

1 Renee M. Finch, Esq.
Nevada State Bar 13118
2 **MESSNER REEVES LLP**
8945 W. Russell Road, Suite 300
3 Las Vegas, Nevada 89148
4 Phone: (702) 363-5100
Email: *rfinch@messner.com*
5 *Attorneys for Plaintiff, Treasure Island, LLC*

6
7 **UNITED STATES DISTRICT COURT**

8 **DISTRICT OF NEVADA**

9
10 TREASURE ISLAND, LLC,

CASE NO.

11 *Plaintiff,*

12 v.

13 AFFILIATED FM INSURANCE COMPANY,

14 *Defendant.*

15 **COMPLAINT**

16
17 Plaintiff, Treasure Island, LLC (“Treasure Island”), files this Complaint for damages and
18 declaratory judgment against Defendant, Affiliated FM Insurance Company (“AFM”), alleging the
19 following:

20 **I. INTRODUCTION**

21 1. This diversity action for bad faith breach of contract and declaratory judgment arises
22 out of Treasure Island’s claim of insurance coverage under an “all risks” insurance policy sold by
23 AFM to Treasure Island.

24 2. Despite agreeing to cover Treasure Island for all risks of physical loss or damage to
25 property unless specifically excluded in the policy, and Treasure Island’s resulting business
26 interruption loss, AFM refuses to show its hand and, instead, has doubled down on a calculated claims
27 handling strategy designed to limit or altogether deny Treasure Island from the recovery it is entitled
28 to receive under an insurance contract it has long-relied on as protection against unforeseen loss or

1 damage and resulting loss of income. Undeniably, AFM chose to insure against loss caused by
2 communicable disease, both at and away from Treasure Island’s property. AFM should be required to
3 play its hand and cover Treasure Island’s losses.

4 **II. THE PARTIES**

5 3. Treasure Island is a limited liability company organized under the laws of the State of
6 Nevada, with its principal place of business at 3300 Las Vegas Boulevard South, Las Vegas, NV,
7 89106. No member of Treasure Island is a resident or domiciliary of Rhode Island.

8 4. AFM is incorporated under the laws of Rhode Island with a principal place of business
9 at 270 Central Avenue, Johnston, RI 02919.

10 5. AFM is authorized to do business and issue insurance policies in the State of Nevada.

11 **III. JURISDICTION & VENUE**

12 6. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332, as the parties
13 are completely diverse in citizenship and the amount in controversy exceeds \$75,000, exclusive of
14 interests and costs.

15 7. Venue is proper in this District under 28 U.S.C. § 1391 because Treasure Island’s
16 principal place of business is in this District and a substantial portion of the events and omissions
17 giving rise to the claims and losses occurred within the District.

18 **IV. FACTUAL BACKGROUND**

19 8. Treasure Island is a sprawling 2.1 million square foot casino and resort occupying over
20 20 acres of land. It has over 2,000 gaming attractions, nearly 3,000 rooms, and employs approximately
21 2,000 people. The number of guests that Treasure Island welcomes onto its property is staggering—
22 over 7,000 people on an average day.

23 9. AFM is an insurance company that sold an insurance policy to Treasure Island
24 providing coverage to Treasure Island against “all risks of physical loss or damage, except as ...
25 excluded.” (See Policy No. GS784, attached as Exhibit A (the “Policy”).)

26 10. The Policy has an effective term of March 20, 2019 through March 20, 2020.
27
28

1 11. The Policy also affords coverage to Treasure Island for business interruption losses
2 occurring as a result of physical loss or damage of the type insured under the Policy. Exhibit A, at
3 TIPOLICY034.

4 12. The Policy provides up to \$850 million in coverage for property damage and up to \$327
5 million in coverage for business interruption losses. Exhibit A, at TIPOLICY062.

6 13. The Policy provides Civil Authority coverage for business interruption loss resulting
7 from the prohibition of access to covered property for up to 395 days. Exhibit A, at TIPOLICY039;
8 TIPOLICY006; TIPOLICY062.

9 14. In exchange for AFM's agreement to take on Treasure Island's risk of loss, Treasure
10 Island paid AFM nearly \$1 million in premium.

11 **A. COVID-19 is a Deadly Communicable Disease**

12 15. COVID-19 is a deadly communicable disease that has already infected over 1.6 million
13 people in the United States and caused more than 100,000 deaths.¹ There is no vaccine for COVID-
14 19.

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

18 17. The incubation period for COVID-19—the time between exposure (becoming infected)
19 and symptom onset—can be up to 14 days.²

20 18. During this period (also known as the "pre-symptomatic" period), infected persons can
21 be contagious and disease transmission can occur before the infected person shows any symptoms or
22 has any reason to believe they are infected.³

23
24
25 ¹ See <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html> (last viewed May 28, 2020, 2020).

26 ² See https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200402-sitrep-73-covid-19.pdf?sfvrsn=5ae25bc7_2 (last viewed May 4, 2020).

27 ³ See https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200402-sitrep-73-covid-19.pdf?sfvrsn=5ae25bc7_2 ("In a small number of case reports and studies, pre-symptomatic transmission has been documented through contact tracing efforts and enhanced investigation of clusters of confirmed cases. This is supported by data suggesting that some people can test positive for COVID-19 from 1-3 days
28

1 19. Not only is COVID-19 spread by human-to-human transfer, but the WHO has
2 confirmed that COVID-19 can exist on contaminated objects or surfaces.⁴

3 20. According to a study documented in *The New England Journal of Medicine*, COVID-
4 19 was detectable in aerosols for up to three hours, up to four hours on copper, up to 24 hours on
5 cardboard, and up to three days on plastic and stainless steel.⁵

6 21. All of these materials are used by Treasure Island throughout its facilities and
7 operations.

8 22. The study's results suggest that individuals could become infected with COVID-19
9 through indirect contact with surfaces or objects used by an infected person, whether they were
10 symptomatic or not.⁶

11 **B. Civil Authority Orders Because of COVID-19 and Related Physical Loss or**
12 **Damage to Property**

13 23. In an effort to slow the spread of COVID-19 and as a consequence of physical damage
14 caused by COVID-19, federal, state and local governments imposed unprecedented directives
15 prohibiting travel into the United States, requiring certain businesses to close and requiring residents
16 to remain in their homes unless performing "essential" activities, like shopping for food, going to see
17 a doctor, or getting fresh air ("Stay at Home Orders").

18 24. The Stay at Home Orders typically require businesses deemed "non-essential" to be
19 closed and in-person work is not permitted.

20 25. However, even businesses classified as "essential" have been severely impacted by the
21 pandemic and Stay at Home Orders.

22
23 before they develop symptoms. Thus, it is possible that people infected with COVID-19 could transmit the
24 virus before significant symptoms develop.") (last viewed May 4, 2020).

25 ⁴ See <https://www.who.int/news-room/commentaries/detail/modes-of-transmission-of-virus-causing-covid-19-implications-for-ipc-precaution-recommendations> ("[T]ransmission of the COVID-19 virus can occur by
26 direct contact with infected people and indirect contact with surfaces in the immediate environment or with
objects used on the infected person") (last viewed May 4, 2020).

27 ⁵ See <https://www.nih.gov/news-events/news-releases/new-coronavirus-stable-hours-surfaces> (last viewed
28 May 4, 2020); see also <https://www.who.int/news-room/commentaries/detail/modes-of-transmission-of-virus-causing-covid-19-implications-for-ipc-precaution-recommendations> (last viewed May 4, 2020).

⁶ Id.

1 26. Stay at Home Orders remain in effect as of the date of filing and have caused the
2 suspension of both non-essential and essential businesses.

3 27. As a business that relies on materials and customers from right next door to across the
4 country to around the world, Treasure Island is subject to these various Stay at Home Orders.

5 28. Stay at Home Orders, the damage caused by COVID-19, and the transmission of
6 COVID-19 have had a devastating effect on Treasure Island's business.

7 29. One of the first publicized cases of COVID-19 in Las Vegas was a guest that stayed
8 from March 5th through 8th at the Mirage Resort and Casino, which is located immediately next to
9 Treasure Island and connected to Treasure Island by tram. This case was publically reported on March
10 11, 2020.

11 30. The next day, March 12, 2020, Nevada Governor Steve Sisolak declared a state of
12 emergency in the state of Nevada citing the presence of COVID-19 and its impact on lives and
13 property. (See NV Exec. Decl. of Emergency, dated March 12, 2020,
14 [http://gov.nv.gov/News/Emergency_Orders/2020/2020-03-12_-_COVID-](http://gov.nv.gov/News/Emergency_Orders/2020/2020-03-12_-_COVID-19_Declaration_of_Emergency/)
15 [19_Declaration_of_Emergency/](http://gov.nv.gov/News/Emergency_Orders/2020/2020-03-12_-_COVID-19_Declaration_of_Emergency/), attached as Exhibit B).

16 31. Five days later, pursuant to his March 12, 2020 Declaration, Governor Sisolak further
17 ordered all gaming activities in the state to close at midnight on March 17, 2020. (See NV Exec.
18 Emergency Order, dated March 17, 2020,
19 [http://gov.nv.gov/uploadedFiles/govnewnv.gov/Content/News/Emergency_Orders/2020_attachments](http://gov.nv.gov/uploadedFiles/govnewnv.gov/Content/News/Emergency_Orders/2020_attachments/2020-03-17-NV-Health-Reponse-COVID19-Risk-Management-Initiative-2.pdf)
20 [/2020-03-17-NV-Health-Reponse-COVID19-Risk-Management-Initiative-2.pdf](http://gov.nv.gov/uploadedFiles/govnewnv.gov/Content/News/Emergency_Orders/2020_attachments/2020-03-17-NV-Health-Reponse-COVID19-Risk-Management-Initiative-2.pdf), attached as Exhibit
21 C).

22 32. As a direct result of COVID-19 and these Orders, issued directly because of physical
23 damage to property, Treasure Island closed its doors at 12:01 AM on March 18, 2020.

24 33. Persons infected with COVID-19 were present at Treasure Island prior to March 18,
25 2020.

26 34. In fact, during the period January 1, 2020 to March 18, 2020, Treasure Island
27 employees recorded more than 1,500 sick days. During that same period, Treasure Island had more
28 than 329,000 registered guests from all over the world.

1 35. On March 20, 2020, Governor Sisolak, again noting the need to protect person and
2 property, ordered all non-essential businesses to close and restricted the activities of essential
3 businesses. (See NV Exec. Emergency Decl., Directive No. 3, dated March 20, 2020,
4 [http://gov.nv.gov/News/Emergency_Orders/2020/2020-03-20_-_COVID-
5 19_Declaration_of_Emergency_Directive_003_\(Attachments\)/](http://gov.nv.gov/News/Emergency_Orders/2020/2020-03-20_-_COVID-19_Declaration_of_Emergency_Directive_003_(Attachments)/); and related regulations,
6 [http://gov.nv.gov/uploadedFiles/govnewnv.gov/Content/News/Emergency_Orders/2020_attachments
7 /2020-03-20_COVID-19_DPS_DEM_EmergencyRegulations.pdf](http://gov.nv.gov/uploadedFiles/govnewnv.gov/Content/News/Emergency_Orders/2020_attachments/2020-03-20_COVID-19_DPS_DEM_EmergencyRegulations.pdf), attached as Exhibit D).

8 36. On April 29, 2020, Governor Sisolak issued a Directive explaining, among other things,
9 the basis for the closure and stay at home orders stating specifically that the ability of COVID-19 “to
10 survive on surfaces for indeterminate periods of time renders some property unusable and contributes
11 to contamination, damage, and property loss” (See NV Exec. Emergency Decl. Directive No. 16,
12 dated April 29, 2020, [http://gov.nv.gov/News/Emergency_Orders/2020/2020-04-29_-_COVID-
13 19_Declaration_of_Emergency_Directive_016_\(Attachments\)/](http://gov.nv.gov/News/Emergency_Orders/2020/2020-04-29_-_COVID-19_Declaration_of_Emergency_Directive_016_(Attachments)/), attached as Exhibit E).

14 **C. Treasure Island’s “All Risks” Policy**

15 37. The Policy covers property at or within 1,000 feet of Treasure Island’s locations
16 “against ALL RISKS OF PHYSICAL LOSS OR DAMAGE, except as hereinafter excluded”
17 Exhibit A, at TIPOLICY016.

18 38. Treasure Island’s insured locations, referred to as “described locations” and “location”
19 throughout the Policy, are: (a) the actual casino located at 3300 Las Vegas Boulevard South, Las
20 Vegas; and (b) an office/warehouse located at 4050 West Sunset Road, Suite B, Las Vegas. These
21 locations are referred to herein as “Treasure Island Locations.” Exhibit A, at TIPOLICY016,
22 TIPOLICY057, & TIPOLICY004.

23 39. AFM drafted the Policy.

24 40. Pursuant to the “Communicable Disease – Property Damage” coverage, the Policy
25 expressly covers, among other things, “the reasonable and necessary costs incurred ... for the: (a)
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27
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1 Cleanup, removal and disposal of ... **communicable disease** from insured property.”⁷ Exhibit A, at
2 TIPOLICY022.

3 41. By providing for the “cleanup, removal and disposal of ... **communicable disease**,”
4 the Policy explicitly recognizes that **communicable disease** physically damages property.

5 42. Accordingly, because the Policy specifically covers remediation of the damage caused
6 by **communicable disease**, the physical damage to property caused by **communicable disease** is
7 “physical damage of the type insured” under the Policy.

8 **1. COVID-19 Triggered Coverage Under the “All Risks” Policy**

9 43. The actual presence of COVID-19 at Treasure Island Locations has triggered coverage
10 under the Policy.

11 44. In addition, the presence of COVID-19 on property away from Treasure Island
12 Locations has triggered coverage under the Policy.

13 45. COVID-19 has caused (and continues to cause) physical loss and physical damage to
14 property, including Treasure Island’s property.

15 46. COVID-19 also has caused (and continues to cause) Treasure Island to experience
16 covered business interruption.

17 47. Treasure Island has submitted a claim pursuant to the Policy as a result of sustaining
18 losses covered by the Policy. Notwithstanding, AFM has denied coverage for Treasure Island’s claim
19 and done so in bad faith based on an apparent systematic company practice designed to minimize
20 payments for covered COVID-19 claims.

21 **2. Multiple Coverages are Triggered under the “All Risks” Policy**

22 48. In addition to triggering the Policy’s “all risks” coverage, Treasure Island’s claim also
23 triggers multiple coverage “extensions” provided under the Policy including but not limited to the
24 following.

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26
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28 ⁷ Terms defined in the Policy are signified by the use of **bold** typeface. Unless otherwise stated, the use of
bold typeface signifies the use of same in the Policy.

1 ***i. COVID-19 Triggered the Policy's Communicable Disease – Property***
2 ***Damage Coverage***

3 49. The actual presence of COVID-19 at the Treasure Island Locations has caused physical
4 damage to property at these locations resulting in the issuance of an order by an authorized
5 governmental agency regulating communicable disease, thereby triggering coverage under the
6 Policy's Communicable Disease – Property Damage coverage.

7 50. Upon information and belief the actual presence of COVID-19 continues to exist at
8 Treasure Island Locations.

9 ***ii. COVID-19 Triggered the Policy's Protection and Preservation of***
10 ***Property – Property Damage Coverage***

11 51. COVID-19 also has caused and continues to cause actual physical loss and damage to
12 insured property. In addition, COVID-19 has threatened and continues to threaten to cause physical
13 loss and damage to property.

14 52. This actual and threatened physical loss and damage to insured property has prompted
15 Treasure Island to take action to temporarily protect or preserve its property, thereby triggering the
16 Policy's Protection and Preservation of Property – Property Damage coverage.

17 ***iii. COVID-19 Triggered the Policy's Business Interruption Coverage***

18 53. The Policy affords coverage for Treasure Island's business interruption losses, subject
19 to the Policy's terms and conditions.

20 54. COVID-19 has caused Treasure Island to suffer business interruption loss as a direct
21 result of physical loss and damage of the type insured under the Policy.

22 55. This loss triggers coverage under the Policy's Business Interruption provisions
23 including, without limitation, coverage for up to 395 days of Gross Earnings loss, Gross Profits loss
24 and Rental Income loss.

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

26 56. COVID-19 has caused Treasure Island to incur reasonable and necessary expenses to
27 continue as close to normal as possible the conduct of Treasure Island's business. Such expenses are
28 beyond those that would have normally been incurred in conducting the business absent the presence
of COVID-19.

1 57. The expenses incurred by Treasure Island beyond those necessary in the normal
2 operation of its business solely as a result of the physical loss and damage caused by COVID-19 trigger
3 coverage under the Policy's Extra Expense coverage.

4 **v. COVID-19 Triggered the Policy's Attraction Property Coverage**

5 58. COVID-19 also has caused and is continuing to cause physical loss and damage to
6 property away from Treasure Island Locations, including property located within one (1) statute mile
7 of Treasure Island Locations.

8 59. Treasure Island has sustained and will continue to sustain a loss of business income
9 directly resulting from physical loss and damage of the type insured to property of the type insured
10 that attracts business to the Treasure Island Locations.

11 **vi. COVID-19 Triggered the Policy's Civil Authority Coverage**

12 60. The physical damage caused by the presence of COVID-19 at property located within
13 five (5) statute miles of Treasure Island Locations has directly resulted in the issuance of orders and
14 Directives by Governor Sisolak and other civil authorities prohibiting access to Treasure Island
15 Locations.

16 61. Treasure Island has sustained and will continue to sustain business interruption losses
17 because orders from civil authorities issued as a direct result of physical damage of the type insured
18 at a Treasure Island Location or within five (5) statute miles of such a Treasure Island Location, have
19 prohibited access to Treasure Island Locations.

20 **vii. COVID-19 Triggered the Policy's Communicable Disease – Business
21 Interruption Coverage**

22 62. The actual presence of COVID-19 at Treasure Island Locations has resulted in the
23 issuance of orders by authorized governmental agencies regulating communicable disease.

24 63. The business interruption losses sustained by Treasure Island as a result of such civil
25 authority orders issued because of the actual presence of COVID-19 at Treasure Island Locations
26 triggers coverage under the Policy's Communicable Disease – Business Interruption coverage.
27
28

viii. COVID-19 Triggered the Policy's Ingress/Egress Coverage

64. COVID-19 and the physical loss and damage it has caused has resulted in the necessary interruption of Treasure Island's business by totally or partially preventing ingress to or egress from Treasure Island Locations as a direct result of physical loss and damage of the type insured to property of the type insured.

65. The business interruption losses sustained by Treasure Island as a result of the necessary suspension of Treasure Island's business as a result of the total or partial denial of access to Treasure Island Locations triggers coverage under the Policy's Ingress/Egress coverage.

ix. COVID-19 Triggered the Policy's Supply Chain Coverage

66. COVID-19 has caused physical loss and damage of the type insured to property of the type insured at the premises of Treasure Island's direct customers and direct contract service providers, and the direct and indirect suppliers, customers and contract service providers of Treasure Island's direct customers and contract service providers.

67. The loss of business income sustained by Treasure Island as a result of such supply chain interruption triggers coverage under the Policy's Supply Chain coverage.

3. No Exclusion Impacts Coverage

68. No exclusion in the Policy applies to preclude or limit coverage for the actual presence of COVID-19 at or away from Treasure Island Locations, the physical loss and damage to property at Treasure Island Locations and/or the business interruption losses that has and will continue to result from the physical loss and damage to property. To the extent AFM contends any exclusion(s) apply, such exclusion(s) are unenforceable.

4. The Policy's Contamination Exclusion Does Not Apply

69. The Policy's "Communicable Disease – Property Damage" coverage provides coverage for, among other things, "the reasonable and necessary costs incurred ... for the: (a) Cleanup, removal and disposal of ... **communicable disease** from insured property." Exhibit A, at TIPOLICY022.

70. AFM has stated in writing that COVID-19 meets the definition of **communicable disease** under the Policy. Exhibit G.

1 71. The Policy also contains an exclusion that purports to preclude coverage for
2 “**contamination.**” Exhibit A, at TIPOLICY020.

3 72. The Policy defines “**contamination**” as, among other things, a “virus.” Exhibit A, at
4 TIPOLICY057.

5 73. The Policy’s “**contamination**” exclusion does not exclude coverage for loss caused by
6 “communicable disease.”

7 74. The Policy’s “**contamination**” exclusion does not exclude coverage for Treasure
8 Island’s claim.

9 75. To the extent AFM contends that the Policy’s “**contamination**” exclusion bars
10 coverage for loss caused by “**communicable disease**” or some other aspect of Treasure Island’s claim,
11 the Policy is, at best, ambiguous, and therefore, must be construed in favor of coverage. Century Sur.
12 Co. v. Casino West, Inc., 130 Nev. 395, 398 (2014) (finding pollution exclusion ambiguous and
13 explaining that “[w]e interpret ambiguities in an insurance contract against the drafter, which is
14 typically the insurer.”)

15 **5. The Policy’s Communicable Disease Sublimit Does Not Cap Treasure**
16 **Island’s Losses**

17 76. The Policy affords coverage to Treasure Island for the actual presence of
18 “communicable disease” at a Treasure Island Location. This communicable disease coverage is found
19 under two sections of the policy titled “Communicable Disease – Property Damage” and
20 “Communicable Disease – Business Interruption” (together, the “On-Site Sublimited Communicable
21 Disease Coverages”).

22 77. The On-Site Sublimited Communicable Disease Coverages do not apply to limit any
23 other coverage under the Policy that may also apply to loss or damage resulting from or caused by
24 communicable disease, including physical damage resulting from or caused by communicable disease
25 away from Treasure Island Locations.

26 78. Likewise, any sublimit applicable to the On-Site Sublimited Communicable Disease
27 Coverages does not apply to limit any other coverage under the Policy that may also apply to loss or
28

1 damage resulting from or caused by communicable disease, including physical damage resulting from
2 or caused by communicable disease away from Treasure Island Locations.

3 79. Rather, coverage for covered physical loss and damage, and/or resulting business
4 interruption loss, from or caused by communicable disease, including physical damage resulting from
5 or caused by communicable disease away from Treasure Island Locations, is subject to the Policy
6 limits associated with the coverage or coverages implicated.

7 **D. AFM's Bad Faith Conduct**

8 *i. AFM Conducted an Inadequate and Improper Investigation of*
9 *Treasure Island's Claim*

10 80. Aware that its Policy affords coverage for COVID-19 losses beyond the On-Site
11 Sublimited Communicable Disease Coverages, AFM devised a plan designed to steer its
12 policyholders, including Treasure Island, into at most, the On-Site Sublimited Communicable Disease
13 Coverages for their COVID-19 losses.

14 81. AFM executed that plan in response to Treasure Island's claim.

15 82. Treasure Island submitted its claim for coverage under the Policy on March 19, 2020.
16 See Copy of E-mail Notice, attached as Exhibit F.

17 83. Three weeks later, on April 9, 2020, AFM's assigned adjuster, David Carroll, called
18 Treasure Island's General Counsel, Brad Anthony, to discuss Treasure Island's claim.

19 84. During that call and several subsequent calls, Mr. Anthony explained that Treasure
20 Island's claim was based on the physical loss and/or physical damage to property caused by, among
21 other things, the presence of COVID-19 at Treasure Island Locations and elsewhere, as well as related
22 government orders prohibiting access to Treasure Island Locations and orders mandating that Treasure
23 Island close its doors.

24 85. Mr. Carroll ignored Mr. Anthony's statements concerning the prohibition of access to
25 Treasure Island because of civil authority orders issued due to physical damage of the type insured
26 and, instead, shifted the conversation to whether any employees of Treasure Island had tested positive
27 for COVID-19.
28

1 86. In response to Mr. Carroll’s question, Mr. Anthony advised that he was uncomfortable
2 disclosing confidential personnel information due to privacy concerns.

3 87. AFM failed to further investigate Treasure Island’s claimed losses.

4 88. Following the April 9 call, Mr. Carroll sent a letter to Mr. Anthony, also dated April 9,
5 2020, purporting to recap the earlier conversation. Exhibit G.

6 89. The letter failed to accurately recap the conversation.

7 90. Mr. Carroll’s letter grossly mischaracterized the substance of the telephone
8 conversation and the information that Mr. Anthony provided during the call. In particular, the April 9
9 letter states – incorrectly:

10 Per our discussion, it is our understanding that Treasure Island, LLC was not aware of
11 any employees infected with the virus, nor whether the virus was present at any of the
12 locations. We also understand that there was no physical damage or loss to Insured
property at the location.

13 Exhibit G.

14 91. The statements contained in Mr. Carroll’s April 9 letter concerning the absence of
15 infected employees and the absence of physical loss or damage to Insured property are false.

16 92. The April 9 letter also misstates Mr. Carroll’s conversation with Mr. Anthony by
17 omitting any reference to Mr. Anthony’s statements about the prohibition of access to Treasure Island
18 due to civil authority orders issued as a direct result of physical damage of the type insured.

19 93. The April 9 letter states that coverage is potentially available to clean up, remove and
20 dispose of COVID-19 from Treasure Island because “COVID-19 meets the definition of a
21 **communicable disease** under the [P]olicy.” Exhibit G.

22 94. On April 16, 2020, Mr. Carroll sent Treasure Island another letter stating that “coverage
23 is not available [for COVID-19] absent physical loss or damage of the type insured.” Exhibit J.

24 95. Again, however, Mr. Carroll omitted material information from the April 16 letter
25 provided by Mr. Anthony regarding the physical loss and/or damage to property sustained by Treasure
26 Island.

1 *ii. AFM's Attempt to Steer Treasure Island Into the Policy's On-Site*
2 *Sublimited Communicable Disease Coverage*

3 96. Based on information and belief, Mr. Carroll's mischaracterization of his telephone call
4 with Mr. Anthony and Mr. Carroll's material omission of facts provided to him as part of his claim
5 investigation was not by accident, but rather a systematic claims handling practice and procedure that
6 AFM has deployed across all COVID-19 claims.

7 97. AFM's systematic practice is outlined in a set of "Talking Points" (hereafter, the "AFM
8 Talking Points") prepared for AFM claim adjusters to use to ensure that AFM's adjusters reach the
9 same conclusion for all COVID-19 claims. (See Copy of Talking Points, attached as Exhibit H.)

10 98. The AFM Talking Points explicitly acknowledge that AFM "ha[s] a wide range of
11 clients who may be affected in a variety of ways" by COVID-19. Exhibit H.

12 99. The AFM Talking Points outline only a few of the many different coverages contained
13 in AFM's standard commercial property policies, including policies of the type AFM sold to Treasure
14 Island, that specifically afford coverage for COVID-19 claims. Exhibit H.

15 100. The AFM Talking Points outline certain specific "triggers" of coverage that the adjuster
16 should look for when investigating any COVID-19 claim. Exhibit H.

17 101. But the AFM Talking Points fail to include all of the different "triggers" of coverage
18 that may be implicated by COVID-19 claims.

19 102. Among those "triggers" included by AFM in its Talking Points is an employee of the
20 insured that "actually has the communicable disease." Exhibit H.

21 103. Ironically, the AFM Talking Points recognize that some insureds may be unable to
22 disclose that an employee actually has COVID-19 due to medical privacy restrictions.

23 104. In fact, the AFM Talking Points specifically address the very same privacy concerns
24 raised by Mr. Anthony during his telephone call with AFM's adjuster, stating "In some jurisdictions,
25 access to medical records is not possible without employee consent." Exhibit H.

26 105. By including only the On-Site Sublimited Communicable Disease Coverages as
27 coverages potentially applicable to a COVID-19 claim, the AFM Talking Points steer adjusters to only
28 seek information that pertains to the On-Site Sublimited Communicable Disease Coverages.

1 106. In fact, the AFM Talking Points expressly and unequivocally foreclose the availability
2 of coverage under the Policy’s Civil or Military Authority coverage provision. Exhibit H.

3 107. The AFM Talking Points specifically provide:

4 Q. Does coverage under Civil or Military Authority apply?

5 A. No

6 Exhibit H.

7 108. The AFM Talking Points make similar statements with respect to the Policy’s Supply
8 Chain coverage. Exhibit H.

9 109. The AFM Talking Points further instruct that “the presence of a **communicable disease**
10 does not constitute physical damage and is not of the type insured against as a virus falls within the
11 definition of **contamination**, which is excluded.” Exhibit H.

12 110. But as alleged above, the Policy AFM sold to Treasure Island expressly recognizes that
13 the presence of communicable disease causes physical damage to property because it provides
14 coverage for the resulting “cleanup, removal and disposal of ... **communicable disease**.” Exhibit A,
15 at TIPOLICY022.

16 111. Regardless, AFM failed to conduct any investigation with respect to Treasure Island’s
17 claim to determine whether Treasure Island had in fact sustained physical loss or damage as a result
18 of communicable disease.

19 112. The AFM Talking Points direct the claims adjuster to reach conclusions without
20 considering the specific facts of the particular claim and without considering the applicable law that
21 governs interpretation of the relevant insurance policy.

22 113. Instead, the AFM Talking Points coach the adjuster to suggestively steer the
23 policyholder toward the On-Site Sublimited Communicable Disease Coverages, which provide only a
24 fraction of the coverage limits otherwise available under the Policy.

25 114. The AFM Talking Points are contrary to the accepted practices of good faith insurance
26 claim handling.

27 115. AFM’s practice and procedure constitutes an unfair or deceptive act or practice in the
28 business of insurance.

1 116. AFM's use of the Talking Points reflects a conscious disregard of the policyholder's
2 rights under the policy.

3 117. On May 7, 2020, Treasure Island sent a letter to AFM in response to Mr. Carroll's April
4 9, 2020 letter, correcting Mr. Carroll's misstatements, and noting AFM's conflicting coverage
5 positions. Treasure Island requested that AFM reconsider its coverage denial and acknowledge
6 coverage for Treasure Island's claim. (See Letter from Brad Anthony, dated May 7, 2020, attached as
7 Exhibit I.)

8 118. AFM has not responded to Treasure Island's request.

9 119. AFM continues to refuse to pay Treasure Island's claim and has effectively denied its
10 claim.

11 120. AFM knowingly or recklessly failed to conduct a reasonable investigation of Treasure
12 Island's claim and, therefore, the basis for AFM's denial is unreasonable.

13 121. In denying Treasure Island's claim, AFM knew its denial lacked any reasonable basis.

14 122. In denying Treasure Island's claim, AFM failed to faithfully apply its own Policy
15 language, failed to conduct a reasonable investigation, and failed to consider the facts relevant to
16 Treasure Island's claim against the Policy language as interpreted pursuant to Nevada law.

17 123. As a consequence of AFM's bad faith conduct, including its wrongful denial and
18 inadequate claim investigation, Treasure Island has suffered and continues to suffer significant
19 damages.

20 **COUNT I**

21 Declaratory Judgment

22 124. Treasure Island repeats and realleges the allegations in the preceding paragraphs.

23 125. Treasure Island seeks the Court's declaration of the parties' rights and duties under the
24 Policy pursuant to 28 U.S.C. § 2201. A justiciable controversy exists between Treasure Island and
25 AFM concerning the availability of coverage under the Policy for Treasure Island's claim.

26 126. The controversy between Treasure Island and AFM is ripe for judicial review.
27
28

1 127. Nevada has adopted the Uniform Declaratory Judgment Act for purposes of declaring
2 parties' right in this precise circumstance.

3 128. Accordingly, Treasure Island seeks a declaration from the Court that:

- 4 a. The various coverage provisions identified herein are triggered by Treasure
5 Island's claim;
- 6 b. No Policy exclusion applies to bar or limit coverage for Treasure Island's
7 claim; and
- 8 c. The Policy covers Treasure Island's claim.

8 **COUNT II**

9 Breach of Contract
10 (Property Damage)

11 129. Treasure Island repeats and realleges the allegations in the preceding paragraphs.

12 130. The Policy is a valid and enforceable contract between Treasure Island and AFM.

13 131. In the Policy, AFM agreed to cover property against all risks of physical loss or damage
14 not otherwise excluded.

15 132. COVID-19 has caused and is continuing to cause physical loss and/or physical damage
16 to Treasure Island's property.

17 133. No exclusions apply to bar coverage.

18 134. Treasure Island is entitled to coverage for the physical loss and/or damage up to the
19 Policy's \$850 million limit of liability or any applicable sublimits.

20 135. Treasure Island complied with all applicable Policy provisions, including paying
21 premiums and providing timely notice of its claim.

22 136. Nonetheless, AFM unjustifiably refuses to pay for Treasure Island's physical loss or
23 damage in breach the Policy.

24 137. Treasure Island has suffered and continues to suffer damages as a result of AFM's
25 breach of the Policy.

26 138. Treasure Island is entitled to damages as a result of AFM's breach in an amount to be
27 determined at trial, including pre- and post-judgment interest and any other costs and relief that this
28 Court deems appropriate.

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COUNT III

Breach of Contract
(Business Interruption)

139. Treasure Island repeats and realleges the allegations in the preceding paragraphs.

140. The Policy is a valid and enforceable contract between Treasure Island and AFM.

141. In the Policy, AFM agreed to cover Business Interruption loss and incurred Extra Expense, as provided in the Business Interruption Coverage Extensions, as a direct result of physical loss or damage of the type insured under the Policy.

142. COVID-19 has caused and, upon information and belief, is continuing to cause physical loss and/or physical damage to Treasure Island's property and the property of others that has caused Treasure Island to suffer business interruption losses and incur extra expenses.

143. No exclusions apply to bar coverage.

144. Treasure Island is entitled to coverage for its business interruption losses and incurred extra expenses related to COVID-19 up to the Policy's \$327 million limit of liability or any applicable sublimits.

145. Treasure Island complied with all applicable Policy provisions, including paying premiums and providing timely notice of its claim.

146. Nonetheless, AFM unjustifiably refuses to pay for these losses and expenses in breach the Policy.

147. Treasure Island has suffered and continues to suffer damages as a result of AFM's breach of the Policy.

148. Treasure Island is entitled to damages as a result of AFM's breach in an amount to be determined at trial, including pre- and post-judgment interest and any other costs and relief that this Court deems appropriate.

COUNT IV

Breach of Contract
(Business Interruption Coverage Extensions)

149. Treasure Island repeats and realleges the allegations in the preceding paragraphs.

1 162. AFM failed to conduct a reasonable investigation of Treasure Island’s claim under the
2 Policy and, therefore, AFM’s basis for its denial is unreasonable.

3 163. AFM employed a systematic “one-size-fits-all” approach to adjusting and denying
4 coverage for all COVID-19 claims, including Treasure Island’s claim.

5 164. AFM knew or was actually or implicitly aware of the lack of any reasonable basis to
6 deny coverage.

7 165. AFM acted with reckless disregard as to the unreasonableness of its denial.

8 166. AFM breached its duty of good faith and fair dealing by failing to reasonably
9 investigate Treasure Island’s claim and provide coverage.

10 167. AFM’s denial of coverage constitutes bad faith.

11 168. As a result of AFM’s bad faith, Treasure Island has suffered and is continuing to suffer
12 damages.

13 169. Treasure Island is entitled to an award of damages as a result of AFM’s bad faith in an
14 amount to be determined at trial, including attorney’s fees, pre- and post-judgment interest and any
15 other costs and relief that this Court deems appropriate.

16 **COUNT VI**

17 Violation of the Nevada Unfair Claims Practices Act - NRS 686A.310

18 170. Treasure Island repeats and realleges the allegations in the preceding paragraphs.

19 171. AFM’s systemic practice of mischaracterizing the facts provided by policyholders in
20 connection with claims for coverage for losses from COVID-19 constitutes an unfair or deceptive act
21 or practice in the business of insurance pursuant to NRS 686A.310(a).

22 172. AFM’s systemic practice of attempting to influence and direct policyholders’ claims
23 for coverage for losses from COVID-19 to the On-Site Sublimited Communicable Disease Coverages
24 constitutes an unfair or deceptive act or practice in the business of insurance pursuant to NRS
25 686A.310(a), (c) and (l).

26 173. AFM’s use of the AFM Talking Points with pre-determined conclusions regarding
27 coverage for claims based on losses from COVID-19 without consideration of the particular facts or
28

1 applicable law constitutes an unfair or deceptive act or practice in the business of insurance pursuant
2 to NRS 686A.310(a), (c) and (n).

3 174. AFM's use of the AFM Talking Points designed to coach its claim adjusters to steer
4 the policyholder to the On-Site Sublimited Communicable Disease Coverages constitutes an unfair or
5 deceptive act or practice in the business of insurance pursuant to NRS 686A.310(a), (c), (l) and (n).

6 175. AFM's systemic practice and policy of denying coverage for claims by policyholders
7 for losses from COVID-19 without conducting an adequate investigation of the facts and the
8 applicable law constitutes an unfair or deceptive act or practice in the business of insurance pursuant
9 to NRS 686A.310(a), (c) and (n).

10 176. AFM has failed to adopt and implement reasonable standards for the prompt
11 investigation and processing of claims related to losses based on COVID-19, which constitutes a
12 violation of NRS 686A.310(c) and (n).

13 177. AFM's systemic practices and procedures have compelled Treasure Island to institute
14 this litigation to recover amounts due under the Policy by attempting to restrict Treasure Island's
15 recovery to the limited coverage available for communicable disease, which constitutes a violation of
16 NRS 686A.310(f).

17 178. As a result of AFM's unfair or deceptive acts or practices, Treasure Island has suffered
18 and is continuing to suffer damages.

19 179. Treasure Island is entitled to an award of damages as a result of AFM's unfair or
20 deceptive acts or practices in an amount to be determined at trial, including attorney's fees, pre- and
21 post-judgment interest and any other costs and relief that this Court deems appropriate.

22 **PRAYER FOR RELIEF**

23 **Wherefore**, Treasure Island prays for judgment against AFM as follows:

- 24 1) A declaration from the Court that:
- 25 a. The various coverage provisions identified herein are triggered by Treasure
26 Island's claim;
- 27 b. No Policy exclusion applies to bar or limit coverage for Treasure Island's
28 claim; and

1 c. The Policy covers Treasure Island's claim.

- 2 2) For special and consequential damages against AFM in an amount in to be proved at
3 trial in excess of \$75,000.00;
- 4 3) Pre and Post-judgment interest as provided by law;
- 5 4) An award of attorney's fees and costs of suit incurred; and
- 6 5) For such other and further relief as the Court deems just and proper.

7 **JURY TRIAL DEMANDED**

8 Treasure Island demands trial by jury on all issues so triable.

9
10 Date: May 28, 2020

Respectfully submitted,
PLAINTIFF TREASURE ISLAND, LLC
By and through its attorneys,

11
12 /s/ Renee M. Finch

13 Renee M. Finch, Esq.
14 Nevada State Bar 13118
MESSNER REEVES LLP
15 8945 W. Russell Road, Suite 300
Las Vegas, NV 89148
16 Phone: (702) 363-5100
Email: rfinch@messner.com

17
18 Michael S. Levine (*pro hac vice* forthcoming)
HUNTON ANDREWS KURTH LLP
19 2200 Pennsylvania Ave. NW
Washington, DC 20037
20 Phone: (202) 955-1500
Email: mlevine@hunton.com

21
22 Kevin V. Small (*pro hac vice* forthcoming)
HUNTON ANDREWS KURTH LLP
23 200 Park Ave, 52 Fl.
New York, NY 10166
24 Phone: (212) 309-1226
Email: ksmall@hunton.com

25
26 Harry L. Manion, III (*pro hac vice* forthcoming)
Christopher Cunio (*pro hac vice* forthcoming)
27 HUNTON ANDREWS KURTH LLP
60 State Street, Suite 2400
28 Boston, MA 02109
Phone: (617) 648-2800

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Fax: (617) 433-5022
Email: *hmanion@hunton.com*
Email: *ccunio@hunton.com*

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Treasure Island, LLC

(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

See attached.

DEFENDANTS

Affiliated FM Insurance Company

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship and business location (Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation).

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District (specify), 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

28 U.S.C. § 1332

Brief description of cause:

Bad faith breach of contract and declaratory judgment under an "all risks" insurance policy.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ Exceeds \$75,000 CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- Date and Attorney Signature.** Date and sign the civil cover sheet.

ATTORNEY LIST

Civil Cover Sheet JS 044 – Section I(c) Plaintiff Attorneys

Treasure Island, LLC v. Affiliated FM Insurance Company

Renee M. Finch
Nevada State Bar 13118
MESSNER REEVES LLP
8945 W. Russell Road, Suite 300
Las Vegas, NV 89148
Phone: (702) 363-5100
Email: rfinch@messner.com

Michael S. Levine (*pro hac vice* forthcoming)
HUNTON ANDREWS KURTH LLP
2200 Pennsylvania Ave. NW
Washington, DC 20037
Phone: (202) 955-1500
Email: mlevine@HuntonAK.com

Kevin V. Small (*pro hac vice* forthcoming)
HUNTON ANDREWS KURTH LLP
200 Park Ave, 52 Fl.
New York, NY 10166
Phone: (212) 309-1226
Email: ksmall@HuntonAK.com

Harry L. Manion, III (*pro hac vice* forthcoming)
Christopher Cunio (*pro hac vice* forthcoming)
HUNTON ANDREWS KURTH LLP
60 State Street, Suite 2400
Boston, MA 02109
Phone: (617) 648-2800
Fax: (617) 433-5022
Email: hmanion@HuntonAK.com
Email: ccunio@HuntonAK.com

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

_____ District of _____

Plaintiff(s)

v.

Defendant(s)

)
)
)
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Civil Action No.

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the summons unexecuted because _____; or

Other *(specify)*: _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

1 Renee M. Finch, Esq.
Nevada State Bar 13118
2 **MESSNER REEVES LLP**
8945 W. Russell Road, Suite 300
3 Las Vegas, NV 89148
4 Phone: (702) 363-5100
Email: rfinch@messner.com
5 *Attorney for Plaintiff, Treasure Island, LLC*

6
7
8 **UNITED STATES DISTRICT COURT**
9 **DISTRICT OF NEVADA**

10 TREASURE ISLAND, LLC,
11
12 Plaintiff,
13 v.
14 AFFILIATED FM INSURANCE COMPANY,
15 Defendant.

CASE NO. 2:20-cv-00965

EXHIBITS TO PLAINTIFF'S COMPLAINT

16
17 Date: May 28, 2020

Respectfully submitted,

18 PLAINTIFF TREASURE ISLAND, LLC

19 By and through its attorneys,

20 /s/ Renee M. Finch

21 Renee M. Finch, Esq.
22 Nevada State Bar 13118
MESSNER REEVES LLP
23 8945 W. Russell Road, Suite 300
Las Vegas, NV 89148
24 Phone: (702) 363-5100
25 Email: rfinch@messner.com
26
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Michael S. Levine (*pro hac vice* forthcoming)
HUNTON ANDREWS KURTH LLP
2200 Pennsylvania Ave. NW
Washington, DC 20037
Phone: (202) 955-1500
Email: *mlevine@hunton.com*

Kevin V. Small (*pro hac vice* forthcoming)
HUNTON ANDREWS KURTH LLP
200 Park Ave, 52 Fl.
New York, NY 10166
Phone: (212) 309-1226
Email: *ksmall@hunton.com*

Harry L. Manion, III (*pro hac vice* forthcoming)
Christopher Cunio (*pro hac vice* forthcoming)
HUNTON ANDREWS KURTH LLP
60 State Street, Suite 2400
Boston, MA 02109
Phone: (617) 648-2800
Fax: (617) 433-5022
Email: *hmanion@hunton.com*
Email: *ccunio@hunton.com*

Attorneys for Plaintiff, Treasure Island, LLC

EXHIBIT A



Member of the FM Global Group

270 Central Ave
Johnston, RI 02919
www.affiliatedfm.com

Thank you for placing your property insurance with AFM. We believe insurance should be straightforward and certain. That is why our proVision® 4100 policy is easy to read and navigate, while providing you broad coverage.

In addition to providing property insurance, AFM would like to help you protect your business and achieve your goals. In partnering with AFM, you have the strength of FM Global Group behind you, including a strong balance sheet and access to our market-leading loss prevention engineering products and services that are based on more than 180 years of experience as a property specialist. We are eager to work with you and your broker to choose how to best identify, prioritize and reduce future loss in a way that makes practical and affordable sense.

Our engineering services, combined with the comprehensive coverage of our proVision 4100, will give you peace of mind and allow you to focus on what matters most—making your business thrive. We are committed to maintaining a long-term, mutually beneficial relationship with you. And, it is our hope that you will take advantage of the many tools and resources we offer our clients, such as online training, onsite policy workshops and access to AFM Online, our powerful extranet that includes policy documents and data-driven risk management tools.

If you have any questions or concerns, please do not hesitate to contact your local account team.

Respectfully,

A handwritten signature in black ink, appearing to read 'James R. Galloway'. The signature is fluid and cursive.

James R. Galloway
Senior Vice President, AFM

Loss Reporting and Contact Information Dallas Operations



Claims Manager:

Richard Judd
Affiliated FM Insurance Company
One Cowboys Way, Suite 600
Frisco, TX 75034
Tel: 972-731-1879

Property Loss Reporting Procedure:

To ensure that you receive prompt claims service, be sure to report a loss immediately. This enables us to provide you a professional property adjuster to examine your loss. Your loss may give rise to a claim under your Affiliated FM Insurance Company policy.

Notice of Loss:

The notice and report of any loss under an Affiliated FM Insurance Company policy may be communicated by:

- calling the 24-hour claims hotline: **1-877-NEW-LOSS [(1) 877 639 5677]** or
- via email to newlossdallas@fmglobal.com

If this first notice and report is made orally, it should be confirmed in writing including at least the same information as was provided in the oral first notice and report.

Leaving a Message:

When leaving a message, please include the following information:

- Name and phone number of person to contact
- A brief description of the loss

A claims adjuster will return your call promptly.

Account Engineer:

Rianne Ruegger
Affiliated FM Insurance Company
One Cowboys Way, Suite 600
Frisco, TX 75034
Tel: 972-731-1937
rienne.ruegger@affiliatedfm.com

Jurisdictional Services:

For more information on our jurisdictional inspections, please contact the Account Engineer listed above.



Affiliated FM Insurance Company
P.O Box 7500
Johnston, RI 02919

DECLARATIONS PAGE

Policy No. GS784	Previous Policy No. GS417	DATE OF ISSUE 20-Mar-2019
Account No. 1-54831		

In consideration of this Policy's Provisions, Conditions, Stipulations, Exclusions and Limits of Liability, and the premium charged, Affiliated FM Insurance Company, hereinafter referred to as the "Company", does insure:

INSURED:

Treasure Island, LLC
3300 Las Vegas Boulevard South
Las Vegas, NV 89109


(For Complete Title See Policy)

The term of this Policy is from the **20th day of March 2019 to the 20th day of March 2020 at 12:01a.m.**, Standard Time, at the Locations of property involved as provided in this Policy.

This Policy covers property, as described in this Policy, against ALL RISKS OF PHYSICAL LOSS OR DAMAGE, except as hereinafter excluded, while located as described in this Policy.

This Policy is made and accepted subject to the above provisions and those hereinafter stated, which are made a part of this Policy, together with such other provisions and agreements as may be added to this Policy.

In Witness, this Company has issued this Policy at its office in Frisco, Texas this 20th day of March 2019.



Authorized Signature
BGB/pdl


Secretary


President

DECLARATIONS

A. **POLICY TERM:**

20-March-2019 to 20-March-2020

B. **NAMED INSURED:**

Treasure Island, LLC, and its wholly or majority owned subsidiaries and any interest which may now exist or hereinafter be created or acquired which are owned, controlled or operated by any one or more of those named insureds.

C. **POLICY LIMIT:**

This Company's total limit of liability, including any insured Business Interruption loss, will not exceed the Policy Limit of \$700,000,000 as a result of any one **occurrence** subject to the respective sub-limits of liability shown elsewhere in this Policy.

D. **POLICY TERRITORY:**

Coverage provided by this Policy is limited to property while located within the United States of America and Canada except as follows:

Cyber Coverage Territory

Coverage provided in Data, Programs or Software; Off-Premises Data Services Property Damage and Business Interruption and Computer Systems Non-Physical Damage is limited to anywhere in the world except Cuba, Iran, North Korea, Sudan, Syria or Crimea Region of Ukraine.

E. **INSURANCE PROVIDED:**

This Policy covers property, as described in this Policy, against ALL RISKS OF PHYSICAL LOSS OR DAMAGE, except as hereinafter excluded, while located as follows:

Location Schedule:

1. 3300 Las Vegas Boulevard South, Las Vegas, NV, 89109, Index No. 079302.61
2. 4050 West Sunset Road, Suite B, Las Vegas, NV, 89118, Index No. 001327.01

DECLARATIONS

F. SUB-LIMITS:

Unless otherwise stated below or elsewhere in this Policy, the following sub-limits of liability, including any insured Business Interruption loss, will be the maximum payable and will apply on a per **occurrence** basis.

The sub-limits stated below or elsewhere in this Policy are part of and not in addition to the Policy Limit.

When a limit of liability applies to a **location** or property, such limit of liability will be the maximum amount payable for all loss or damage.

There shall be no liability under this Policy when "NOT COVERED" is shown as a sublimit.

- | | | |
|----|---------------|--|
| 1. | \$200,000,000 | Earth Movement annual aggregate for all coverages provided, and is the maximum amount payable for all loss or damage caused by or resulting from Earth Movement, not to exceed: |
| | \$50,000 | Earth Movement annual aggregate as respects Errors and Omissions, Off-Premises Data Services, Off-Premises Service Interruption, Unnamed Property and Supply Chain combined. |
| 2. | \$200,000,000 | Flood annual aggregate for all coverages provided, and is the maximum amount payable for all loss or damage caused by or resulting from Flood, not to exceed: |
| | \$50,000 | Flood annual aggregate as respects Errors and Omissions, Off-Premises Data Services, Off-Premises Service Interruption, Unnamed Property and Supply Chain combined. |
| 3. | \$3,000,000 | annual aggregate for all coverages provided at the following location(s) : |
| | | 2. 4050 West Sunset Road, Suite B, Las Vegas, NV, 89118 |

Additional Coverages

\$10,000,000	Accounts Receivable
\$100,000	Arson or Theft Reward
Policy Limit	Brand Protection
\$100,000	Change of Temperature
\$100,000	Communicable Disease - Property Damage annual aggregate
\$500,000	Data, Programs or Software annual aggregate
Policy Limit	Debris Removal
Policy Limit	Decontamination Costs
\$100,000	Deferred Payment
Policy Limit	Demolition and Increased Cost of Construction
\$10,000,000	Errors and Omissions
\$10,000,000	Expediting Expenses
\$5,000,000	Fine Arts not to exceed \$10,000 per item for irreplaceable Fine Arts
\$50,000	Green Coverage not to exceed 25% of the amount of the property damage loss
\$50,000	Land and Water Clean Up Expense annual aggregate
\$100,000	Locks and Keys
\$100,000	Money and Securities
\$10,000,000	Newly Acquired Property
\$50,000	Off-Premises Data Services - Property Damage annual aggregate
\$10,000,000	Off-Premises Service Interruption - Property Damage
\$100,000	Professional Fees
Policy Limit	Property Removed from a Location
Policy Limit	Protection and Preservation of Property - Property Damage not to exceed \$250,000 for security costs
\$100,000	Tax Treatment

DECLARATIONS

\$100,000	Tenants Legal Liability Terrorism Coverage and the Supplemental United States Certified Act of Terrorism Endorsement
\$700,000,000	A. United States Certified Act of Terrorism coverage
\$100,000	B. Terrorism Coverage for Locations Outside of the United States annual aggregate not to exceed \$100,000 annual aggregate for Property Removed from a Location, Unnamed Property and Flood
\$500,000	Transit not to exceed \$250,000 for Business Interruption
\$10,000,000	Unnamed Property
\$10,000,000	Valuable Papers and Records not to exceed \$10,000 per item for irreplaceable Valuable Papers and Records

Business Interruption Coverage

\$163,477,215	Gross Earnings not to exceed 90 days for ordinary payroll
\$163,477,215	Gross Profits for 12 months Period of Liability not to exceed 90 days for ordinary payroll
\$163,477,215	Rental Income
\$10,000,000	Extra Expense

Business Interruption Coverage Extensions

\$100,000	Attraction Property
30 Days	Civil or Military Authority
\$100,000	Communicable Disease - Business Interruption annual aggregate for a 1 Month Period of Liability
Included in Data, Programs or Software	Computer Systems Non-Physical Damage annual aggregate
\$100,000	Contractual Penalties
\$100,000	Crisis Management not to exceed 30 Days
180 Days	Extended Period of Liability
\$10,000,000	Ingress/Egress
\$250,000	Leasehold Interest
\$100,000	Logistics Extra Cost
\$50,000	Off-Premises Data Services - Business Interruption annual aggregate
\$10,000,000	Off-Premises Service Interruption - Business Interruption
Policy Limit	Protection and Preservation of Property - Business Interruption
\$250,000	Research and Development
\$100,000	Soft Costs
\$1,000,000	Supply Chain

DECLARATIONS

G. DEDUCTIBLE AMOUNT:

This Company will not be liable for loss or damage, including any insured Business Interruption loss, in any one **occurrence** until the amount of loss or damage exceeds the deductible amount shown below and then this Company will only be liable for its share of the loss or damage in excess of the deductible amount. If two or more deductibles apply to a single **occurrence**, then no more than the largest deductible amount will apply. However, this Policy allows for the application of separate and distinct deductibles and deductibles for specific loss or damage as shown below.

The following deductible amounts shall apply per **occurrence**, unless otherwise stated, for insured loss or damage under this Policy:

1. \$100,000 Earthquake (per **location** for all coverages provided).
2. \$100,000 Flood (per **location** for all coverages provided).
3. Boiler and Machinery:
 - A. Property Damage: \$100,000
 - B. Business Interruption Average Daily Value:

The business interruption deductible will be determined by multiplying the one hundred percent average daily value (ADV) by 2.

The ADV will be calculated by dividing the sum of the 100% actual annual business interruption values that would have been earned had no loss occurred at the **location** where the physical damage happened plus that proportion of the 100% annual business interruption value at all other **locations** where Business Interruption loss ensues by the number of annual working days.

4. Communicable Disease Property Damage and Business Interruption:

Qualifying Period: This Company will not be liable for loss or damage unless access is limited, restricted or prohibited in excess of 48 hours.

Should this time be exceeded, the insured loss or damage will be calculated beginning from the time of loss subject to a deductible of:

- A. Property Damage: \$100,000
- B. Business Interruption Day Equivalent Deductible:

The business interruption deductible will be determined by multiplying the one hundred percent day equivalent (DEQ) by 2.

The day equivalent is the 100% actual annual business interruption value that would have been earned had no loss occurred at the **location** where the physical damage happened plus that proportion of the 100% annual business interruption value at all other **locations** where business interruption loss ensues, divided by the number of annual working days.

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5. Computer Systems Non-Physical Damage:

Qualifying Period: This Company will not be liable for loss resulting from the failure of the Insured's electronic data processing or media to operate as a direct result of a malicious act directed at the Named Insured, unless the Period of Liability exceeds 48 hours.

The Qualifying Period for the cost to temporarily protect under Item 4. b) shall be waived.

Should this time be exceeded, the insured loss will be calculated beginning from the time of loss subject to a Business Interruption Day Equivalent Deductible:

The business interruption deductible will be determined by multiplying the one hundred percent day equivalent (DEQ) by 2.

The day equivalent is the 100% actual annual business interruption value that would have been earned had no loss occurred at the **location** where the loss happened plus that proportion of the 100% annual business interruption value at all other **locations** where business interruption loss ensues, divided by the number of annual working days.

6. Data, Programs, or Software:

Qualifying Period: This Company will not be liable for loss or damage caused by the malicious introduction of a machine code or instruction, unless the time to recreate or restore physically damaged property exceeds 48 hours.

Should this time be exceeded, the insured loss or damage will be calculated beginning from the time of loss subject to a deductible of:

A. Property Damage: \$100,000

B. Business Interruption Day Equivalent Deductible:

The business interruption deductible will be determined by multiplying the one hundred percent day equivalent (DEQ) by 2.

The day equivalent is the 100% actual annual business interruption value that would have been earned had no loss occurred at the **location** where the physical damage happened plus that proportion of the 100% annual business interruption value at all other **locations** where business interruption loss ensues, divided by the number of annual working days.

7. Off-Premises Data Services Property Damage and Business Interruption:

Qualifying Period: This Company will not be liable for loss or damage unless the Period of Liability exceeds 48 hours.

Should this time be exceeded, the insured loss or damage will be calculated beginning from the time of loss subject to a deductible of:

A. Property Damage: \$100,000

B. Business Interruption Day Equivalent Deductible:

The business interruption deductible will be determined by multiplying the one hundred percent day equivalent (DEQ) by 2.

The day equivalent is the 100% actual annual business interruption value that would have been earned had no loss occurred at the **location** where the physical damage happened plus that proportion of the 100% annual business interruption value at all other **locations** where business interruption loss ensues, divided by the number of annual working days.

DECLARATIONS

8. Off Premises Service Interruption Property Damage and Business Interruption:

Qualifying Period: This Company will not be liable for loss or damage unless the Period of Liability exceeds 24 hours.

Should this time be exceeded, the insured loss or damage will be calculated beginning from the time of loss subject to the deductible(s) that would have applied to the cause of the interruption of services, but not less than:

A. Property Damage: \$100,000

B. Business Interruption Day Equivalent Deductible:

The business interruption deductible will be determined by multiplying the one hundred percent day equivalent (DEQ) by 2.

The day equivalent is the 100% actual annual business interruption value that would have been earned had no loss occurred at the **location** where the physical damage happened plus that proportion of the 100% annual business interruption value at all other **locations** where business interruption loss ensues, divided by the number of annual working days.

9. All Other Losses:

A. Property Damage: \$100,000

B. Business Interruption Average Daily Value:

In the event of loss or damage insured by this policy, the deductible will be determined by multiplying the one hundred percent average daily value (ADV) by 2. The ADV will be calculated by dividing the sum of the 100% actual annual Business Interruption that would have been earned had no loss or damage occurred, by the number of annual working days. This calculation will not include any reduction for: Business Interruption; fixed charges; expenses not being incurred; or in the annual number of working days because of scheduled or unscheduled shutdown(s) that occur during the period of interruption.

H. SPECIAL TERMS AND CONDITIONS:

1. **United States Certified Act of Terrorism 2015**

As respects the United States, its territories and possessions and the Commonwealth of Puerto Rico, the definition of terrorism contained in DEFINITIONS is declared null and void and it is agreed that an event defined as a Certified Act of Terrorism under the terms of the SUPPLEMENTAL UNITED STATES CERTIFIED ACT OF TERRORISM ENDORSEMENT attached to this policy shall be considered terrorism within the terms of this policy. Notwithstanding anything contained in this policy to the contrary, this policy provides coverage for direct physical loss or damage to insured property and any resulting Business Interruption loss, as provided in the policy, caused by or resulting from a Certified Act of Terrorism only to the extent coverage is provided under the terms and conditions of the SUPPLEMENTAL UNITED STATES CERTIFIED ACT OF TERRORISM ENDORSEMENT attached to this policy. Any difference in limit between loss recoverable under the SUPPLEMENTAL UNITED STATES CERTIFIED ACT OF TERRORISM ENDORSEMENT and this policy is not recoverable under this policy.

DECLARATIONS

2. Data, Programs or Software Split Sublimit for Malicious Introduction of Machine Code and Computer Systems Non-Physical Damage - PRO 847 (12/17)

The Data, Programs or Software SUB-LIMIT in the ADDITIONAL COVERAGES and Computer Systems Non-Physical Damage in the BUSINESS INTERRUPTION COVERAGE EXTENSIONS are amended to:

\$10,000,000	Data, Programs or Software for physical loss or damage not caused by the malicious introduction of a machine code or instruction
\$500,000	Data, Programs or Software for physical loss or damage caused by the malicious introduction of a machine code or instruction and Computer Systems Non-Physical Damage combined annual aggregate.

3. Supply Chain Schedule - PRO 177 (4/15)

At the following location(s) only, the Supply Chain sub-limit of liability shown in the DECLARATIONS is amended to the following limit of liability:

<u>Location(s)</u>	<u>Limit of liability</u>
Las Vegas Convention Center 3150 Paradise Road, Las Vegas, NV 89109	\$10,000,000
McCarron International Airport 5757 Wayne Newton Boulevard, Las Vegas, NV 89119	Included in above
The Mirage Hotel and Casino 3400 Las Vegas Boulevard South, Las Vegas, NV 89109	Included in above
All Other Direct Suppliers and/or Customers	\$1,000,000

4. Business Interruption Coverage Sub-Limit - PRO 709 (1/17)

The **Business Interruption Coverage** in **SUB-LIMITS** are amended to the following:

Business Interruption Coverage

This Company's total limit of liability for insured Business Interruption loss, will not exceed Business Interruption Limit of \$173,477,215 as a result of any one **occurrence** subject to the respective sub-limits of liability shown below.

\$163,477,215	Gross Earnings not to exceed 90 days for ordinary payroll
\$163,477,215	Gross Profits for 12 months Period of Liability not to exceed 90 days for ordinary payroll
\$163,477,215	Rental Income
\$10,000,000	Extra Expense

DECLARATIONS

5. **Notice of Cancellation/Non-Renewal - PRO 53 (4/15)**

The time required by the Company for mailing or delivering notice of cancellation or non-renewal of this Policy to the First Named Insured as shown in GENERAL CONDITIONS, CANCELLATION/NON-RENEWAL, is extended from 60 days to 90, except the notice for non-payment of premium remains at ten (10) days.

6. **Mortgagee/Lenders Loss Payable - PRO 66 (4/15)**

Subject to the GENERAL CONDITIONS, MORTGAGEE/LENDERS LOSS PAYABLE, loss, if any, under this Policy will be adjusted with and made payable to the Insured and the following, as their interest may appear:

<u>Mortgagee/Lender and Address</u>	<u>Location/Interest</u>
Bank of America, N.A. as Agent Bank Building B 2001 Clayton Rd Concord, CA 94520	All

DECLARATIONS

I. INDEX OF FORMS:

The following forms are made part of this Policy:

<u>Title</u>	<u>Form No.</u>	<u>Edition</u>
Declarations Page	PRO DEC 4100	(04/15)
Declarations	PRO S-1 4100	(01/17)
All Risk Coverage	PRO AR 4100	(01/17)
Supplemental United States Certified Act of Terrorism Endorsement	7312	(1/15)
Nevada Amendatory Endorsement	AFM 6513	(04/15)



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ALL RISK COVERAGE

This Policy covers property, as described in this Policy, against ALL RISKS OF PHYSICAL LOSS OR DAMAGE, except as hereinafter excluded, while located as described in this Policy.

A. PROPERTY INSURED

This Policy insures the following property, unless otherwise excluded elsewhere in this Policy, at or within 1,000 feet of a **described location**, to the extent of the interest of the Insured in such property.

1. Real Property in which the Insured has an insurable interest.
2. Personal Property:
 - a) Owned by the Insured.
 - b) Consisting of improvements and betterments in which the Insured has an insurable interest.
 - c) Of directors, officers and employees of the Insured.
 - d) Of others in the Insured's custody to the extent the Insured is under obligation to keep insured for physical loss or damage insured by this Policy.
 - e) Of others in the Insured's custody to the extent of the Insured's legal liability for insured physical loss or damage to such Personal Property.

This Company may defend that portion of any suit against the Insured that alleges such liability and seeks damages for such insured physical loss or damage to such Personal Property. This Company may, without prejudice, investigate, negotiate and settle any claim or suit as this Company deems expedient.

This Policy also insures the interest of contractors and subcontractors in insured property during construction, while at or within 1,000 feet of a **described location**, to the extent that the Insured has agreed, prior to loss, to keep such interest insured for insured physical loss or damage to such property. Such interest of contractors and subcontractors is limited to the property for which they have been hired to perform work and will not extend to any Business Interruption coverage provided in this Policy.

B. PROPERTY EXCLUDED

This Policy excludes the following except as otherwise stated in this Policy:

1. Land, water or any substance in or on land.
2. Growing crops, standing timber or animals.
3. Bridges and tunnels intended for use by motor vehicles licensed for highway use.
4. Reservoirs, canals, dikes or dams.
5. Docks, piers or wharves which are not a structural part of a building.
6. Currency, money, notes or securities, except as provided by the Money and Securities coverage in this Policy.
7. Motor vehicles licensed for highway use or owned by directors, officers or employees of the Insured.



8. Satellites, aircraft or watercraft, except if on land, unfueled and manufactured by the Insured.
9. Property sold by the Insured under conditional sale, trust agreement, installment payment or other deferred payment plan after delivery to the customer, except as provided by the Deferred Payment coverage in this Policy.
10. Underground mines or mine shafts or any property within such mine or shaft.
11. Property while in transit, except as otherwise provided in this Policy.
12. Electronic data, programs or software, except when they are stock in process, finished goods manufactured by the Insured, raw materials, supplies or other merchandise not manufactured by the Insured or as provided by the Data, Programs or Software coverage in this Policy.
13. Property while located **offshore**, except as provided by the Transit coverage in this Policy.

C. EXCLUSIONS

In addition to the exclusions elsewhere in this Policy, the following exclusions apply unless otherwise stated:

GROUP I: This Policy excludes loss or damage directly or indirectly caused by or resulting from any of the following regardless of any other cause or event, whether or not insured under this Policy, contributing concurrently or in any other sequence to the loss or damage:

1. Nuclear reaction or nuclear radiation or radioactive contamination. However:
 - a) If physical damage by fire or sprinkler leakage results, then only that resulting damage is insured; but not including any loss or damage due to nuclear reaction, radiation or radioactive contamination.
 - b) This Policy does insure physical damage directly caused by sudden and accidental radioactive contamination, including resultant radiation damage, from material used or stored or from processes conducted on the **location**, provided that on the date of loss, there is neither a nuclear reactor nor any new or used nuclear fuel on the **location**. This coverage does not apply to any act, loss or damage excluded in Group I Item 2f of this Exclusions clause.

This exclusion Group I Item 1 and the exceptions in Group I Item 1a and Group I Item 1b above do not apply to any act, loss or damage which also comes within the terms of exclusion Group I Item 2b of this Exclusions clause.

2. a) Hostile or warlike action in time of peace or war, including action in hindering, combating or defending against an actual, impending or expected attack by any:
 - i) Government or sovereign power (de jure or de facto);
 - ii) Military, naval or air forces; or
 - iii) Agent or authority of any party specified in i) or ii) above.
- b) Discharge, explosion or use of any nuclear device, weapon or material employing or involving nuclear fission, fusion or radioactive force, whether in time of peace or war and regardless of who commits the act.
- c) Insurrection, rebellion, revolution, civil war, usurped power, or action taken by governmental authority in hindering, combating or defending against such an event.
- d) Seizure or destruction under quarantine or custom regulation, or confiscation by order of any governmental or public authority.
- e) Risks of contraband, or illegal transportation or trade.



- f) **Terrorism**, including action taken to prevent, defend against, respond to or retaliate against **terrorism** or suspected **terrorism**, except to the extent provided in the Terrorism coverage of this Policy. However, if direct loss or damage by fire results from any of these acts (unless committed by or on behalf of the Insured), then this Policy covers only to the extent of the **actual cash value** of the resulting direct loss or damage by fire to insured property. This coverage exception for such resulting fire loss or damage does not apply to:
- i) Direct loss or damage by fire which results from any other applicable exclusion in the Policy, including the discharge, explosion or use of any nuclear device, weapon or material employing or involving nuclear fission, fusion or radioactive force, whether in time of peace or war and regardless of who commits the act.
 - ii) Any coverage provided in the Business Interruption section of this Policy or to any other coverages provided by this Policy.

Any act which satisfies the definition of **terrorism** shall not be considered to be vandalism, malicious mischief, riot, civil commotion or any other risk of physical loss or damage covered elsewhere in this Policy.

If any act which satisfies the definition of **terrorism** also comes within the terms of Group I Item 2a of this Exclusions clause then Group I Item 2a applies in place of this Group I Item 2f exclusion.

If any act which satisfies the definition of **terrorism** also comes within the terms of Group I Item 2b of this Exclusions clause then Group I Item 2b applies in place of this Group I Item 2f exclusion.

If any act which satisfies the definition of **terrorism** also comes within the terms of Group I Item 2c of this Exclusions clause then Group I Item 2c applies in place of this Group I Item 2f exclusion.

If any act excluded herein involves nuclear reaction, nuclear radiation or radioactive contamination, this Group I Item 2f exclusion applies in place of Group I Item 1 of this Exclusions clause.

3. Any dishonest act, including but not limited to theft, committed alone or in collusion with others, at any time by:
- a) An Insured or any proprietor, partner, director, trustee, officer or employee of an Insured; or
 - b) Any proprietor, partner, director, trustee, or officer of any business or entity (other than a common carrier) engaged by an Insured to do anything in connection with property insured under this Policy.

This Policy does insure acts of direct insured physical damage intentionally caused by an employee of an Insured or any individual specified in b above, and done without the knowledge of the Insured. This coverage does not apply to any act excluded in Group I Item 2f of this Exclusions clause. In no event does this Policy cover loss by theft by any individual specified in a or b above.

4. Lack of incoming electricity, fuel, water, gas, steam or refrigerant; outgoing sewerage; or incoming or outgoing voice, data or video; all when caused by an event off the **location**, except as provided by the Off-Premises Data Services and Off-Premises Service Interruption coverages in this Policy. If the lack of such a service directly causes insured physical damage at the **location**, then only that resulting damage is insured.
5. **Earth movement**, except as otherwise provided in this Policy.
6. **Flood**, except as otherwise provided in this Policy.
7. Seepage or influx of water from natural underground sources.

GROUP II: This Policy excludes the following, however, if physical damage not excluded by this Policy results, then only that resulting damage is insured:



1. Wear and tear, deterioration, depletion, rust, corrosion, erosion, inherent vice or latent defect.
2. Faulty workmanship, material, construction or design.
3. Loss or damage to stock or material attributable to manufacturing or processing operations while such stock or material is being processed, manufactured, tested or otherwise worked on.
4. Loss or damage caused by or resulting from:
 - a) Changes of temperature, except damage to machinery or equipment including fire protective equipment;
 - b) Changes in relative humidity,All whether atmospheric or not, except as provided by the Change of Temperature and Off-Premises Service Interruption coverages in this Policy.
5. Settling, cracking, shrinking, bulging or expansion of:
 - a) Foundations.
 - b) Walls.
 - c) Floors.
 - d) Pavements or roadways.
 - e) Roofs.
 - f) Ceilings.
6. Loss or damage to personal property in the open from rain, sleet, snow, sand or dust.
7. Theft of precious metal or stones, except when such property is used by the Insured for industrial purposes.
8. Insect, animal or vermin damage.

GROUP III: This Policy excludes:

1. Indirect or remote loss or damage.
2. Interruption of business, except to the extent provided in this Policy.
3. Loss of market or loss of use.
4. Loss or damage or deterioration arising from any delay.
5. Mysterious disappearance, loss or shortage disclosed on taking inventory, or any unexplained loss.
6. Loss from enforcement of any law or ordinance:
 - a) Regulating the construction, repair, replacement, use or removal, including debris removal, of any property; or
 - b) Requiring the demolition of any property, including the cost in removing its debris;



Except as provided by the Decontamination Costs and Demolition and Increased Cost of Construction coverages in this Policy.

7. Loss or damage resulting from the voluntary parting with title or possession of property if induced by any fraudulent act or by false pretense.
8. **Contamination**, and any cost due to **contamination** including the inability to use or occupy property or any cost of making property safe or suitable for use or occupancy. If **contamination** due only to the actual not suspected presence of **contaminant(s)** directly results from other physical damage not excluded by this Policy, then only physical damage caused by such **contamination** may be insured. This exclusion does not apply to radioactive contamination which is excluded elsewhere in this Policy.
9. Shrinkage, evaporation or loss of weight, unless directly resulting from other physical damage not excluded by this Policy.
10. Changes in color, flavor, texture or finish, unless directly resulting from other physical damage not excluded by this Policy.

D. ADDITIONAL COVERAGES

The Additional Coverages below are subject to all the terms and conditions of this Policy including, but not limited to, the limits of liability, deductibles and exclusions shown in the Declarations section.

1. Accounts Receivable

This Policy covers amounts which the Insured is unable to collect as a direct result of insured physical loss or damage to accounts receivable records at a **location**.

Coverage includes:

- a) Interest charges on any loan to offset impaired collections pending repayment of sums that cannot be collected. Unearned interest charges and service charges on deferred payment accounts and normal credit losses on bad debts will be deducted.
- b) Collection expenses in excess of normal collection costs.
- c) Other reasonable expenses incurred by the Insured in recreating records of accounts receivable.

After payment of loss by this Company, all amounts recovered by the Insured on accounts receivable for which the Insured has been indemnified will belong to and be paid to this Company by the Insured up to the total amount of loss paid by this Company. All recoveries in excess of such amounts will belong to the Insured.

Accounts Receivable Exclusions: As respects Accounts Receivable, the following additional exclusions apply:

This Policy does not cover shortage resulting from:

- a) Bookkeeping, accounting, or billing error or omission.
- b) Alteration, falsification, manipulation, concealment, destruction or disposal of records of accounts receivable committed to conceal the wrongful giving, taking, obtaining or withholding of money, securities or other property.



2. Arson or Theft Reward

This Policy covers payment of any reward offered by the Insured or on the Insured's behalf for information that leads to conviction of the perpetrator(s) of insured:

- a) Arson to; or
- b) Theft of;

Insured property.

3. Brand Protection

This Policy gives control of physically damaged property consisting of finished goods or merchandise manufactured by or for the Insured as follows:

- a) The Insured will have full rights to the possession and control of damaged property in the event of insured physical loss or damage to such property provided proper testing is done to show which property is physically damaged.
- b) The Insured using reasonable judgment will decide if the physically damaged property can be reprocessed or sold.

Physically damaged property judged by the Insured to be:

- i) Unfit for reprocessing or selling will not be sold or disposed of except by the Insured, or with the Insured's consent.
- ii) Fit for reprocessing or selling and this Company elects to take all or any part of physically damaged branded and labeled property, the Insured may at this Company's expense:
 - (a) Stamp "salvage" on the property or its containers; or
 - (b) Remove or obliterate the brands or labels,

If doing so will not damage the property.

The Insured must relabel the property or containers in compliance with the applicable requirements of law.

- c) Any salvage proceeds received will go to the:
 - i) Company at the time of loss settlement; or
 - ii) Insured if received prior to loss settlement and such proceeds will reduce the amount of loss payable accordingly.

4. Change of Temperature

This Policy covers spoilage of insured stock and supplies due to:

- a) Changes of temperature or changes in relative humidity,

Directly resulting from the interruption, in whole or part, of services consisting of electricity, gas, fuel, steam, water or refrigeration by reason of any accidental event, other than insured physical loss or damage, at a **location**.



5. Communicable Disease – Property Damage

If a **described location** owned, leased or rented by the Insured has the actual not suspected presence of **communicable disease** and access to such **described location** is limited, restricted or prohibited by:

- a) An order of an authorized governmental agency regulating or as result of such presence of **communicable disease**;
or
- b) A decision of an Officer of the Insured as a result of such presence of **communicable disease**,

This Policy covers the reasonable and necessary costs incurred by the Insured at such **described location** for the:

- a) Cleanup, removal and disposal of such presence of **communicable disease** from insured property; and
- b) Actual costs or fees payable to public relations services or actual costs of using the Insured's employees for reputation management resulting from such presence of **communicable disease** on insured property.

This Additional Coverage does not cover any costs incurred due to any law or ordinance with which the Insured was legally obligated to comply prior to such presence of **communicable disease**.

This coverage is subject to the Qualifying Period in the Declarations section of this Policy.

Communicable Disease - Property Damage Exclusions: As respects Communicable Disease – Property Damage, the following additional exclusion applies:

This Policy excludes loss or damage directly or indirectly caused by or resulting from **terrorism** regardless of any other cause or event, whether or not insured under this Policy, contributing concurrently or in any other sequence to the loss.

6. Data, Programs or Software

This Policy covers insured **physical loss or damage to electronic data, programs or software**, including physical loss or damage caused by the malicious introduction of a machine code or instruction, while anywhere within this Policy's Territory, including while in transit.

This coverage includes:

- a) The cost of the following reasonable and necessary actions taken by the Insured due to actual insured **physical loss or damage to electronic data, programs or software**:
 - i) To temporarily protect and preserve insured electronic data, programs or software.
 - ii) For the temporary repair of insured **physical loss or damage to electronic data, programs or software**.
 - iii) To expedite the permanent repair or replacement of such damaged property.
- b) The reasonable and necessary costs incurred by the Insured to temporarily protect or preserve insured electronic data, programs or software against immediately impending insured **physical loss or damage to electronic data, programs or software**. In the event that there is no physical loss or damage, the costs covered under this item will be subject to the deductible that would have applied had there been such physical loss or damage.

This coverage is subject to the Qualifying Period in the Declarations section of this Policy.

This Additional Coverage excludes loss or damage to data, programs or software when they are **stock in process**, finished goods manufactured by the Insured, **raw materials**, supplies or other merchandise not manufactured by the Insured.



Data, Programs or Software Exclusions: As respects Data, Programs or Software, the following additional exclusion applies:

This Policy excludes the following but, if physical damage not excluded by this Policy results, then only that resulting damage is insured:

- a) Errors or omissions in processing or copying.
- b) Loss or damage to data, programs or software from errors or omissions in programming or machine instructions.

Data, Programs or Software Valuation: On property insured under this coverage, the loss amount will not exceed:

- a) The cost to repair, replace or restore data, programs or software including the costs to recreate, research and engineer; or
- b) The blank value of the media if not repaired, replaced or restored within two years from the date of loss.

7. Debris Removal

This Policy covers the reasonable and necessary costs incurred to remove debris from a **location** that remains as the direct result of insured physical loss or damage.

This coverage does not cover the costs of removing:

- a) Contaminated uninsured property; or
- b) The **contaminant** in or on uninsured property;

Whether or not the **contamination** results from insured physical loss or damage.

This coverage includes the costs of removal of contaminated insured property or the **contaminant** in or on insured property only if the **contamination**, due to the actual not suspected presence of **contaminant(s)**, of the debris resulted directly from other physical damage not excluded by the Policy.

8. Decontamination Costs

If insured property is contaminated as a direct result of insured physical damage and there is in force at the time of the loss any law or ordinance regulating **contamination** due to the actual not suspected presence of **contaminant(s)**, then this Policy covers, as a direct result of enforcement of such law or ordinance, the increased cost of decontamination and/or removal of such contaminated insured property in a manner to satisfy such law or ordinance. This coverage applies only to that part of insured property so contaminated due to such presence of **contaminant(s)** as a direct result of insured physical damage.

The Company is not liable for the costs required for removing:

- a) Contaminated uninsured property; or
- b) The **contaminant** in or on uninsured property;

Whether or not the **contamination** results from insured physical loss or damage.



9. Deferred Payment

This Policy covers the Insured's interest in personal property of the type insured that has been sold by the Insured under a conditional sale or trust agreement or any installment or deferred payment plan, if such property sustains physical loss or damage insured by this Policy and only to the extent the Insured is unable to collect the unpaid balance of such interest.

This coverage applies from the time the property is delivered to the buyer until the Insured's interest in it has ceased or the policy terminates or expires, whichever is first.

Deferred Payment Exclusion: As respects Deferred Payment, the following additional exclusion applies:

This Policy excludes:

- a) Theft or conversion by the buyer of the property after the buyer has taken possession of such property.
- b) Property not within this Policy's Territory.

Deferred Payment Valuation: On property insured under this coverage, the loss amount will not exceed the lesser of the following:

- a) The total amount of unpaid installments less finance charges.
- b) The **actual cash value** of the property on the date of loss or damage.
- c) The cost to repair or replace with material of like size, kind and quality.

10. Demolition and Increased Cost of Construction

This Policy covers the costs as described herein resulting from the Insured's obligation to comply with a law or ordinance, provided that:

- a) Such law or ordinance is enforced as a direct result of insured physical loss or damage at a **location**;
- b) Such law or ordinance is in force at the time of such loss or damage; and
- c) Such **location** was not required to be in compliance with such law or ordinance prior to the happening of the insured physical loss or damage.

Coverage A:

The reasonable and necessary costs incurred by the Insured to comply with the enforcement of the minimum requirements of any law or ordinance that Regulates the demolition, construction, repair, replacement or use of buildings, structures, machinery or equipment.

As respects insured property, this Coverage A covers the reasonable and necessary costs to:

- a) Demolish any physically damaged and undamaged portions of the insured buildings, structures, machinery or equipment.
- b) Repair or rebuild the physically damaged and undamaged portions, whether or not demolition is required, of such insured buildings, structures, machinery or equipment.



The Company's maximum liability for this Coverage A at each location in any occurrence will not exceed the actual costs incurred in demolishing the physically damaged and undamaged portions of the insured property plus the lesser of:

- a) The reasonable and necessary cost, excluding the cost of land, to rebuild on another site; or
- b) The cost to rebuild on the same site.

Coverage B:

The reasonable estimated cost to repair, replace or rebuild insured property consisting of buildings, structures, machinery or equipment that the Insured is legally prohibited from repairing, replacing or rebuilding to the same height, floor area, number of units, configuration, occupancy or operating capacity, because of the enforcement of any law or ordinance that regulates the construction, repair, replacement or use of buildings, structures, machinery or equipment.

Demolition and Increased Cost of Construction Coverage B Valuation: On property covered under this Coverage B that cannot legally be repaired or replaced, the loss amount will be the difference between:

- a) The **actual cash value**; and
- b) The cost that would have been incurred to repair, replace or rebuild such lost or damaged property had such law or ordinance not been enforced at the time of loss.

Demolition and Increased Cost of Construction Exclusions: As respects Demolition and Increased Cost of Construction, the following additional exclusions apply:

This Policy does not cover:

- a) Any cost incurred as a direct or indirect result of enforcement of any law or ordinance regulating any form of **contamination**.
- b) Any machinery or equipment manufactured by or for the Insured, unless used by the Insured in its operation at the **location** suffering the physical loss or damage.

11. Earth Movement

This Policy covers physical loss or damage caused by or resulting from **earth movement**.

12. Errors and Omissions

If physical loss or damage is not payable under this Policy solely due to an error or unintentional omission:

- a) In the address of a property insured by this Policy which existed at the inception date of this Policy or in any subsequent amendments to this Policy;
- b) That fails to include any **location**:
 - i) Owned; or
 - ii) Occupied by the Insured; or
- c) That results in cancellation of insured property under this Policy;

Then coverage applies to the extent this Policy would have provided coverage had the error or unintentional omission not been made.



It is a condition of this Additional Coverage that any error or unintentional omission be reported by the Insured to the Company when discovered and corrected.

13. Expediting Expenses

This Policy covers the reasonable and necessary costs incurred to:

- a) Temporarily repair or replace; and
- b) Expedite the permanent repair or replacement of;

Insured property that has sustained insured physical loss or damage.

This coverage does not include expenses payable elsewhere in this Policy including the cost of permanent repair or replacement of damaged property.

14. Fine Arts and Valuable Papers and Records

This Policy covers **fine arts** and **valuable papers and records** while anywhere within this Policy's Territory including while in transit.

Fine Arts and Valuable Papers and Records Exclusion: As respects Fine Arts and Valuable Papers and Records, the following additional exclusion applies:

This Policy excludes:

- a) Loss or damage to any **fine arts** as a result of restoring, repairing or retouching processes.
- b) Errors or omissions in the processing or copying of **valuable papers and records**.

Fine Arts and Valuable Papers and Records Valuation: On property insured under this coverage, the loss amount will not exceed the lesser of the following:

- a) The cost to repair or restore the article to the condition that existed immediately prior to the loss;
- b) The cost to replace the article; or
- c) The value designated for the article as shown in the Declarations section of this Policy or on a schedule on file with this Company.

In case of physical loss or damage to a **fine arts** or **valuable papers and records** article that is part of a pair or a set, this Company will pay the lesser of the full value or the amount scheduled, if any, of the value of such pair or set only if the damaged article cannot be repaired or restored to its condition before the loss and the Insured surrenders the remaining article or articles of the pair or set to this Company.

15. Flood

This Policy covers physical loss or damage caused by or resulting from **flood**.

16. Green Coverage

This Policy covers the reasonable and necessary additional costs incurred by the Insured, as a direct result of insured physical loss or damage:



- a) To repair or replace physically damaged insured property with material of like kind and quality which qualifies as **Green**.
- b) To replace the insured physically damaged portions of insured roofing systems with vegetative roof(s), including but not limited to the addition of trees, shrubs, plants and lawns to those roof(s), which qualify as **Green**, if this Policy covers Real Property.
- c) As part of **Green** reconstruction, to flush out the air in the area of the physically damaged insured property with 100 percent outside air and to provide replacement filtration media for the building's ventilation system that controls the damaged area.
- d) For an accredited professional certified by a **Green Authority** to participate in the design and construction for repairing or rebuilding the physically damaged insured property as **Green**.
- e) For the process of certification or recertification of the repaired or replaced insured property as **Green**.
- f) For **Green** removal, disposal or recycling of the damaged insured property.

Notwithstanding any other provision in this Policy, the Insured must repair or replace the insured real and/or personal property lost, damaged or destroyed as a condition of this coverage.

Green Coverage Exclusions: As respects Green Coverage, the following additional exclusions apply:

This Policy excludes:

- a) Stock, **raw materials**, work in process, finished goods, merchandise, **production machinery and equipment**, electronic data processing equipment not used in the functional support of the real property, molds and dies, property in the open, property of others for which the insured is legally liable, personal property of directors, officers or employees of the Insured.
- b) Any property adjusted on other than repair or replacement per the Valuation clauses of this Policy.
- c) Any loss recoverable elsewhere in this Policy.

17. Land and Water Clean Up Expense

This Policy covers the reasonable and necessary costs to remove, dispose of or clean up the actual but not the suspected presence of **contaminant(s)** from uninsured land or water or any substance in or on land, at a **location**, when such property is contaminated as a direct result of insured physical loss or damage to insured property.

This Policy does not cover the cost to clean up, remove and dispose of **contamination** from such property:

- a) At any **location** insured for Personal Property only.
- b) When the Insured fails to give written notice of loss to this Company within 180 days after the inception of the loss.

18. Locks and Keys

This Policy covers the reasonable and necessary cost incurred by the Insured to replace undamaged keys and to replace, adjust or reprogram undamaged locks to accept new keys or entry codes as a result of insured physical loss or damage.



19. Money and Securities

This Policy covers physical loss or damage to money and securities at a **location** resulting from:

- a) Fire, explosion or sprinkler leakage.

20. Newly Acquired Property

This Policy covers property of the type insured that is newly acquired while located anywhere within this Policy's Territory, excluding while in transit.

This coverage terminates:

- a) When the newly acquired property is bound by this Company; or
- b) When agreement is reached that the property will not be insured under this Policy; or
- c) 120 days after the date of acquisition of the property; or
- d) At the termination or expiration of this Policy;

Whichever occurs first.

21. Off-Premises Data Services - Property Damage

This Policy covers insured physical loss or damage to insured property at a **location** when such physical loss or damage results from the interruption of **off-premises data processing or data transmission services** by reason of any accidental event at the facilities of the provider of such services, while anywhere within this Policy's Territory, that immediately prevents in whole or in part the delivery of such provided services.

For the purposes of this Additional Coverage an accidental event to satellites will be considered an accidental event at the facilities of the provider.

This coverage is subject to the Qualifying Period in the Declarations section of this Policy.

Additional General Conditions:

- 1) The Insured will immediately notify the company providing **off-premises data processing or data transmission services** of any interruption of such services.
- 2) The Company will not be liable if the interruption of such services is caused directly or indirectly by the failure of the Insured to comply with the terms and conditions of any contracts the Insured has entered into for such specified services.

Off Premises Data Services - Property Damage Exclusions: As respects Off-Premises Data Services - Property Damage , the following additional exclusion applies:

This Policy excludes loss or damage directly or indirectly caused by or resulting from **terrorism** regardless of any other cause or event, whether or not insured under this Policy, contributing concurrently or in any other sequence to the loss.

22. Off-Premises Service Interruption - Property Damage

This Policy covers insured physical loss or damage at a **location** caused by or resulting from the interruption, in whole or part, of incoming electric, gas, fuel, steam, water, refrigeration, or outgoing sewerage.



The interruption of such services must be by reason of an accidental event, not otherwise excluded by this Policy, at the facilities of the service provider(s) while anywhere within this Policy's Territory.

This coverage is subject to the Qualifying Period in the Declarations section of this Policy.

Additional Conditions:

This Company will not be liable for deliberate act(s) by the service provider to shed load to maintain system integrity.

Off-Premises Service Interruption - Property Damage Exclusion: As respects Off-Premises Service Interruption - Property Damage the following additional exclusions apply:

This Policy excludes loss or damage directly or indirectly caused by or resulting from **terrorism** regardless of any other cause or event, whether or not insured under this Policy, contributing concurrently or in any other sequence to the loss.

23. Professional Fees

This Policy covers the reasonable and necessary expenses incurred by the Insured of:

- a) Auditors;
- b) Accountants;
- c) Architects;
- d) Engineers; or
- e) Other professionals; and
- f) The Insured's own employees,

For producing and certifying particulars or details to determine the amount of loss payable under this Policy for which this Company has accepted liability.

This coverage does not include the fees and expenses of attorneys, public adjusters, loss appraisers, loss consultants or any of their subsidiaries or related or associated entities.

24. Property Removed from a Location

This Policy covers insured property when removed from a **location** to avoid or prevent immediately impending insured physical loss or damage to such property. This Policy covers such property for physical loss or damage as provided at the **location** from which the property was removed.

This coverage applies for a period:

- a) Of 120 days from the date of removal; but
- b) Not beyond the termination or expiration date of this Policy.

25. Protection and Preservation of Property - Property Damage

This Policy covers the reasonable and necessary costs incurred for:



- a) Actions to temporarily protect or preserve insured property; provided such actions are necessary due to actual, or to prevent immediately impending, insured physical loss or damage to such insured property.
- b) Fire department firefighting charges imposed as a result of responding to a fire in, on or exposing the insured property.
- c) Restoring and recharging fire protection systems following an insured loss.
- d) The water used for fighting a fire in, on or exposing the insured property.
- e) Temporary security for a period of time not to exceed 30 consecutive days due to actual, or to prevent immediately impending, insured physical loss or damage to such insured property.

This coverage does not cover costs incurred for actions to temporarily protect or preserve insured property from actual, or to prevent immediately impending, physical loss or damage covered by the Terrorism coverage of this Policy.

This coverage is subject to the deductible provisions that would have applied had the physical loss or damage happened.

26. Tax Treatment

This Policy covers the increased tax liability as a direct result of insured physical loss or damage to insured property. When such tax liability is greater than the tax liability that would have been incurred had there been no such loss or damage, then this Policy will cover only the increased tax liability for the profit portion of a loss payment under this Policy involving finished stock manufactured by the Insured and/or the profit portion of the Business Interruption loss payment.

27. Tenants Legal Liability

This Policy covers direct physical loss or damage, caused by or resulting from **named perils**, to that part of buildings of others, including permanently attached building fixtures, leased to and occupied by the Insured at a **described location** to the extent of the Insured's legal liability for such loss or damage.

This coverage also includes the following:

- a) The reasonable expenses of defending the Insured against only that part of any suit alleging the Insured's legal liability for such physical loss or damage;
- b) The reasonable expenses incurred by this Company, this Company's proportionate share of costs taxed against the Insured in any such suit, and this Company's proportionate share of interest accruing after entry of judgment until this Company has paid, tendered or deposited into court its proportionate share of such judgment; and
- c) The reasonable expenses, other than loss of earnings, incurred at this Company's request.

This coverage does not include:

- a) That part of any settlement by the Insured to which this Company has not given its prior written consent; or
- b) Any legal liability for loss or damage assumed by the Insured under any contract or agreement, whether oral or written, expressed or implied.

Additional Provisions: This Company may:

- a) Investigate, negotiate and settle any claim or suit as this Company deems expedient and will not be prejudiced under this coverage for failure to settle for any amount within the Company's applicable limit of liability.



- b) Pay, tender or deposit into court the Company's applicable limit of liability, less any expenses incurred by the Company, in full satisfaction of its liability under this coverage, and thereby terminate any further liability for any expense amount described in paragraphs a, b or c above.

Tenants Legal Liability Exclusion: As respects Tenants Legal Liability, the following additional exclusions apply:

This Policy excludes loss or damage directly or indirectly caused by or resulting from **terrorism** regardless of any other cause or event, whether or not insured under this Policy, contributing concurrently or in any other sequence to the loss.

28. Terrorism

This Policy covers physical loss or damage caused by or resulting from **terrorism** only at a **described location**.

Any act which satisfies the definition of **terrorism** shall not be considered to be vandalism, malicious mischief, riot, civil commotion or any other risk of physical loss or damage covered elsewhere in this Policy.

Amounts recoverable under this coverage are excluded from coverage elsewhere in this Policy.

This coverage does not cover loss or damage which also comes within the terms of either Group I Item 2a or Group I Item 2c of the Exclusions clause of this Policy.

This coverage does not in any event cover loss or damage directly or indirectly caused by or resulting from any of the following, regardless of any other cause or event, whether or not insured under this Policy contributing concurrently or in any other sequence to the loss:

- a) That involves the use, release or escape of nuclear materials or that directly or indirectly results in nuclear reaction or radiation or radioactive contamination or that involves the discharge, explosion or use of any nuclear device, weapon or material employing or involving nuclear fission, fusion or radioactive force, whether in time of peace or war and regardless of who commits the act; or
- b) That is carried out by means of the dispersal or application of pathogenic or poisonous biological or chemical materials; or
- c) In which pathogenic or poisonous biological or chemical materials are released, and it appears that one purpose of the terrorism was to release such materials; or
- d) That involves action taken to prevent, defend against, respond to or retaliate against **terrorism** or suspected **terrorism**.

29. Transit

This Policy covers the following insured personal property:

- a) Owned by the Insured;
- b) Of others to the extent of the Insured's interest or legal liability while in the actual or constructive custody of the Insured;
- c) Shipped to others on Free on Board (FOB), Cost and Freight (C&F) or similar terms. The Insured's contingent interest in such shipments is admitted,
- d) Of others sold by the Insured, that the Insured has agreed prior to the loss to insure during course of delivery including:



- i) When shipped by the Insured's direct contract service provider or by the Insured's direct contract manufacturer to the Insured or to the Insured's customer;
- ii) When shipped by the Insured's customer to the Insured or to the Insured's contract service provider or to the Insured's contract manufacturer,

While in transit within the Policy's Territory:

- a) From the time the property leaves the original point of shipment for transit; and
- b) Continuously in the due course of transit until delivered at the destination.
- c) Coverage on export shipments not insured under ocean cargo policies does not extend beyond the time when the property is loaded on board overseas vessels or aircraft. Coverage on import shipments not insured under ocean cargo policies does not attach until after discharge from overseas vessels or aircraft.

This coverage:

- a) Insures physical loss or damage caused by or resulting from:
 - i) Unintentional acceptance of fraudulent bills of lading, shipping or messenger receipts by the Insured or the Insured's agent, customer or consignee.
 - ii) Any unauthorized person(s) representing themselves to be the proper party(ies) to receive the property for shipment or to accept it for delivery.
- b) Covers general average and salvage charges on shipments covered while waterborne.

Additional Conditions:

- a) Permission is granted to the Insured, without prejudice to this insurance, to accept ordinary bills of lading used by carriers, including:
 - i) Released and/or undervalued bills of lading; or
 - ii) Shipping or messenger receipts.
- b) The Insured may waive subrogation against railroads under sidetrack agreements.
- c) The Insured may not enter into any special agreement with carriers releasing them from their common law or statutory liability.
- d) This coverage shall not inure directly or indirectly to the benefit of any carrier or bailee.

Transit Exclusions: As respects Transit, the following additional exclusions apply:

This Policy excludes:

- a) Property shipped by mail.
- b) Shipments by air unless made by regularly scheduled airlines.
- c) Waterborne shipments via the Panama Canal or waterborne shipments to and from:
 - i) Alaska.



- ii) Hawaii.
- iii) Commonwealth of Puerto Rico.
- iv) Virgin Islands.
- d) Any transporting vehicle.
- e) Property of others, including the Insured's legal liability, hauled on vehicles owned, leased or operated by the Insured when acting as a common or contract carrier.
- f) Property insured under any import or export ocean marine insurance.

Transit Valuation: On property insured under this coverage, the loss amount will not exceed the following:

- a) For property shipped to or for the account of the Insured: the actual invoice to the Insured, including such costs and charges (including the commission of the Insured as selling agent) as may have accrued and become legally due on such property.
- b) For property that has been sold by the Insured and shipped to or for the account of the purchaser (if covered by this Policy), the amount of the Insured's selling invoice, including prepaid or advanced freight.
- c) For property not under invoice:
 - i) For property of the Insured, at the valuation provisions of the Policy applying at the place from which the property is being transported; or
 - ii) For other property, the **actual cash value** at point of destination on the date of loss,

Less any charges saved which would have become due and payable upon arrival at destination.

30. Unnamed Property

This Policy covers insured property anywhere within this Policy's Territory, excluding property while in transit.

Unnamed Property Exclusion: As respects Unnamed Property, the following additional exclusion applies:

This Policy excludes:

- a) **Transmission and distribution systems**, except at a premises owned, leased or rented by the Insured.



BUSINESS INTERRUPTION

The Business Interruption loss, as provided in the Business Interruption Coverage and Business Interruption Coverage Extensions of this section, is subject to all the terms and conditions of this Policy including, but not limited to, the limits of liability, deductibles and exclusions shown in the Declarations section.

A. LOSS INSURED

This Policy insures Business Interruption loss, as provided in the Business Interruption Coverage, as a direct result of physical loss or damage of the type insured:

1. To property as described elsewhere in this Policy and not otherwise excluded by this Policy;
2. Used by the Insured;
3. While at a **location** or while in transit as provided by this Policy; and
4. During the Period of Liability as described elsewhere in this Policy.

This Policy insures Business Interruption loss only to the extent it cannot be reduced through:

1. The use of any property or service owned or controlled by the Insured;
2. The use of any property or service obtainable from other sources;
3. Working extra time or overtime; or
4. The use of inventory;

All whether at a **location** or at any other premises. This Company reserves the right to take into consideration the combined operating results of all associated, affiliated or subsidiary companies of the Insured in determining the amount of loss.

In determining the amount of loss payable, this Company will consider:

1. Any amount recovered elsewhere under this Policy for loss or damage to finished goods or merchandise at selling price as having been sold to the Insured's regular customers and credited against net sales.
2. The experience of the business before and after and the probable experience during the Period of Liability. The probable experience will also consider any increase or decrease in demand for the Insured's goods or services during the Period of Liability, even if such increase or decrease is from the same event that caused physical loss or damage starting the Period of Liability.
3. The continuation of only those normal charges and expenses that would have been earned had there been no interruption of production or business operations or services.

This Policy also covers expenses reasonably and necessarily incurred by the Insured to reduce the loss otherwise payable under this Policy. The amount of such recoverable expenses will not exceed the amount by which the loss is reduced.



B. BUSINESS INTERRUPTION COVERAGE

1. Gross Earnings

The recoverable Gross Earnings loss is the actual loss sustained by the Insured of **Gross Earnings**, less all charges and expenses that do not necessarily continue, plus all other earnings derived from the operations of the business, excluding loss covered under Rental Income, during the Period of Liability.

Gross Earnings means:

The net sales value of production or business operations or services less the cost of:

- a) Raw stock;
- b) Materials and supplies; and
- c) Merchandise sold;

Used in production or business operations or services rendered by the Insured

The recoverable Gross Earnings loss payable is limited to the extent the Insured is:

- a) Wholly or partially prevented from producing goods or continuing business operations or services;
- b) Unable to make up lost production within a reasonable amount of time, not limited to the period during which production is interrupted;
- c) Unable to continue such operations or services during the Period of Liability; and
- d) Able to demonstrate a loss of sales for the production or business operations or services prevented.

2. Gross Profits

The recoverable Gross Profits loss is the actual loss sustained by the Insured of the:

- a) **Reduction in Sales;** and the
- b) **Increased Cost of Doing Business,**

Resulting from the necessary interruption of business during the Period of Liability.

As respects Gross Profits, Business Interruption Exclusion Items 2a, 2c and 3 do not apply.

For purposes of measuring the loss:

Gross Profits means:

The sum produced by adding the **Net Profit** to the **Insured Fixed Charges**. If there is no **Net Profit** the amount of all **Insured Fixed Charges** less that proportion of any loss from business operations as the amount of the **Insured Fixed Charges** bears to all fixed charges.

Increased Cost of Doing Business means:



The reasonable and necessary costs incurred to avoid or diminish a reduction in sales but not to exceed the sum produced by applying the **Rate of Gross Profit** to the amount of the reduction avoided; all less any sums saved as may cease or be reduced during the Period of Liability.

Insured Fixed Charges means:

All fixed charges unless specifically excluded in the Declarations section.

Net Profit means:

The net operating profit excluding:

- a) Capital receipts and accruals; and
- b) Outlay properly chargeable to capital;

Resulting from the business of the Insured after due provision has been made for all fixed charges and any other expenses, including depreciation, but before deduction of any taxes on profits.

Rate of Gross Profit means:

The rate of **Gross Profit** earned on **Sales** during the twelve (12) full months immediately before the date of the loss or damage to the insured property.

Reduction in Sales means:

The amount produced by applying the **Rate of Gross Profit** to the amount by which the **Sales** during the Period of Liability fall short of the **Standard Sales**.

Sales means:

The money, excluding loss covered under Rental Income, paid or payable to the Insured for:

- a) Goods sold and delivered; and
- b) Services rendered;

In the conduct of the Insured's business.

Standard Sales means:

The **Sales** during the period of the twelve (12) months immediately before the date of the loss or damage to the insured property which corresponds with the Period of Liability.

3. Rental Income

The recoverable Rental Income loss is the actual loss sustained by the Insured of the following during the Period of Liability:

- a) The fair rental value of any portion of the property occupied by the Insured;
- b) Income reasonably expected from the rentals of unoccupied or unrented portions of such property;
- c) The rental income from the rented portions of such property, according to bona fide leases, contracts or agreements, in force at the time of loss;



All less charges and expenses that do not continue.

Rental Income Exclusion: As respects Rental Income, the following additional exclusion applies:

This Policy does not insure:

- a) Any loss of rental income during any period in which the insured property would not have been rented for any reason other than an insured loss.

4. Extra Expense

The recoverable Extra Expense loss is the reasonable and necessary extra expense incurred by the Insured of the following during the Period of Liability to:

- a) Temporarily continue as close to normal the conduct of the Insured's business; and
- b) Temporarily use the property or facilities of the Insured or others;

All less any value remaining at the end of the Period of Liability for property obtained in connection with the above.

If the Insured makes claim in accordance with the terms and conditions of the BI Select clause, the Period of Liability for Extra Expense coverage will be the Period of Liability applicable to the Business Interruption Coverage option selected.

Extra Expense Exclusions: As respects Extra Expense, the following additional exclusions apply:

This Policy does not insure:

- a) Any loss of income.
- b) Expenses that usually would have been incurred in conducting the business during the same period had no physical loss or damage happened.
- c) The cost of permanent repair or replacement of property that has been damaged or destroyed.
- d) Any expense recoverable elsewhere in this Policy.

5. BI Select™

If this Policy insures Gross Earnings and Gross Profit the Insured has the option to make claim based on either:

- a) Gross Earnings; or
- b) Gross Profit.

If such claim involves more than one **location**, including interdependency at one or more **locations**, all such claims will be adjusted using the coverage option chosen above.

This option may be exercised any time prior to meeting the conditions set forth in the Settlement of Claims provisions in the Loss Adjustment and Settlement section of this Policy.



C. PERIOD OF LIABILITY

The Period of Liability for Business Interruption Coverage and Business Interruption Coverage Extensions, unless otherwise stated elsewhere in this Policy, is as follows:

The Gross Earnings, Rental Income or Extra Expense Period of Liability is:

1. The period starting from the time of physical loss or damage of the type insured; and
2. Ending when, with due diligence and dispatch,
 - a) The lost or damaged property could be repaired or replaced and made ready for production or business operations or services under the same or equivalent physical operating conditions that existed prior to the loss or damage; or
 - b) The lost or damaged property under the course of construction or renovation could be repaired or replaced to the same or equivalent degree of completion that existed prior to the loss or damage. This period of time will be applied to the level of business that would have been reasonably achieved after construction and startup would have been completed had no physical damage happened.
3. For **raw materials** or supplies, the period of time:
 - a) Resulting from the inability to procure suitable **raw materials** or supplies to replace those physically lost or damaged, but
 - b) For no more than the period of time for which such physically lost or damaged **raw materials** or supplies would have supplied production or business operating or servicing needs.

The Gross Profit Period of Liability is:

The period starting from the time of physical loss or damage of the type insured and ending no later than the period of time shown in the Declarations section during which the results of the business shall be directly affected by such damage.

Period of Liability Conditions:

The Period of Liability will not include any additional time:

1. Due to the Insured's inability to resume production or business operations or services regardless of the reason, including but not limited to:
 - a) Making change(s) to the buildings, structures or equipment, for any reason except as provided by the Demolition and Increased Cost of Construction coverage in this Policy; or
 - b) Restaffing or retraining employees. However, this item does not apply to additional time needed to train staff to use new machinery or equipment which replaces machinery or equipment that suffered insured physical loss or damage, provided that such training is completed within 90 days after the new machinery or equipment has been installed.

If two or more Periods of Liability apply such periods will not be cumulative and will not be limited by the expiration of this Policy.

D. BUSINESS INTERRUPTION EXCLUSIONS

In addition to the exclusions elsewhere in this Policy, the following exclusions apply to Business Interruption loss:

This Policy does not insure:



1. Any loss during any idle period, including but not limited to when production, operations or services or delivery or receipt of goods would cease, or would not have taken place or would have been prevented due to:
 - a) Physical loss or damage not insured by this Policy.
 - b) Planned or rescheduled shutdown.
 - c) Strike or other work stoppage.
 - d) Any other reason other than physical loss or damage insured under this Policy.
2. Any increase in loss due to:
 - a) The suspension, cancellation, or lapse of any lease, contract, license or order.
 - b) Damages for breach of contract, or for late or non-completion of orders.
 - c) Fines or penalties of any nature, except as provided by the Contractual Penalties coverage in this Policy.
 - d) Any other consequential or remote loss.
3. Any loss resulting from physical loss or damage to merchandise or finished goods valued at the regular cash selling price or the time required for their reproduction.
4. Any loss resulting from the actual cash value portion of direct physical loss or damage by fire caused by or resulting from terrorism.

E. BUSINESS INTERRUPTION COVERAGE EXTENSIONS

1. Attraction Property

This Policy covers the Business Interruption Coverage loss incurred by the Insured during the Period of Liability directly resulting from physical loss or damage of the type insured to property of the type insured that attracts business to a **described location** and is within one (1) statute mile of the **described location**.

Attraction Property Exclusion: As respects Attraction Property, the following additional exclusion applies:

This Policy does not insure loss resulting from:

- a) Physical loss or damage caused by or resulting from **terrorism**, regardless of any other cause or event, whether or not insured by this Policy, contributing concurrently or in any other sequence to loss.

2. Civil or Military Authority

This Policy covers the Business Interruption Coverage loss incurred by the Insured during the Period of Liability if an order of civil or military authority prohibits access to a **location** provided such order is the direct result of physical damage of the type insured at a **location** or within five (5) statute miles of it.

Item B. 3. of Property Excluded does not apply to this Business Interruption Coverage Extension.

The Period of Liability for this Business Interruption Coverage Extension will be:



- a) The period of time starting at the time of such order of civil or military authority, but not to exceed the number of consecutive days shown in the Declarations section of this Policy.

3. Communicable Disease - Business Interruption

If a **described location** owned, leased or rented by the Insured has the actual not suspected presence of **communicable disease** and access to such **described location** is limited, restricted or prohibited by:

- a) An order of an authorized governmental agency regulating such presence of **communicable disease**; or
- b) A decision of an Officer of the Insured as a result of such presence of **communicable disease**,

This Policy covers the Business Interruption Coverage loss incurred by the Insured during the Period of Liability at such **described location** with such presence of **communicable disease**.

This coverage is subject to the Qualifying Period in the Declarations section of this Policy.

Communicable Disease - Business Interruption Exclusions: As respects Communicable Disease - Business Interruption, the following additional exclusions apply:

This Policy does not insure loss resulting from:

- a) The enforcement of any law or ordinance with which the Insured was legally obligated to comply prior to the time of the actual spread of **communicable disease**.
- b) Loss or damage caused by or resulting from **terrorism**, regardless of any other cause or event, whether or not insured under this Policy, contributing concurrently or in any sequence of loss.

The Period of Liability for this Business Interruption Coverage Extension will be:

The period of time:

- a) Starting at the time of the order of the authorized governmental agency or the Officer of the Insured; but
- b) Not to exceed the time limit shown in the Limits of Liability clause in the Declarations section,

This period of time is part of and not in addition to any Period of Liability applying to any coverage provided in the Business Interruption section.

4. Computer Systems Non-Physical Damage

This Policy covers the Business Interruption Coverage loss incurred by the Insured during the Period of Liability directly resulting from:

- a) The failure of the Insured's **electronic data processing equipment or media** to operate provided that such failure is the direct result of a malicious act directed at the Named Insured; or
- b) The Insured's reasonable action to temporarily protect the Insured's **electronic data processing equipment or media** against an actual or immediately impending malicious act directed at the Named Insured, provided such action is necessary to prevent failure of the Insured's **electronic data processing equipment or media** to operate.

While anywhere within this Policy's Territory.

This coverage is subject to the Qualifying Period in the Declarations section of this Policy.



The Period of Liability for this Business Interruption Coverage Extension will be:

- a) The period of time starting when the Insured's **electronic data processing equipment or media** fails to operate and ending when, with due diligence and dispatch, the Insured's **electronic data processing equipment or media** could be restored to the same or equivalent operating condition that existed prior to the failure; and
- b) Does not include the additional time to make changes to the Insured's **electronic data processing equipment or media**.

5. Contractual Penalties

This Policy covers contractual penalties incurred by the Insured during the Period of Liability due to late or non-completion of orders as a direct result of insured physical loss or damage to property of the type insured.

This extension of coverage applies provided that such contractual penalties:

- a) Are written in the provisions of a contract prior to the time of such direct physical loss or damage, and
- b) Will be limited to the contractual sales value of such late or non-completed orders.

6. Crisis Management

This Policy covers the Business Interruption Coverage loss incurred by the Insured during the Period of Liability if an order of civil or military authority prohibits access to a **described location**, provided such order is a direct result of:

- a) A violent crime, suicide, attempted suicide or armed robbery; or
- b) A death or bodily injury caused by a **workplace accident**;

At that **described location**.

For the purpose of this Business Interruption Coverage Extension only, a violent crime, suicide, attempted suicide or armed robbery at a **described location** will be considered direct physical loss or damage insured by this Policy.

Crisis Management Exclusion: As respects Crisis Management, the following additional exclusion applies:

This Policy does not insure loss resulting from:

- a) Physical loss or damage caused by or resulting from **terrorism**, regardless of any other cause or event, whether or not insured by this Policy, contributing concurrently or in any other sequence to the loss.

The Period of Liability for this Business Interruption Coverage Extension will be:

- a) The period of time starting at the time of such order of civil or military authority, but not to exceed the number of consecutive days shown in the Declarations section of this Policy.

7. Extended Period of Liability

The Gross Earnings and Rental Income coverage is extended to cover the reduction in sales resulting from:

- a) The interruption of business as covered by Gross Earnings or Rental Income;
- b) For such additional length of time as would be required with the exercise of due diligence and dispatch to restore the Insured's business to the condition that would have existed had no loss happened; and



- c) Commencing with the date on which the liability of the Company for loss resulting from interruption of business would terminate if this Business Interruption Coverage Extension had not been included in this Policy.

However, this Business Interruption Coverage Extension does not apply to Gross Earnings or Rental Income loss resulting from physical loss or damage caused by or resulting from **terrorism**.

As respects Extended Period of Liability, Business Interruption Exclusion Item 2a does not apply.

Coverage under this Business Interruption Coverage Extension for the reduction in sales due to contract cancellation will include only those sales that would have been earned under the contract during the extended period of liability.

Coverage under this Business Interruption Coverage Extension does not apply for more than the number of consecutive days shown in the Limits of Liability clause of the Declarations section of this Policy.

8. Ingress/Egress

This Policy covers the Business Interruption Coverage loss incurred by the Insured due to the necessary interruption of the Insured's business when ingress to or egress from a **described location(s)** is physically prevented, either partially or totally, as a direct result of physical loss or damage of the type insured to property of the type insured whether or not at a **described location**.

Item B. 3. of Property Excluded does not apply to this Business Interruption Coverage Extension.

Ingress/Egress Exclusion: As respects Ingress/Egress, the following additional exclusion applies:

This Policy does not insure loss resulting from:

- a) Physical loss or damage caused by or resulting from **terrorism**, regardless of any other cause or event, whether or not insured by this Policy, contributing concurrently or in any other sequence to the loss.

9. Leasehold Interest

This Policy covers the loss incurred by the Insured of Leasehold Interest as follows:

If the lease agreement requires continuation of rent; and if the property is wholly untenable or unusable, the actual rent payable for the unexpired term of the lease; or if the property is partially untenable or unusable, the proportion of the rent payable for the unexpired term of the lease.

If the lease is cancelled by the lessor pursuant to the lease agreement or by the operation of law; the **Lease Interest** for the first three months following the loss; and the **Net Lease Interest** for the remaining unexpired term of the lease.

Leasehold Interests Exclusions: As respects Leasehold Interest, the following applies:

- a) Business Interruption Exclusions 1, 2 and 3 do not apply and the following applies instead:

This Policy does not insure any increase in loss resulting from the suspension, lapse or cancellation of any license, or from the Insured exercising an option to cancel the lease; or from any act or omission of the Insured that constitutes a default under the lease.

- b) This Policy does not insure loss directly resulting from physical loss or damage to Personal Property.

As used above, the following terms mean:

Net Lease Interest:



That sum which placed at 6 percent interest rate compounded annually would equal the Lease Interest (less any amounts otherwise payable hereunder).

Lease Interest:

The excess rent paid for the same or similar replacement property over actual rent payable plus cash bonuses or advance rent paid (including maintenance or operating charges) for each month during the unexpired term of the Insured's lease.

10. Logistics Extra Cost

This Policy covers the extra cost incurred by the Insured during the Period of Liability due to disruption of the normal movement of goods or materials:

- a) Directly between **described locations**; or
- b) Directly between a **location** and the premises of a direct supplier, direct customer or direct contract service provider to the Insured;

Provided that such disruption is a direct result of physical loss or damage of the type insured to property of the type insured within the Policy's Territory.

Item B. 3. of Property Excluded does not apply to this Business Interruption Coverage Extension.

The recoverable extra cost loss will be the reasonable and necessary extra costs incurred by the Insured of the following:

- a) Extra costs to temporarily continue as close to normal the movement of goods or materials.

Logistics Extra Cost Exclusions: As respects Logistics Extra Cost, the following shall apply:

This Policy does not insure any loss resulting from:

- a) Disruption of incoming or outgoing services consisting of electricity, gas, fuel, steam, water, refrigeration, sewerage and voice, data or video.
- b) Disruption caused by or resulting from **terrorism**, regardless of any other cause or event, whether or not insured under this Policy, contributing concurrently or in any other sequence to the loss.
- c) Disruption caused by physical loss or damage to personal property of the Insured while in transit.
- d) Disruption in the movement of goods or materials between the premises of a supplier, customer or contract service provider to the Insured and the premises of another supplier, customer or contract service provider to the Insured.
- e) Costs that usually would have been incurred in conducting the business during the same period had there been no disruption of normal movement of goods or materials; or
- f) Loss of income
- g) Costs of permanent repair or replacement of property that has been damaged or destroyed.

The Period of Liability for this Business Interruption Coverage Extension will be:

The period of time:

- a) Starting at the time of physical loss or damage causing the disruption of the normal movement of goods or materials; and



- b) Ending not later than when with due diligence and dispatch the normal movement of goods or materials could be resumed.

11. Off-Premises Data Services - Business Interruption

This Policy covers the Business Interruption Coverage loss incurred by the Insured during the Period of Liability at a **location of off-premises data processing or data transmission services**, when the interruption is caused by any accidental event at the facilities of the provider of such services, while anywhere within this Policy's Territory, that immediately prevents in whole or in part the delivery of such provided services. For the purposes of this Additional Coverage an accidental event to satellites will be considered an accidental event at the facilities of the provider.

This coverage is subject to the Qualifying Period in the Declarations section of this Policy.

Additional General Conditions:

- a) The Insured will immediately notify the company providing **off-premises data processing or data transmission services** of any interruption of such services.
- b) The Company will not be liable if the interruption of such services is caused directly or indirectly by the failure of the Insured to comply with the terms and conditions of any contracts the Insured has entered into for such specified services.

Coverage provided in this Extension is excluded from coverage elsewhere in this Policy.

This Extension does not cover the Business Interruption Coverage loss incurred by the Insured covered by Computer Systems Non-Physical Damage coverage as provided in this section of this Policy.

Off-Premises Data Services - Business Interruption Exclusions: As respects Off- Premises Data Services - Business Interruption, the following additional exclusions apply:

This Policy excludes loss or damage directly or indirectly caused by or resulting from **terrorism** regardless of any other cause or event, whether or not insured under this Policy, contributing concurrently or in any other sequence to the loss.

As used above, Period of Liability of **off-premises data processing or data transmission services**:

- a) Is the period starting with the time when an interruption of provided services happens; and ending when with due diligence and dispatch the service could be wholly restored and the **location** receiving the service could or would have resumed normal operations following the restorations of service under the same or equivalent physical and operating conditions as provided by the Period of Liability clause in this section.
- b) Is limited to only those hours during which the Insured would or could have used service(s) if it had been available.
- c) Does not extend to include the interruption of operations caused by any reason other than interruption of the provided service(s).

12. Off-Premises Service Interruption - Business Interruption

This Policy covers Business Interruption Coverage loss incurred by the Insured during the Period of Liability caused by the interruption, in whole or part, of incoming electric, gas, fuel, steam, water, refrigeration, and outgoing sewerage services at a **location**.

The interruption of such services must be by reason of any accidental event, not otherwise excluded by this Policy, at the facilities of the service provider(s) while anywhere within this Policy's Territory.



This coverage is subject to the Qualifying Period in the Declarations section of this Policy.

Additional Conditions:

This Company will not be liable for deliberate act(s) by the supplying utility to shed load to maintain system integrity.

Off-Premises Service Interruption - Business Interruption Exclusion: As respects Off-Premises Service Interruption - Business Interruption the following additional exclusions apply:

This Policy excludes loss or damage directly or indirectly caused by or resulting from **terrorism** regardless of any other cause or event, whether or not insured under this Policy, contributing concurrently or in any other sequence to the loss.

The Period of Liability for this Business Interruption Coverage Extension will be:

- a) The period starting with the time when an interruption of specified services happens; and
- b) Ending when with due diligence and dispatch the service could be wholly restored and the **location** receiving the service could or would have resumed normal operations under the same or equivalent physical and operating conditions. Resultant and concurrent interruptions are considered as one event.

13. Protection and Preservation of Property - Business Interruption

This Policy covers the Business Interruption Coverage loss incurred by the Insured for a period of time not to exceed 48 hours prior to and 48 hours after the Insured first taking reasonable action for the temporary protection and preservation of property insured by this Policy provided such action is necessary to prevent immediately impending insured physical loss or damage to such insured property.

This Business Interruption Coverage Extension does not cover loss sustained by the Insured to temporarily protect or preserve insured property from actual, or to prevent immediately impending, physical loss or damage covered by Terrorism coverage as provided in this Policy.

This Business Interruption Coverage Extension is subject to the deductible provisions that would have applied had the physical loss or damage happened.

14. Research and Development

Gross Earnings and Gross Profits coverages are extended to cover the actual loss sustained by the Insured of continuing fixed charges and **ordinary payroll** directly attributable to the interruption of research and development activities that in themselves would not have produced income during the Period of Liability.

The Period of Liability for this Business Interruption Coverage Extension will be:

The period of time:

- a) Starting at the time of physical loss or damage of the type insured; and
- b) Ending when the property could be repaired or replaced and made ready for operations.

15. Soft Costs

This Policy covers **soft costs** incurred by the Insured during the Period of Liability arising out of the delay in the completion of buildings and additions under construction directly resulting from physical loss or damage of the type insured to insured property under construction at **locations**.



16. Supply Chain

This Policy covers the Business Interruption Coverage loss incurred by the Insured during the Period of Liability directly resulting from physical loss or damage of the type insured to property of the type insured at the premises of any of the following within the Policy's Territory:

- a) Direct suppliers, direct customers or direct contract service providers to the Insured;
- b) Any company under any royalty, licensing fee or commission agreement with the Insured; or
- c) Any company that is a direct or indirect supplier, customer or contract service provider of those described in a) above,

But not at the premises of entities directly or indirectly supplying to or receiving from a **location** electricity, fuel, water, steam, refrigeration, sewerage, voice, data or video.

Business Interruption Coverage loss recoverable under this Business Interruption Coverage Extension is extended to include the following Business Interruption Coverage Extensions:

- a) Civil or Military Authority
- b) Crisis Management
- c) Extended Period of Liability
- d) Ingress/Egress
- e) Off-Premises Service Interruption - Business Interruption
- f) Supply Chain

Supply Chain Exclusions: As respects Supply Chain coverage, the following additional exclusion applies:

This Policy does not insure loss resulting from:

- a) Physical loss or damage caused by or resulting from **terrorism**, regardless of any other cause or event, whether or not insured by this Policy, contributing concurrently or in any other sequence to the loss.



LOSS ADJUSTMENT AND SETTLEMENT

A. ABANDONMENT

There shall be no abandonment to this Company of any property.

B. APPRAISAL

If the Insured and this Company fail to agree on the amount of loss, each will, on the written demand of either, select a competent and disinterested appraiser after:

1. The Insured has fully complied with all provisions of this Policy.
2. This Company has received a signed and sworn Proof of Loss from the Insured.

Each will notify the other of the appraiser selected within 20 days of such demand.

The appraisers will first select a competent and disinterested umpire. If the appraisers fail to agree upon an umpire within 30 days then, on the request of the Insured or this Company, the umpire will be selected by a judge of a court of record in the jurisdiction in which the appraisal is pending. The appraisers will then appraise the amount of loss, stating separately the **actual cash value** and replacement cost value as of the date of loss and the amount of loss, for each item of physical loss or damage or if, for Business Interruption loss, the amount of loss for each Business Interruption coverage of this Policy.

If the appraisers fail to agree, they will submit their differences to the umpire. An award agreed to in writing by any two will determine the amount of loss.

The Insured and this Company will each:

1. Pay its chosen appraiser; and
2. Bear equally the other expenses of the appraisal and umpire.

A demand for Appraisal shall not relieve the Insured of its continuing obligation to comply with the terms and conditions of this Policy, including as provided under Requirements in Case of Loss.

This Company will not be held to have waived any of its rights by any act relating to appraisal.

C. COLLECTION FROM OTHERS

This Company will not be liable for any loss to the extent that the Insured has collected for such loss from others.

D. COMPANY OPTION

This Company has the option to take all or any part of damaged property at the agreed or appraised value. This Company must give notice to the Insured of its intention to do so within 30 days after receipt of Proof of Loss.

E. CURRENCY FOR LOSS PAYMENT

Losses will be adjusted and paid in the currency of the United States of America, except in Canada where losses will be paid in Canadian currency, unless directed otherwise by the First Named Insured.



F. LEGAL ACTION AGAINST THIS COMPANY

No suit, action or proceeding for the recovery of any claim will be sustained in any court of law or equity unless:

1. The Insured has fully complied with all the provisions of this Policy; and
2. Legal action is started within two years after inception of the loss.

If under the insurance laws of the jurisdiction in which the property is located, such two-year limitation is invalid, then any such legal action must be started within the shortest limit of time permitted by such laws.

G. LOSS ADJUSTMENT AND PAYABLE

Loss or damage will be adjusted with the First Named Insured and payable to or as the First Named Insured directs subject to the Mortgagee/Lenders Loss Payable clause in the General Conditions section of this Policy.

Additional insured interests will also be included in loss payment as their interests may appear when named as additional named insured, lender, mortgagee and/or loss payee on a Certificate of Insurance issued by this Company prior to the loss.

When named on a Certificate of Insurance issued by the Insured's broker with this Company's permission, such additional interests are added to this Policy as their interests may appear when such Certificate of Insurance is issued prior to the loss and on file with this Company. The effective date of any such interest will be the issue date of the certificate unless a later date is specified on the Certificate of Insurance. The Certificate of Insurance will not amend, extend or alter the terms, conditions, provisions and limits of this Policy.

H. OTHER INSURANCE

1. If there is any other insurance that would apply in the absence of this Policy, this Policy will apply only after such insurance whether collectible or not.
2. In no event will this Policy apply as contributing insurance.
3. The Insured is permitted to have other insurance over any limits or sublimits of liability specified elsewhere in this Policy without prejudice to this Policy. The existence of any such insurance will not reduce any limit or sublimit of liability in this Policy. Any other insurance that would have provided primary coverage in the absence of this Policy will not be considered excess.
4. The Insured is permitted to have other insurance for all, or any part, of any deductible in this Policy. The existence of such other insurance will not prejudice recovery under this Policy. If the limits of liability of such other insurance are greater than this Policy's applicable deductible, this Policy's insurance will apply only after such other insurance has been exhausted.
5. If this Policy is deemed to contribute with other insurance, the limit of liability applicable at each **location**, for the purposes of such contribution with other insurers, will be the latest amount described in this Policy or the latest **location** value on file with this Company.

I. REQUIREMENTS IN CASE OF LOSS

The Insured will:

1. Give immediate written notice to this Company of any loss.
2. Protect the property from further loss or damage.



3. Promptly separate the damaged and undamaged property; put it in the best possible order; and furnish a complete inventory of the lost, destroyed, damaged and undamaged property showing in detail the quantities, costs, **actual cash value**, replacement value and amount of loss claimed.
4. Give a signed and sworn proof of loss to the Company within 90 days after the loss, unless that time is extended in writing by this Company. The proof of loss must state the knowledge and belief of the Insured as to:
 - a) The time and origin of the loss.
 - b) The Insured's interest and that of all others in the property.
 - c) The **actual cash value** and replacement value of each item and the amount of loss to each item; all encumbrances; and all other contracts of insurance, whether valid or not, covering any of the property.
 - d) Any changes in the title, use, occupation, location, possession or exposures of the property since the effective date of this Policy.
 - e) By whom and for what purpose any **location** insured by this Policy was occupied on the date of loss, and whether or not it then stood on leased ground.
5. Include a copy of all the descriptions and schedules in all policies and, if required, provide verified plans and specifications of any buildings, fixtures, machinery or equipment destroyed or damaged.
6. Further, the Insured, will as often as may be reasonably required:
 - a) Exhibit to any person designated by the Company all that remains of any property;
 - b) Submit to examination under oath by any person designated by the Company and sign the written records of examinations; and
 - c) Produce for examination at the request of the Company:
 - i) All books of accounts, business records, bills, invoices and other vouchers; or
 - ii) Certified copies if originals are lost,

At such reasonable times and places that may be designated by the Company or its representative and permit extracts and machine copies to be made.

J. SETTLEMENT OF CLAIMS

The amount of loss for which this Company may be liable will be paid within 30 days after:

1. Proof of loss as described in this Policy is received by this Company; and
2. When a resolution of the amount of loss is made either by:
 - a) Written agreement between the Insured and this Company; or
 - b) The filing with this Company of an award as provided in the Appraisal clause of this section.

In the event of insured physical loss or damage determined by this Company's representatives to be in excess of the applicable policy deductible, this Company will advance mutually agreed-upon partial payment(s), subject to the Policy's



provisions. To obtain such partial payments, the Insured will submit a signed and sworn proof of loss as described in this Policy, with adequate supporting documentation.

K. SUBROGATION

The Insured shall cooperate in any subrogation proceedings. This Company may require from the Insured an assignment or other transfer of all rights of recovery against any party for loss to the extent of this Company's payment.

This Company will not acquire any rights of recovery that the Insured has expressly waived prior to a loss. No such waiver will affect the Insured's rights under this Policy.

Any recovery from subrogation proceedings, less costs incurred by this Company in such proceedings, will be payable to the Insured in the proportion that the amount of:

1. Any applicable deductible; and/or
2. Any provable uninsured loss,

Bears to the entire provable loss amount.

L. VALUATION

Adjustment of the physical loss amount(s) under this Policy will be as of the date of loss at the place of loss, and for no more than the interest of the Insured.

1. Adjustment of physical loss to property will be determined based on the lesser of the following unless stated otherwise below or elsewhere in this Policy:
 - a) The cost to repair.
 - b) The cost to rebuild or replace on the same site with new materials of like size, kind and quality.
 - c) The cost to rebuild, repair or replace on the same or another site, but not to exceed the size and operating capacity that existed on the date of loss.
 - d) On real property or machinery and equipment, other than stock, offered for sale on the date of the loss, the selling price.
2. On **raw materials**, supplies and merchandise not manufactured by the Insured, the replacement cost.
3. On **stock in process**, the value of **raw materials** and labor expended plus the proper proportion of overhead charges.
4. On finished goods manufactured by the Insured, the regular cash selling price, less all discounts and charges to which such finished goods would have been subject had no loss happened.
5. On exposed films, records, manuscripts and drawings that are not **valuable papers and records**, the value blank plus the cost of copying information from backup or from originals of a previous generation. These costs will not include research, engineering or any costs of restoring or recreating lost information.
6. On property that is damaged by fire and such fire is the result of **terrorism**, the **actual cash value** of the fire damage loss. Any remaining fire damage loss shall be adjusted according to the terms and conditions of the Valuation clause(s) of the Policy and shall be subject to the limit(s) of liability for Terrorism, and if stated the limit of liability for SUPPLEMENTAL UNITED STATES CERTIFIED ACT OF TERRORISM ENDORSEMENT(S), as shown in the Limits of Liability clause in the Declarations section.



7. On personal property that is part of a pair or set, and the physically damaged personal property cannot be replaced or repaired, the reduction in value of the undamaged portion of insured personal property. If settlement is based on a constructive total loss, the Insured will surrender the undamaged parts of such property to this Company.
8. On unrepairable electrical or mechanical equipment, including computer equipment, the cost to replace such equipment with equipment that is the most functionally equivalent to that damaged or destroyed, even if such equipment has technological advantages and/or represents an improvement in function and/or forms part of a program of system enhancement.
9. On property scheduled for demolition, the increased cost of demolition, if any, directly resulting from insured loss.
10. On improvements and betterments, the unamortized value of improvements and betterments, if such property is not repaired or replaced at the Insured's expense.
11. On property that is useless to the Insured, the **actual cash value**.
12. On property if not repaired, replaced or rebuilt on the same or another site within two years from the date of loss, unless such time is extended by the Company, the **actual cash value**.

The Insured may elect not to repair or replace the insured real or personal property under Item 1 above that is lost, damaged or destroyed. Loss settlement may be elected on the lesser of repair or replacement cost basis if the proceeds of such loss settlement are expended on other capital expenditures related to the Insured's operations within two years from the date of loss. As a condition of collecting under this item, such expenditure must be unplanned as of the date of loss and be made at a **described location** under this Policy. This item does not extend to Demolition and Increased Cost of Construction.



GENERAL CONDITIONS

A. APPLICATION OF POLICY TO DATE OR TIME RECOGNITION

With respect to situations caused by any **date or time recognition** problem by **electronic data processing equipment or media** (such as the so-called Year 2000 problem), this Policy applies as follows:

1. This Policy does not pay for remediation, change, correction, repair or assessment of any **date or time recognition** problem, including the Year 2000 problem, in any **electronic data processing equipment or media**, whether preventative or remedial, and whether before or after a loss, including temporary protection and preservation of property. This Policy does not pay for any business interruption loss resulting from the foregoing remediation, change, correction, repair or assessment.
2. Failure of **electronic data processing equipment or media** to correctly recognize, interpret, calculate, compare, differentiate, sequence, access or process data involving one or more dates or times, including the Year 2000, is not insured physical loss or damage. This Policy does not pay for any such incident or for any business interruption loss resulting from any such incident.

Subject to all of its terms and conditions, this Policy does pay for physical loss or damage not excluded by this Policy that results from a failure of **electronic data processing equipment or media** to correctly recognize, interpret, calculate, compare, differentiate, sequence, access or process data involving one or more dates or times, including the Year 2000. Such covered resulting physical loss or damage does not include any loss, cost or expense described in a) or b) above. If such covered resulting physical loss or damage happens, and if this Policy provides business interruption coverage, then, subject to all of its terms and conditions, this Policy also covers any insured business interruption loss directly resulting therefrom.

B. CANCELLATION/NON-RENEWAL

This Policy may be:

1. Cancelled at any time at the request of the First Named Insured by surrendering this Policy to this Company or by giving written notice to this Company stating when such cancellation will take effect; or
2. Cancelled by this Company by giving the First Named Insured not less than:
 - a) 60 days written notice of cancellation; or
 - b) 10 days written notice of cancellation if the First Named Insured fails to remit, when due, payment of premium for this Policy; or
3. Non-renewed by this Company by giving the First Named Insured not less than 60 days written notice of non-renewal.

Return of any unearned premium will be calculated on the customary short rate basis if the First Named Insured cancels and on a pro-rata basis if the Company cancels this Policy. Return of any unearned premium will be made by the Company as soon as practicable.

C. CONFORMITY TO STATUTE

Terms of this Policy that conflict with the statutes of the jurisdiction where the insured property is located, are amended to conform to such statutes.

D. FIRST NAMED INSURED

The First Named Insured shown in the Declarations section:



1. Is responsible for the payment of all premiums.
2. Will be the payee for any return premiums.
3. May authorize changes in the terms and conditions of this Policy with the consent of this Company.

E. INCREASE IN HAZARD

This Policy will not apply to any **location** where there is an increase in hazard over which the Insured has control and knowledge. Any increase in hazard at one or more **locations** will not affect coverage at other **locations** where, at the time of loss or damage, the increase in hazard does not exist.

F. INSPECTIONS

This Company, at all reasonable times, will be permitted, but will not have the duty, to inspect insured property. This Company does not address life, safety or health issues.

This Company's:

1. Right to make inspections; or
2. Making of inspections; or
3. Providing recommendations or other information in connection with any inspections,

Will not constitute an undertaking, on behalf of or for the benefit of the Insured or others.

This Company will have no liability to the Insured or any other person because of any inspection or failure to inspect.

When this Company is not providing jurisdictional inspections, the Owner/Operator has the responsibility to assure that jurisdictional inspections are performed as required, and to assure that required jurisdictional Operating Certificates are current for their pressure equipment.

G. LIBERALIZATION CLAUSE

If during the period that insurance is in force under this Policy, any filed rules or regulations affecting the same are revised by statute so as to broaden the insurance without additional premium charge, such extended or broadened insurance will inure to the benefit of the Insured within such jurisdiction, effective the date of the change specified in such statute.

H. MISREPRESENTATION AND FRAUD

This entire Policy will be void if, whether before or after a loss, an Insured has:

1. Willfully concealed or misrepresented any material fact or circumstance concerning this insurance, the subject thereof, any insurance claim, or the interest of an Insured.
2. Made any attempt to defraud this Company.
3. Made any false swearing.



I. MORTGAGEE/LENDERS LOSS PAYABLE

Loss or damage, if any, to specified property insured under this Policy shall be payable to each specified Lenders Loss Payable (hereinafter referred to as Lender) and specified Mortgagee as its interest may appear.

This insurance as to the interest of the Lender or Mortgagee shall not be invalidated by:

1. Any act or neglect of the debtor, mortgagor or owner (as the case may be) of the property.
2. Foreclosure, notice of sale or similar proceedings with respect to the property.
3. Change in the title or ownership of the property.
4. Change to a more hazardous occupancy.

The Lender or Mortgagee will notify this Company of any known change in ownership, occupancy or hazard and, within 10 days of written request by this Company, may pay the increased premium associated with such known change. If the Lender or Mortgagee fails to pay the increased premium, all coverage under this Policy will cease.

If the Insured fails to render proof of loss within the time provided in this Policy, the Lender or Mortgagee shall render proof of loss within sixty days after having knowledge of the Insured's failure in the form and manner provided by this Policy, and, further, shall be subject to the provisions of this Policy relating to Appraisal, Legal Action Against this Company, and Settlement of Claims.

If this Policy is cancelled at the request of the First Named Insured or its agent, the coverage for the interest of the Lender or Mortgagee will terminate 10 days after the Company sends to the Lender or Mortgagee written notice of cancellation, unless:

1. Sooner terminated by authorization, consent, approval, acceptance or ratification of the Insured's action by the Lender or Mortgagee, or its agent.
2. This Policy is replaced by the Insured, with a policy providing coverage for the interest of the Lender or Mortgagee, in which event coverage under this Policy with respect to such interest will terminate as of the effective date of the replacement policy, notwithstanding any other provision of this Policy.

This Company may cancel this Policy and/or the interest of the Lender or Mortgagee under this Policy, by giving the Lender or Mortgagee written notice 60 days prior to the effective date of cancellation, if cancellation is for any reason other than non-payment. If the debtor, mortgagor or owner has failed to pay any premium due under this Policy, this Company may cancel this Policy for such non-payment, but will give the Lender or Mortgagee written notice 10 days prior to the effective date of cancellation. If the Lender or Mortgagee fails to pay the premium due by the specified cancellation date, all coverage under this Policy will cease.

Whenever this Company shall pay the Lender or Mortgagee for loss or damage under this Policy and shall deny payment to the debtor, mortgagor or owner, this Company shall, to the extent of such payment, be subrogated to the rights of the Lender or Mortgagee under all collateral held to secure the debt or mortgage. No subrogation shall impair the right of the Lender or Mortgagee to recover the full amount due. At its option, this Company may pay to the Lender or Mortgagee the whole principal due on the debt or mortgage plus any accrued interest. In this event, all rights and securities will be assigned and transferred from the Lender or Mortgagee to this Company, and the remaining debt or mortgage will be paid to this Company.

This Company may invoke this Policy's Suspension clause. The suspension of insurance will apply to the interest of the Lender or Mortgagee in any machine, vessel, or part of any machine or vessel subject to the suspension. This Company will provide the Lender or Mortgagee at the last reported address a copy of the suspension notice.

All notices sent to the Lender shall be sent to its last reported address.



Other provision relating to the interests and obligations of the Lender or Mortgagee may be added to this Policy by agreement in writing.

J. POLICY MODIFICATION

This Policy contains all of the agreements between the Insured and the Company concerning this insurance. The Insured and the Company may request changes to this Policy. This Policy can be changed only by endorsements issued by the Company and made a part of this Policy.

Notice to any agent or knowledge possessed by any agent or by any other person will not:

1. Create a waiver, or change any part of this Policy; or
2. Prevent the Company from asserting any rights under the provisions of this Policy.

K. REINSTATEMENT OF LIMITS AFTER A LOSS

Except for an **annual aggregate** limit of liability, any loss or payment of any claim will not reduce the amount payable under this Policy.

L. SUSPENSION

Upon discovery of a dangerous condition, this Company may immediately suspend the **boiler and machinery** insurance with respect to any machine, vessel or part thereof by giving written notice to the Insured. The insurance that is suspended may be reinstated by this Company. The Insured will be allowed the return of the unearned portion of the premium resulting from the suspension of insurance.

M. TRANSFER OF RIGHTS AND DUTIES UNDER THIS POLICY

The Insured's rights, interests and duties under this Policy may not be transferred or assigned without this Company's written consent.



DEFINITIONS

actual cash value means the cost to repair or replace the property, on the date of the loss or damage, with material of like kind and quality, less proper deduction for obsolescence and physical depreciation.

annual aggregate means the Company's maximum amount payable during any policy year.

boiler and machinery means:

1. Direct physical loss or damage originating within:

- a) Boilers, fired or unfired pressure vessels, vacuum vessels and pressure piping, all normally subject to vacuum or internal pressure other than static pressure of contents, excluding:
 - i) Waste disposal piping;
 - ii) Any piping forming part of a fire protective system;
 - iii) Furnaces; and
 - iv) Any water piping other than:
 - (a) Boiler feed water piping between the feed pump or injector and the boiler;
 - (b) Boiler condensate return piping; or
 - (c) Water piping forming part of a refrigerating or air conditioning system used for cooling, humidifying or space heating purposes.

- b) All mechanical, electrical, electronic or fiber optic equipment;

2. And caused by, resulting from or consisting of:

- a) Mechanical breakdown; or
- b) Electrical or electronic breakdown; or
- c) Extremes or changes of temperature; or
- d) Rupture, bursting, bulging, implosion or steam explosion.

3. **boiler and machinery** as used in this Policy does not mean:

Physical loss or damage caused by or resulting from any of the following regardless of any other cause or event contributing concurrently or in any other sequence to the loss:

- a) Combustion explosions, except from within combustion gas turbines; or
- b) Explosions from liquids coming in contact with molten materials; or
- c) Accidental discharge, escape, leakage, backup or overflow to the open of any material from confinement within piping, plumbing systems or tanks except from property described in Item 1a above; or
- d) Fire, or from the use of water or other means to extinguish a fire.



communicable disease means disease which is:

1. Transmissible from human to human by direct or indirect contact with an affected individual or the individual's discharges, or
2. Legionellosis.

contaminant means anything that causes **contamination**.

contamination means any condition of property due to the actual or suspected presence of any foreign substance, impurity, pollutant, hazardous material, poison, toxin, pathogen or pathogenic organism, bacteria, virus, disease causing or illness causing agent, fungus, mold or mildew.

date or time recognition means the recognition, interpretation, calculation, comparison, differentiation, sequencing, accessing or processing of data involving one or more dates or times, including the Year 2000.

described location(s) means the locations described in the Insurance Provided clause of the Declarations section of this Policy.

earth movement means any natural or man-made earth movement, including but not limited to earthquake or landslide regardless of any other cause or event contributing concurrently or in any other sequence of loss. However, physical loss or damage by fire, explosion, sprinkler leakage or **flood** resulting from **earth movement** will not be considered to be loss by **earth movement** within the terms and conditions of this Policy.

electronic data processing equipment or media means any computer, computer system or component, hardware, network, microprocessor, microchip, integrated circuit or similar devices or components in computer or non-computer equipment, operating systems, data, programs or other software stored on electronic, electro-mechanical, electro-magnetic data processing or production equipment, whether the property of the Insured or not.

fine arts means paintings; etchings; pictures; tapestries; rare or art glass windows; valuable rugs; statuary; sculptures; antique furniture; antique jewelry; bric-a-brac; porcelains; and similar property of rarity, historical value, or artistic merit, excluding automobiles, coins, stamps, furs, jewelry, precious stones, precious metals, watercraft, aircraft, money and securities.

flood means flood; surface waters; rising waters; storm surge, sea surge, wave wash; waves; tsunamis; tide or tidal water; the release of water, the rising, overflowing or breaking of boundaries of natural or man-made bodies of water; or the spray therefrom; all whether driven by wind or not; or sewer backup resulting from any of the foregoing; regardless of any other cause or event, whether natural or man-made, contributing concurrently or in any other sequence of loss. Physical loss or damage from **flood** associated with a storm or weather disturbance whether or not identified by name by any meteorological authority, is considered to be **flood** within the terms of this Policy. However, physical loss or damage by fire, explosion or sprinkler leakage resulting from **flood** is not considered to be loss by **flood** within the terms and conditions of this Policy.

Green means products, materials, methods and processes certified by a **Green Authority** that conserve natural resources, reduce energy or water consumption, avoid toxic or other polluting emissions or otherwise minimize environmental impact.

Green Authority means an authority on **Green** buildings, products, materials, methods or processes that are certified and accepted by Leadership in Energy and Environmental Design (LEED®), Green Building Initiative Green Globes®, Energy Star Rating System or any other recognized **Green** rating system.

irreplaceable means an item which cannot be replaced with other of like kind and quality.

location means a location described in the Insurance Provided clause of the Declarations section or included as Newly Acquired Property or Unnamed Property coverages.



named perils means: fire, lightning, **wind**, hail, explosion, smoke, impact from aircraft and vehicles, objects falling from aircraft, strike, riot, civil commotion, vandalism, theft, attempted theft, sprinkler leakage or collapse of buildings.

occurrence means the sum total of all loss or damage of the type insured, including any insured Business Interruption loss, arising out of or caused by one discrete event of physical loss or damage, except as respects the following:

1. **terrorism: occurrence** will mean the sum total of all loss or damage of the type insured, including any insured Business Interruption loss, arising out of or caused by all acts of **terrorism** during a continuous period of seventy-two (72) hours.
2. **earth movement: occurrence** will mean the sum total of all loss or damage of the type insured, including any insured Business Interruption loss, arising out of or caused by all **earth movement(s)** during a continuous period of seventy-two (72) hours.

off-premises data processing or data transmission services means the storage or processing of data performed off-premises of the Insured's property, including the transmission of voice, data or video over a single, or combination of, computer or communication networks.

offshore means away from the shore but not connected to the shore by docks, piers or any other physical connection other than pipelines.

ordinary payroll means:

1. Wages of all employees except officers, executives, department managers, and employees under contract or similar key employees; and
2. Includes taxes and charges dependent on the payment of those wages.

physical loss or damage to electronic data, programs or software means the destruction, distortion or corruption of electronic data, programs or software.

production machinery and equipment means any production or process machine(s) or apparatus that processes, forms, cuts, shapes, grinds or conveys **raw materials**, materials in process or finished goods and any associated equipment utilized in production including but not limited to electrical cabling, transformers, HVAC and any equipment or apparatus that is mounted upon or used exclusively with any one or more production or process machine(s) or apparatus.

raw materials mean materials and supplies in the state in which the Insured receives them for conversion by the Insured into finished goods.

soft costs means the expenses over and above normal expenses at **locations** undergoing alterations or additions to existing property and property in the course of construction limited to the following:

1. Construction loan fees - the additional cost incurred to rearrange loans necessary for the completion of construction, repairs or reconstruction including the cost to arrange refinancing, accounting work necessary to restructure financing, legal work necessary to prepare new documents, and charges by the lenders for the extension or renewal of loans necessary.
2. Commitment fees, leasing and marketing expenses - the cost of returning any commitment fees received from prospective tenant(s) or purchaser(s), the cost of releasing and marketing of the Insured Project due to loss of tenant(s) or purchaser(s).
3. Additional fees - for architects, engineers, consultants, attorneys and accountants needed for the completion of construction, repairs or reconstruction.
4. Carrying costs - building permits, additional interest on loans, insurance premiums and property and realty taxes.



stock in process means **raw materials** or stock, which has undergone any aging, seasoning, mechanical or other process or manufacture, but which is not finished goods.

terrorism means:

1. Any act, involving the use or threat of: force, violence, dangerous conduct, interference with the operations of any business, government or other organization or institution, or any similar act,
2. When the effect or apparent purpose is:

To influence or instill fear in any government (de jure or de facto) or the public, or any segment of either; or to further, or to express support for, or opposition to, any political, religious, social, ideological or similar type of objective or position.

transmission and distribution systems means transmission and distribution systems including but not limited to electricity, gas, fuel, steam, water, refrigeration, sewerage, voice, data and video. Such systems shall include poles, towers and fixtures, overhead conductors and devices, underground and underwater conduit, underground and underwater conductors and devices, line transformers, service meters, street lighting and signal systems.

valuable papers and records means inscribed, printed or written: documents; manuscripts or records including abstracts; and, books, deeds, drawings, films, maps or mortgages, all of which must be of value to the Insured. **Valuable papers and records** are not: money, securities and stamps; converted data programs or instructions used in the Insured's data processing operations; or, materials on which data is recorded.

wind means direct action of wind including substance driven by wind. **Wind** does not mean or include anything defined as **flood** in this Policy.

workplace accident means a sudden, fortuitous event that happens during working hours and arises out of work performed in the course and the scope of employment.

SUPPLEMENTAL UNITED STATES CERTIFIED ACT OF TERRORISM ENDORSEMENT

This Endorsement is applicable to all insured locations in the United States, its territories and possessions and the Commonwealth of Puerto Rico.

Coverage for “Certified Act of Terrorism” Under The Terrorism Risk Insurance Act of 2002, as amended.

In consideration of a premium charged of \$15,000, this Policy, subject to the terms and conditions therein and in this Endorsement, covers direct physical loss or damage to insured property and any resulting Business Interruption loss, as provided in the Policy, caused by or resulting from a Certified Act of Terrorism as defined herein.

Notwithstanding anything contained elsewhere in this Policy, any exclusion or limitation of terrorism in this Policy and any endorsement attached to and made a part of this Policy, is hereby amended to the effect that such exclusion or limitation does not apply to a “Certified Act of Terrorism” as defined herein. This amendment does not apply to any limit of liability for a Certified Act of Terrorism, if any, stated under any Sub-Limits clause in the Declarations section of this Policy.

With respect to any one or more Certified Act(s) of Terrorism, this Company will not pay any amounts for which the Company is not responsible under the terms of the Terrorism Risk Insurance Act of 2002 (including subsequent action of Congress pursuant to the Act) which includes a provision stating that if the aggregate insured losses exceed \$100,000,000,000 during any calendar year, neither the United States Government nor any insurer that has met its insurer deductible shall be liable for the payment of any portion of the amount of such losses that exceed \$100,000,000,000. If the aggregate insured losses for all insurers exceed \$100,000,000,000, your coverage may be reduced.

The coverage provided under this Endorsement for “Certified” losses caused by acts of terrorism will be partially reimbursed by the United States Government under a formula established by Federal Law. Under this formula, the United States pays 85% (and beginning on January 1, 2016, shall then decrease by 1 percentage point per calendar year until equal to 80 percent) of covered terrorism losses exceeding a statutorily established retention by the insurer referenced in this Policy. The premium charged for this coverage is provided above.

The terms and limitations of any terrorism exclusion, or the inapplicability or omission of terrorism exclusion, do not serve to create coverage for any loss which would otherwise be excluded under this Endorsement or the Policy.

The coverage provided by this Endorsement only applies to a Certified Act of Terrorism.

Reference and Application: The following term(s) means:

Certified Act of Terrorism:

A “Certified Act of Terrorism” means any act that is certified by the Secretary of the Treasury, in concurrence with the Secretary of Homeland Security, and the Attorney General of the United States, to be an act of terrorism pursuant to the federal Terrorism Risk Insurance Act of 2002 as amended and extended in 2005, 2007 and in 2015. The criteria contained in that Act for a “Certified Act of Terrorism” include the following:

- a. The act resulted in aggregate losses in excess of \$5,000,000; and
- b. The act is a violent act or an act that is dangerous to human life, property or infrastructure and is committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.



NEVADA

AMENDATORY ENDORSEMENT

With respect to any insured location in the State of Nevada this policy is amended:

CANCELLATION - If this policy has been in effect for at least 70 days or is a renewal of a policy issued by this Company, it may cancel this policy only on any anniversary date or if one or more of the following reasons apply:

1. Failure to pay a premium when due;
2. Conviction of the insured of a crime arising out of acts increasing the hazard insured against;
3. Discovery of fraud or material misrepresentation in the obtaining of this policy or in the presentation of a claim thereunder;
4. Discovery of:
 - a. An act or omission; or
 - b. A violation of any condition of the policy, which occurred after the first effective date of the current policy and substantially and materially increases the hazard insured against;
5. A material change in the nature or extent of the risk, occurring after the first effective date of the current policy, which causes the risk of loss to be substantially and materially increased beyond that contemplated at the time the policy was issued or last renewed;
6. A determination by the Commissioner that continuation of the Insurer's present volume of premiums would jeopardize the insurer's solvency or be hazardous to the interests of policyholders of the insurer, its creditors or the public; or
7. A determination by the Commissioner that the continuation of this policy would violate or place the Company in violation of any provision of the code.

This Company will deliver or mail the written notice of cancellation at least 10 days before the cancellation is to take effect when the reason for cancellation is nonpayment of premium. It will deliver or mail to the Named Insured written notice of cancellation at least 30 days before the cancellation is to take effect, except when the reason for cancellation is nonpayment of premium. This Company may cancel the policy on any anniversary date by delivering or mailing written notice of cancellation at least 60 days before the policy anniversary date.

The notice must be accompanied by the written explanation of the specific reasons for the cancellation. Return of any unearned premium will be calculated: on a pro-rata basis if the Policy is cancelled. Return of unearned premium will be made by this Company as soon as practicable.

NONRENEWAL - If this Company decides not to renew this policy, it will deliver or mail to the Named Insured written notice of nonrenewal at least 60 days before the policy expiration date. The notice must be accompanied by a written explanation of the specific reasons for nonrenewal. Notice of nonrenewal is not required if the Insured has accepted replacement coverage of has requested or agreed to nonrenewal.

APPRAISAL – The appraisal agreement as found in the Appraisal clause in this policy is voluntary between the insured and this Company.

Copy of Original - For Reference Purposes Only



General Change Endorsement

This endorsement is attached to and forms part of the following designated policy:

Account Number: 1-54831
Policy Number: GS784

Endorsement Number: 01
Effective Date of Change: Jan 17, 2020

Insured: Treasure Island, LLC

All terms and conditions remain unchanged except:

Additional Premium due now: \$33,463 US (pro-rata of \$197,000 US)

The following changes are made to Form No. S-1, Declarations:

The Policy Limit under SECTION C, POLICY LIMIT, is amended to read: \$850,000,000.

Due to a change in value at the following location(s), under SECTION E, INSURANCE PROVIDED, an additional premium of \$33,463 (pro-rata of \$197,000) is due.

1. 3300 Las Vegas Boulevard South, Las Vegas, NV, 89109, Index No. 079302.61

The sub-limits for the following coverages under SECTION F, SUB-LIMITS, are amended to read as follows:

Additional Coverages

	Terrorism Coverage and the Supplemental United States Certified Act of Terrorism Endorsement
\$850,000,000	A. United States Certified Act of Terrorism coverage

Business Interruption Coverage Extensions

365 Days	Extended Period of Liability
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Business Interruption Coverage

\$327,000,000	Gross Earnings not to exceed 90 days for ordinary payroll
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INSURED: Treasure Island, LLC
ACCOUNT NO.: 1-54831
POLICY NO.: GS784
ENDORSEMENT NO.: 01

Item No. 4. **Business Interruption Coverage Sub-Limit - PRO** under SECTION H, SPECIAL TERMS AND CONDITIONS, is amended to read as follows:

4. **Business Interruption Coverage Sub-Limit - PRO 709 (1/17)**

The **Business Interruption Coverage** in **SUB-LIMITS** are amended to the following:

Business Interruption Coverage

This Company's total limit of liability for insured Business Interruption loss, will not exceed Business Interruption Limit of \$337,000,000 as a result of any one **occurrence** subject to the respective sub-limits of liability shown below.

\$327,000,000	Gross Earnings not to exceed 90 days for ordinary payroll
\$163,477,215	Gross Profits for 12 months Period of Liability not to exceed 90 days for ordinary payroll
\$163,477,215	Rental Income
\$10,000,000	Extra Expense



BY: _____
Authorized Representative
Brian Bueche
Office: Dallas Operations BGB/pdl
Date: Jan. 13, 2020

EXHIBIT B

Stay at Home Order still in Effect. For the latest info, visit nvhealthresponse.nv.gov.

Nevada Governor Steve Sisolak



DECLARATION OF EMERGENCY FOR COVID-19

WHEREAS, Nevada Revised Statutes, Chapter 414, authorizes the Governor to issue a proclamation declaring a state of emergency when a natural emergency or disaster of major proportions has occurred within this state, and the assistance of state agencies is needed to supplement the efforts and capabilities of political subdivisions to save lives, protect property, and protect the health and safety of persons in this state, particularly through a coordinated response; and

WHEREAS, the Centers of Disease Control and Prevention (CDC) are responding to an outbreak of a respiratory illness that has since been confirmed in numerous countries, including the United States; and

WHEREAS, the respiratory disease has been named coronavirus disease 2019, abbreviated as COVID-19; and

WHEREAS, the World Health Organization declared the COVID-19 outbreak a pandemic; and

WHEREAS, the State of Nevada has been coordinating with the federal government, as well as local health authorities, health care facilities, and providers of health care to prepare for, and identify possible cases of COVID-19 in the State of Nevada; and

WHEREAS, the nearby states of California, Washington, Oregon, Arizona, and Utah have been impacted by COVID-19 and have already declared a state of emergency; and

WHEREAS, there are multiple confirmed and presumptive cases of COVID-19 in the State of Nevada; and

WHEREAS, there are multiple confirmed and presumptive cases of COVID-19 in the State of Nevada; and

WHEREAS, the Nevada Department of Health and Human Services is working with local health authorities to identify any other potential cases of COVID-19 in the State; and

WHEREAS, the Chief Medical Officer has reported that a public health emergency exists in the State; and

WHEREAS, the Governor has determined that the State of Nevada is experiencing events that require a coordinated response for the health and safety of the public; and

WHEREAS, Article 5, Section 1 of the Nevada Constitution provides: "The supreme executive power of this State, shall be vested in a Chief Magistrate who shall be Governor of the State of Nevada."

NOW, THEREFORE, I, Steve Sisolak, Governor of the State of Nevada, pursuant to the authority vested in me by the Constitution and laws of the State of Nevada, hereby declare an emergency and direct all state agencies to supplement the efforts of all impacted and threatened counties to save lives, protect property, and protect the health and safety of persons in this state. Under my authority, I will perform and exercise such other functions, powers, and duties as are necessary to promote and secure the safety and protection of the civilian population.

SECTION 1:	The State Emergency Operations Center be activated to coordinate a response to minimize the impacts, and prevent the further transmission of, COVID-19 to persons in this state; and
SECTION 2:	An Emergency Team be established to coordinate the response to COVID-19; and
SECTION 3:	The Emergency Team will consult with the Nevada Tribal Emergency Coordinating Council to ensure a coordinated response to COVID-19; and
	The Administrator of the State Purchasing Division, pursuant to Nevada Administrative

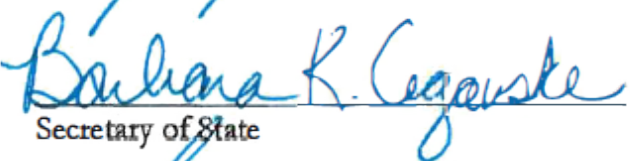
SECTION 4:	Code 333.114, to the extent necessary, may authorize an emergency purchase for any amount, or provide the using agency with written authorization for the emergency purchase, including, without limitation, a description of the justification for authorizing the emergency purchase, and suspend the standard procurement process to allow the purchase of food, supplies, services, and equipment; and
SECTION 5:	Law enforcement, including the Nevada Attorney General, will diligently monitor and investigate a coordinated increase in prices for goods or services, and particularly goods or services necessary for the health and safety of the public or that result in economic hardships, making false representations, "bait and switch" practices, failure to disclose material facts in conjunction with the sale of goods or services, or the use of coercion, duress, or intimidation in a transaction in violation of consumer protection laws; and
SECTION 6:	Law enforcement, including the Nevada Attorney General, will diligently ensure that persons or corporations act and perform in a lawful manner which ensures the safety, health, comfort, or repose of any considerable number of the public, do not offend public decency, or in any way renders a considerable number of persons insecure in life or the use of property.
SECTION 7:	This declaration will remain in effect until the Chief Medical Officer notifies the Governor that the health event has been abated and the Governor issues an order terminating the emergency.

Emergency Order Instructions



IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Nevada to be affixed at the State Capitol in Carson City, this 12th day of March, in the year two thousand twenty.


Governor of the State of Nevada


Secretary of State


Deputy Secretary of State

- Executive**
- Governor
 - Lt. Governor
 - Secretary of State
 - Attorney General
 - State Treasurer
 - State Controller

- Alerts**
- Amber Alerts
 - Consumer Affairs
 - Weather Alerts
 - 211- Service Information
 - 511 - Road Conditions
 - 911 - Emergency Help

- Legislature**
- Legislature Website
 - NELIS
 - Legislature Meetings
 - Find Your Legislator
 - Nevada State Senate
 - Nevada State Assembly

Select Language ▼



EXHIBIT C



**NEVADA
HEALTH
RESPONSE**

NEVADA HEALTH RESPONSE COVID-19 RISK MITIGATION INITIATIVE

"The most effective course of action is for all Nevadans to stay home and for all nonessential businesses to temporarily close to the public for 30 days."

- Governor Steve Sisolak, March 17, 2020

This Nevada Health Response COVID-19 Risk Mitigation Initiative (Initiative), is issued as guidance following Governor Sisolak's Tuesday, March 17, 2020 Press Conference, and pursuant to Governor Sisolak's March 12, 2020 Declaration of Emergency, which cites Article 5, Section 1 of the Nevada Constitution declaring that the "supreme executive power of this State, shall be vested in a Chief Magistrate who shall be the Governor of the State of Nevada."

The goal of this Initiative is to protect the health and safety of Nevadans by preventing people coming together unnecessarily, where people who have the infection can easily spread it to others. Ask yourself this question: "Where do people get within 6 feet of other individuals for an extended period of time?" -- then avoid those areas.

As with all Initiative parameters related to the COVID-19 crisis, the Governor, the Nevada Health Response Center, and local and state health authorities will **revisit this guidance on a regular basis** to evaluate the continued public health needs and whether any elements need to be changed.

The immediate implementation of aggressive strategies to create social distance and decrease close contact of people, including limiting gatherings, has proven effective in prior pandemics at delaying rates of transmission and reducing death and illness. By decreasing the prevalence of disease across Nevada we will:

- Reduce the number of Nevadans who contract COVID-19 before an effective treatment or vaccine is available.
- Protect those most likely to experience severe symptoms, such as older Nevadans and those with underlying chronic conditions.

- Preserve and protect our health care delivery system, including our health care workforce, so they can care for the least healthy individuals in the community for any medical condition, not just COVID-19.
- Minimize the social and economic impacts of COVID-19 over the long run.

SOCIAL DISTANCING GUIDELINES

Nevadans must ensure that **6 feet of social distancing per person** for non-household members is maintained at all times.

Examples of activities to avoid:

- Group gatherings
- Sleepovers
- Concerts and theater outings
- Playdates
- Athletic events
- Visitors in your house
- Non-essential workers in your house
- Shopping in malls
- Workouts in gyms

Initiative parameters on gatherings:

All gatherings should be postponed or canceled.

For purposes of this Initiative, a “gathering” is any event or convening that brings people together in a single room or single space at the same time – indoor or outdoor.

When it comes to gatherings, the risk is based on the proximity between individuals and how they are interacting with one another. The risk does not disappear in small gatherings. It’s the social distancing that will make the difference.

- We still want you to experience the **joy of weddings**, but this is not the time to bring your friends together -- especially if this will require travel. Consider postponing the celebration to a time when the risk is low or eliminated.
- For Nevadans making preparations to say goodbye to loved ones, please limit the attendance at **funeral services**. Consider outdoor services where the risk of exposure is less than inside.

- While the Governor cannot and will not say that **places of worship** should be closed, he strongly urges our faith leaders to find ways to tend to your congregation without bringing them together in person.

ESSENTIAL AND NON-ESSENTIAL SERVICES & SECTORS

Essential services and sectors include, *but are not limited to:*

- Fire services, law enforcement agencies, ambulances, paramedics, all emergency medical services & public safety agencies
- Healthcare services
- Businesses or organizations that provide food, shelter, or critical social services for disadvantaged populations
- Utilities as defined in [NRS Chapter 704](#)
- Trash collection
- Home maintenance/repair services
- Auto repair services & trucking service centers
- Grocery stores, supermarkets, hardware stores, convenience & discount stores
- Pharmacies, healthcare operations, & biomedical facilities
- Post offices & shipping outlets
- Gas stations & truck stops
- Banks & financial institutions
- Veterinary services & pet stores
- Laundromats & dry cleaners
- Food processing
- Agriculture, livestock & feed mills
- Logistics & Supply Chain Operations: Warehousing, storage, distribution, and supply-chain related operations
- Air transportation
- Public transportation
- Essential stays in hotels, commercial lodging, dormitories, shelters, and homeless encampments
- Child care centers and daycares operating in accordance with requirements set forth by their licensing authorities and COVID-19 guidance

Although these businesses may remain open, the Nevada Health Response Center maintains that all employees and patrons employ strict social distancing practices. In addition, businesses should:

- Remind employees of best hygiene practices, including washing their hands often with soap and water for at least 20 seconds.
- Increase the frequency of cleaning and sanitizing per CDC Environmental Cleaning and Disinfection guidance of all hard surfaces, including tables and countertops that are being utilized by employees and patrons during pickup/delivery options.

Other businesses, including but not limited to legal services, business and management consulting, professional services and insurance services are encouraged to have employees work remotely or telecommute.

If that is not possible, they should employ strict social distancing practices as set forth by the Nevada Health Response Center and the CDC.

Non-essential services and sectors include, *but are not limited to:*

- Entertainment & hospitality, including but not limited to strip clubs and brothels, casinos, concert venues, arenas, auditoriums, stadiums, large conference rooms, meeting halls, and cafeterias
- Recreation and athletic facilities, including but not limited to community and recreation centers, gyms, health clubs, fitness centers, yoga, barre and spin facilities
- Beauty and personal care services and facilities, including but not limited to barber shops, beauty, tanning, waxing hair salons, and nail salons and spas
- Retail facilities, including shopping malls except for pharmacy or other health care facilities within retail operations. Retailers are encouraged to continue online operations with pickup and delivery.

FOOD & BEVERAGE ESTABLISHMENTS GUIDANCE

The Governor directed all restaurants and bars to close their dine-in facilities to help stop the spread of COVID-19. Businesses that offer carry-out, delivery, and drive-through food and beverage service may continue to do so, but eating and drinking inside restaurants and bars is temporarily prohibited. These businesses offering carry-out, delivery, and drive-through food and beverage should employ strict social distancing protocol. Additional information is below:

- Charitable food distribution sites, including the meals being distributed to our students in wake of the school closings, along with grocery stores, should remain fully open and operational.

- Food services for healthcare facilities and other essential facilities should remain open.
- Any **buffet or food stations** used in charitable food distribution settings should transition to boxed meals or served through gloved staff members or volunteers.
- Restaurants throughout Nevada, in addition to pubs, wineries, bars, and breweries that include meals provided by a full kitchen should be reduced to serving food only in a **drive-thru, take-out or delivery capacity**. No dine-in at food establishments should be allowed until further notice. This also includes food courts, coffee shops, catered events, clubs, bowling alleys, and other similar venues in which people congregate for the consumption of food.
- **Pubs, wineries, bars, and breweries that do not include meals provided by a full kitchen should close.**

For the food establishments allowed to remain open, you should:

- Immediately increase sanitizing and cleaning frequency of high contact areas -- such as restrooms.
- Enforce stringent hygiene practices for your staff, including frequent and thorough hand washing for at least 20 seconds at a time.

GAMING

The Governor announced that all gaming machines, devices, tables, games, and any equipment related to gaming activity will be shut down. Restaurants and bars located within gaming properties will be subject to the same restrictions as those outside of gaming establishments.

CANNABIS

Licensed cannabis stores and medical dispensaries should only remain open if employees and consumers strictly adhere to the social distancing protocol. The Nevada Health Response Center is encouraging **consumers to use delivery services** and not congregate in stores.

###

EXHIBIT D



Stay at Home Order still in Effect. For the latest info, visit nvhealthresponse.nv.gov.



Nevada Governor Steve Sisolak



DECLARATION OF EMERGENCY FOR COVID-19- DIRECTIVE 003

WHEREAS, on March 12, 2020, I, Steve Sisolak, Governor of the State of Nevada issued a Declaration of Emergency to facilitate the State's response to the COVID19 pandemic; a

WHEREAS, on March 13, 2020, Donald J. Trump, President of the United States declared a nationwide emergency pursuant to Sec. 501(6) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121-5207 (the "Stafford Act"); and

WHEREAS, the World Health Organization and United States Centers for Disease Control and Prevention have advised that there is a correlation between density of persons gathered and the risk of transmission of COVID-19; and

WHEREAS, close proximity to other persons is currently contraindicated by public health and medical best practices to combat COVID-19; an

WHEREAS, recreational social gatherings unnecessarily extend periods of interpersonal contact and promulgates spread of COVID-19; a

WHEREAS, certain non-essential activities result in the congregation of persons for extended periods of time; and

WHEREAS, fire services, law enforcement agencies, emergency medical services, and public safety agencies are essential to the welfare, safety, and health of our communities; and

WHEREAS, NRS 414.060 outlines powers and duties delegated to the Governor during the existence of a state of emergency, including without limitation, directing and controlling the conduct of the general public and the movement and cessation of movement of pedestrians and vehicular traffic during, before and after exercises or an emergency or disaster, public meetings or gatherings; and

WHEREAS, NRS 414.070 outlines additional powers delegated to the Governor during the existence of a state of emergency, including without limitation, enforcing all laws and regulations relating to emergency management and assuming direct operational control of any or all forces, including, without limitation, volunteers and auxiliary staff for emergency management in the State; providing for and compelling the evacuation of all or part of the population from any stricken or threatened area or areas within the State and to take such steps as are necessary for the receipt and care of those persons; and performing and exercising such other functions, powers and duties as are necessary to promote and secure the safety and protection of the civilian population; and

WHEREAS, NRS 414.090 limits the powers of political subdivisions in the event of an emergency, and provides that counties shall, and cities may, in pertinent part establish local organizations for emergency management in accordance with the state emergency management plan and program for emergency management; enter into contracts and incur obligations necessary to combat such an emergency or disaster, protect the health and safety of persons and property and provide emergency assistance to the victims of such an emergency or disaster; and exercise the powers vested under NRS 414.090 in the light of the exigencies of the extreme emergency or disaster without regard to timeconsuming procedures and formalities prescribed by law, except constitutional requirements, pertaining to the performance of public work, entering into contracts, the

incurring of obligations, the employment of temporary workers, the rental of equipment, the purchase of supplies and materials, the levying of taxes, and the appropriation and expenditure of public funds; and

WHEREAS, the Nevada Attorney General opined in Opinion Number 57-336 that "there can be no question but that the Legislature intended to give to the Governor the broadest possible powers consistent with constitutional government in a time of dire emergency;" and

WHEREAS, the Nevada Attorney General opined in Opinion Number 9 5-03 that, in the context of the Governor's exercise of powers under NRS Chapter 414, municipalities exceed their statutory authority in adopting emergency powers that:

- Establish a curfew allowing only authorized persons in public places;
- Forbid or limit the number of persons who may gather or congregate in public places;
- Prohibit or restrict traffic on public streets and roads;
- Prohibit the sale or distribution of gasoline (or other flammable/ combustible), except in vehicle gas tanks or other proper container;
- Close businesses which sell gasoline (or other flammable/combustible);
- Prohibit the sale or distribution of alcohol;
- Close businesses which sell alcohol;
- Prohibit the sale or distribution of guns, ammunition or explosives; or
- Close businesses which sell guns, ammunition or explosives; and

WHEREAS, the Nevada Attorney General further opined in Opinion Number 95-03 that such powers as outlined immediately above, if enacted, would be preempted by other grants of power set forth in Chapter 414 and elsewhere; and

WHEREAS, Article 5, Section 1 of the Nevada Constitution provides: "The supreme executive power of this State, shall be vested in a Chief Magistrate who shall be Governor of the State of Nevada;" and

WHEREAS, on March 17, 2020, I directed Nevadans to implement the following measures; and

WHEREAS, non-essential businesses continue to operate and avail themselves to the general public, further exacerbating the public health emergency:

NOW, THEREFORE, by the authority vested in me as Governor by the Constitution and the laws of the State of Nevada and the United States, and pursuant to the March 12, 2020, Emergency Declaration,

SECTION 1:	Non-Essential Businesses, as further defined in regulations promulgated under this Directive, that promote recreational social gathering activities including, but not limited to, recreation centers, clubhouses, nightclubs, movie theaters, massage parlors, adult entertainment establishments, brothels, and live entertainment venues, and any other such Non-Essential Business shall close effective March 20, 2020, at 11:59 p.m., for the duration that this Directive shall be in effect.
SECTION 2:	Non-Essential Businesses that promote extended periods of public interaction where the risk of transmission is high, including fitness establishments such as gyms and studios; aesthetic services such as beauty shops, barber shops, nail salons, tanning salons, and wax salons; and any other such Non-Essential Business shall close effective March 20, 2020, at 11 :59 p.m., for the duration that this Directive shall be in effect.
SECTION 3:	<p>The Nevada general public may utilize restaurants and food establishments serving prepared meals. Such establishments may continue serving the public, but shall cease onsite dining effective March 20, 2020 at 11:59 p.m., for the duration that this Directive shall be in effect. Food establishments open to the Nevada general public shall only serve customers through a take-out, drive-through, curbside pickup, or delivery capacity. Food establishments shall adopt COVID-19 risk mitigation policies including, but not limited to:</p> <ul style="list-style-type: none"> • To the extent practicable, ensuring that customers receiving orders outside the food establishment maintain adequate social distancing practices by not congregating within a minimum of six feet of separation between each other. This social distancing requirement does not apply to persons residing in the same household. • To the extent practicable, disallowing the formation of queues whereby persons congregate in a manner that violates the social distancing guidelines above. • Adopting contactless payment systems whenever possible. • All food workers must strictly abide by all applicable hygiene guidelines including handwashing and glove requirements. • Follow United States Centers for Disease Control and Prevention sanitization

	recommendations, including disinfecting surfaces routinely and at frequent intervals throughout the workday.
SECTION 4:	An Essential Licensed Business, including but not limited to, and as further defined in regulations promulgated under this Directive, healthcare providers, veterinary services, grocery stores, pharmacies, financial institutions, hardware stores, convenience stores, security services, and gas stations, is encouraged to continue operation, but must adopt COVID-19 risk mitigation measures that reduce the risk of community disease spread, including but not limited to:
SECTION 5:	Retail cannabis dispensaries may operate by delivery only pursuant to the guidance that Retail cannabis dispensaries may operate by delivery only pursuant to the guidance that
SECTION 6:	The construction, mining, manufacturing, and infrastructure sector labor force may continue operations, but shall maintain strict social distancing practices to facilitate a minimum of six feet of separation between workers, and to adopt policies and practices that ensure minimum contact between the workforce and the general public. This social distancing restriction shall not be construed to supersede any safety practices imposed on the industry by state or federal law. Business sectors operating under this authority must comply with any applicable COVID-19 risk mitigation policies, as further defined in regulations promulgated under this Directive, and any precautionary measures and guidance that shall be promulgated by Nevada Department of Business and Industry.
SECTION 7:	This Directive shall not be construed to hinder the ability of the industries identified in the U.S. Department of Homeland Security Cyber & Infrastructure Security Agency Essential Critical Infrastructure Workforce memorandum dated March 19, 2020 to continue their operation appropriately modified to account for Centers for Disease Control (CDC) workforce and consumer protection guidance.
SECTION 8:	Businesses not delineated above or in regulations promulgated under this Directive may continue operations, not to include retail sales, if they are able to implement social distancing safeguards for the protection of their employees and: <ul style="list-style-type: none"> • Perform operations without contact with the Nevada general public; or • To the extent practicable, provide services without causing members of the Nevada general public to congregate in a manner contrary to social distancing goals of a minimum of six feet of separation for more than incidental contact; or • Provide services without causing more than ten members of the Nevada general public to congregate.
SECTION 9:	Businesses that do not comply with this Directive or regulations promulgated under his Directive, after receiving written notice from law enforcement, may be subject to criminal prosecution and civil penalties under NRS 202.595, NRS 202.450, and any other applicable statute, ordinance, or regulation. All law enforcement agencies in the State of Nevada are authorized to enforce this Directive and regulations promulgated under this Directive. The Office of the Attorney General is given concurrent jurisdiction to prosecute violations of this Directive and any regulations promulgated thereunder.
SECTION 10:	Pursuant to NRS 414.060(3)(E), I hereby authorize all local, city, and county governments to enforce this Directive and regulations promulgated thereunder. This includes, but is not limited to, suspending a license, revoking a license, or issuing penalties for violating business, professional, liquor, tobacco, or gaming licenses issued by the local jurisdiction for actions that jeopardize the health, safety, or welfare of the public; conduct which may injuriously affect the public health, safety, or welfare; conduct that may be detrimental to the public peace, health, or morals; or any other applicable ordinance or requirement for such a license.
SECTION 11:	This Directive shall remain in effect until April 16, 2020, unless renewed by a subsequent Directive promulgated pursuant to the March 12, 2020 Declaration of Emergency to facilitate the State's response to the COVID-19 pandemic.

Emergency Order Instructions



IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Nevada to be affixed at the State Capitol in Carson City, this 20th day of March, in the year two thousand twenty.



Governor of the State of Nevada

[Handwritten Signature]
Secretary of State

Deputy Secretary of State

Emergency Regulations

Executive

- Governor
- Lt. Governor
- Secretary of State
- Attorney General
- State Treasurer
- State Controller

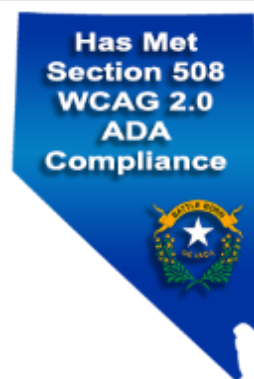
Legislature

- Legislature Website
- NELIS
- Legislature Meetings
- Find Your Legislator
- Nevada State Senate
- Nevada State Assembly

Alerts

- Amber Alerts
- Consumer Affairs
- Weather Alerts
- 211- Service Information
- 511 - Road Conditions
- 911 - Emergency Help

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SECRETARY OF STATE
FILING DATA

FILED IN USCS
2020 MAR 20
PM 4:46

For Filing Administrative Regulations

Agency... Department of Public Safety, Division of Emergency Management

FOR EMERGENCY REGULATIONS ONLY

Effective date.....03/20/2020.....

Expiration date.....04/16/2020.....

.....
Governor's Signature

Classification: PROPOSED ADOPTED BY AGENCY EMERGENCY

Brief description of action..... Emergency amendment of NAC 414

The Department of Public Safety, Division of Emergency Management has adopted the emergency regulation as a result of the COVID-19 Pandemic. This addition to NAC 414 will define essential and non-essential businesses, as well as, parameters for essential businesses to conduct business in this State under the Governor's March 12, 2020, Declaration of Emergency and related directives. Through the enclosed emergency regulation, businesses, as well as, state and local governments, will have the guidance to determine which businesses are essential and which are non-essential during the COVID-19 Pandemic.

Authority citation other than 233B NRS 414.060; NRS 414.070; Declaration of Emergency, Directive 003, March 20, 2020

Notice date March 20, 2020

Date of Adoption by Agency March 20, 2020

Hearing date ^t NOT practicable

Steve Sisolak
Governor



Nevada Department of
Public Safety
DEDICATION PRIDE SERVICE

George Togliatti
Director

Sheri Bueggemann
Deputy Director

Justin Luna
Chief

**Division of Emergency Management
Homeland Security**

2478 Fairview Drive
Carson City, Nevada 89701
Telephone (775) 687-0300 / Fax (775) 687-0322
DEM Website - <http://dem.nv.gov>

STATEMENT OF EMERGENCY

Pursuant to NRS 414.060(3)(a); NRS 414.070(7); Declaration of Emergency,
Directive 003, March 20, 2020

March 20, 2020

The Honorable Steve Sisolak
Governor of the State of Nevada
Executive Chambers
101 N. Carson Street, Suite 1
Carson City, Nevada 89701

RE: Emergency Regulation Concerning COVID-19 Pandemic

Dear Governor Sisolak,

The continued operation of non-essential businesses is impairing the State's ability to prevent the further transmission of COVID-19 and lives are at stake. The Department of Public Safety, Division of Emergency Management has determined that an immediate need exists for an emergency regulation defining essential and non-essential businesses, as well as, parameters for essential businesses to conduct business in this State under your March 12, 2020, Declaration of Emergency and related directives.

Through the enclosed emergency regulation, businesses, as well as, state and local governments, will have the guidance to determine which businesses are essential and which are non-essential. Further, essential businesses will have clear direction on the expectations for their ability to continue providing goods and services to our communities during the existence of the COVID-19 pandemic.

This emergency regulation is necessary and your immediate endorsement is requested.

Justin Luna

Justin Luna

Capitol Police • Office of Criminal Justice Assistance • Emergency Management/Homeland Security
• State Fire Marshal • Records, Communications and Compliance • Highway Patrol • Investigations • Parole and Probation
• Office of Professional Responsibility • Office of Traffic Safety • Training • Office of Cyber Defense
• Emergency Response Commission

LCB File No.
Information Statement per NRS 233B.066
Page 2 of 2

Not applicable.

5. If the regulation includes provisions which are more stringent than a federal regulation which regulates the same activity, a summary of such provisions as required by NRS 233B.066(1)(j).

Not applicable

6. If the regulation establishes a new fee or increases an existing fee, a statement indicating the total annual amount the agency expects to collect and the manner in which the money will be used as required by NRS 233B.066(1)(k).

Not applicable

I hereby endorse this Statement prepared
by the Chief of the Division of
Emergency Management pursuant to
NRS 233B.0613(1).

Dated this 20th day of March, 2020:


Justin Luna
Nevada Division of Emergency Management

Dated this 20th day of March, 2020:


Steve Sisolak, Governor
State of Nevada

**EMERGENCY REGULATION OF THE
DEPARTMENT OF PUBLIC SAFETY
DIVISION OF EMERGENCY MANAGEMENT**

March 20, 2020

EXPLANATION – Matter in *italics* is new; matter in brackets ~~[omitted material]~~ is material to be omitted.

Filing of an Emergency Administrative Regulation

AUTHORITY: NRS 414.060; NRS 414.070; Declaration of Emergency, Directive 003, March 20, 2020

A REGULATION relating to the Governor's March 12, 2020, Declaration of Emergency and related directives.

Explanation:

Due to the recent COVID-19 pandemic, the Governor, through the March 12, 2020 Declaration of Emergency and related directives, has ordered non-essential businesses to cease operations and has ordered essential businesses to follow additional guidelines to reduce the likelihood of transmitting COVID-19. This regulation will provide clarity as to which businesses are considered essential and which are considered non-essential during the existing COVID-19 pandemic. Further, essential businesses will have clear direction on operational expectations while continuing to provide goods and services to Nevada communities.

Section 1. **Chapter 414 of the NAC is hereby amended by adding thereto a new section to read as follows:**

NAC 414.XXX Businesses During Times of Declared Emergency (NRS 414.060, 414.070)

1. *“Essential Licensed Business” means a business operating in the state of Nevada that provides:*

(a) Essential healthcare operations, including, hospitals, medical offices, clinics, healthcare suppliers, home health care providers, mental health providers, dentists, orthodontists, oral surgeons, physical or occupational therapists, speech therapists and pathologists, chiropractors, licensed homeopathic medical providers, biomedical facilities, non-governmental

emergency service providers, optometrist and ophthalmologist offices, offices for certified nurse-midwives, veterinary services, and pharmaceuticals;

(b) Essential infrastructure operations, including construction, agriculture, farming, housing construction, airport operations, water, sewer, gas, electrical, mining, public transportation, solid waste collection and removal, recycling services, energy, including solar, internet, telecommunication services, manufacturing, and food processing;

(c) Grocery stores, including, supermarkets, food banks, food pantries, soup kitchens, convenience stores, farm and produce stands, and other retail sale of canned and dry goods, fresh produce, frozen foods, fresh meats, fish, and poultry;

(d) Retailers that sell food items and other household consumer products for cleaning and personal care to promote safety, sanitation, and essential operations of households;

(e) Businesses that ship or deliver goods directly to residences;

(g) Businesses that sell or rent medical supplies;

(h) Licensed Cannabis entities, including dispensaries, producers, and cultivators;

(i) Pet supply stores;

(j) Animal shelters;

(k) Banks and Financial Institutions;

(l) Pawnbrokers as defined in NRS 646.010;

(m) Restaurants and food establishments that offer meals on a take-out, curbside pickup, delivery, or drive-through basis only and food distribution pods to provide meals to students;

(n) Businesses and other entities that provide food, shelter, or social services for economically disadvantaged individuals, vulnerable populations, or victims of crime;

(o) Hardware Stores, including home improvement centers;

(p) Auto-supply, automobile repair facilities, and tire shops;

(q) Laundromats and Dry Cleaners;

(r) Warehouse and Storage facilities;

(s) Transportation services, including taxicabs and rideshare services;

(t) Mail and shipping services, including PO Boxes;

(u) Businesses that supply products necessary for people to work from home on a curbside pickup or delivery to consumer basis only;

(v) Plumbers, electricians, exterminators, home security, and other service providers who provide services necessary to maintain the safety, sanitation, and essential operations of residences or businesses;

(w) Professional or technical services including legal, accounting, tax, payroll, real estate, and property management services;

(x) Child care facilities;

(y) Residential facilities and shelters for seniors, adults, and children, including retirement homes and assisted living facilities;

(z) Newspapers, television, radio, and other media services;

(aa) Hotels, motels, or short-term rentals, RV Parks, campgrounds, dormitories, and commercial lodging; and

(bb) Gas Stations, with or without attached convenience store.

2. *“Non-Essential Business” means a business operating in Nevada that provides:*

(a) Recreational activities, including, but not limited to, recreation and community centers, sporting event venues, fitness facilities, gyms, clubhouses, racetracks, zoos, aquariums, golf and country clubhouses not to include golf activities outside clubhouse settings, bowling centers, cinemas and movie theaters, skiing facilities, theme parks, and amusement parks;

- (b) Brothels and houses of prostitution;*
- (c) Live entertainment venues, including theaters and adult entertainment establishments;*
- (d) Retail facilities that are not specified in Section 1 as essential businesses and are unable to sell goods through shipping or direct delivery to consumers;*
- (e) Restaurant services providing in-house dining only;*
- (f) Nightclubs;*
- (g) Pubs, wineries, bars, and breweries;*
- (h) Gaming machines and gaming operations;*
- (i) Aesthetic services and schools of aesthetics services, including, hair dressing, barbering, cosmetology services, nail salons, tanning and air brush salons, massage (not provided by a physical therapist), waxing, diet and weight loss centers, and other cosmetic services;*
- (j) Spas;*
- (k) Sporting good and hobby shops; and*
- (l) Museums and art galleries.*

3. All Essential Licensed businesses must:

- (a) Comply with social distancing guidance issued by the Centers for Disease Control and Prevention document entitled "Implementation of Mitigation Strategies for Communities with Local COVID-19 Transmission," the Governor's Medical Advisory Team, a Governor's Directive, any other Nevada state regulatory agency or board; and*
- (b) Cease operating and shut down all gaming machines, devices, tables, games, and any equipment related to gaming activity, excluding licensed online gaming or mobile wagering operations; and*
- (c) Cease all door-to-door solicitation, even if the good or service offered for sale is*

considered essential, excluding the delivery of a good or service that has been ordered by a resident or business; and

(d) In addition to the general requirement described in 3(a), (b), & (c), specific Essential Businesses described in NAC 414.XXX(1) must comply with the following additional requirements:

(1) Essential Businesses described in NAC 414.XXX(1)(b) must:

(I) Maintain strict social distancing practices to facilitate a minimum of six feet of separation between workers and adopt policies and practices that ensure minimum contact between the workforce and the general public. Social distancing restrictions shall not be construed to supersede any safety practices imposed on the industry by state or federal law.

(II) All applicable COVID-19 risk mitigation policies and any precautionary measures and guidance that shall be promulgated by Nevada Department of Business and Industry and any other state regulatory body.

(2) Essential businesses described in NAC 414.XXX(1)(c) must adopt COVID-19 risk mitigation policies, including whenever possible adopting contactless payment systems; requiring food workers to strictly abide by all applicable hygiene guidelines including handwashing and glove requirements; following United States Centers for Disease Control and Prevention sanitization recommendations, including disinfecting surfaces routinely and at frequent intervals; and prohibiting self-serve food and beverage, such as condiments and samples. Contactless payment systems are credit cards and debit cards, key fobs, smart cards, or other devices, including smartphones and other mobile devices, that use radio-frequency identification (RFID) or near field communication (NFC, e.g. Samsung Pay, Apple Pay, Google Pay, Fitbit Pay, or any bank mobile application that supports contactless) for making secure payments, as opposed to the direct transfer of cash between buyer and seller.

(3) Essential businesses described in NAC 414.XXX(1)(g) must ensure that rental medical equipment and supplies are cleaned and sanitized in accordance with the United States Centers for Disease Control and Prevention sanitization recommendations.

(4) Essential businesses described in NAC 414.XXX(1)(h) must:

(I) Ensure sales to consumers are by direct delivery under guidance that shall be issued by the Department of Taxation in conjunction with the Cannabis Compliance Board.

(II) Ensure that producers and cultivators strictly adhere to the social distancing protocol.

(5) Essential businesses described in NAC 414.XXX(1)(m) must adopt COVID-19 risk mitigation policies, including whenever possible adopting contactless payment systems; requiring food workers to strictly abide by all applicable hygiene guidelines including handwashing and glove requirements; following United States Centers for Disease Control and Prevention sanitization recommendations, including disinfecting surfaces routinely and at frequent intervals; and prohibiting self-serve food and beverage, including as condiments shared between unrelated customers and samples not distributed by a food worker. Contactless payment systems are credit cards and debit cards, key fobs, smart cards, or other devices, including smartphones and other mobile devices, that use radio-frequency identification (RFID) or near field communication (NFC, e.g. Samsung Pay, Apple Pay, Google Pay, Fitbit Pay, or any bank mobile application that supports contactless) for making secure payments, as opposed to the direct transfer of cash between buyer and seller.

(6) Essential businesses described in NAC 414.XXX(1)(s) may only serve one customer or group of customers that originate at the same address at the same time or are members of the same household. "Pooling" customers is prohibited.

(7) Essential businesses described in NAC 414.XXX(1)(x) must conform to any further regulation and guidelines promulgated by the Nevada Department of Health and Human services.

(e) In addition to the general requirement described in 3(a), (b), & (c), the following Non-Essential Businesses described in Section 2 are subject to the following restrictions:

(1) Zoos and aquariums, referenced in 2(a), must close to the public but may maintain essential operations by staff members for the health and safety of animals.

(2) Pubs, wineries, bars, and breweries, as referenced in 2(g), may provide meals on a take-out, curbside pickup, delivery, or drive-through basis.

(3) Gaming machines and gaming operations, as referenced in 2(h), do not include online gaming or mobile wagering operations.

EXHIBIT E

Stay at Home Order still in Effect. For the latest info, visit nvhealthresponse.nv.gov.

Nevada Governor Steve Sisolak



DECLARATION OF EMERGENCY DIRECTIVE 016

WHEREAS, on March 12, 2020, I, Steve Sisolak, Governor of the State of Nevada issued a Declaration of Emergency to facilitate the State's response to the COVID-19 pandemic; and

WHEREAS, on March 13, 2020, Donald J. Trump, President of the United States declared a nationwide emergency pursuant to Sec. 501(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121-5207 (the "Stafford Act"); and

WHEREAS, since the March 12, 2020 Declaration of Emergency, I have issued fifteen Directives pursuant to that order to provide for the safety, wellbeing, and public health of Nevadans and the administration of the State of Nevada; and

WHEREAS, the ability of the novel coronavirus that causes COVID-19 to survive on surfaces for indeterminate periods of time renders some property unusable and contributes to contamination, damage, and property loss; and

WHEREAS, the propensity of the COVID-19 disease to spread via interpersonal contact precipitated the widespread closure of certain businesses and the imposition of limitations on other businesses; and

WHEREAS, on April 21, 2020, the National Governors Association issued guidance for a staged reopening that protects the public's health while laying a strong foundation for long-term economic recovery; and

WHEREAS, Nevada Revised Statutes 414.060 outlines powers and duties delegated to the Governor during the existence of a state of emergency, including without limitation, directing and controlling the conduct of the general public and the movement and cessation of movement of pedestrians and vehicular traffic during, before and after exercises or an emergency or disaster, public meetings or gatherings; and

WHEREAS, NRS 414.070 outlines additional powers delegated to the Governor during the existence of a state of emergency, including without limitation, enforcing all laws and regulations relating to emergency management and assuming direct operational control of any or all forces, including, without limitation, volunteers and auxiliary staff for emergency management in the State; providing for and compelling the evacuation of all or part of the population from any stricken or threatened area or areas within the State and to take such steps as are necessary for the receipt and care of those persons; and performing and exercising such other functions, powers and duties as are necessary to promote and secure the safety and protection of the civilian population; and

WHEREAS, Article 5, Section 1 of the Nevada Constitution provides: "The supreme executive power of this State, shall be vested in a Chief Magistrate who shall be Governor of the State of Nevada;" and

NOW, THEREFORE, by the authority vested in me as Governor by the Constitution and the laws of the State of Nevada and the United States, and pursuant to the March 12, 2020, Emergency Declaration,

IT IS HEREBY ORDERED THAT:

SECTION 1:	To the extent this Directive conflicts with earlier Directives or regulations promulgated pursuant to the March 12, 2020 Declaration of Emergency, the provisions of this Directive shall prevail.
	Effective May 1, 2020, non-essential retail businesses identified in Directive 003 Emergency Regulation NAC 414.XXX(2)(d), NAC 414.XXX(2)(g), and NAC 414.XXX(2)(k)

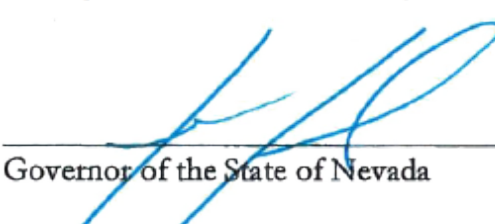
SECTION 2:	may resume retail sales on a curbside or home delivery basis only. Businesses reopening under this provision must adopt measures promulgated by the Nevada State Occupational Safety and Health Administration to minimize the risk of spread of COVID-19 including social distancing and sanitation measures, and abide by all other guidance promulgated pursuant to this Directive. To the extent practicable, businesses must provide services in a manner disallowing the formation of queues whereby persons congregate in a manner that violates the social distancing guidelines above. All businesses are encouraged to permit their employees to work from home to the maximum extent practicable.
SECTION 3:	Section 5 of Directive 003 is hereby amended. Effective May 1, 2020, licensed cannabis dispensaries may engage in retail sales on a curbside pickup or home delivery basis pursuant to guidance that shall be issued by the Department of Taxation in conjunction with the Cannabis Compliance Board, and subject to all local ordinances or municipal code. Retail cannabis dispensaries must adopt measures promulgated by Nevada State Occupational Safety and Health Administration (OSHA) to minimize the risk of spread of COVID-19 including social distancing and sanitation measures. All retail cannabis dispensaries are encouraged to permit their employees to work from home to the maximum extent practicable.
SECTION 4:	Directive 003, as amended herein is hereby extended until May 15, 2020, unless specifically terminated or extended by subsequent Directive.
SECTION 5:	Directive 004 is hereby amended. Effective May 1, 2020, Department of Motor Vehicle (DMV) expiration dates referenced in Directive 004 for all commercial and commercial licenses, non-commercial and commercial instruction permits, identification cards, Driver Authorization Cards (DAC), vehicle or off-highway vehicle registrations, motor carrier active and temporary credentials, or any other credentials issued by the DMV as required by state law that have expired or will expire during DMV public office closures due to the COVID-19 State of Emergency shall be extended for a period of 90 days from the date DMV offices reopen to the public. Directive 004 is further amended to provide that the expiration date on said licenses, permits, cards, and other DMV credentials expiring within 30 days after DMV offices reopen to the public shall be extended for an additional 60 days from the date DMV offices reopen to the public. Where possible, DMV customers are strongly encouraged to renew said licenses, permits, cards and other DMV credentials through DMV's website, portal, or kiosks.
SECTION 6:	Directive 006 is hereby extended from April 16, 2020 to May 15, 2020, unless specifically terminated or renewed by subsequent Directive.
SECTION 7:	Directive 007 is hereby extended until May 15, 2020, unless specifically terminated or extended by subsequent Directive.
SECTION 8:	Directive 010 is hereby extended until May 15, 2020. Directive 010 is hereby modified to the extent that individuals may leave their residences for the additional purpose of picking up goods at non-essential retail businesses offering curbside delivery pursuant to Section 2 of this Directive. Recognizing that COVID-19 is still present in Nevada and highly contagious, Nevadans are advised that they are safer at home and should avoid interpersonal contact with persons not residing in their households to the extent practicable. To reduce the spread of COVID-19 via respiratory transmission, the Nevada public should utilize face coverings in public spaces.
SECTION 9:	Section 2 of Directive 013 is hereby amended. Golf, tennis, and pickleball activities may resume on May 1, 2020 if they are able to operate in a manner that is consistent with social distancing guidelines, can do so without violating the provisions set forth in Directive 007, adopt sanitation measures intended to reduce the spread of COVID- 19, and abide by all guidance promulgated pursuant to this Directive. This section shall not be construed to permit the reopening of businesses defined in Emergency Regulation NAC 414.XXX:(2)(a) through NAC 414.XXX:(2)Q), with the exception of retail businesses classified under NAC 414.:XX:X(2)(d), NAC 414.XXX:(2)(g), and NAC 414.XXX:(2)(k).
SECTION 10:	Section 4 of Directive 013 is hereby amended. Effective May 1, 2020, places of worship may offer services on an in-car or drive-in basis, if these services allow occupants to remain in their vehicles, can be held in a manner consistent with social distancing guidelines, implement precautions intended to reduce the spread of COVID-19, and abide by other guidance promulgated pursuant to this Directive. The prohibition of ten or more persons for indoor services shall remain in effect for the duration that this Directive shall be in effect, unless specifically terminated or renewed by subsequent order.
SECTION 11:	All other provisions of Directive 013 shall be extended to May 15, 2020, unless specifically terminated or renewed by subsequent order.
	The Nevada State Occupational Safety and Health Ad.ministration (OSHA) shall

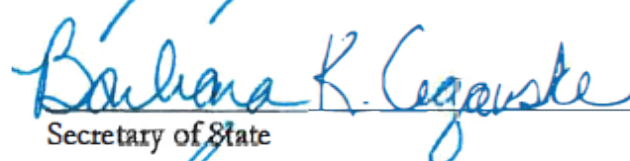
SECTION 12:	continue to ensure that businesses reopened pursuant to this Directive or otherwise operating during the state of emergency provide adequate protections to their workers and adopt sanitation protocols that minimize the risk of spread of COVID-19 among their workforce.
SECTION 13:	Gaming operations, not including licensed online gaming or mobile wagering operations, shall remain closed until the Gaming Control Board determines that operations may safely resume. The Gaming Control Board shall promulgate guidance for a phased and incremental resumption of gaming operations, as well as criteria regarding when operations may resume.
SECTION 14:	Previous Directives not specifically referenced herein remain in effect for the duration that this Directive shall remain in effect, unless specifically terminated or extended renewed by subsequent Directive.
SECTION 15:	This Directive shall remain in effect until May 15, 2020, unless extended or terminated by a subsequent Directive promulgated pursuant to the March 12, 2020 Declaration of Emergency to facilitate the State's response to the COVID-19 pandemic.
SECTION 16:	No provision of this Directive or any previously issued Directive shall be construed to impose a termination date on the Declaration of Emergency for COVID-19 issued on March 12, 2020. The Declaration of Emergency shall remain in effect until the Chief Medical Officer notifies the Governor that the health event has been abated and the Governor issues an order terminating the emergency.

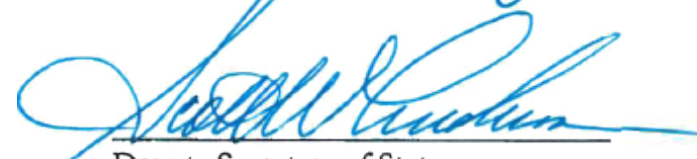
Declaration of Emergency Directive 16 Orders



IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Nevada to be affixed at the State Capitol in Carson City, this 29th day of April, in the year two thousand twenty.


Governor of the State of Nevada


Secretary of State


Deputy Secretary of State

Governor Sisolak Guidance Directive 016
Governor Sisolak Guidance Directive 016 – Best Practices for Golf Courses
Curbside Commerce Safety Protocol

Executive

- Governor
- Lt. Governor
- Secretary of State
- Attorney General
- State Treasurer
- State Controller

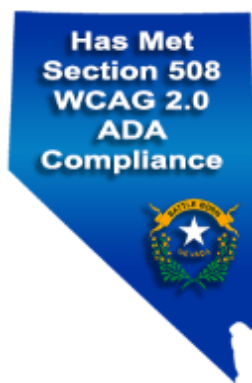
Alerts

- Amber Alerts
- Consumer Affairs
- Weather Alerts
- 211- Service Information
- 511 - Road Conditions

Legislature

- Legislature Website
- NELIS
- Legislature Meetings
- Find Your Legislator
- Nevada State Senate
- Nevada State Assembly

Select Language ▼





**NEVADA
HEALTH
RESPONSE**

Gov. Sisolak Guidance: Directive 016

April 29, 2020

Understanding Governor Sisolak's latest directive extending previous directives and making certain changes

Since the start of the COVID-19 crisis, Governor Sisolak has issued a series of orders intended to reduce interactions, minimize the risk of infection, and slow the rate of spread by limiting opportunities for interpersonal contact. This Directive extends the deadlines for many previous directives and loosens restrictions on certain activities. Below is some general guidance on what this new directive means and how it applies to you.

What is new in this directive?: The new Directive is the first step in the Nevada United: Roadmap to Recovery plan before the State officially enters Phase 1. It loosens some restrictions that were previously in place:

- All retail businesses previously identified as non-essential will be allowed to operate under curbside commerce models, similar to curbside pickup currently allowed for restaurants and eateries
 - This now includes curbside sales for retail cannabis dispensaries
- Golf, tennis, and pickleball activities may resume as long as they comply with social distancing, sanitation, and other requirements intended to prevent the spread of COVID-19
- Drive-up religious services are now permitted, as long as congregants stay in a vehicle and maintain at least 6 feet of social distance from people not in their household

Does this end the Stay at Home order?: No. This Directive extends the Stay at Home orders from previous directives to May 15, 2020, meaning Nevadans should stay at home except for necessary outings like going to work as an essential employee, buying groceries, picking up food or retail items from curbside pickup, or attending medical appointments.

Nevadans who wish to enjoy the great outdoors can still do so, including walking in your neighborhood or in a nearby park. Individuals should practice good social

distancing of at least 6 feet from other members of the public and avoid touching any outdoor equipment (like playground equipment) where the virus may be lurking. Congregating outdoors without maintaining safe social distancing is not permitted. We strongly encourage Nevadans to wear masks in public whenever possible.

What about gatherings?: The ban on gatherings of 10 more people in any indoor or outdoor public area still stands.

What does this mean for my leisure activities?: It means that some publicly accessible sporting and recreational venues and activities—golf, tennis, and pickleball—that were paused by [Directive 013](#) can reopen as long as they adhere to the all of the guidelines and conditions outlined by the previous directives, starting with [Directive 003](#) issued on March 20, 2020 and ending with today's [Directive 016](#), which loosens some of the restriction. All other activities referenced in Directive 013 are still prohibited for now.

It says publicly accessible above; can private golf and tennis clubs reopen?: Yes, as long as they follow the public health guidelines, they can absolutely reopen. However, clubhouses, bars, and amenities, like gyms, must remain closed.

What are some examples of best practices?: While golfing, don't share a golf cart with people outside your household. Be mindful of and try to avoid exposure to shared equipment or hard surfaces like flagsticks, bunker rakes, scorecards, etc. Specific guidance for golf courses can be found [HERE](#).

What if I would like to attend a faith based service?: During challenging times many people have relied on their faith. Places of worship have been encouraged to hold services via alternative means, like videos, streaming, or broadcast. The people that are performing these services should, of course, do so in a manner that they are practicing social distancing and are encouraged to wear facial coverings. Remember, the best thing we can do right now is to Stay Home for Nevada. Because we are trying to get everyone to stay home, and we have prohibited all gatherings over ten people, this is not yet the time to get people together to celebrate their faith. Nobody should be physically attending in-person, indoor worship services with ten or more people. However, drive-in services are now permitted, as long as congregants stay in a vehicle and maintain at least 6 feet of social distance from people not in their household.

What does this mean for certain businesses?: It means non-essential retailers that could not operate at all under previous directives can open for curbside, as well as home delivery services. Non-essential retailers must comply with Nevada State Occupational Safety and Health Administration (NV OSHA) measures to protect employees and customers. Retailers also need to comply with social distancing guidance from the [CDC](#), the Governor's Office, and any applicable Nevada state regulatory agency or board. For

a reminder of which businesses are considered non-essential, please see guidance [HERE](#), and for more information on how to safely operate curbside services, refer to this [GUIDANCE](#).

Additionally, retail cannabis dispensaries can now offer curbside sales, in addition to delivery services previously allowed under [Directive 003](#). Licensed cannabis retailers must continue to comply with all social distancing guidance from previous directives and NV OSHA guidance for protecting employees and customers. These retailers should also comply with any related guidance from the Cannabis Compliance Board.

Gaming operations are still closed until further notice.

Are smoke shops, breweries, and wine, beer, and liquor stores open?: Yes; non-essential retailers licensed to sell tobacco or alcohol on a take-away basis are now allowed to open for curbside or home delivery services only. Those retailers must comply with NV OSHA standards, local laws and regulations, and applicable licensing provisions.

Can I buy a new car, refrigerator, or couch?: This Directive extends the closure of showrooms to May 15, 2020. Those businesses have all been deemed essential, so all of the items that they sell can still be purchased. However, you'll have to use different forms of purchase, like shipping, curbside pickup, or home delivery.

I'm thinking about buying a new house. Can I see it?: Yes...but you'll have to look at pictures, take a virtual tour, and handle all of the paperwork (whenever possible) without seeing anyone in person. For now, "Open Houses" and in-person showings of single and multi-family homes that are occupied by renters are prohibited. You may still arrange to view an unoccupied house on an appointment basis.

Can I call my barber or stylist to come over?: No, not while this directive is in place. Not only does it put you both at risk of spreading the disease to one another and those that you're staying at home with, it could also cost them their license!

What else does this directive do?: [Directive 016](#) also extends other items covered in previous directives, like the changes to public meetings, and extension of legal deadlines and professional licensing requirements.

Additionally, for any drivers' license or other card issued by the Department of Motor Vehicles that expires during the time that the DMV is closed to the public, the expiration date is extended for 90 days after the day the DMV offices reopen to the public.

If I'm providing an essential good or service, what should I do?: Directives affecting essential businesses ([Directive 003](#) and [Directive 013](#)) haven't changed, except that

those directives are now extended through May 15, 2020. Essential businesses that are still providing goods or services need to make sure that foot traffic is kept to a minimum and ensure that social distancing standards are maintained. When going to these places, people need to be spaced out and as far away from each other as possible, especially when a line is forming. Those engaging in curbside commerce should review the Curbside Commerce Safety Protocols.

I've heard of essential businesses remaining open that aren't protecting their employees. What are we doing to protect those brave Nevadans? The Nevada Occupational Safety and Health Administration, or OSHA for short, is ensuring that all open businesses are keeping their employees safe, adhering to proper social distancing, and keeping their workplaces clean. Call NV OSHA if you'd like to alert them of any unsafe conditions.

Please note, additional guidance on all of Governor Sisolak's emergency directives can be found [HERE](#).

EXHIBIT F

From: Allen Kaercher <akaercher@kaercherinsurance.com>
Sent: Thursday, March 19, 2020 12:38 PM
To: Block, Marika; Kropp, William
Cc: Robin Rider
Subject: FW: TI claim

Good Morning Marika and Bill The Governor of the State of Nevada issued a "civil Authority" to close ALL gaming establishments, Hotels and non-essential business, thus causing a Business Interruption loss. Therefore, the client wishes to submit a claim to AFM on Business Interruption. Thank You

William Allen Kaercher

President

9555 Hillwood Drive, Suite 140, Las Vegas, NV 89134
Main: 702.304.7800 | Direct: 702.304.7814 | Fax: 702.386.7970
Toll Free: 844.421.3560 | Cell: 702.378.9814
www.kaercherinsurance.com



From: Anthony, Brad
Sent: Thursday, March 19, 2020 8:38 AM
To: Allen Kaercher <akaercher@kaercherinsurance.com>; Robin Rider <rrider@kaercherinsurance.com>
Cc: Griffis, Jerry <RGRIFFIS@treasureisland.com>
Subject: TI claim

Allen/Robin:

We need to file a claim on the expiring policy for Business Interruption. I received via a law firm AFM's initial letter trying to limit coverage generally (not addressed to us), but feel that it ignores much precedent and can be disregarded except that it shows that we are in for a fight. Still, the claims need filed, and as you are BOR for TI, we would appreciate your assistance in filing it.

Thank you.

Brad Anthony
General Counsel

Treasure Island Hotel & Casino
3300 Las Vegas Blvd., South
Las Vegas, NV 89109
702-894-7510 - phone
702-894-7295 - facsimile

Circus Circus Hotel and Casino
2880 Las Vegas Blvd., South

Las Vegas, NV 89109

EXHIBIT G

Affiliated FM Insurance Company
6320 Canoga Ave., Suite 1100
Woodland Hills, CA USA 91367
T: 818 / 227-2200 F: 818 / 340-8654
E-mail: david.carroll@fmglobal.com

April 9, 2020

(Send via email to banthony@treasureisland.com)

Mr. Brad Anthony
General Counsel
TREASURE ISLAND HOTEL & CASINO
3300 Las Vegas Blvd., South
Las Vegas, NV 89109

Re: **TREASURE ISLAND, LLC**
3300 Las Vegas Boulevard South
Las Vegas, Nevada
Loss ID: 415972
Claim ID: 500756
Policy No.: GS784
Date of Loss: 16-Mar-2020
Description: Communicable Disease

Dear Mr. Anthony:

Briefly recapping our discussion, Allen Kaercher, Kaercher Insurance has reported the shutdown of Treasure Island, LLC's business operations in Las Vegas due to the coronavirus (COVID-19). The location affected is 3300 Las Vegas Boulevard South, Las Vegas, NV 89109.

According to the loss notice, the closure of this location took effect on March 16, 2020 upon the direction of officers of the Company, and based on the order of governmental authorities. It is uncertain when the location would reopen. Per our discussion, it is our understanding that Treasure Island, LLC was not aware of any employees infected with the virus, nor whether the virus was present at any of the locations. We also understand that there was no physical damage or loss to Insured property at the location. Please advise if our understanding is incorrect.

Affiliated FM Insurance Company Policy No. GS784 contains additional coverages for COMMUNICABLE DISEASE – PROPERTY DAMAGE annual aggregate and COMMUNICABLE DISEASE – BUSINESS INTERRUPTION annual aggregate. COVID-19 meets the definition of a communicable disease under the policy. Other key conditions of this coverage are the actual not suspected presence of a communicable disease at a location owned, leased or rented by Treasure Island, LLC, access to which has been limited, restricted or prohibited for more than 48 hours. Pertinent sections of Affiliated FM Insurance Company Policy No. GS784 state in part, as follows:

3.Communicable Disease - Business Interruption

If a described location owned, leased or rented by the Insured has the actual not suspected presence of communicable disease and access to such described location is limited, restricted or prohibited by:

- a) An order of an authorized governmental agency regulating such presence of communicable disease; or
- b) A decision of an Officer of the Insured as a result of such presence of communicable disease,

This Policy covers the Business Interruption Coverage loss incurred by the Insured during the Period of Liability at such described location with such presence of communicable disease.

This coverage is subject to the Qualifying Period in the Declarations section of this Policy.

Communicable Disease - Business Interruption Exclusions: As respects Communicable Disease - Business Interruption, the following additional exclusions apply:

This Policy does not insure loss resulting from:

- a) The enforcement of any law or ordinance with which the Insured was legally obligated to comply prior to the time of the actual spread of communicable disease.
- b) Loss or damage caused by or resulting from terrorism, regardless of any other cause or event, whether or not insured under this Policy, contributing concurrently or in any sequence of loss.

The Period of Liability for this Business Interruption

Coverage Extension will be: The period of time:

- a) Starting at the time of the order of the authorized governmental agency or the Officer of the Insured; but
- b) Not to exceed the time limit shown in the Limits of Liability clause in the Declarations section,

This period of time is part of and not in addition to any Period of Liability applying to any coverage provided in the Business Interruption section.

As indicated, we understand that there has not been any reported case of COVID-19 at any of Treasure Island LLC's insured locations. If you become aware of any employee or other individuals who were at an insured location who have tested positive for COVID-19, or any other information that the virus was present at an insured location, please advise us, as we will need to request certain additional detailed information to assist with our investigation. If any of the foregoing should change or is incorrect, or you become aware of additional information that may affect our understanding of the facts, please feel free to contact us so we can consider any such additional information.

Neither this letter nor our investigation is an admission or denial of liability and does not waive any right or duties of either party under the Factory Mutual Insurance Company Policy. Anything done or to be done by Factory Mutual Insurance Company, or on its behalf, in connection with the above described matter, including but not limited to, any investigation into the cause or amount of loss or other matter relative thereto, shall not waive, invalidate, forfeit or modify any of its rights under the policies issued by it.

We would like to thank you in advance for your cooperation in this matter. In the interim, should you have any questions or comments, please feel free to contact us.

Sincerely,



David P. Carroll
General Adjuster
Los Angeles Ops Claim

em: Mr. William Allen Kaercher
President
Kaercher Insurance
9555 Hillwood Drive, Suite 140
Las Vegas, NV 89134
akaercher@kaercherinsurance.com

AFM/LA Ops Claims- David Carroll
AFM/LA Ops Claims- Imaging

EXHIBIT H

Talking Points on the 2019 Novel Coronavirus (2019-nCoV)

“2019 Novel Coronavirus (2019-nCoV) is a virus (more specifically, a [coronavirus](#)) identified as the cause of an outbreak of respiratory illness first detected in Wuhan, China. Early on, many of the patients in the outbreak in Wuhan, China reportedly had some link to a large seafood and animal market, suggesting animal-to-person spread. However, a growing number of patients reportedly have not had exposure to animal markets, indicating person-to-person spread is occurring. At this time, it’s unclear how easily or sustainably this virus is spreading between people. The latest situation summary updates are available on CDC’s web page [2019 Novel Coronavirus, Wuhan, China](#).”¹

Several of our clients have inquired as to whether there is coverage for losses they have or expect to incur as a result of the virus, which has spread outside of China. As one might expect, we have a wide range of clients who may be affected in a variety of ways by this outbreak. This document will not deal with all the issues associated with this matter, but will be helpful in providing responses to basic questions as it relates to the coverage provided by our policies.

The standard FM Global Advantage and AFM proVision forms provide a specific coverage for Communicable Disease. The Advantage policy provides Communicable Disease Response under Property Damage and Interruption by Communicable Disease under Time Element. The proVision policy provides coverage for Communicable Disease – Property Damage and Communicable Disease – Business Interruption. This memo addresses the standard policy language (cited below).

Lead in policy language policy language is noted below:Property Damage

The 2019 Advantage Policy states in part:

If a **location** owned, leased or rented by the Insured has the actual not suspected presence of **communicable disease** and access to such location is limited, restricted or prohibited by:

- 1) an order of an authorized governmental agency regulating the actual not suspected presence of communicable disease; or
- 2) a decision of an Officer of the Insured as a result of the actual not suspected presence of **communicable disease**,

The proVision states:

If a **described location** owned, leased or rented by the Insured has the actual not suspected presence of **communicable disease** and access to such **described location** is limited, restricted or prohibited by:

- a) An order of an authorized governmental agency regulating or as result of such presence of **communicable disease**; or
- b) A decision of an Officer of the Insured as a result of such presence of **communicable disease**

This same initial lead in language also appears under the Advantage Time Element coverage and the proVision Business Interruption coverage.

Q. What is the trigger of coverage for Property Damage?

A. Under each policy there must be the actual presence of a **communicable disease** at a location owned, leased or rented by the Insured and the access must be limited by either 1) or 2) under the Advantage, or a) or b) under proVision

Q. When does this coverage apply?

- A. Advantage Policy – under both Property Damage and Time Element each state:
 - This Additional Coverage will apply when access to such location is limited, restricted or prohibited in excess of 48 hours
- A. AFM proVision Policy - under both Property Damage and Business Interruption each state:
 - This coverage is subject to the Qualifying Period in the Declarations section of this Policy

Q. Would an employee at a **location** who is affected with the **communicable disease** be considered the “actual presence” of a **communicable disease**?

¹ <https://www.cdc.gov/coronavirus/2019-ncov/about/index.html>

A. Yes - if it can be confirmed the employee actually has the **communicable disease** and that the presence of the **communicable disease** is the basis for the decision limiting access as noted in sub-sections 1) and 2) under the Advantage Policy or a) and b) under proVision Policy.

Q. How can we determine whether an employee has the **communicable disease**

A. In some jurisdictions, access to medical records is not possible without employee consent. However, the Insured can ask the employee for the necessary medical diagnosis.

Q. If an Insured closes one or more locations because they suspect the presence of the **communicable disease** or does so in an abundance of caution, would that trigger coverage.

A. No. Coverage is only triggered if there is the actual presence of a **communicable disease**.

Q. What deductible would apply in the event of a covered loss?

A. If a coverage-specific deductible is not specified, the largest applicable deductible would apply. For example, if the location deductible is \$1,000,000 combined and the All Other Loss deductible is \$250,000, the \$1,000,000 would apply.

Q. Would an outbreak of a different virus be considered part of the same occurrence?

A. No

Q. Does coverage under Civil or Military Authority apply?

A. No

The Advantage form states:

“This Policy covers the Actual Loss Sustained and **EXTRA EXPENSE** incurred by the Insured during the **PERIOD OF LIABILITY** if an order of civil or military authority limits, restricts or prohibits partial or total access to the insured **location** provided such order is the direct result of physical damage of the type insured at the insured **location** or within five statute miles/eight kilometres of it...”

The proVision form states:

“This Policy covers the Business Interruption Coverage loss incurred by the Insured during the Period of Liability if an order of civil or military authority prohibits access to a **location** provided such order is the direct result of physical damage of the type insured at a **location** or within five (5) statute miles of it...”

A virus will typically not cause physical damage. Under either policy, the presence of a communicable disease does not constitute physical damage and is not of the type insured against as a virus falls within the definition of **contamination**, which is excluded.

Q. Does coverage under Contingent Time Element Extended (Advantage) or Supply Chain (ProVision) or Ingress/Egress apply?

A. No

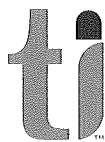
These coverages require physical loss or damage to property of the type insured under either policy. The presence of a communicable disease does not constitute physical damage and is not of the type insured against as a virus falls within the definition of **contamination**, which is excluded.

Q. Is there any activity to consider prior to confirming coverage or issuing a payment?

A. Yes - keep in mind that most policies issued have a specific limit for this coverage and an annual aggregate applies. Check with the Claims Manager Written as well as the DSGA Written prior to confirming coverage and prior to issuing any payment to determine the status of the annual aggregate.

While the FM Global Advantage offers some of the broadest property coverage available, there are still events for which there may be no coverage. The Advantage and AFM policies insure against physical damage and require that there be insured physical loss or damage to property before its coverages become available. The Communicable Disease coverage provides for a specific trigger of coverage under these Additional Coverages. If there is a report of loss, FM Global stands ready to provide all the coverage available under the terms and conditions of its policies.

EXHIBIT I



TREASURE ISLAND
Las Vegas

Brad R. Anthony
General Counsel

May 7, 2020

Via Electronic Mail

David Carroll
General Adjuster
Factory Mutual Insurance Company
6320 Canoga Ave., Suite 1100
Woodland Hills, CA USA 91367
david.carroll@fmglobal.com

Re: Insured: Treasure Island, LLC
Insurer: Affiliated FM Insurance Co. (AFM)
Policy No.: GS784 (the Policy)
Claim No.: 500756 (the Claim)

Dear Mr. Carroll:

Thank you for your letters dated April 9 and 16, 2020, regarding Treasure Island's Claim under the Policy. As discussed more fully below, AFM's coverage positions are in error and, at a minimum, inconsistent. We ask, therefore, that AFM immediately reconsider its coverage positions and confirm the availability of coverage for Treasure Island's claimed losses, which continue to accrue.

As you know, Treasure Island submitted its Claim to AFM on March 19, 2020. Three weeks later, on April 9, 2020, you acknowledged the Claim with a telephone call to me. During that call and several subsequent calls, I advised you that, among other things, Treasure Island's Claim was based on the physical loss of property and the physical damage to property caused by the presence of COVID-19, as well as related government orders mandating, among other things, that Treasure Island close its doors. You asked whether any employees of Treasure Island had tested positive for COVID-19, to which I advised that I was uncomfortable disclosing personal employee information given the potential privacy implications. To be clear, however, at no time did I advise that no Treasure Island employee had been infected with COVID-19. Your April 9, 2020, letter, which purports to recap our conversation and which suggests otherwise, clearly mischaracterizes our conversation.

Your April 9 letter also misrepresents our conversation in other ways beyond our discussion about Treasure Island's employees. Specifically, your letter incorrectly states that Treasure Island was not aware of any property where COVID-19 was present; and that there has been no physical loss of or physical damage to Treasure Island's property. Each of these statements is false. Your letter does go on to suggest,

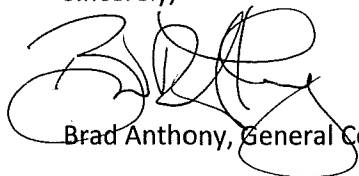
however, that if Treasure Island did experience physical loss or damage from COVID-19, coverage would be available under the Policy for loss or damage caused by communicable disease, but that such coverage is subject to a \$100,000 sublimit (a small fraction of the Policy's coverage for business interruption losses).

On April 16, 2020, I received a second letter from you, apparently in response to an e-mail you received from our insurance broker, inquiring about the coverage available for business interruption losses given Treasure Island's closure pursuant to orders from civil authorities issued in response to, among other things, physical damage of the type insured under the Policy either at a "location" or within 5 miles of a "location." Apparently relying on the misstatement contained in your April 9 letter that there was no physical loss of property or physical damage to such property, you cite a Policy exclusion for "contamination," the definition of which includes "virus," which you assert applies to bar coverage for loss or damage caused by COVID-19. This statement is directly contradicted by the statement in your earlier April 9 letter that coverage *is* available for physical loss or damage resulting from "communicable disease." As you know and as you acknowledged during our April 9 telephone call specifically, COVID-19 is a "communicable disease." There can be no question, therefore, that coverage *is not* excluded for loss resulting from COVID-19.

Your April 16 letter also is in conflict with your earlier April 9 letter with respect to other coverages available under the Policy. In your April 16 letter, you state that "To the extent Treasure Island LLC is seeking coverage under any Policy provisions other than the Communicable Disease provisions, coverage is not available absent physical loss or damage *of the type insured.*" (Emphasis added) But, as I just illustrated above, your April 9 letter and your April 16 letter both suggest that physical loss or damage caused by COVID-19 – a "communicable disease" – *is covered*. Thus, your statements are in conflict, both among themselves and with the Policy. And, to the extent your conflicting statements are both true (*i.e.* that the Policy covers physical loss or damage caused by COVID-19 and excludes physical loss or damage caused by COVID-19), then the Policy is ambiguous, in which case it must be construed in Treasure Island's favor. Farmers Ins. Grp. v. Stonik By & Through Stonik, 110 Nev. 64, 67 (1994) ("Any ambiguity in an insurance contract must be interpreted against the drafting party and in favor of the insured."). Accordingly, for that reason as well, we ask that AFM promptly acknowledge coverage for Treasure Island's Claim and provide Treasure Island with appropriate forms and instructions for submitting a partial proof of loss.

Treasure Island reserves all rights under the Policy and the law. Thank you for your assistance with Treasure Island's Claim.

Sincerely,



Brad Anthony, General Counsel

EXHIBIT J

Affiliated FM Insurance Company
6320 Canoga Ave., Suite 1100
Woodland Hills, CA USA 91367
T: 818 / 227-2200 F: 818 / 340-8654
[E-mail: david.carroll@finglobal.com](mailto:david.carroll@finglobal.com)

April 16, 2020

(Send via email to banthony@treasureisland.com)

Mr. Brad Anthony
General Counsel
TREASURE ISLAND HOTEL & CASINO
3300 Las Vegas Blvd., South
Las Vegas, NV 89109

Re: **TREASURE ISLAND, LLC**
3300 Las Vegas Boulevard South
Las Vegas, Nevada
Loss ID: 415972
Claim ID: 500756
Policy No.: GS784
Date of Loss: 16-Mar-2020
Description: Communicable Disease

Dear Mr. Anthony:

We received an email from Robin Rider with Kaerchar Insurance inquiring about the Civil Authority provisions in the Affiliated FM Insurance Company Policy No. GS784 ("Policy") with respect to your reported claim. We previously advised of the coverage provisions of the Communicable Disease coverage in our Policy in our letter dated April 9, 2020. To the extent Treasure Island LLC is seeking coverage under any Policy provisions other than the Communicable Disease provisions, coverage is not available absent physical loss or damage of the type insured. The Policy excludes coverage for contamination, and a virus such as COVID-19 is a form of contamination as defined in the Policy and is therefore excluded. The relevant provisions, in part, are set forth below:

"GROUP III: This Policy excludes:

Contamination, and any cost due to **contamination** including the inability to use or occupy property or any cost of making property safe or suitable for use or occupancy. If **contamination** due only to the actual not suspected presence of **contaminant(s)** directly results from other physical damage not excluded by this Policy, then only physical damage caused by such **contamination** may be insured. This exclusion does not apply to radioactive contamination which is excluded elsewhere in this Policy."

The Policy defines **contamination** under DEFINITIONS section of the Policy on Page 42:

"contamination means any condition of property due to the actual or suspected presence of any foreign substance, impurity, pollutant, hazardous material, poison, toxin, pathogen or pathogenic organism, bacteria, virus, disease causing or illness causing agent, fungus, mold or mildew."

Consequently, based on the limited information provided at this time, the only coverage potentially available under the Policy for losses arising from COVID-19 is found in our Communicable Disease coverages, assuming the conditions of those coverages are satisfied. As discussed above, to the extent Treasure Island LLC believes that it has sustained physical loss or damage from causes of loss other than COVID-19, please provide further information so that we may investigate those causes of loss.

The foregoing enumeration of specific policy provisions is not intended to waive any other defenses which are now, or which may hereafter become available to Affiliated FM Insurance Company. The foregoing does not constitute a waiver of any term or condition of the Policy or of any rights and defenses under the Policy and Affiliated FM Insurance Company hereby expressly reserves all of its rights and defenses thereunder.

Neither this letter nor our investigation is an admission or denial of liability and does not waive any right or duties of either party under the Affiliated FM Insurance Company Policy No. GS784. Anything done or to be done by Affiliated FM Insurance Company, or on its behalf, in connection with the above described matter, including but not limited to, any investigation into the cause or amount of loss or other matter relative thereto, shall not waive, invalidate, forfeit or modify any of its rights under the policies issued by it.

We would like to thank you in advance for your cooperation in this matter. In the interim, should you have any questions or comments, please feel free to contact us.

Sincerely,

A handwritten signature in black ink, appearing to read "David P. Carroll". The signature is written in a cursive, flowing style.

David P. Carroll
General Adjuster
Los Angeles Ops Claim

em: Mr. William Allen Kaercher
President
Kaercher Insurance
9555 Hillwood Drive, Suite 140
Las Vegas, NV 89134
akaercher@kaerchetinsurance.com

AFM/LA Ops Claims- David Carroll
AFM/LA Ops Claims- Imaging