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SPIRIT AIRLINES, INC.

By their Attorneys,

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**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK**

SPIRIT AIRLINES, INC.,	:	
	:	
	:	Index No.:
Plaintiff,	:	
v.	:	<u>COMPLAINT</u>
	:	
AMERICAN HOME ASSURANCE COMPANY,	:	<u>JURY TRIAL DEMANDED</u>
	:	
Defendant.	:	
	:	

Plaintiff Spirit Airlines, Inc. (“Spirit or “Plaintiff”), by and through its undersigned attorneys, as and for its Complaint against American Home Assurance Company (“AIG” or “Defendant”), alleges as follows:

INTRODUCTION

1. This action for breach of contract and declaratory judgment arises out of AIG’s wrongful refusal and failure to provide insurance coverage to Spirit for Spirit’s massive losses resulting from, among other things, the novel coronavirus outbreak and ongoing COVID-19 pandemic as well as civil authority orders by federal, state, and local governments limiting, restricting, or prohibiting access to property within one mile of Spirit’s covered locations.

2. Spirit is an international airline company that has some of the youngest and most fuel-efficient airplanes in the United States. Typically, Spirit planes make more than 500 flights a day to more than 70 destinations in the United States, Mexico, Central America, South America, and the Caribbean. Spirit is committed to flying its passengers to a variety of destinations for the best price possible, all while typically leading the industry in on-time performance, giving

passengers more seat, baggage, and boarding options, and improving the travel experience with on-board Wi-Fi, improved seating, and time-saving self-service ticket and baggage kiosks.

3. Spirit earns its income primarily through ticket and ancillary (*e.g.*, checked bags, seat upgrades, and other services) sales to passengers. Spirit also earns revenue from customers by way of Spirit credit card and Fare Club sign-ups and spending, as well as from aircraft rental.

4. Beginning in March 2020, however, the coronavirus/COVID-19 pandemic, related governmental orders, and other events caused Spirit to suffer hundreds of millions (if not more than a billion) dollars in losses to its company—and such losses that are not being subsidized by the federal government. These damages include, among other things: refunded ticket sales, credit card chargebacks for cancelled tickets, decreased ticket sales, cancelled and reduced flights, reduced ancillary sales, decreased vendor services, increased operational expenses (including, for example, parking and storing approximately 129 grounded airplanes), lost rental value of aircrafts, spoiled catering items, various extra expenses (including additional hotel expenses for crewmembers who tested positive while on duty), temporarily decreased employee availability, among other business income losses.

5. Fortunately, for the policy period from November 30, 2019 to November 30, 2020, Spirit had purchased an “all risks” property and business interruption insurance Policy from AIG that covers Spirit at its covered locations against “all risks of direct physical loss or damage” and Spirit’s resulting business income losses, unless otherwise specifically excluded or limited by the Policy. The Policy is attached hereto as **Exhibit A**.

6. By its terms, and as intended by the parties, the Policy covers exactly the types of losses Spirit has suffered, and continues to suffer, resulting from the COVID-19 pandemic.

7. Though microscopic, the coronavirus is a physical substance that attaches to, and remains on, Spirit's property, physically permeating and altering the air around Spirit's property, rendering the property unsuitable for its intended purpose and/or severely limiting Spirit's use of the property and its business of flying customers around the world.

8. Under the Policy, Spirit's "covered locations" for its insured property and business losses include dozens and dozens of the nation's largest airports where Spirit serves millions of customers, including, among many others: LaGuardia Airport in Queens, NY; Ft. Lauderdale/Hollywood International Airport; Dallas/Fort Worth International Airport; Hartsfield Jackson International Airport in Atlanta, GA; Logan International Airport in Boston, MA; Orlando International Airport; Philadelphia International Airport; and the Baltimore/Washington International Thurgood Marshall Airport ("BWI"), among many others. Spirit also has its property at covered locations at several large airports outside of the United States as well, including in Cancun, Mexico; San Jose, Costa Rica; and Panama City, Panama. And at, or around, each of these covered locations, Spirit has covered real and personal property—including but not limited to: lobbies, kiosks, podiums, walkways, terminal offices and buildouts and other leasehold renovations at terminals, as well as holdrooms, furniture, training centers, ticket counters, crew rooms, and even warehouses and hangars.

9. Spirit has had the confirmed presence of the coronavirus and/or COVID-19 at many, if not all, of its covered locations. For example, as early as April 2020, Spirit was aware of at least sixty-five Spirit employees who tested positive for COVID-19 and who worked at covered locations across the United States, including in Arizona, California, Colorado, Florida, Georgia, Illinois, Louisiana, Massachusetts, Michigan, New Jersey, New York, Puerto Rico, South Carolina, and Texas. The number of confirmed cases of COVID-19 among Spirit's employees has

only grown since then, and those are just Spirit employees—this does not take into account the other airport and airplane employees or thousands of travelers carrying and spreading COVID-19 on Spirit’s property at covered locations. For example, the first known COVID-19 patient in Los Angeles County was a traveler originally from Wuhan, China who came through the Los Angeles International Airport, LAX, twice in January 2020 and asked customs officials for help because he felt severely sick, and tested positive.¹

10. As of May 1, 2020, only two months after the onset of the pandemic in the United States, it was reported that over 500 Transportation Security Administration (“TSA”) employees had tested positive for COVID-19 at over a dozen airports where Spirit routinely flies—including 88 alone at LaGuardia Airport and Newark Liberty International Airport.² This does not even speak to the thousands of travelers occupying these locations during the pandemic who are constantly reintroducing the disease into the air and onto the property. Given the high traffic areas where Spirit is insured, including dozens of major U.S. city airports, it is certain that COVID-19 has been and continues to this day to be present at Spirit’s locations, and is an imminent threat to Spirit’s locations by altering and remaining on property, continuing to infect individuals.

11. The physical presence of the coronavirus and persons with COVID-19 on, at, or near Spirit’s covered property at covered locations impaired the functionality and use of Spirit’s property. For example, customers cancelled or did not purchase plane tickets and other services from Spirit and thus did not use Spirit’s property because of the constant presence of COVID-19

¹ *The Story of LA’s First Known COVID-19 Patient*, <https://spectrumnews1.com/ca/la-west/la-times-today/2020/09/12/the-story-of-la-s-first-known-covid-19-patient> (last visited Oct. 1, 2021).

² Carolyn Crist, *TSA: 500 Employees Test Positive for COVID-19*, WebMD (May 1, 2020) available at <https://www.webmd.com/lung/news/20200501/tsa-500-employees-test-positive-for-covid-19> (last visited Oct. 1, 2021).

at the airports. Additionally, Spirit had to cancel flights, ground and park airplanes, dispose of spoiled food, restrict the number of people who accessed its terminals and airplanes, attempt to continue to operate its business as normally as possible with reduced pilots, flight attendants, and staff, and enable many other employees to work remotely.

12. Indeed, compared to 2019, U.S. airline passenger traffic was down approximately 60% in 2020, and the combined pre-tax profit margins of nine major U.S. airlines, including Spirit, were down almost 70% in 2020 compared to 2019.³ Specifically, for the months of April, May and June 2019, Spirit had 18,266, 19,913 and 19,620 flight departures, respectively. One year later in 2020, but during the pandemic when COVID-19 was constantly present in and around Spirit's covered airport locations, Spirit had flight departures of 4,398, 1,384 and 2,900 for the months April, May and June—a drop of 72%, 92%, and 83%, respectively, from the previous year.



As seen in just one example in the picture above, scores of Spirit's planes were grounded as a

³ *Impact of COVID-19: Data Updates*, Airlines for America (Sept. 27, 2021) available at <https://www.airlines.org/dataset/impact-of-covid19-data-updates/> (last visited Oct. 1, 2021).

result of the pandemic, resulting in significant losses. These losses are business income losses tied to the interruption of Spirit's normal business from direct physical loss and damage caused by the undisputed presence of the coronavirus at the covered locations under the Policy.

13. Additionally, due to the constant presence of COVID-19, Spirit has taken various actions to repair, rebuild, replace, protect, and preserve its properties, which also has caused Spirit substantial losses. For example, during the Policy's applicable periods of indemnity, Spirit has spent millions of dollars in extra expenses incurred to remove the coronavirus from its properties and to repair, protect, and preserve property by adding improved ventilation systems and air filters, dividers, and sanitation stations and purchasing additional cleaning supplies (including those on the Environmental Protection Agency's List N), cleaning services (including Primeflight, an aviation services vendor), and personal protective equipment. Yet even the most aggressive cleaning efforts cannot completely eliminate COVID-19 from Spirit's properties, let alone reduce the imminent risk of its reintroduction to Spirit's properties. This is especially true at airports, where COVID-19 is constantly being carried in by employees and travelers.

14. Spirit has also incurred significant extra expenses to continue as nearly normal as practicable the conduct of its business during the pandemic by adding signs to its property, limiting the number of persons allowed onto its property and airplanes, modifying employee schedules, and enabling remote-work capabilities for its employees.

15. Additionally, dozens (if not hundreds) of separate governmental "stay at home" orders issued during the pandemic crippled Spirit's business as federal, state, and local governments and municipalities prohibited potential customers from leaving their homes and traveling for any purpose other than an essential purpose. Moreover, every location where Spirit

suffered these damages were separate and apart from the other, each resulting from that specific location's separate and unique COVID-19 presence and restrictions.

16. Thus, by attaching to the property and remaining in the air, the physical presence of COVID-19 in and on Spirit's properties has caused physical loss or damage to those properties, has rendered such properties dangerous and unfit for their intended purpose, and has resulted in massive losses covered under the Policy. Spirit's various and substantial losses thus fall squarely in the coverage of the Policy, including the Policy's basic property loss or damage and business interruption coverages as well as additional coverages, such as extra expense coverage, ingress and egress coverage, interruption by civil or military authority coverage, and spoilage coverage, among others described in Section I *infra*.

17. Nevertheless, despite Spirit paying substantial premiums to AIG to cover these very types of losses, and despite AIG agreeing to provide Spirit with \$100 million in per-occurrence coverage for Spirit's property and income losses and extra expenses resulting from physical loss or damage to certain real and other property, AIG denied coverage in May 2020 based primarily on a single, inapplicable exclusion in the Policy that was intended to preclude coverage for instances of traditional, environmental pollutants and contaminants, not the type of property loss associated with global pandemics.

18. Therefore, Spirit has been forced to bring this lawsuit to obtain the insurance coverage to which it is entitled.

THE PARTIES

19. Plaintiff Spirit Airlines, Inc. is a corporation organized under the laws of the State of Delaware with its principal place of business in Miramar, Florida. Spirit also owns insured

property in the State of New York where it operates a portion of its business and regularly flies into and out of LaGuardia Airport.

20. Upon information and belief, Defendant American Home Assurance Company is a corporation organized under the laws of the State of New York with its principal place of business in New York, New York, and is authorized to conduct insurance business in the State of New York.

JURISDICTION AND VENUE

21. This Court has jurisdiction pursuant to N.Y. C.P.L.R. §§ 301 and 302.

22. The Policy provides that “[a]ny interpretation of this Policy or issue relating to its construction, validity or operation shall be determined by the laws of the United States or of any applicable state in the United States. The parties will submit to the exclusive jurisdiction of the applicable court within the United States.” Ex. A at p. 59 of 191, § VIII.H.

23. Venue in this Court is proper pursuant to N.Y. C.P.L.R. §§ 501 and 503.

FACTUAL ALLEGATIONS

I. THE POLICY COVERS SPIRIT’S LOSSES AND EXPENSES RELATED TO THE CORONAVIRUS AND/OR COVID-19

24. In exchange for a substantial premium, AIG sold an “all risks” property and business interruption insurance Policy to Spirit for the policy period from November 30, 2019 to November 30, 2020, Policy No. 025032576 (the “Policy”). Ex. A.

25. The Policy was designed to cover exactly the types of losses Spirit has suffered and continues to suffer and extra expenses Spirit has incurred and continues to incur due to the COVID-19 pandemic and the restrictions imposed regarding the same—namely, losses and extra expenses arising out of all risks of physical loss or damage to and/or near Spirit’s property, including but

not limited to gross profits losses, gross earnings losses, various extra expenses, contractual penalties, soft costs, expediting expenses, contingent business losses related to suppliers and customers, increased operational costs, and spoilage, among others.

26. The Policy is not a specific named perils policy but rather an “all risks” property and business interruption policy that covers “all risks of direct physical loss or damage” to Spirit’s property and resulting business income loss unless otherwise excluded. Ex. A at p. 24 of 191, § I.A; Ex. A at p. 46 of 191, § VI.A.

27. More specifically, AIG agreed to “pay for all risks of direct physical loss or damage by a **covered caused of loss**⁴ to **covered property** at a **covered location** (or within 1000 feet thereof) as described in the most recent Statement of Locations and Values on file with [AIG]” for \$100 million per occurrence (the “Property Loss or Damage Coverage”). Ex. A at p. 24 of 191, § I.A; Ex. A at p. 1 of 191, Item 6. A “covered cause of loss” is defined as “a peril or other type of loss, not otherwise excluded under this Policy.” Ex. A at p. 62 of 191, § IX.6. A “covered location” is defined as (a) a location as specified in the most recent Statement of Locations and Values on file with AIG; (b) a miscellaneous unnamed location (*i.e.*, property rented or leased by Spirit that is not reported on the Statement of Locations and Values); or (c) a location which is covered under the errors or omissions additional coverage or the newly acquired property additional coverage. Ex. A at p. 62 of 191, § IX.8. The Statement of Locations and Values is attached hereto as **Exhibit B**.

28. Pursuant to the Policy, in addition to the Property Loss or Damage Coverage, AIG also agreed to “pay the actual **business income** loss sustained by [Spirit] due to the necessary

⁴ Terms in bold are defined in the Policy.

partial or total interruption of [Spirit's] business operations, services or production during the **period of indemnity** as a result of direct physical loss or damage to (1) **covered property** by a [peril or other type of loss, not otherwise excluded under this Policy] or (2) property of the type insured under this Policy by a [peril or other type of loss, not otherwise excluded under this Policy] which directly affects [Spirit's] use of the **covered property**" for \$15 million on a per-occurrence basis (the "Business Income Loss Coverage"). Ex. A at p. 46 of 191, § VI.A; Ex. A at p. 21 of 191, Endorsement ("End.") No. 1 § I.

29. Under the Property Loss or Damage Coverage, the Policy covers both: (i) "all risks of direct physical *loss . . . to*" Spirit's property; and (ii) "all risks of direct physical . . . *damage . . . to*" Spirit's property. Ex. A at p. 24 of 191, § I.A. (emphases added).

30. Similarly, under the Business Income Loss Coverage, the Policy covers both: (i) "**business income** loss sustained by [Spirit] as a result of direct physical *loss . . . to*" Spirit's property (or property that affects Spirit's use of its property); and (ii) "**business income** loss sustained by [Spirit] as a result of direct physical . . . *damage . . . to*" Spirit's property (or property that affects Spirit's use of its property). Ex. A at p. 46 of 191, § VI.A. (emphases added).

31. As drafted by AIG, the Policy does not define what constitutes "all risks of direct physical loss or damage." However, although the Policy does not define what constitutes "all risks of direct physical loss or damage," as used in the Policy, "loss" is distinct from "damage" and has an independent meaning.

32. Moreover, a "covered cause of loss" is defined as "a peril or other type of loss, not otherwise excluded under this Policy." Ex. A at p. 62 of 191, § IX.6. As such, the Policy uses the undefined term "loss" with at least two different meanings as demonstrated by the phrase "all risks

of . . . loss [caused] by a . . . peril or other type of loss” in both the Property Loss or Damage Coverage and the Business Income Loss Coverage.

33. The Policy defines “occurrence” as “any one **accident**, loss, disaster, casualty, incident or series of **accidents**, losses, disasters, casualties or incidents, including all resultant or concomitant insured losses, not otherwise excluded by this Policy [that] arises out of a single event or originating cause.” Ex. A at p. 65 of 191, § IX.28. The Policy’s per-occurrence deductible is \$50,000. Ex. A at p. 6 of 191, Item 10.A.

34. Additionally, the Policy does not require complete dispossession or uninhabitability to trigger coverage. For example, the Policy covers Spirit when its business operations are even “partial[ly]” interrupted.

35. As described above, the Policy is divided into two primary coverage sections—“Business Income Loss Coverage” and “Property Loss or Damage Coverage.”

A. The Policy Provides Applicable Business Income Loss Coverages

36. Under the Business Income Loss Coverage, which AIG refers to as “Time Element Coverage,” AIG agreed to “pay the actual **business income** loss sustained by [Spirit] due to the necessary partial or total interruption of [Spirit’s] business operations, services or production during the **period of indemnity** as a result of direct physical loss or damage to (1) **covered property** by a **covered cause of loss** or (2) property of the type insured under this Policy by a **covered cause of loss** which directly affects [Spirit’s] use of the **covered property**, provided that [Spirit is] a lessee or occupant of the premises where the direct physical loss or damage occurred.” Ex. A at p. 46 of 191, § VI.A.

37. The Policy defines “business income” as either “gross profits” or “gross earnings” (both as described more fully in the Policy), including ordinary payroll (for up to 30 days). Ex. A at p. 46 of 191, § VI.B; Ex. A at p. 5 of 191, Item 8.A.

38. The Policy defines “ordinary payroll” as “payroll expenses for [Spirit’s] employees other than officers, executives, department managers and employees under contract (other than under collective bargaining agreements),” including “employee benefits, FICA, Medicare payments, union dues, and workers’ compensation premiums.” Ex. A at p. 65 of 191, § IX.29.

39. AIG agreed to pay the greater of either “gross profits” or “gross earnings” for all Spirit’s “business income” loss. Ex. A at p. 46 of 191, § VI.B.

40. The Policy provides a “period of indemnity” for “gross profits” and “gross earnings.” Ex. A at pp. 66-67 of 191, § IX.32. The “period of indemnity” for “gross profits” is:

With respect to business operations, services and production . . . the period of time that:

(a) (i) Begins on the date and time of the loss or damage to the **covered property** or property of the type insured . . . ;

(ii) With respect to the CONTINGENT TIME ELEMENT Additional Time Element Coverage, begins on the date and time of the loss or damage to the property of the applicable supplier or applicable customer; [and]

(b) Ends no later than the [12] months . . . during which sales are directly affected by covered loss or damage.

...

This period of time shall not be cut short by the end of the policy period.

Ex. A at p. 66 of 191, § IX.32.a.

41. The “period of indemnity” for “gross earnings” is:

With respect to business operations, services and production . . . the period of time that:

(a) (i) Begins on the date and time of the loss or damage to **covered property** or property of the type insured . . . ;

(ii) With respect to the CONTINGENT TIME ELEMENT Additional Time Element Coverage, begins on the date and time of the loss or damage to the property of the applicable supplier or applicable customer; [and]

(b) Ends on the earlier of:

(i) The date when such property could be repaired, rebuilt or replaced with materials of like kind, size, capacity and quality to the same or equivalent physical operating conditions with the exercise of due diligence and dispatch, including any additional time to meet the applicable and covered **law or ordinance** requirements, if any; or

(ii) The date when the business is resumed at a new permanent location.

...

This period of time shall not be cut short by the end of the policy period.

Ex. A at pp. 66-67 of 191, § IX.32.b.

42. “Covered property” includes real and personal property. *See* Ex. A at p. 63 of 191, § IX.10, and pp. 26-27, § I.C.

43. In addition to the Policy’s basic Business Income Loss Coverage, the Policy provides several Additional Time Element Coverages that are relevant to Spirit’s losses, including, but not limited to, Attraction Property coverage, Contingent Time Element coverage, Contractual Penalties coverage, Extra Expense coverage, Ingress & Egress coverage, Interruption by Civil or Military Authority coverage, and Soft Costs coverage.

44. Each Additional Time Element Coverage includes a sublimit of liability that is “per **occurrence** unless otherwise indicated” and applies “in addition to the Business Income Loss Sublimit” of \$15 million, which also applies per “occurrence.” Ex. A at p. 2 of 191, Item 7; Ex. A at p. 21 of 191, End. No. 1 § I.

1. The Policy Provides Attraction Property Coverage

45. Under the Attraction Property coverage, AIG agreed to:

pay the actual **business income** loss sustained by [Spirit] and **extra expense** caused by direct physical loss or damage by a **covered cause of loss** to property of the type insured under this Policy that attracts business to a **covered location**, provided that such property is within [1 mile] from the **covered location**.

Ex. A at p. 48 of 191, § VI.D.1.

46. “Extra expense” is defined in Section I.A.4. *infra*.

47. The Attraction Property coverage “begins on the date and time that the **attraction property** sustains such direct physical loss or damage and ends on the date and time that the **attraction property** could be reopened for business” for up to “30 days, subject to a maximum per **occurrence** sublimit of \$500,000.” Ex. A at p. 48 of 191, § VI.D.1; Ex. A at p. 4 of 191, Item 7.C.1.

2. The Policy Provides Contingent Time Element Coverage

48. The Policy also provides Contingent Time Element coverage, which is divided into two subsections—one dealing with the supply and acceptance of goods and services, and the other dealing with ingress to and egress from property being partially or totally prevented or access to property being limited, restricted, or prohibited by an order of civil or military authority.

49. Subsection a. of the Contingent Time Element coverage provides that:

If direct physical loss or damage by a **covered cause of loss** to property of the type insured under this Policy is sustained by: (i) [Spirit’s] **Tier 1 supplier** [a supplier that supplies products or services directly to Spirit] or [Spirit’s] **Tier 2 supplier** [a supplier that supplies products or services directly to Spirit’s **Tier 1 supplier**] or (ii) [Spirit’s] **Tier 1 customer** [a customer that receives products or services directly from Spirit] or [Spirit’s] **Tier 2 customer** [a customer that receives products or services directly from Spirit’s **Tier 1 customer**], anywhere in the world and such loss or damage:

(1) Wholly or partially prevents [Spirit's] direct supplier from supplying their goods and/or services to [Spirit]; or

(2) Wholly or partially prevents [Spirit's] direct customer from accepting [Spirit's] goods and/or services;

then [AIG] will pay the actual **business income** loss and **extra expense** sustained by [Spirit] during the **period of indemnity** with respect to such property of the type insured under this Policy.

Ex. A at pp. 14-15 of 191, Special Terms and Conditions Schedule, Contingent Time Element Amendment § a.

50. Subsection b. of the Contingent Time Element coverage provides that:

[AIG] will pay the actual **business income** loss and **extra expense** sustained by [Spirit] in accordance with Subsection a. above:

(1) If ingress to or egress from: (i) [Spirit's] **Tier 1 supplier's** or [Spirit's] **Tier 2 supplier's** location or (ii) [Spirit's] **Tier 1 customer's** or [Spirit's] **Tier 2 customer's** location is partially or totally prevented in accordance with the same exclusions, limitations and time period that apply to the INGRESS & EGRESS Additional Time Element Coverage; [or]

(2) If an order of civil or military authority limits, restricts or prohibits access to property not insured under this Policy, provided that the effect of such order partially or totally prohibits access to: (i) [Spirit's] **Tier 1 supplier's** or [Spirit's] **Tier 2 supplier's** location or (ii) [Spirit's] **Tier 1 customer's** or [Spirit's] **Tier 2 customer's** location, in accordance with the same exclusions, limitations and time period that apply to the INTERRUPTION BY CIVIL OR MILITARY AUTHORITY Additional Time Element Coverage.

Ex. A at p. 15 of 191, Special Terms and Conditions Schedule, Contingent Time Element Amendment § b.

51. The Contingent Time Element coverage has a "\$2,500,000 maximum per **occurrence** sublimit," which is further sublimited to \$1,000,000 for Unnamed Suppliers/Customers (as defined in the Policy) and Tier 2 suppliers/customers. Ex. A at pp. 4-5 of 191, Item 7.C.2.

3. The Policy Provides Contractual Penalties Coverage

52. The Policy also provides Contractual Penalties coverage, pursuant to which AIG agreed to “pay for contractual penalties [Spirit is] legally liable to pay under the written provisions of a contract executed prior to the loss or damage due to direct physical loss or damage by a **covered cause of loss to covered property.**” Ex. A at p. 49 of 191, § VI.D.3. The Contractual Penalties coverage has a \$50,000 per occurrence sublimit. Ex. A at p. 5 of 191, Item 7.C.3; Ex. A at p. 2 of 191, Item 7.

4. The Policy Provides Extra Expense Coverage

53. The Policy provides Extra Expense coverage, pursuant to which AIG agreed to “pay loss sustained by [Spirit] for **extra expense** during the **period of indemnity** resulting from direct physical loss or damage by a **covered cause of loss.**” Ex. A at p. 50 of 191, § VI.D.6.

54. The Policy defines “extra expense” as reasonable and necessary:

a. Extra expense incurred to temporarily continue as nearly normal as practicable the conduct of [Spirit’s] business;

b. Extra costs of temporarily using [Spirit’s] property or [Spirit’s] facilities or the property or facilities of others; and

c. Costs to purchase **finished goods** from third parties to fulfill orders when such orders cannot be met, less the payment received for the sale of such **finished goods**;

all less any value remaining at the end of the **period of indemnity** for property obtained in connection with the above.

Ex. A at p. 50 of 191, § VI.D.6.

55. The Policy defines “finished goods” as “stock manufactured or processed by [Spirit] which is in final packaging and ready for shipment or sale.” Ex. A at p. 64 of 191, § IX.18.

56. The Extra Expense coverage has a \$2,500,000 per occurrence sublimit. Ex. A at p. 5 of 191, Item 7.C.5; Ex. A at p. 2 of 191, Item 7.

5. The Policy Provides Ingress & Egress Coverage

57. The Policy also provides Ingress & Egress coverage, pursuant to which AIG agreed

to:

pay the actual **business income** loss sustained by [Spirit] and **extra expense** caused by direct physical loss or damage by a **covered cause of loss** to property not insured under this Policy, provided that:

a. Such direct physical loss or damage to such property partially or totally prevents physical ingress to or egress from a **covered location**; and

b. Such property not insured under this Policy is within [1 mile] from the **covered location**.

Ex. A at p. 50 of 191, § VI.D.7; Ex. A at p. 5 of 191, Item 7.C.7.

58. The Ingress & Egress coverage “begins on the date and time that ingress to or egress from the **covered location** is partially or totally prevented” for up to “30 days, subject to a maximum per **occurrence** sublimit of \$1,000,000.” Ex. A at p. 50 of 191, § VI.D.7; Ex. A at p. 5 of 191, Item 7.C.7.

59. If a “covered cause of loss” occurs under both the Ingress & Egress coverage and the Interruption by Civil or Military Authority coverage, AIG will pay for loss under only one of those coverages, as selected by Spirit. Ex. A at p. 54 of 191, § VI.D.

6. The Policy Provides Interruption By Civil Or Military Authority Coverage

60. The Policy also provides Interruption by Civil or Military Authority coverage, pursuant to which AIG agreed to pay:

the actual **business income** loss sustained by [Spirit] and **extra expense** if an order of civil or military authority limits, restricts or prohibits access to property not insured under this Policy provided that:

a. Such property sustains direct physical loss or damage by a **covered cause of loss**;

b. Such property is within [1 mile] from the **covered location** . . . ; and

c. The effect of such order is to partially or totally prohibit access to a **covered location**.

Ex. A at p. 51 of 191, § VI.D.8; Ex. A at p. 5 of 191, Item 7.C.8.

61. The Interruption by Civil or Military Authority coverage “begins on the effective date and time of such order and ends on the date and time that the **covered location** could be reopened for business” for up to “30 days, subject to a maximum per **occurrence** sublimit of \$1,000,000.” Ex. A at p. 50 of 191, § VI.D.8; Ex. A at p. 5 of 191, Item 7.C.8.

7. The Policy Provides Soft Costs Coverage

62. The Policy also provides Soft Costs coverage as follows:

For **covered property** consisting of new buildings, additions or alterations in the course of construction only, we will pay for reasonable and necessary **soft costs** incurred by [Spirit] during the period of delay in completion if such property sustains direct physical loss or damage by a **covered cause of loss**.

Ex. A at p. 53 of 191, § VI.D.14.

63. The Policy defines “soft costs” as:

- a. The amount of actual interim or construction financing interest, including loan fees and other one-time charges incurred to negotiate a new construction loan and/or extend the existing one;
- b. Real estate taxes and ground rent, if any;
- c. Advertising and promotional expenses;
- d. Cost of additional commissions;
- e. Architects, surveyors, legal, consulting engineers or other fees, not otherwise covered under this Policy;
- f. Project administration expenses, but not including development fees;
- g. Insurance premiums; and
- h. Finder’s fee refunds.

Ex. A at p. 54 of 191, § VI.D.14.

64. The Soft Costs coverage has a \$1,000,000 per occurrence sublimit. Ex. A at p. 5 of 191, Item 7.C.14; Ex. A at p. 2 of 191, Item 7.

B. The Policy Provides Applicable Property Loss or Damage Coverages

65. In addition to the Business Income Loss Coverage, the Policy provides Property Loss or Damage Coverage, pursuant to which AIG agreed to “pay for all risks of direct physical loss or damage by a **covered cause of loss to covered property at a covered location** (or within 1000 feet thereof) as described in the most recent Statement of Locations and Values on file with [AIG].” Ex. A at p. 24 of 191, § I.A.

66. In addition to the Policy’s basic Property Loss or Damage Coverage, the Policy provides several Additional Coverages that are relevant to Spirit’s losses, including, but not limited to, Expediting Expenses, Preservation of Property, and Spoilage.

1. The Policy Provides Expediting Expenses Coverage

67. The Policy also provides Expediting Expenses coverage, pursuant to which AIG agreed to “pay reasonable and necessary expediting expenses to: **a. Make temporary repairs to covered property**; or **b. Expedite the permanent repair or replacement of covered property**; that has sustained direct physical loss or damage by a **covered cause of loss.**” Ex. A at p. 33 of 191, § II.9.

68. The Expediting Expenses coverage has a \$2,500,000 per occurrence sublimit. Ex. A at p. 4 of 191, Item 7.B.9; Ex. A at p. 2 of 191, Item 7.

2. The Policy Provides Preservation Of Property Coverage

69. The Policy also provides Preservation of Property coverage, pursuant to which AIG agreed to pay for:

a. Reasonable and necessary costs, over and above normal operating costs, incurred by [Spirit] for actions to temporarily protect or preserve **covered property**, and

b. Direct physical loss or damage by a **covered cause of loss** to **covered property** removed from a **covered location**,

provided that such actions or removal is necessary due to imminent direct physical loss or damage to **covered property** by a **covered cause of loss**. The Preservation of Property sublimit of liability as shown in Item 7.B. of the Declarations does not apply to Subsection b. above.

Ex. A at p. 36 of 191, § II.22.

70. The Preservation of Property coverage under subsection a. has a \$500,000 per occurrence sublimit. Ex. A at p. 4 of 191, Item 7.B.22; Ex. A at p. 2 of 191, Item 7.

3. The Policy Provides Spoilage Coverage

71. The Policy also provides Spoilage coverage, pursuant to which AIG agreed to pay “for physical loss or damage due to spoilage of [Spirit’s] **perishable goods**, including while such goods are in transit, by a **covered cause of loss**.” Ex. A at p. 37 of 191, § II.26.

72. The Policy defines “perishable goods” as “personal property: a. Maintained under controlled conditions for their preservation, and b. Susceptible to loss or damage if the controlled conditions are not maintained.” Ex. A at p. 67 of 191, § IX.33.

73. The Spoilage coverage has a \$250,000 per occurrence sublimit. Ex. A at p. 4 of 191, Item 7.B.26; Ex. A at p. 2 of 191, Item 7.

C. No Exclusion In The Policy Bars Spirit’s Covered Losses

74. The Policy does not contain a virus exclusion, even though such exclusions are often included in “all risks” property and business interruption policies.

75. However, AIG has pointed to a different exclusion to fill the place of a virus exclusion which purportedly applies to “**pollutants or contaminants.**” The exclusion provides that:

Except as otherwise provided under the Additional Coverages or Additional Time Element Coverages (and in such event, only to the extent provided therein), [AIG] do[es] not insure loss or damage caused directly or indirectly by . . .

The actual, alleged or threatened release, discharge, escape or dispersal of **pollutants or contaminants**, all whether direct or indirect, proximate or remote or in whole or in part caused by, contributed to or aggravated by any **covered cause of loss** under this Policy.

However, this exclusion shall not apply to direct physical loss or damage to **covered property** from **pollutants or contaminants** caused by a **covered cause of loss** at the **covered location**, including the cost to clean-up **pollutants or contaminants** from **covered property** at the **covered location** resulting from such loss or damage. No coverage is provided for testing or monitoring for **pollutants or contaminants**. For the purpose of the exception to this exclusion only, **pollutants or contaminants** do not include radioactive contaminants.

Ex. A at pp. 43-44 of 191, § V.1.d.

76. The Policy form defines “pollutants or contaminants” as:

any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste, which 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 to property insured hereunder, including, but not limited to, bacteria, virus, or hazardous substances. Waste includes materials to be recycled, reconditioned or reclaimed. **Pollutants or contaminants** do not include **fungus, mold or spore**.

Ex. A at pp. 67-68 of 191, § IX.35.

77. This exclusion does not apply to Spirit’s losses for several reasons. First, the exclusion specifically does not apply to Spirit’s losses triggering its coverage under “Additional Coverages” and “Additional Time Element Coverages,” which, as discussed *supra*, apply to Spirit’s losses here. Ex. A at p. 43 of 191, § V.1.

78. Second, if AIG had wanted to exclude coverage for physical loss or damage caused directly or indirectly by an outbreak of a naturally-occurring, communicable disease like COVID-19, it could have used an exclusion that clearly and unambiguously did so. As discussed in more detail below (*infra* ¶ 133), the insurance industry, through Insurance Services Office, has promulgated such an exclusion since at least 2006; yet the Policy here contains no such exclusion.

79. Third, when read narrowly as required by policy construction rules, the exclusion makes clear it applies to traditional environmental and industrial contamination only. Here, the exclusion does not apply to Spirit's losses because SARS-CoV-2, which causes the disease COVID-19, is not "released," "discharged," or "dispersed" by, and does not "escape" as those terms are understood and used in normal parlance of this type of exclusion. Indeed, the exclusion's references to "soot . . . acids, alkalis [and] chemicals," "radioactive contaminants," and "waste" as including "materials to be recycled, reconditioned or reclaimed" which "*after its release*" causes damage shows that the exclusion was designed and used by AIG and understood by Spirit to apply only to losses caused by standard industrial and environmental pollution, not property loss and business income loss relating to the novel coronavirus at or surrounding the insured locations, the constant imminent presence of COVID-19, or the associated government actions in response to the pandemic.

II. THE CORONAVIRUS OUTBREAK CAUSES A GLOBAL PANDEMIC

80. In December 2019, during the term of the Policy, an outbreak of the illness known as COVID-19 caused by the novel coronavirus formally known as SARS-CoV-2 was first

identified in Wuhan, Hubei Province, China.⁵ COVID-19 is a severe and highly contagious infectious disease that can cause serious systemic illness and death. Then, in an event that had not occurred in more than a century, a global pandemic quickly ensued, and the virus infected every country in the world.⁶

81. The United States reported its first COVID-19 case in January 2020, and on January 30, 2020, the World Health Organization (the “WHO”) declared the spread of the coronavirus a “Public Health Emergency of International Concern.”⁷

82. From the first reported case in the United States in January 2020 to the present, the impact of the coronavirus and the resulting disease has been staggering on life, property, and business. According to the Centers for Disease Control and Prevention (“CDC”), more than 36.5 million Americans have contracted the disease, and more than 620,000 have died from the same. Thus, the impact on customer-services businesses generally and the airline industry specifically has been massive with Spirit’s own covered locations and its vendors’ and customers’ properties and businesses being shut down, Spirit’s prospective passengers being ordered to stay at home and

⁵ *Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak*, Federal Register (Mar. 13, 2020), available at <https://www.federalregister.gov/documents/2020/03/18/2020-05794/declaring-a-national-emergency-concerning-the-novel-coronavirus-disease-covid-19-outbreak> (last visited Oct. 1, 2021).

⁶ Donald G. McNeil Jr., *Wuhan Coronavirus Looks Increasingly Like a Pandemic, Experts Say*, N.Y. Times (Feb. 2, 2020), available at <https://www.nytimes.com/2020/02/02/health/coronavirus-pandemic-china.html> (last visited Oct. 1, 2021).

⁷ *COVID-19 Public Health Emergency of International Concern (PHEIC) Global research and innovation forum*, World Health Organization (Feb. 12, 2020), available at [https://www.who.int/publications/m/item/covid-19-public-health-emergency-of-international-concern-\(pheic\)-global-research-and-innovation-forum](https://www.who.int/publications/m/item/covid-19-public-health-emergency-of-international-concern-(pheic)-global-research-and-innovation-forum) (last visited Oct. 1, 2021).

not travel, and with drastically decreased customer spending. Indeed, in 2020, dozens of airlines went out of business as a result of the pandemic.⁸

83. As of February 26, 2020, the CDC warned that community transmission of the disease existed in the United States.⁹ Community transmission means that the coronavirus and/or COVID-19 was continuing with no ability to trace the origins of new infections.

84. Further, though the CDC began shipping testing kits to laboratories on February 5, 2020, the kits were later determined to be flawed, rendering any results unreliable. By February 26, 2020, the CDC were still testing fewer than 100 patients a day.

85. On March 11, 2020, the WHO declared the novel coronavirus and resulting COVID-19 infectious disease a global pandemic.¹⁰ As a declared pandemic, the coronavirus and/or COVID-19 is present globally, including at each of Spirit's covered locations as well as at its vendors' and customers' properties and properties within one mile of Spirit's covered locations.

86. By mid-March, it became clear that drastic action had to be taken to slow down the rate of infections. Many state and local governments then began to impose sweeping restrictions on residents' daily lives and property to protect life and property and stop the spread of the

⁸ Thomas Pallini, *The pandemic devastated airlines in 2020 and forced many out of business — here's the most notable that didn't make it to 2021*, Insider (Jan 17, 2021), available at <https://www.businessinsider.com/airlines-that-went-out-of-business-in-2020-2021-1> (last visited Oct. 1, 2021).

⁹ *CDC Confirms Possible Instance of Community Spread of COVID-19 in U.S.*, CDC Newsroom, (Feb. 26, 2020), available at <https://www.cdc.gov/media/releases/2020/s0226-Covid-19-spread.html> (last visited Oct. 1, 2021).

¹⁰ WHO Director-General's opening remarks at the media briefing on COVID-19, World Health Organization (Mar. 11, 2020) available at <https://www.who.int/director-general/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020> (last visited Oct. 1, 2021).

coronavirus and/or COVID-19. Most states restricted or prohibited the operation of all non-essential businesses or required individuals to stay at home except for essential purposes.

87. Even now, more than one year since the WHO declared COVID-19 a pandemic and since many governmental orders were enacted in response to the coronavirus and/or COVID-19 pandemic, the world is still dealing with the coronavirus/COVID-19 global pandemic.

III. THE CORONAVIRUS AND/OR COVID-19 CAUSES DIRECT PHYSICAL LOSS OR DAMAGE TO PROPERTY

88. The various modes of transmission of the coronavirus have made containment of the coronavirus and/or COVID-19 particularly challenging. The WHO recognizes that the coronavirus and/or COVID-19 can be transmitted through at least three different modes: (1) person-to-person contact or airborne transmission via droplets; (2) contact with inanimate surfaces impacted by the coronavirus, also known as “fomites”; and (3) contact with aerosolized particles that remain in the air in highly populated and indoor areas.¹¹

89. First, according to the WHO, the coronavirus and/or COVID-19 spreads primarily between persons who are in close contact with each other, usually about three feet.¹²

90. The virus is spread when uninfected persons inhale droplets that carry the coronavirus from infected persons or otherwise come into contact with infected droplets through

¹¹ *Transmission of SARS-CoV-2: implications for infection prevention precautions*, WHO Scientific Brief (July 9, 2020), available at <https://www.who.int/news-room/commentaries/detail/transmission-of-sars-cov-2-implications-for-infection-prevention-precautions> (last visited Oct. 1, 2021).

¹² *Coronavirus disease (COVID-19): How is it transmitted?* World Health Organization (Dec. 13, 2020) available at <https://www.who.int/news-room/q-a-detail/coronavirus-disease-covid-19-how-is-it-transmitted> (last visited Oct. 1, 2021).

their mucous membranes.¹³ This is called airborne transmission. Droplets from an infected person can remain in the air for minutes or hours and remain on surfaces for days or weeks and thus affect real and personal property.

91. Second, scientific studies have found that the coronavirus physically rests and remains on surfaces for up to twenty-eight days on a variety of materials, including glass, steel, vinyl, plastic, and paper—surfaces that are found throughout Spirit’s covered locations.¹⁴ Human contact with these surfaces, which are known as fomites, can transmit the disease-causing virus, rendering the property dangerous and potentially fatal. When the virus is shed by an infected person onto objects and surfaces such as airplane and airport seats, doorknobs/door handles,

¹³ CDC, *Scientific Brief: SARS-CoV-2 and Potential Airborne Transmission* (last updated May 7, 2021), available at <https://www.cdc.gov/coronavirus/2019-ncov/more/scientific-brief-sars-cov-2.html> (last visited Oct. 1, 2021); see also CDC, *How COVID-19 Spreads* (last updated July 14, 2021), available at <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-covid-spreads.html> (last visited Oct. 1, 2021)

¹⁴ See, e.g., Shane Riddell, et al., *The effect of temperature on persistence of SARS-CoV-2 on common surfaces*, *Virology J.* (Oct. 7, 2020), available at <https://virologyj.biomedcentral.com/articles/10.1186/s12985-020-01418-7> (last visited Oct. 1, 2021); see also Neeltje van Doremalen, et al., *Aerosol and Surface Stability of SARS-CoV-2 as Compared with SARS-CoV-1*, *N. Engl. J. Med.* (March 17, 2020), available at <https://www.nejm.org/doi/full/10.1056/nejmc2004973> (last visited Oct. 1, 2021); Leah F. Moriarty, et al., *Public Health Responses to COVID-19 Outbreaks on Cruise Ships – Worldwide, February-March 2020*, CDC Morbidity and Mortality Weekly Report (Mar. 27, 2020), available at <https://www.cdc.gov/mmwr/volumes/69/wr/mm6912e3.htm> (last visited Oct. 1, 2021); Zhen-Dong Guo, *Aerosol and Surface Distribution of Severe Acute Respiratory Syndrome Coronavirus 2 in Hospital Wards, Wuhan, China, 2020*, *CDC Emerging Infectious Disease Journal* Vol. 26, No. 7-July 2020 (Apr. 10, 2020), available at https://wwwnc.cdc.gov/eid/article/26/7/20-0885_article (last visited Oct. 1, 2021); CDC, Boris Pastorino, Franck Touret, Magali Gilles, Xavier de Lamballerie, and Rémi N. Charrel, *Prolonged Infectivity of SARS-CoV-2 in Fomites*, 26 *EMERGING INFECTIOUS DISEASES* 9 (Sept. 2020), available at https://wwwnc.cdc.gov/eid/article/26/9/20-1788_article (last visited Oct. 1, 2021).

counters, desks, computer keyboards, bathroom fixtures, and tickets, other people can become infected by touching these surfaces and then touching their eyes, noses, or mouths.¹⁵

92. Accordingly, fomites transform the surface of property into a potentially deadly transmission device. A study published in the *Journal of Epidemiology and Infection* showed that after lockdown in the United Kingdom, fomite transmission of the coronavirus and/or COVID-19 may have contributed to as many as 25% of the deaths in that region.¹⁶

93. Additionally, an American Society for Microbiology article discussed fomite transmission involving both porous and non-porous surfaces as a mode of virus transmission. According to the researchers, “[o]nce a fomite is contaminated, the transfer of infectious virus may readily occur between inanimate and animate objects, or vice versa, and between two separate

¹⁵ See, e.g., *Coronavirus disease (COVID-19): How is it transmitted?*, WHO (last updated Apr. 30, 2021), available at <https://www.who.int/news-room/q-a-detail/coronavirus-disease-covid-19-how-is-it-transmitted> (last visited Oct. 1, 2021); see also CDC, Jing Cai, Wenjie Sun, Jianping Huang, Michelle Gamber, Jing Wu, Guiqing He, *Indirect Virus Transmission in Cluster of COVID-19 Cases, Wenzhou, China, 2020*, 26 *EMERGING INFECTIONS DISEASES* 6 (June 2020), available at https://wwwnc.cdc.gov/eid/article/26/6/20-0412_article (last visited Oct. 1, 2021); WHO, *Transmission of SARS-CoV-2: implications for infection prevention precautions* (Jul. 9, 2020), available at <https://www.who.int/news-room/commentaries/detail/transmission-of-sars-cov-2-implications-for-infection-prevention-precautions> (last visited Oct. 1, 2021); see also *See How Easily COVID-19 Might Spread Through A Restaurant In This Black Light Experiment* (May 14, 2020), available at <https://www.news10.com/news/coronavirus/see-how-easily-covid-19-might-spread-through-a-restaurant-in-this-black-light-experiment/> (last visited Oct. 1, 2021).

¹⁶ A. Meiksin, *Dynamics of COVID-19 transmission including indirect transmission mechanisms: a mathematical analysis*, 148 *EPIDEMIOLOGY & INFECTION* e257, 1-7 (Oct. 2020), available at <https://www.cambridge.org/core/journals/epidemiology-and-infection/article/dynamics-of-covid19-transmission-including-indirect-transmission-mechanisms-a-mathematical-analysis/A134C5182FD44BEC9E2BA6581EF805D3> (last visited Oct. 1, 2021).

fomites (if brought together).”¹⁷ That is, common surfaces that are frequently touched can become highly transmissible fomites for the tangible, physical coronavirus.

94. Indeed, though microscopic, the coronavirus is a tangible, physical thing with a material existence.

95. Thus, based on its ability to affix itself to property, including surfaces inside buildings, the coronavirus and/or COVID-19 has caused and continues to cause physical loss or damage to property (including, as discussed in more detail below, Spirit’s covered property at covered locations and property within one mile of Spirit’s covered locations), which in turn renders the property in question dangerous, uninhabitable, and unfit for its intended purpose.

96. Third, aerosols, which are fine water droplets that are produced by normal breathing and talking, can transmit the coronavirus and are another source of physical loss or damage to property because they make the air inside buildings and airplanes hazardous. Aerosols “remain infectious when suspended in air over long distances and time.”¹⁸ Infected aerosols are particularly dangerous indoors because they can remain “airborne indefinitely under most indoor conditions

¹⁷ Stephanie A. Bone and Charles P. Gerba, *Significance of Fomites in the Spread of Respiratory and Enteric Viral Disease*, 73 APPLIED AND ENVIRONMENTAL MICROBIOLOGY 6, 1687-96 (Mar. 2007) available at <https://aem.asm.org/content/73/6/1687> (last visited Oct. 1, 2021).

¹⁸ *Transmission of SARS-CoV-2: implications for infection prevention precautions*, WHO Scientific Brief (Jul. 9, 2020), *supra* note 11.

unless there is removal due to air currents or ventilation.”¹⁹ Aerosols, though, can be pulled into air circulation systems and spread to other areas in a building as well.²⁰

97. Scientific articles state that respiratory transmission via aerosols is a mode of transmission of the coronavirus and/or COVID-19.²¹ One scientific review stated that the “infectious virus can be found in aerosols and in exhaled breath samples, and it is likely that under certain circumstances, including during aerosol-generating procedures, while singing or in indoor environments with poor ventilation, the virus may be transmitted at a distance through aerosols.”²²

98. Therefore, based on its ability to remain suspended in the air for long periods of time, especially indoors and especially where multiple people are gathered, the coronavirus and/or COVID-19 has caused and continues to cause physical loss or damage to property by making the air inside buildings hazardous.

99. The airborne, fomite, and aerosolized transmission of the coronavirus is depicted in the below illustrations:

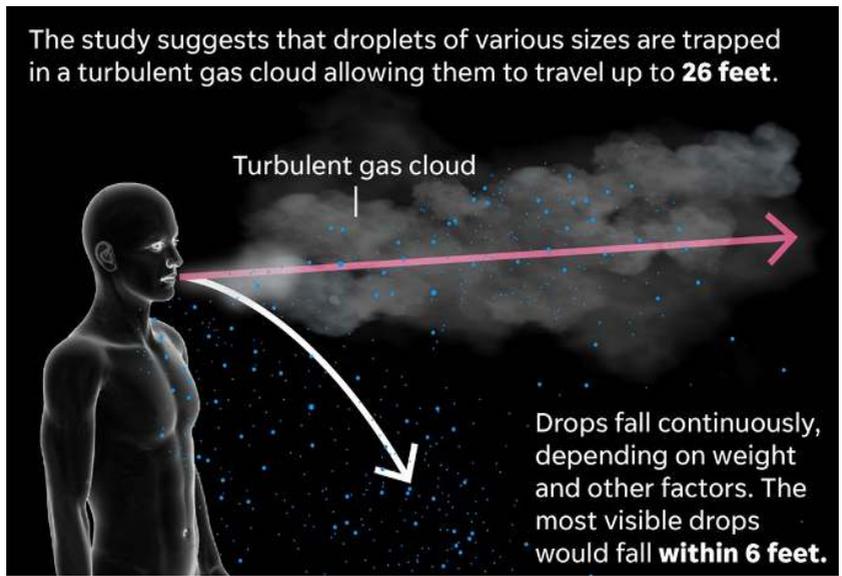
¹⁹ Kevin P. Fennelly, *Particle sizes of infectious aerosols: implications for infection control*, LANCET RESPIRATORY MED. 8:914-24 (July 24, 2020), available at [https://www.thelancet.com/journals/lanres/article/PIIS2213-2600\(20\)30323-4/fulltext](https://www.thelancet.com/journals/lanres/article/PIIS2213-2600(20)30323-4/fulltext) (last visited Oct. 1, 2021).

²⁰ Ramon Padilla & Javier Zarracina, *WHO agrees with more than 200 medical experts that COVID-19 may spread via the air*, USA Today (last updated Oct. 1, 2020), available at www.usatoday.com/in-depth/news/2020/04/03/coronavirusprotection-how-masks-might-stop-spread-throughcoughs/5086553002/ (last visited Oct. 1, 2021).

²¹ See, e.g., G. Kampf, Y. Brüggemann, H. Kaba, J. Steinmann, S. Pfaender, S. Scheithauer and E. Steinmann, *Potential sources, modes of transmission and effectiveness of prevention measures against SARS-CoV-2*, Journal of Hospital Infection (Dec. 2020), available at <https://www.sciencedirect.com/science/article/abs/pii/S0195670120304370> (last visited Oct. 1, 2021).

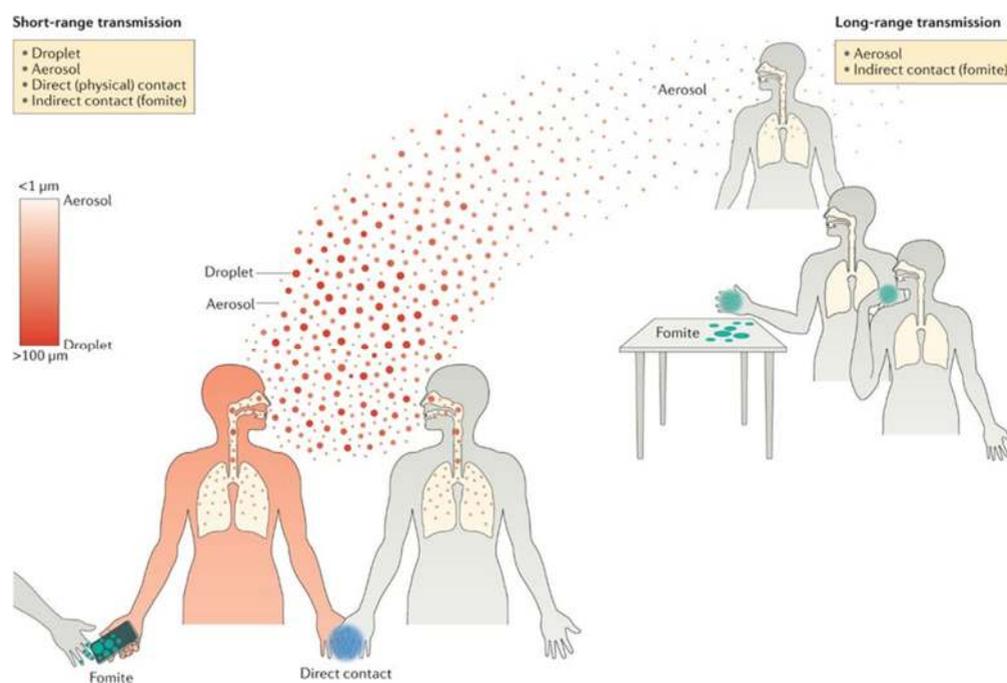
²² E. A. Meyerowitz, A. Richterman, R. T. Gandhi and P. E. Sax, *Transmission of SARS-CoV-2: a review of viral, host, and environmental factors*, Annals of Internal Medicine (Jan. 2021), available at <https://www.acpjournals.org/doi/full/10.7326/M20-5008> (last visited Oct. 1, 2021).

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²³ (Illustration), in *WHO agrees with more than 200 medical experts that COVID-19 may spread via the air*, USA Today (last updated Sept. 21, 2020), *supra* note 20.

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²⁴ Major modes of transmission of respiratory viruses during short-range and long-range transmission (illustration), in Nancy H.L. Leung, *Transmissibility and transmission of respiratory viruses*, 19 NATURE REVIEWS MICROBIOLOGY 528-45 (Mar. 22, 2021), <https://www.nature.com/articles/s41579-021-00535-6> (last visited Oct. 1, 2021).

25



100. Given these various means of infection and the highly contagious nature of the virus, client-services businesses, including airline companies, are particularly susceptible to the spread of the virus. In response to the frequently asked question “Can flying on an airplane increase my risk of getting COVID-19?” the CDC’s answer states: “Yes. Air travel requires

²⁵ Mikko Auvinen & Antti Hellsten (animation), Frank O’Laughlin, *3D simulation shows how a single cough can spread coronavirus through a grocery store* (Apr. 9, 2020), <https://whdh.com/coronavirus/3d-simulation-shows-how-a-single-cough-can-spread-coronavirus-through-a-grocery-store/> (last visited Oct. 1, 2021).

spending time in security lines and airport terminals, which can bring you in close contact with other people and frequently touched surfaces. . . . This may increase your risk for exposure to the virus that causes COVID-19.”²⁶ Accordingly, Spirit’s covered property at covered locations was a vulnerable target for the damage and loss that the coronavirus/COVID-19 pandemic causes.

101. Further, presymptomatic and asymptomatic transmission is a significant challenge posed by the hazardous and often deadly coronavirus. Persons infected but without symptoms can still transmit the virus in two different states of infection: a presymptomatic state (in individuals who are infectious before developing symptoms) and an asymptomatic state (in individuals who are infectious but never develop symptoms). Therefore, presymptomatic and asymptomatic people infected with COVID-19 can unwittingly spread the virus by merely touching objects and surfaces that other persons then touch. A study published by the CDC confirmed the magnitude of this problem, estimating that transmission of the coronavirus and/or COVID-19 from asymptomatic individuals accounts for more than half of all transmissions.²⁷

102. Additionally, COVID-19 has an incubation period that can last up to fourteen days.²⁸ Incubation is the time between when a person becomes infected and the infected person’s expression of symptoms.

²⁶ CDC, *Travel: Frequently Asked Questions and Answers* (updated July 27, 2021), available at <https://www.cdc.gov/coronavirus/2019-ncov/travelers/faqs.html> (last visited Oct. 1, 2021).

²⁷ Michael A. Johansson, et al., *SARS-CoV-2 Transmission From People Without COVID-19 Symptoms*, JAMA Network (Jan. 7, 2021) available at <https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2774707> (last visited Oct. 1, 2021).

²⁸ WHO, *Coronavirus disease 2019 (COVID-19) Situation Report – 73* (Apr. 2, 2020), available at https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200402-sitrep-73-covid-19.pdf?sfvrsn=5ae25bc7_2 (last visited Oct. 1, 2021).

103. During the incubation period, or in the presymptomatic state, infected individuals can carry the greatest viral load, which is the quantity of a virus in a person's system.²⁹ Thus, presymptomatic and asymptomatic persons can have the greatest ability to transmit COVID-19 and pose the greatest risk to human health and property loss or damage.³⁰

104. Additionally, unlike many other viruses that, once outside the body, do not remain infectious for long periods of time, studies show that the coronavirus is resilient and can remain infectious for weeks. During that time, the coronavirus compromises the physical integrity of the property to which it attaches and the air in which it exists, causing physical loss or damage to such property. The virus, therefore, renders such structures and such property uninhabitable, unusable, and unsafe for an extended period of time.

²⁹ Xi He, *et al.*, *Temporal dynamics in viral shedding and transmissibility of COVID-19*, 26 NATURE MED. 672, 675 (Apr. 15, 2020), available at <https://www.nature.com/articles/s41591-020-0869-5> (last visited Oct. 1, 2021).

³⁰ Seungjae Lee, MD, *et al.*, *Clinical Course and Molecular Viral Shedding Among Asymptomatic and Symptomatic Patients With SARS-CoV-2 Infection*, JAMA (Aug. 6, 2020), available at <https://jamanetwork.com/journals/jamainternalmedicine/fullarticle/2769235> (study revealing that viral loads were similar between the symptomatic and asymptomatic groups and actually decreased more slowly among the asymptomatic carriers, meaning that they had higher loads for longer) (last visited Oct. 1, 2021); Lirong Zou, M.Sc., *et al.*, *SARS-CoV-2 Viral Load in Upper Respiratory Specimens of Infected Patients*, 382 NEW ENG. J. MED. 1177 (Mar. 19, 2020), available at <https://www.nejm.org/doi/full/10.1056/nejmc2001737> (“The viral load that was detected in the asymptomatic patient was similar to that in the symptomatic patients, which suggests the transmission potential of asymptomatic or minimally symptomatic patients.”) (last visited Oct. 1, 2021); Monica Ghandi, *et al.*, *Asymptomatic Transmission, the Achilles’ Heel of Current Strategies to Control Covid-19*, 382 NEW ENG. J. MED. 2158 (Apr. 24, 2020), available at <https://www.nejm.org/doi/full/10.1056/nejme2009758> (“Ultimately, the rapid spread of Covid-19 across the United States and the globe, the clear evidence of SARS-CoV-2 transmission from asymptomatic persons, and the eventual need to relax current social distancing practices argue for broadened SARS-CoV-2 testing to include asymptomatic persons in prioritized settings.”) (last visited Oct. 1, 2021).

105. Given that the coronavirus and/or COVID-19 is a pandemic and is statistically certain to be carried by a number of individuals, the coronavirus is continually reintroduced to the surfaces of, and air in, high-traffic areas, such as Spirit's covered property at covered locations.³¹ Thus, contagious individuals, surfaces, and invisible particles suspended in the air caused physical loss or damage to Spirit's covered property at covered locations and other properties.

106. Unfortunately, routine cleaning and improved ventilation do not entirely remove or eliminate the coronavirus from droplets, fomites, or aerosols, like one might do with a non-hazardous microscopic substance like dust. A recent CDC article stated that "there is little scientific support for routine use of disinfectants in community settings, whether indoor or outdoor, to prevent SARS-CoV-2 transmission from fomites."³²

107. Another study concluded that the coronavirus is "much more resilient to . . . cleaning than most other respiratory viruses so tested."³³ Additionally, the use of complex disinfectant solutions and regimens poses its own risks that could be harmful to human health and safety, especially in the contained indoor spaces where the coronavirus is at its most dangerous. A CDC article stated that "ventilation interventions can reduce the risk of exposure to the virus and reduce the spread of the disease, but they will not eliminate the risk completely."³⁴

³¹ See, e.g., *COVID-19 Event Risk Assessment Planning Tool*, Georgia Institute of Technology, available at <https://covid19risk.biosci.gatech.edu/> (last visited Oct. 1, 2021).

³² *Science Brief: SARS-CoV-2 and Surface (Fomite) Transmission for Indoor Community Environments*, Science Briefs (Apr. 5, 2021), available at <https://www.cdc.gov/coronavirus/2019-ncov/more/science-and-research/surface-transmission.html> (last visited Oct. 1, 2021).

³³ Nevio Cimolai, *Environmental and decontamination issues for human coronaviruses and their potential surrogates*, 92 J. OF MED. VIROLOGY 11, 2498-510 (June 2020), available at <https://doi.org/10.1002/jmv.26170> (last visited Oct. 1, 2021).

³⁴ *Ventilation in Buildings*, COVID-19 (last updated June 2, 2021), available at

108. Recent studies show that even extraordinary cleaning measures do not completely remove the coronavirus from surfaces. For example, a 2021 study by New York's largest hospital network demonstrated that even after trained hospital personnel used disinfection procedures in coronavirus patient treatment areas, some of the virus still survived in those areas.³⁵ Additionally, even the most aggressive cleaning regimen cannot eliminate aerosolized coronavirus particles from the air. Just like cleaning friable asbestos particles that have landed on a surface will not remove the friable asbestos particles suspended in the surrounding air, cleaning surfaces does not lessen the deadly impact of inhaled coronavirus aerosols.

109. Consequently, and to help reduce the presence of the virus in indoor spaces, some scientists recommend the use of HEPA and other specialized air filtration systems.³⁶ In other words, physical alteration of property is necessary to help make it safe from the coronavirus and return the property to a useable and inhabitable state.

110. Because even extraordinary cleaning and state-of-the-art ventilation cannot consistently remove or eliminate the coronavirus, they likewise cannot remove or eliminate the risk of individuals contracting COVID-19 from infected droplets, fomites, and aerosols.

<https://www.cdc.gov/coronavirus/2019-ncov/community/ventilation.html#:~:text=HEPA%20filters%20are%20even%20more> (last visited Oct. 1, 2021); see also Wenzhao Chen, et al., *Short-range airborne route dominates exposure of respiratory infection during close contact*, BUILDING & ENV'T 176 (June 2020), available at <https://www.sciencedirect.com/science/article/abs/pii/S0360132320302183> (last visited Oct. 1, 2021) (“[G]eneral ventilation cannot prevent transmission.”).

³⁵ Zarina Brune et al., *Effectiveness of SARS-CoV-2 Decontamination and Containment in a COVID-19 ICU*, 18 INT'L J. ENV'T RSCH. & PUB. HEALTH 5, 2479 (Mar. 3, 2021), <https://www.mdpi.com/1660-4601/18/5/2479> (last visited Oct. 1, 2021).

³⁶ Zeynep Tufekci, *We Need to Talk About Ventilation*, The Atlantic (July 30, 2020), available at <https://www.theatlantic.com/health/archive/2020/07/why-arent-we-talking-more-about-airborne-transmission/614737/> (last visited Oct. 1, 2021).

111. Given the ubiquity and pervasiveness of the coronavirus and/or COVID-19, no amount of cleaning or ventilation intervention will prevent a person infected with the coronavirus from entering an indoor space and dispersing millions of infected particles onto surfaces and in the air, physically altering, transforming, and damaging surfaces and the air, turning surfaces into disease-transmitting fomites and making the property uninhabitable, unsafe, and unfit for its intended purposes.

112. Because the coronavirus and resulting COVID-19 disease cause physical property and physical space within and around properties to lose their functionality and ability to generate revenue, businesses such as Spirit's suffer income loss and incur extra expenses.

113. The coronavirus also continues to evolve, further stymying efforts to control the pandemic. Multiple variants of the coronavirus are circulating globally, including the Delta variant as well as variants originating in the United Kingdom, South Africa, Brazil, and California.³⁷ Ongoing research suggests these variants may spread more easily and quickly, making the coronavirus even more dangerous and damaging to persons and property.

114. Despite the sustained global effort to contain the coronavirus and/or COVID-19, it is beyond dispute that the virus and disease can be anywhere and everywhere, directly causing physical loss or damage to life and property. Furthermore, the coronavirus is especially dangerous indoors where it cannot be entirely removed from surfaces or the air. Thus, the coronavirus and/or COVID-19 makes property unsafe, uninhabitable, and unfit for its intended purpose and directly

³⁷ *What You Need to Know about Variants, COVID-19* (last updated Sept. 20, 2021), available at <https://www.cdc.gov/coronavirus/2019-ncov/transmission/variant.html> (last visited Oct. 1, 2021).

causes physical loss or damage to property, including, as discussed below, to Spirit's covered property at covered locations.

IV. IN RESPONSE TO DIRECT PHYSICAL LOSS AND DAMAGE TO PROPERTY CAUSED BY COVID-19, CIVIL AUTHORITY ORDERS LIMITED, RESTRICTED, OR PROHIBITED PARTIAL OR TOTAL ACCESS TO PROPERTY AND TRAVEL

115. Government entities have issued countless orders separately requiring the suspension, limitation, and modification of Spirit's business and/or use of property, including prohibiting access to, and preventing ingress to and egress from, each of Spirit's covered locations. Each jurisdiction's civil authority orders suspended or severely curtailed the operations of all nonessential businesses and restricted people from leaving their homes except for limited purposes, such as to obtain groceries and medical attention or to perform essential jobs. People all around the globe were restricted from flying on airlines, including flying with Spirit.

116. For example, on March 16, 2020, United States President Donald Trump issued coronavirus guidelines for America that mandated Americans to "avoid social gatherings in groups of more than 10 people" and to "avoid discretionary travel, shopping trips, and social visits."³⁸ Around the same time, many state and local governments each separately issued civil authority orders that directly limited, restricted, or prohibited access to property within one mile of Spirit's covered locations, which partially or totally prohibited access to Spirit's covered locations, and restricted or severely limited air traffic. These civil authority orders (many of which have been extended multiple times) include, but are not limited to, the following Spirit insured locations:

³⁸ *15 Days to Slow the Spread*, United States Department of Justice (Mar. 16, 2020), *available at* <https://www.justice.gov/doj/page/file/1258511/download> (last visited Oct. 1, 2021).

- a. Arizona: On March 30, 2020, Arizona Governor Doug Ducey issued Executive Order 2020-18, ordering “all individuals in the State of Arizona [to] limit their time away from their place of residence or property” except to “conduct or participate in Essential Activities” and ordering the closure of non-essential businesses and entities.³⁹
- b. California: On March 19, 2020, California Governor Gavin Newsom issued Executive Order N-33-20, requiring “all individuals living in the State of California to stay home or at their place of residence.”⁴⁰
- c. Colorado: On March 25, 2020, Colorado Governor Jared Polis issued Executive Order D 2020 017, directing all Coloradoans to stay at home, subject to limited exceptions such as obtaining food, and directing all businesses other than those qualified as Critical Businesses to close temporarily.⁴¹
- d. Connecticut: On March 20, 2020, Connecticut Governor Ned Lamont issued Executive Order No. 7H, ordering “all businesses and not-for-profit entities in the state [to] employ, to the maximum extent possible, any telecommuting or work from home procedures that they can safely employ. Non-essential businesses or

³⁹ Executive Order 2020-18 (Mar. 30, 2020), available at https://azgovernor.gov/sites/default/files/eo_2020-18_stay_home_stay_healthy_stay_connected_1.0.pdf (last visited Oct. 1, 2021).

⁴⁰ Executive Order N-33-20 (Mar. 19, 2020), available at <https://www.gov.ca.gov/wp-content/uploads/2020/03/EO-N-33-20-COVID-19-HEALTH-ORDER-03.19.2020-002.pdf> (last visited Oct. 1, 2021).

⁴¹ Executive Order D 2020 017 (Mar. 25, 2020), available at https://www.colorado.gov/governor/sites/default/files/inline-files/D%202020%20017%20Ordering%20Coloradans%20to%20Stay%20at%20Home_0.pdf (last visited Oct. 1, 2021).

not-for-profit entities shall reduce their in-person workforces at any workplace locations by 100%.”⁴²

- e. Florida: On April 1, 2020, Florida Governor Ron DeSantis issued Executive Order No. 20-91, ordering “all persons in Florida [to] limit their movements and personal interactions outside of their home to only those necessary to obtain or provide essential services or conduct essential activities.”⁴³
- f. Georgia: On April 2, 2020, Georgia Governor Brian P. Kemp issued Executive Order 04.02.20.01, requiring all individuals to “shelter in place within their homes or places of residence.”⁴⁴
- g. Illinois: On March 20, 2020, Illinois Governor JB Pritzker issued COVID-19 Executive Order No. 8, requiring all individuals currently living in the State of Illinois to “stay at home or at their place of residence” and requiring all non-essential business and operations to cease “**due to the virus’s propensity to physically impact surfaces and personal property.**”⁴⁵
- h. Indiana: On March 23, 2020, Indiana Governor Eric J. Holcomb issued Executive Order No. 20-08, stating “all individuals currently living in the state of Indiana are

⁴² Executive Order No. 7H (Mar. 20, 2020), available at <https://portal.ct.gov/-/media/Office-of-the-Governor/Executive-Orders/Lamont-Executive-Orders/Executive-Order-No-7H.pdf?la=en> (last visited Oct. 1, 2021).

⁴³ Executive Order No. 20-91 (Apr. 1, 2020), available at https://www.flgov.com/wp-content/uploads/orders/2020/EO_20-91-compressed.pdf (last visited Oct. 1, 2021).

⁴⁴ Executive Order 04.02.20.01 (Apr. 2, 2020), available at <https://gov.georgia.gov/executive-action/executive-orders/2020-executive-orders> (last visited Oct. 1, 2021).

⁴⁵ COVID-19 Executive Order No. 8 (Mar. 20, 2020), available at <https://www2.illinois.gov/pages/executive-orders/executiveorder2020-10.aspx> (last visited Oct. 1, 2021).

ordered to stay at home or their place of residence” and “[a]ll businesses and operations in the State of Indiana, except for Essential Businesses and Operations, are hereby required to cease all activities within the State.”⁴⁶

- i. Kentucky: On March 25, 2020, Kentucky Governor Andy Beshear issued Executive Order 2020-257, ordering all residents of the State to stay at home and the closure of all non-essential businesses. On March 30, 2020, he issued Executive Order 2020-258, relating to travel and ordered all residents not to leave the state except for essential reasons.⁴⁷
- j. Louisiana: On March 22, 2020, Louisiana Governor John Edwards issued Proclamation Number 33 JBE 2020, placing all individuals within the State under a stay-at-home order except to perform essential activities and ordering the closure of all nonessential businesses.⁴⁸
- k. Maryland: On March 30, 2020, Maryland Governor Lawrence H. Hogan, Jr. issued Order of the Governor of the State of Maryland, number 20-03-30-01,

⁴⁶ Executive Order No. 20-08 (Mar. 23, 2020), *available at* https://www.in.gov/gov/files/Executive_Order_20-08_Stay_at_Home.pdf (last visited Oct. 1, 2021).

⁴⁷ Executive Orders 2020-257 (Mar. 25, 2020) and 2020-258 (Mar. 30, 2020), *available at* https://governor.ky.gov/attachments/20200325_Executive-Order_2020-257_Healthy-at-Home.pdf and https://governor.ky.gov/attachments/20200330_Executive-Order_2020-258_Out-of-State-Travel.pdf (last visited Oct. 1, 2021).

⁴⁸ Proclamation Number 33 JBE 2020 (Mar. 22, 2020), *available at* <https://gov.louisiana.gov/assets/Proclamations/2020/modified/33-JBE-2020-Public-Health-Emergency-COVID.pdf> (last visited Oct. 1, 2021).

ordering individuals to stay in their homes or places of residence and closing nonessential businesses.⁴⁹

1. Massachusetts: On March 23, 2020, Massachusetts Governor Charles D. Baker issued COVID-19 Order No. 13, stating that, because “the number of presumptive positive and confirmed cases of COVID-19 continues to rise exponentially in the Commonwealth . . . [a]ll businesses and other organizations that do not provide COVID-19 Essential Services shall close their physical workplaces and facilities . . . to workers, customers, and the public”⁵⁰
- m. Michigan: On March 23, 2020, Michigan Governor Gretchen Whitmer issued Executive Order No. 2020-21, ordering all individuals to stay at home or their place of residence, closing all non-essential businesses, and placing restrictions on travel.⁵¹
- n. Minnesota: On March 25, 2020, Minnesota Governor Tim Walz issued Emergency Order 20-20, directing Minnesotans to stay at home and stating that “all persons currently living within the State of Minnesota are ordered to stay at

⁴⁹ Order Number 20-03-30-01 (Mar. 30, 2020), available at <https://governor.maryland.gov/wp-content/uploads/2020/03/Gatherings-FOURTH-AMENDED-3.30.20.pdf> (last visited Oct. 1, 2021).

⁵⁰ COVID-19 Order No. 13 (Mar. 23, 2020), available at <https://www.mass.gov/doc/march-23-2020-essential-services-and-revised-gatherings-order/download> (last visited Oct. 1, 2021).

⁵¹ Executive Order No. 2020-21 (Mar. 23, 2020), available at https://www.michigan.gov/whitmer/0,9309,7-387-90499_90705-522626--,00.html (last visited Oct. 1, 2021).

home or in their place of residence except to engage in the Activities and Critical Sector work.”⁵²

- o. Missouri: On April 3, 2020, Missouri Department of Health and Senior Services Director Randall W. Williams issued a Stay at Home Order, stating that “[i]ndividuals currently residing within the State of Missouri shall avoid leaving their homes or places of residence.”⁵³
- p. Nevada: On March 20, 2020, Nevada Governor Steve Sisolak issued Declaration of Emergency for COVID-19 - Directive 003, directing nonessential businesses to close.⁵⁴
- q. New Hampshire: On March 26, 2020, New Hampshire Governor Chris Sununu issued Emergency Order #17 pursuant to Executive Order 2020-04, ordering the closure of non-essential businesses and requiring all residents to stay at home.⁵⁵

⁵² Executive Order No. 20-20 (Mar. 25, 2020), *available at* https://mn.gov/governor/assets/3a.%20EO%2020-20%20FINAL%20SIGNED%20Filed_tcm1055-425020.pdf (last visited Oct. 1, 2021).

⁵³ Stay at Home Order (Apr. 3, 2020), *available at* <https://governor.mo.gov/priorities/stay-home-order> (last visited Oct. 1, 2021).

⁵⁴ Declaration of Emergency for COVID-19 - Directive 003 (Mar. 20, 2020), *available at* [https://gov.nv.gov/News/Emergency_Orders/2020/2020-03-20_-_COVID-19_Declaration_of_Emergency_Directive_003_\(Attachments\)/](https://gov.nv.gov/News/Emergency_Orders/2020/2020-03-20_-_COVID-19_Declaration_of_Emergency_Directive_003_(Attachments)/) (last visited Oct. 1, 2021).

⁵⁵ Emergency Order #17 (Mar. 26, 2020), *available at* <https://www.governor.nh.gov/sites/g/files/ehbemt336/files/documents/emergency-order-17.pdf> (last visited Oct. 1, 2021).

- r. New Jersey: On March 21, New Jersey Governor Phillip D. Murphy issued Executive Order No. 107, stating that “[a]ll New Jersey residents shall remain home or at their place of residence”⁵⁶
- s. New York: On March 18, 2020, New York Governor Andrew M. Cuomo issued Executive Order No. 202.6, ordering “[a]ll businesses and not-for-profit entities in the state [to] utilize, to the maximum extent possible, any telecommuting or work from home procedures that they can safely utilize.”⁵⁷ Additionally, on March 20, 2020, Governor Cuomo issued Executive Order No. 202.8 modifying Executive Order No. 202.6 and stating that “[e]ach employer shall reduce the in-person workforce at any work locations by 100%.”⁵⁸ Also, on March 16, 2020, New York City Mayor Bill de Blasio issued Executive Order No. 100, which limited certain activities and gatherings **“because of the propensity of the virus to spread person to person and also because the virus physically is causing property loss and damage.”**⁵⁹ On March 25, 2020, Mayor de Blasio issued Executive Order No. 103, directing all non-essential businesses to reduce their “in-person

⁵⁶ Executive Order No. 107 (Mar. 21, 2020), *available at* <https://nj.gov/infobank/eo/056murphy/pdf/EO-107.pdf> (last visited Oct. 1, 2021).

⁵⁷ Executive Order No. 202.6 (Mar. 18, 2020), *available at* <https://www.governor.ny.gov/sites/default/files/atoms/files/EO202.6.pdf> (last visited Oct. 1, 2021).

⁵⁸ Executive Order No. 202.8 (Mar. 20, 2020), *available at* https://www.governor.ny.gov/sites/default/files/atoms/files/EO_202.8.pdf (last visited Oct. 1, 2021).

⁵⁹ Executive Order No. 100 (Mar. 16, 2020), *available at* <https://www1.nyc.gov/assets/home/downloads/pdf/executive-orders/2020/eeo-100.pdf> (last visited Oct. 1, 2021) (emphasis added).

workforce at any locations by 100%” and stating that **“this Order is given because of the propensity of the virus to spread person-to-person and also because the actions taken to prevent such spread have led to property loss and damage.”**⁶⁰

- t. North Carolina: On March 27, 2020, North Carolina Governor Roy Cooper issued Executive Order 121, directing individuals within the State of North Carolina to stay home except for essential activities and closing nonessential businesses.⁶¹
- u. Ohio: On March 22, 2020, Ohio Department of Health Director Amy Acton issued a Director’s Stay at Home Order, stating that “all individuals currently living within the State of Ohio are ordered to stay at home or at their place of residence” and “[a]ll businesses and operations in the State, except Essential Businesses and Operations . . . are required to cease all activities within the State.”⁶²
- v. Oregon: On March 23, 2020, Oregon Governor Kate Brown issued Executive Order No. 20-12, which directed individuals in the state to stay at home unless

⁶⁰ Executive Order No. 103 (Mar. 25, 2020), *available at* <https://www1.nyc.gov/assets/home/downloads/pdf/executive-orders/2020/eo-103.pdf> (last visited Oct. 1, 2021) (emphasis added).

⁶¹ Executive Order No. 121 (Mar. 27, 2020), *available at* <https://files.nc.gov/governor/documents/files/EO121-Stay-at-Home-Order-3.pdf> (last visited Oct. 1, 2021).

⁶² Director’s Stay at Home Order (Mar. 22, 2020), *available at* https://content.govdelivery.com/attachments/OHOOD/2020/03/22/file_attachments/1407840/Stay%20Home%20Order.pdf (last visited Oct. 1, 2021).

performing essential activities and placed restrictions on non-essential businesses.⁶³

- w. Pennsylvania: On March 19, 2020, Pennsylvania Governor Tom Wolf issued Order of the Governor of the Commonwealth of Pennsylvania Regarding the Closure of All Businesses That are Not Life Sustaining, closing all “[non-]life sustaining business regardless of whether the business is open to members of the public.”⁶⁴
- x. South Carolina: On April 6, 2020, South Carolina Governor Henry McMaster issued Executive Order 2020-21, directing all residents of the State of South Carolina to stay home except for purposes of engaging in essential activities.⁶⁵
- y. Texas: On March 31, 2020, Texas Governor Greg Abbott issued Executive Order GA 14 pursuant to the authority of Section 4 18.018(c) whereby the “governor may control ingress and egress to and from a disaster area and the movement of persons and the occupancy of premises in the area” and ordering people to

⁶³ Executive Order No. 20-12 (Mar. 23, 2020), available at https://govsite-assets.s3.amazonaws.com/jkAULYKcSh6DoDF8wBM0_EO%2020-12.pdf (last visited Oct. 1, 2021).

⁶⁴ Order of the Governor of the Commonwealth of Pennsylvania Regarding the Closure of All Businesses That are Not Life Sustaining (Mar. 19, 2020), available at <https://www.scribd.com/document/452416027/20200319-TWW-COVID-19-Business-Closure-Order> (last visited Oct. 1, 2021).

⁶⁵ Executive Order 2020-21 (Apr. 6, 2020), available at <https://governor.sc.gov/sites/default/files/Documents/Executive-Orders/2020-04-06%20eFILED%20Executive%20Order%20No.%202020-21%20-%20Stay%20at%20Home%20or%20Work%20Order.pdf> (last visited Oct. 1, 2021).

“minimize social gatherings and minimize in-person contact with people who are not in the same household.”⁶⁶

- z. Washington: On March 23, 2020, Washington Governor Jay Inslee issued Proclamation No. 20-25, Stay Home – Stay Healthy, finding that COVID-19 “remains a public disaster affecting life, health, [and] property” and, except as limited, “prohibiting all people in Washington State from leaving their homes or participating in social, spiritual and recreational gatherings of any kind regardless of the number of participants, and all non-essential businesses in Washington State from conducting business.”⁶⁷
- aa. West Virginia: On March 24, 2020, West Virginia Governor Jim Justice issued Executive Order No. 9-20, directing all residents of the state to stay at home and limit movements outside of their homes beyond essential needs and temporarily ceasing the operations of all non-essential businesses.⁶⁸

⁶⁶ Executive Order GA 14 (Mar. 31, 2020), *available at* https://gov.texas.gov/uploads/files/press/EO-GA-14_Statewide_Essential_Service_and_Activity_COVID-19_IMAGE_03-31-2020.pdf (last visited Oct. 1, 2021).

⁶⁷ Proclamation No. 20-25 (Mar. 23, 2020), *available at* <https://www.governor.wa.gov/sites/default/files/proclamations/20-25%20Coronavirus%20Stay%20Safe-Stay%20Healthy%20%28tmp%29%20%28002%29.pdf> (last visited Oct. 1, 2021).

⁶⁸ Executive Order No. 9-20 (Mar. 24, 2020), *available at* <https://governor.wv.gov/Documents/2020%20Executive%20Orders/STAY-AT-HOME-ORDER-MARCH-23-2020.pdf> (last visited Oct. 1, 2021).

V. THE PRESENCE OF CORONAVIRUS AND/OR COVID-19 AND RESULTING CIVIL AUTHORITY ORDERS CAUSED SPIRIT TO SUFFER SEVERE LOSSES AND INCUR EXTRA EXPENSES

117. Because Spirit relies on its employees, vendors, properties, equipment, and planes to provide transportation and other services to its customers, the coronavirus/COVID-19 pandemic has caused Spirit's business to suffer massive financial losses and incur vast additional expenses.

118. Spirit has had the confirmed presence of the coronavirus and/or COVID-19 at many, if not all, of its covered locations through employees, vendors, guests, or other persons who have tested positive shortly after being on Spirit's premises. For example, as early as April 28, 2020, Spirit was aware of 65 Spirit employees who tested positive for COVID-19 and who worked at covered locations across the United States, including: 35 in Florida; 5 in Michigan; 3 in Georgia; 3 in Texas; 2 in California; 2 in Colorado; 2 in Massachusetts; 2 in New York; 2 in South Carolina; 1 in Arizona; 1 in Illinois; 1 in Louisiana; 1 in New Jersey; and 1 in Puerto Rico. Naturally those numbers are far greater as the pandemic continues and with new variants continuing to develop.

119. Additionally, it is undisputed, because it cannot be disputed, that COVID-19 has been present at and around all of Spirit's "covered locations" under the Policy where its insured real and personal property is located—some of the largest domestic and international airports in this country and abroad. The constant presence of the coronavirus and/or COVID-19 at Spirit's covered locations and on Spirit's property has caused physical loss or damage to Spirit's covered property, as detailed *supra* ¶¶ 11-16, 88-114. Moreover, while the COVID-19 is indeed a global pandemic, each location/airport where Spirit suffered its losses is separate and independent from the other, caused by the specific conditions of the pandemic at that specific location.

120. Much of Spirit's property insured under the Policy is located in and around these airports' terminals, and includes, for example, anything from smaller items like copiers, kiosks,

ticket counters, and podiums to large leasehold improvements made by Spirit for terminal buildouts, renovations, rebooking centers, and walkways, to entire crew rooms, and real property including warehouses and hangars. For example, at Orlando International Airport, Spirit is insured for kiosks located in the terminal for approximately \$264,000, plus business income loss. At BWI, Spirit is insured for more than \$400,000 in property loss, in addition to business income, for both its terminal buildout and other property at that airport. The same is true in Philadelphia International Airport, where Spirit is insured for its Terminal “B” buildout for over \$1 million in property loss, plus business income loss. *See Ex. B.* Importantly, the Policy insures Spirit not only for business income losses it suffers resulting from physical loss or damage to its “covered property” at covered locations such as airports, but also its losses resulting from physical loss or damage to any property which “affects [Spirit’s] use of its covered property” as long as Spirit is the lessee or occupant where the physical loss or damage occurred.

121. Once COVID-19 was introduced into the United States, all of Spirit’s property was subject to the presence of the coronavirus at its insured locations, including at these and other airports, either by staying in the air surrounding Spirit’s property, or by landing and attaching to Spirit’s property and/or other property in the terminals affecting Spirit’s use of its own property and not allowing Spirit to fly passengers. Indeed, as of May 1, 2020, only two months after the onset of the pandemic in the United States, it was reported that over 500 TSA employees had tested positive for COVID-19 at over a dozen airports where Spirit routinely flies—including 88 alone at LaGuardia Airport and Newark Liberty International Airport.⁶⁹ This number was only in May

⁶⁹ Carolyn Crist, *TSA: 500 Employees Test Positive for COVID-19*, WebMD (May 1, 2020) *supra* note 2.

2020, and represented *solely* TSA employees—it did not account for the thousands of other airport employees and customers who had COVID-19 on airport premises during that time, as well as after that time.

122. As discussed above, physical droplets containing the coronavirus can and did land on Spirit’s property, surfaces, and objects at these locations, or other property at these locations, creating fomites that remained physically present for days or weeks and caused physical loss or damage to Spirit’s covered property.

123. Also as explained above, aerosols—fine water droplets produced by normal breathing and talking—containing the coronavirus can and did remain physically suspended in the air for extended periods of time in Spirit’s covered property at covered locations. Infected aerosols in Spirit’s covered property did in fact cause physical loss or damage to such property and other property affecting Spirit’s property. Further, aerosols are especially likely to remain suspended in the air inside buildings where there is less airflow than in open outside air, including in Spirit’s covered property located in airport terminals.

124. The presence of the coronavirus and/or COVID-19 in, on, and around Spirit’s covered property in multiple, physical, and tangible forms caused physical loss or damage to that property and rendered it unusable, unsafe, and unfit for its intended purpose. That is the reason why people did not come to the airport to fly on Spirit.

125. Spirit is a large airline company whose business largely depends on transporting thousands of people a day internationally, across dozens and dozens of destinations in North and South America. Since the start of the COVID-19 pandemic and continuing throughout, the disease was most commonly being transmitted in high-trafficked areas, like airport terminals where Spirit conducts its business. Indeed, thousands of people are required to congregate at Spirit’s locations

as they check in and wait for their flights. The risk of contracting a highly lethal disease by entering Spirit's locations was so high that individuals could not safely congregate in airports and terminals, rendering them functionally uninhabitable and useless for their intended function.

126. Thus, as a result of the presence of the coronavirus at all of Spirit's locations simultaneously, attaching itself to property therein and altering the surface areas and air into an unsafe condition (*supra* ¶¶ 88-114), no customers were flying Spirit's scheduled flights. The flights were grounded, cancelled, or rendered largely empty, and Spirit's property at the airports was rendered completely unfit and unsafe for its intended purpose of servicing travelers. That is why during the beginning of the pandemic, when infection rates were at their highest, and when COVID-19 was constantly present in and around Spirit's locations at every airport, Spirit only had flight departures of 4,398, 1,384 and 2,900 in April, May and June—a drop of 72%, 92%, and 83%, respectively, from the previous year during the same months.

127. And, it was the presence of the coronavirus and/or COVID-19 in, on, and around property within one mile of Spirit's covered locations that partially or totally prevented physical ingress to or egress from Spirit's covered locations and caused civil authorities to issue orders limiting, restricting, or prohibiting access to such property, which partially or totally prohibited access to Spirit's covered locations and caused Spirit to suffer business income loss and incur extra expenses. And, as discussed above, each state and city executive order in place where Spirit has insured locations was issued, renewed and amended independently and separate from each other, based on, among other things, each location's COVID-19 rates and government responses.

128. The presence of the coronavirus and/or COVID-19 also caused physical loss or damage at locations of Spirit's suppliers and customers. The above-discussed civil authority orders were "stay-at-home" orders—specifically directing would-be customers and flyers to

literally stay at home and not use Spirit's airline services, in order to curtail the effect of the pandemic, including its effect of physical loss or damage to property. *See, e.g., supra* ¶ 116(e) (Florida Governor DeSantis ordering "all persons in Florida [to] limit their movements and personal interactions outside of their home to only those necessary."); *see also supra* ¶ 116(s) (Mayor de Blasio issuing Executive Order No. 100 limiting certain activities and gatherings "because of the propensity of the virus to spread person to person and also because the virus physically is causing property loss and damage.").

129. As a result, the sustained and unavoidable physical loss or damage to Spirit's covered property at covered locations and to other property caused by the coronavirus and/or COVID-19 caused Spirit to suffer numerous types of losses during the Policy's applicable "periods of indemnity," including but not limited to:

- Loss of gross earnings and/or gross profits due to physical loss or damage to Spirit's covered property at covered locations by way of COVID-19 on the premises, resulting in refunded ticket sales, credit card chargebacks for cancelled tickets, decreased ticket sales, reduced ancillary sales, decreased vendor services, increased operational expenses (including parking and storing 129 grounded airplanes), spoiled catering items, extra expenses (including additional hotel expenses for crewmembers who tested positive while on duty), and temporarily decreased employee availability;
- Costs to remove the coronavirus from covered property and to repair, rebuild, replace, protect, and preserve covered property, including, but not limited to, adding improved ventilation systems and filters, dividers, and sanitation stations and purchasing additional cleaning supplies (including those on the Environmental Protection Agency's List N), cleaning services (including Primeflight, an aviation services vendor), hygiene supplies, and personal protective equipment, such as hand sanitizer, hand sanitizer dispensers, antibacterial soap, gloves, masks, plexiglass dividers, thermometers, paper products, and signs;
- Extra expenses incurred to temporarily continue as nearly normal as practicable the conduct of Spirit's business, including, but not limited to, the extra expenses listed above as well as extra expenses incurred from limiting the number of persons allowed onto Spirit's properties and airplanes, modifying employee schedules, enabling remote-work capabilities, and training employees regarding policy and

procedural changes as a result of social distancing guidelines and best practices, cleaning requirements, and other business changes;

- Losses sustained and extra expenses incurred of the sorts described above resulting from the partial or total prevention of physical ingress to or egress from Spirit's covered locations because of direct physical loss or damage to property within one mile of Spirit's covered locations;
- Losses sustained and extra expenses incurred of the sorts described above resulting from the partial or total prohibition of access to Spirit's covered locations because of civil authority "stay-at-home" orders issued by various governmental officials that limited, restricted, and/or prohibited access to property within one mile of Spirit's covered locations;
- Losses sustained and extra expenses incurred, including under the contingent time element coverage, of the sorts described above resulting from physical loss or damage at Spirit's direct customers and suppliers, which wholly or partially prevented the same from supplying their goods or services to Spirit and/or accepting goods or services from Spirit;
- Contractual penalties Spirit is obligated to pay as a result of direct physical loss or damage by a covered cause of loss to Spirit's covered property; and
- Physical loss or damage due to spoilage of Spirit's perishable goods.

130. Spirit would not have suffered these losses and incurred these extra expenses during the same period had no physical loss or damage occurred, and Spirit has taken reasonable steps to mitigate its losses wherever possible. Accordingly, as a direct result of Spirit's physical loss or damage to covered property discussed above, Spirit sustained and continues to sustain losses of gross earnings, gross profits, additional operational expenses, extra expenses, increases in the costs of doing business, and/or other covered losses, and is entitled to payment for these losses and extra expenses under the terms and provisions of the Policy.

VI. AIG KNEW OF THE RISKS OF A GLOBAL PANDEMIC LOSS AND WAS AWARE THAT SUCH LOSS COULD TRIGGER ITS PROPERTY COVERAGE

131. The insurance industry generally and AIG specifically have known for many years, if not decades, about the risks of a global pandemic.

132. There have been many publicly available reports and articles about the risks of a global pandemic in the last several years. For example, in 2013, Willis Towers Watson published the results of a survey of insurance executives from around the world entitled “Extreme Risks 2013” in which more than 30,000 votes were cast. The number one extreme risk identified by survey participants was a pandemic—that is, a “new highly infectious and fatal disease spreads through human, animal or plant populations worldwide.”⁷⁰ In 2015, scientists at AIR Worldwide published an article called “Quantifying Pandemic Risk,” containing the byline: “The recent West Africa Ebola outbreak serves as a reminder that it is important for actuaries to account for and quantify pandemic risk.”⁷¹ Again, in an article from 2018, “What the 1918 Flu Pandemic Can Teach Today’s Insurers,” scientists modeled the effects of a modern-day 1918 pandemic and estimated that “a modern day Spanish flu would cause between 21 and 33 million deaths worldwide.”⁷² These articles and others demonstrate that AIG knew of the risks of a global pandemic.

133. Furthermore, in 2006, shortly after the 2003 outbreak of Severe Acute Respiratory Syndrome, also known as SARS, which was an airborne viral respiratory disease that spread

⁷⁰ See *Insurers rate global pandemic as the major extreme risk*, Actuarial Post (undated), available at <https://www.actuarialpost.co.uk/article/insurers-rate-global-pandemic-as-the-major-extreme-risk-5705.htm> (last visited Oct. 1, 2021).

⁷¹ J. Douglas Fullam, ASA, Nita Madhav, MSPH, CCM, *Quantifying Pandemic Risk*, The Actuary Magazine 12:1 (February/March 2015), available at [https://www.soa.org/globalassets/assets/library/newsletters/the-actuary-magazine/2015/february/act-2015-vol12-iss1-fullam.pdf?mc_cid=f0cee24803&mc_eid=\[41023ebc2c\]](https://www.soa.org/globalassets/assets/library/newsletters/the-actuary-magazine/2015/february/act-2015-vol12-iss1-fullam.pdf?mc_cid=f0cee24803&mc_eid=[41023ebc2c]) (last visited Oct. 1, 2021).

⁷² Narges Dorratoltaj, Ph.D., Doug Fullam, ASA, *What the 1918 Flu Pandemic Can Teach Today’s Insurers*, AIR Currents (Mar. 29, 2018), available at <https://www.air-worldwide.com/publications/air-currents/2018/What-the-1918-Flu-Pandemic-Can-Teach-Today-s-Insurers/> (last visited Oct. 1, 2021).

through small droplets of saliva,⁷³ just like COVID-19, the Insurance Services Office (“ISO”) drafted new endorsements that it filed with state insurance regulators in all ISO jurisdictions and recommended to the independent bureaus in other jurisdictions to address the exclusion of loss due to virus or bacteria.⁷⁴ The ISO circular specifically states that viruses such as the rotavirus, SARS, and the influenza (such as the avian flu) may “enable the spread of disease by their presence on interior building surfaces [resulting in] potential claims [for] business interruption (time element) losses.”⁷⁵

134. AIG chose not to include the virus exclusion ISO drafted, which exclusion many insurance carriers have used in their “all risks” property and business interruption policies. AIG also chose not include an exclusion specifically for pandemics, which was also available in the marketplace.

VII. AIG WRONGLY DENIED SPIRIT’S CLAIM FOR COVERAGE UNDER THE POLICY

135. On or about April 8, 2020, Spirit timely notified AIG of its coronavirus/COVID-19-related losses.

136. On April 14, 2020, AIG acknowledged receipt of Spirit’s notice and made thirteen requests for information from Spirit. Among others, the requests included the following questions: “1. Has access to your property been limited or prevented? 4. Has someone been on any of the

⁷³ See, e.g., *Severe Acute Respiratory Syndrome (SARS)*, World Health Organization (undated), available at https://www.who.int/health-topics/severe-acute-respiratory-syndrome#tab=tab_1 (last visited Oct. 1, 2021).

⁷⁴ *New Endorsements Filed to Address Exclusion of Loss Due to Virus or Bacteria*, ISO Circular (July 6, 2006), available at <https://www.propertyinsurancecoveragelaw.com/files/2020/03/ISO-Circular-LI-CF-2006-175-Virus.pdf> (last visited Oct. 1, 2021).

⁷⁵ *Id.*

reported premises that tested positive for Covid-19 virus? Have any of your employees been confirmed to have Covid-19 virus? 6. Have cleanup/mitigation been performed as a result of the virus being identified at any of your covered locations? 13. Did you have any food loss/spoilage?"

137. Further, despite alteration and change to property not being prerequisites for coverage under the Policy's plain terms, AIG requested in both questions 8 and 11: "Did the virus physically alter or change the property (loss location)? If yes, please describe how it was altered."

138. On May 4, 2020, Spirit responded to AIG's April 14, 2020 letter and provided detailed information in response to each of AIG's requests for information, including that COVID-19 was present at its covered locations, that Spirit suffered physical loss and damage as a result, and that as of late April 2020, over sixty Spirit employees had tested positive for COVID-19.

139. Nevertheless, despite the presence of COVID-19, the significant losses sustained by Spirit, and the fact that AIG knew there was no exclusion in the Policy applicable to Spirit's losses, AIG swiftly issued a denial of coverage to Spirit on May 28, 2020.

140. Instead of responding to Spirit's detailed answers to AIG's requests for information, AIG merely quoted various Policy provisions and mischaracterized Spirit's claim for coverage as one exclusively under the Policy's Additional Time Element Coverage for Interruption by Civil or Military Authority. AIG then wrongly stated that "[s]ince the reason for the order is the result of a virus (COVID-19), and a virus is considered a contaminant or pollutant that is specifically excluded, coverage cannot be extended for this loss."

141. As stated above, Spirit suffered direct physical loss or damage to covered property at covered locations and consequently suffered financial losses and incurred extra expenses, which AIG agreed to pay under the Policy. Moreover, since AIG's denial, significantly Spirit has received even more reports of confirmed cases of COVID-19 among its employees at or around

its covered locations. Additionally, for the reasons stated above, the “pollutants or contaminants” exclusion cited by AIG does not apply to Spirit’s losses. *Supra* at ¶¶ 74-79.

142. Due to the coronavirus/COVID-19 pandemic, related governmental orders, and other events caused Spirit to suffer hundreds of millions, and likely more than a billion, dollars in property and business income-related losses to its company—losses that are covered under the Policy. To this day, AIG has refused to compensate Spirit for its losses.

143. Based on AIG’s wrongful denial of Spirit’s claim for coverage, Spirit commences this action, seeking damages for AIG’s breach of contract and a judicial declaration of AIG’s obligations to Spirit under the Policy.

FIRST CAUSE OF ACTION
(Breach of Contract)

144. Spirit repeats and reallege the allegations set forth in the foregoing paragraphs of this Complaint as if fully set forth herein.

145. The Policy constitutes a valid and enforceable contract between Spirit as the named insured and AIG as the company providing insurance.

146. In the Policy, AIG agreed to insure Spirit’s losses against all risks of direct physical loss or damage to property not otherwise excluded, including but not limited to the coverages in the Property Loss or Damage Coverage, Business Income Loss Coverage, Time Element, and Extra Expenses portions of the Policy.

147. As described above, Spirit has sustained, and continues to sustain, insured losses under the Policy and during the policy period.

148. Spirit paid all premiums due for the Policy, provided prompt notice of its losses, and performed all other obligations required of it under the Policy at the time AIG denied coverage

on May 28, 2020. AIG's denial letter was clear that AIG would not perform its coverage obligations to Spirit, in breach of the Policy.

149. Under the terms of the Policy, AIG must pay up to the full limits for any losses covered under the Policy, per occurrence, subject only to applicable sublimits, time limits, waiting periods, or deductibles for specific coverages.

150. AIG has not paid any amounts to Spirit in connection with its claim and has refused to pay the full amount it is required to pay under the Policy for Spirit's losses. Instead, AIG has asserted one inapplicable basis to wrongfully deny coverage for Spirit's claim.

151. As a direct and proximate result of AIG's breach of contract, Spirit has suffered and will continue to suffer damages in an amount to be determined at trial, plus consequential damages, attorneys' fees, and pre- and post-judgment interest to the extent permitted by law.

SECOND CAUSE OF ACTION
(Declaratory Judgment)

152. Spirit repeats and realleges the allegations set forth in the foregoing paragraphs of this Complaint as if fully set forth herein.

153. Pursuant to the terms of the Policy, AIG is obligated to pay, up to the limit of liability or any applicable sublimit, per occurrence, Spirit's property loss or damage and business income losses covered under the Policy and not otherwise excluded from coverage.

154. As detailed above, Spirit's losses are covered under multiple coverages of the Policy and are not excluded from coverage.

155. AIG disputes its obligation to pay Spirit's claims.

156. An actual and justiciable controversy presently exists between Spirit and AIG concerning the proper construction of the Policy and the rights and obligations of the parties thereto

with respect to Spirit's claim for property losses, business income losses, and extra expenses arising out of the direct physical loss or damage to Spirit's property arising from the COVID-19 pandemic and resultant civil authority orders and other causes.

157. A declaratory judgment would resolve or be useful to resolve this case or controversy. Spirit's losses are ongoing. By clarifying the parties' rights and duties under the Policy, a declaratory judgment would guide AIG's treatment of Spirit's covered yet unaccrued losses. Because Spirit also has unaccrued losses that have not yet ripened such that a coercive remedy like damages is appropriate, the declaratory judgment would afford Spirit relief independent of the breach of contract claim.

PRAYER FOR RELIEF

WHEREFORE, Spirit prays for relief as follows:

- a. On the First Cause of Action, Spirit requests that the Court enter judgment in favor of Spirit and against AIG, awarding Spirit damages in an amount to be determined at trial plus consequential damages, attorneys' fees, and pre- and post-judgment interest to the extent permitted by law;
- b. On the Second Cause of Action, Spirit requests that the Court enter a declaratory judgment in favor of Spirit and against AIG that Spirit's losses are covered under the Policy, declaring that AIG is required to pay Spirit for claimed amounts under the Policy up to the applicable limits of the Policy;
- c. For All Causes of Action, Spirit requests that the Court grant all pre- and post-judgment interest as allowed by law and award Spirit all costs incurred as a consequence of having to prosecute this lawsuit, including attorneys' fees; and

d. Spirit further requests such other and further relief as the Court deems just and proper.

JURY DEMAND

Spirit hereby demands a trial by jury on all issues so triable.

Dated: New York, New York
October 1, 2021

SPIRIT AIRLINES, INC.

By their Attorneys,

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