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EXHIBITS

CASE NO. _____

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CASE NOTE

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION**

GRADUATE HOTELS REAL ESTATE
FUND III LP, on behalf of itself and AJ
CAPITAL REAL ESTATE FUND II LP,

Plaintiff,

v.

HARTFORD FIRE INSURANCE
COMPANY,

Defendant.

Case No.: _____

COMPLAINT

Plaintiff Graduate Hotels Real Estate Fund III LP, on behalf of itself and AJ Capital Real Estate Fund II LP (collectively, "Graduate Hotels"), by and through its attorneys, Perkins Coie LLP, for its Complaint for breach of contract, declaratory judgment pursuant to 735 ILCS § 5/2-701, and violation of 215 ILCS § 5/155 against Hartford Fire Insurance Company states as follows:

THE PARTIES

1. At all times herein, Graduate Hotels Real Estate Fund III LP ("Fund III") was a Delaware limited partnership with its principal place of business in Chicago, Illinois. At all times relevant herein until June 19, 2020, AJ Capital Real Estate Fund II LP ("Fund II") was a Delaware limited partnership with its principal place of business in Chicago, Illinois. On June 19, 2020, Fund II was merged with Fund III, with Fund III as the surviving joint entity.

2. Defendant Hartford Fire Insurance Company ("Hartford") is a Connecticut corporation, with its principal place of business in Hartford, Connecticut.

JURISDICTION AND VENUE

3. Jurisdiction is proper in this Court pursuant to 735 ILCS § 5/2-209(a)(1) because Hartford at all relevant times was registered with the Illinois Department of Insurance to transact insurance business within the State of Illinois and transacted insurance business within the State. Jurisdiction is additionally proper under 735 ILCS § 5/2-701 because an actual controversy exists

between Graduate Hotels and Hartford regarding the parties' rights and obligations under the insurance policies at issue.

4. Venue is proper in this Court pursuant to 735 ILCS § 5/2-103(e) because Hartford is licensed and does business in the State of Illinois and Graduate Hotels resides in Cook County, Illinois, where the insurance policies at issue herein were issued to Graduate Hotels. Venue is also proper pursuant to 735 ILCS § 5/2-101 because part of the transaction from which this action arose occurred in Cook County, Illinois.

NATURE OF THE ACTION

5. This is a civil action for breach of contract and declaratory relief arising out of Hartford's wrongful failure and refusal to honor its obligation to provide Graduate Hotels with coverage under two commercial property insurance policies for the multi-million-dollar losses of business income incurred by Graduate Hotels' more than 30 nationwide properties arising out of direct physical loss or damage caused by the novel coronavirus ("COVID-19") pandemic and/or the unprecedented state and municipal government orders that impaired, altered, and/or damaged the properties.

6. Graduate Hotels purchased policies from Hartford containing a specific "coverage extension" that acknowledges "virus" as a Covered Cause of Loss in certain circumstances, including here. One such circumstance is where a "virus . . . is the result of . . . a 'Specified Cause of Loss' other than fire or lightning . . .". The "Specified Cause[s] of Loss" include, among other things, "aircraft or vehicles." Despite the undisputed facts that COVID-19 was brought to the United States from China and Europe by infected individuals traveling here by aircraft and/or vehicles, and was spread throughout the United States, including into Graduate Hotels' properties, by and through individuals taking domestic aircraft flights and using vehicles to travel to the properties, Hartford denied Graduate Hotels' insurance claims for its substantial COVID-19-related costs and losses.

7. Hartford did not conduct even a *pro forma* investigation under its policies before denying Graduate Hotels' claims. Hartford never sent an investigator to any Graduate Hotels properties and failed to engage in any fact-finding or investigation related to the "virus" coverage extension *even after* Graduate Hotels responded to Hartford's initial denial of coverage by explaining how the "virus" coverage extension applies here and requesting that Hartford reopen its investigation.

8. Hartford's lack of investigation and denial of coverage are even more vexatious and unreasonable when considering that Hartford's parent company has *for years* acknowledged in public filings and statements that the Hartford group of insurers covers pandemic-related losses right alongside other "catastrophe insurance" risks like earthquakes, hurricanes, hailstorms, severe winter weather, wind storms, fires, tornadoes, and other natural or man-made disasters.

GENERAL ALLEGATIONS

The Policies

9. Hartford issued Special Multi-Flex Policy No. 22 UFJ ZX0057 to Fund II for the policy period of September 1, 2019 to September 1, 2020 (the "Fund II Policy"). A true and correct copy of the Fund II Policy is attached as **Exhibit A**. The Fund II Policy provides up to \$500,000,000 in coverage "in any one occurrence".

10. Hartford issued Multi-Flex Policy No. 22 UFJ BH6903 to Fund III for the policy period of September 1, 2019 to September 1, 2020 (the "Fund III Policy"). A true and correct copy of the Fund III Policy is attached as **Exhibit B**. The Fund III Policy provides up to \$433,672,580 in coverage "in any one occurrence."

11. The Fund II Policy and Fund III Policy (collectively, the "Policies") are substantially similar in all relevant respects. A list of the Graduate Hotels' properties insured under each of the Policies is attached as **Exhibit C** (the "Properties").

12. The Policies contain a Property Choice Elite Coverage Form obligating Hartford to "pay for direct physical loss of or direct physical damage to . . . Covered Property at an 'Insured

Premises' caused by or resulting from a Covered Cause of Loss." Covered Property includes "buildings or structures" that Graduate Hotels either owns or "are responsible for insuring," including any "[a]lterations, repairs or additions to the building" and any "building" that is "in the course of construction."

13. The Property Choice Elite Coverage Form contains numerous Coverage Extensions, including without limitation an extension for "FUNGUS", WET ROT, DRY ROT, BACTERIA AND VIRUS - LIMITED COVERAGE" ("Virus Property Coverage Extension"). The Virus Property Coverage Extension provides \$50,000 "in any one occurrence" and \$250,000 "in any one 'Policy Year'" and states in relevant part:

a. The coverage described below only applies when the 'fungus', wet or dry rot, bacteria or virus is the result of one or more of the following causes that occurs during the policy period and only if all reasonable means were used to save and preserve the property from further damage at the time of and after that occurrence.

(1) A 'specified cause of loss' other than fire or lightning;

b. We will pay for loss or damage by 'fungus', wet rot, dry rot, bacteria and virus. As used in this Limited Coverage, the term loss or damage means:

(1) Direct physical loss or direct physical damage to Covered Property caused by 'fungus', wet rot, dry rot, bacteria or virus, including the cost of removal of the "fungus", wet rot, dry rot, bacteria or virus;

(2) The cost to tear out and replace any part of the building or other property as needed to gain access to the "fungus", wet rot, dry rot, bacteria or virus; and

(3) The cost of testing performed after removal, repair, replacement or restoration of the damaged property is completed, provided there is a reason to believe that "fungus", wet rot, dry rot, bacteria or virus are present.

c. The coverage described under this Limited Coverage is limited to the Limit of Insurance shown in Property Choice Elite - Supplemental Declarations for Fungus, Wet Rot, Dry Rot, Bacteria and Virus Limited Coverage and at each 'Insured Premises'. Regardless of the number of claims, this Limit is the most we will pay for the total of all loss or damage arising out of all occurrences of 'specified causes of loss' (other than fire or lightning), Equipment Breakdown Accident that occurs to Equipment Breakdown Property and Flood which take place in a 12-month period (starting with the beginning of the present annual policy period). With respect to a particular occurrence of loss which results in 'fungus', wet rot, dry rot, bacteria or virus, we will not pay more than the Limit of Insurance shown in Property Choice Elite - Supplemental Declarations for each "Insured Premises" in any one 'Policy Year' applicable to 'Fungus', Wet Rot, Dry Rot, Bacteria and Virus - Limited Coverage even if the 'fungus', wet rot, dry rot, bacteria or virus continues to be present or active, or recurs, in a later policy period.

d. The coverage provided under this Limited Coverage does not increase the applicable Limit of Insurance on any Covered Property. If a particular occurrence results in loss or damage by ‘fungus’, wet rot, dry rot, bacteria or virus, and other loss or damage, we will not pay more, for the total of all loss or damage, than the applicable Limit of Insurance on the affected Covered Property. If there is covered loss or damage to Covered Property, not caused by "fungus", wet rot, dry rot, bacteria or virus, loss payment will not be limited by the terms of this Limited Coverage, except to the extent that ‘fungus’, wet or dry rot, bacteria or virus causes an increase in the loss. Any such increase in the loss will be subject to the terms of this Limited Coverage.

Property Choice Elite Coverage Form, Section B.12.

14. The Policies contain a Property Choice Elite Business Income and Extra Expense Coverage Form (“BI Coverage Form”) that obligates Hartford to “pay up to the Business Income and Extra Expense Limit of Insurance stated in the Property Choice Elite – Supplemental Declarations for the actual loss of Business Income you sustain and the actual necessary and reasonable Extra Expense you incur due to the necessary interruption of your business operations during the Period of Restoration due to direct physical loss of or direct physical damage to property caused by or resulting from a Covered Cause of Loss at “Insured Premises’.” BI Coverage Form, Section A. Hartford further extended this coverage to pay for “Extended Income” loss as provided in the Policies. *See* BI Coverage Form, Section C.3.

15. The BI Coverage Form provides a “Civil Authority” coverage extension for “the actual loss of Business Income you sustain and the actual necessary and reasonable Extra Expense you incur when access to your ‘Insured Premises’ is specifically prohibited by order of a civil authority as the direct result of a Covered Cause of Loss to property in the immediate area of your ‘Insured Premises’.” BI Coverage Form, Section C.1.

16. The BI Coverage Form also provides a “Dependent Properties” coverage extension for “the actual loss of Business Income you sustain and the actual, necessary and reasonable Extra Expense you incur due to the necessary suspension of your operations during the Period of Restoration. The suspension must be caused by direct physical loss of or direct physical damage to a Dependent Property caused by or resulting from a Covered Cause of Loss.” BI Coverage Form, Section C.2.a. “Dependent Properties” includes “property at premises owned and operated

by others that you depend onto . . . [a]ttract customers to your business premises.” BI Coverage Form, Section C.2.c.

17. The Policies extend “Ingress or Egress” coverage under the BI Coverage Form to “the actual loss of Business Income you sustain and the actual, necessary and reasonable Extra Expense you incur when ingress or egress to your ‘Insured Premises’ is specifically prohibited as the direct result of a Covered Cause of Loss to property at premises that is contiguous to your ‘Insured Premises.’” BI Coverage Form, Section C.5.

18. The BI Coverage Form provides a coverage extension for “Actual Loss Sustained and Extra Expenses Incurred for 30 Days” for “‘Fungus’, Wet Rot, Dry Rot, Bacteria and Virus – Limited Coverage” (“Virus BI Coverage Extension”). The Virus BI Coverage Extension states in relevant part:

a. The coverage described below only applies when the "fungus", wet rot, dry rot, bacteria or virus is the result of one or more of the following causes that occurs during the policy period and only if all reasonable means were used to save and preserve the property from further damage at the time of and after that occurrence:

(1) A "Specified Cause of Loss" other than fire or lightning;

b. The following applies only if Business Income and/or Extra Expense coverage applies to the ‘Insured Premises’ and only if the necessary interruption of your business operations satisfies all terms and conditions of this Coverage Part.

(1) If the loss which results in ‘fungus’, wet rot, dry rot, bacteria or virus does not in itself necessitate a necessary interruption of your business operations, but such interruption is necessary due to loss or damage to property caused by ‘fungus’, wet rot, dry rot, bacteria or virus, then our payment under Business Income and/or Extra Expense is limited to the amount of loss and/or expense sustained in a period of not more than 30 days. The days need not be consecutive.

(2) If a covered necessary interruption of your business operations was caused by loss or damage other than ‘fungus’, wet rot, dry rot, bacteria or virus prolongs the Period of Restoration, we will pay for loss and/or expense sustained during the delay (regardless of when such delay occurs during the Period of Restoration), but such coverage is limited to 30 days in total. The days need not be consecutive.

BI Coverage Form, Section C.3.

19. The Policies identify the “Specified Causes of Loss” relevant to the Virus Property Coverage Extension and Virus BI Coverage Extension as follows: “fire; lightning; explosion;

windstorm or hail; smoke; aircraft or vehicles; riot or civil commotion; vandalism; ‘Sinkhole Collapse’; ‘Volcanic Action’; falling objects; weight of snow, ice or sleet; water damage, ‘Sprinkler Leakage’; ‘Theft’; or ‘Building Glass’ breakage.” Property Choice Elite, Conditions and Definitions, Section C.11.

20. The Policies’ exclude “loss or damage caused directly or indirectly by,” among other things, “[p]resence, growth, proliferation, spread or any activity of ‘fungus,’ wet rot, dry rot, bacteria or virus.” Property Choice Elite Covered Causes of Loss and Exclusions Form, Section B.f. This exclusion states further that “[b]ut if direct physical loss or direct physical damage to Covered Property by a ‘Specified Cause of Loss’ results, we will pay for the resulting loss or damage caused by that ‘Specified Cause of Loss’.” *Id.* The exclusion additionally does not apply “[t]o the extent that coverage is provided in the [Virus Property Coverage Extension or Virus BI Coverage Extension] with respect to loss or damage by a cause of loss other than fire or lightning.” *Id.*

21. The Policies also bar coverage for a “[d]ischarge, dispersal, seepage, migration, release or escape of ‘Pollutants and Contaminants’.” Property Choice Elite Covered Causes of Loss and Exclusions Form, Section B.1.1. The Policies define “Pollutants and Contaminants” as “any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemical and waste, or any other material which causes or threatens to cause physical loss, damage, impurity to property, unwholesomeness, undesirability, loss of marketability, loss of use of property or which threatens human health or welfare. Waste includes materials to be recycled, reconditioned or reclaimed.” Property Choice Elite Conditions and Definitions, Section C.8.

22. The Policies also exclude “loss or damage caused by, resulting from, or arising out of delay, loss of use, or loss of market.” Property Choice Elite Covered Causes of Loss and Exclusions Form, Section B.2.d. The Policies contain a conflict with respect to this exclusion, as the exclusion is preceded by introductory language stating that Hartford will “not pay for loss or

damage caused by or resulting from any of the following.” Property Choice Elite Covered Causes of Loss and Exclusions Form, Section B.2.

The COVID-19 Outbreak: What is COVID-19 and How Does It Move?

23. COVID-19 is a communicable disease believed to be caused by a novel coronavirus now known as SARS-CoV-2.

24. As of the time of filing, there is no known, domestically-approved vaccine for preventing COVID-19.

25. On January 30, 2020, the World Health Organization (“WHO”) declared COVID-19 a Public Health Emergency of International Concern. On March 11, 2020, the WHO upgraded its declaration to recognize COVID-19 as a global pandemic.

26. WHO reporting reflects that COVID-19 is highly transmissible and can be passed, among other ways, through:

- a. “direct, indirect, or close contact with infected people”;
- b. exposure to respiratory droplets from a person “in close contact (within 1 metre) with an infected person who has respiratory symptoms (e.g. coughing or sneezing) or who is talking or singing”;
- c. airborne or aerosol transmission where droplets remain in the air for extended periods of time and over long distances; and
- d. coming into contact with an infected surface as “viable SARS-CoV-2 virus and/or RNA . . . can be found on . . . surfaces for periods ranging from hours to days, depending on the ambient environment (including temperature and humidity) and the type of surface.”¹

27. The U.S. Centers for Disease Control and Prevention (“CDC”) has similarly concluded that COVID-19 “is spreading very easily and sustainably between people.”²

28. With respect to surfaces, a March 2020 National Institutes of Health study published in the *New England Journal of Medicine* reported that SARS-CoV-2 “remained active

¹ *Transmission of SARS-CoV-2: implications for infection prevention precautions*, World Health Org. (Jul. 9, 2020), <https://www.who.int/news-room/commentaries/detail/transmission-of-sars-cov-2-implications-for-infection-prevention-precautions>.

² *How it Spreads*, Ctr. for Disease Control and Prevention (Updated Jun. 16, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-covid-spreads.html>.

on plastic and stainless steel surfaces for two to three days” and “remained infectious for up to 24 hours on cardboard and four hours on copper.”³ The same study found that SARS-CoV-2 “was detectable in aerosols for up to three hours.” All of these materials are present in Graduate Hotels’ Properties.

29. Other studies have found that SARS-CoV-2 may be found on various surfaces for even longer periods of time. For example, the CDC determined that SARS-CoV-2 RNA was identifiable on surfaces within the Diamond Princess cruise ship up to 17 days after the cabins had been vacated.⁴

30. COVID-19 is particularly dangerous because it has an incubation period (the time between exposure and manifesting symptoms) of up to 14 days, during which time an individual who has been exposed to COVID-19 but is “pre-symptomatic” can unknowingly shed and/or transmit SARS-Cov-2 particles.⁵

31. Even more concerning, as many as 40 percent of individuals infected with COVID-19 never manifest symptoms.⁶ Scientific studies suggest that even asymptomatic individuals can shed and/or transmit SARS-Cov-2 particles at a level sufficient to infect others.

The COVID-19 Outbreak: The Role of Aircraft or Vehicles

32. COVID-19 was first reported in Wuhan City, China in or around December 2019.⁷ Available evidence “suggests that the start of the outbreak resulted from a single point introduction

³ *Study Suggests New Coronavirus May Remain on Surfaces for Days*, Nat’l Inst. of Health (Mar. 24, 2020), <https://www.nih.gov/news-events/nih-research-matters/study-suggests-new-coronavirus-may-remain-surfaces-days>.

⁴ Leah F. Moriarty, et al., *Public Health Responses to COVID-19 Outbreaks on Cruise Ships — Worldwide, February-March 2020*, Ctr. for Disease Control and Prevention (Mar. 27, 2020), <https://www.cdc.gov/mmwr/volumes/69/wr/mm6912e3.htm>.

⁵ *Coronavirus Disease (COVID-19) Situation Report - 73*, World Health Org. (Apr. 2, 2020), <https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200402-sitrep-73-covid-19>.

⁶ Apoorva Mandavilli, *Even Asymptomatic People Carry the Coronavirus in High Amounts*, N.Y. TIMES (Aug. 6, 2020), <https://www.nytimes.com/2020/08/06/health/coronavirus-asymptomatic-transmission.html>; *see also* Erika Edwards, *Asymptomatic COVID-19 Cases May Be More Common Than Suspected* (May 27, 2020), <https://www.nbcnews.com/health/health-news/asymptomatic-covid-19-cases-maybe-more-common-suspected-n1215481>.

⁷ *Coronavirus Disease (COVID-19) Situation Report - 94*, World Health Org. (Apr. 23, 2020), <https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200423-sitrep-94-covid-19>.

in the human population around the time that the virus was first reported in humans in Wuhan, China in December 2019.”⁸

33. On January 17, 2020, the CDC announced that the implementation of “enhanced health screenings to detect ill travelers traveling to the United States on direct or connecting flights from Wuhan, China” at airports in San Francisco (SFO), New York (JFK), and Los Angeles (LAX).⁹ The CDC’s announcement specified that “[t]his activity is in response to an outbreak in China caused by [COVID-19], with exported cases to Thailand and Japan.”¹⁰

34. The CDC’s screening efforts were well-intentioned, but not successful. On or about January 21, 2020, the United States confirmed its first case of COVID-19.¹¹ The first confirmed case involved a man who entered the United States through Seattle-Tacoma International Airport after traveling by aircraft from China.¹²

35. From this initial confirmed case until February 23, 2020, “a total of 14 cases of coronavirus disease 2019 (COVID-19) were diagnosed in six U.S. states,” 12 of which involved travelers returning from China.¹³ The remaining two cases were “household contacts of persons with confirmed infections.”¹⁴ In other words, these cases each resulted from air travel to the United States from China.

36. A report from RAND Corporation regarding the correlation between commercial air traffic and COVID-19 concluded that “[b]y late January 2020, infections of COVID-19 were likely being exported from China, via commercial air travel, every day—even based on China’s

⁸ *Id.*

⁹ *Public Health Screening to Begin at 3 U.S. Airports for 2019 Novel Coronavirus (“2019-nCoV”)*, Ctr. for Disease Control and Prevention (Jan. 17, 2020), <https://www.cdc.gov/media/releases/2020/p0117-coronavirus-screening.html>.

¹⁰ *Id.*

¹¹ Erin Schumaker, *1st confirmed case of the new coronavirus reported in the US: CDC*, ABC News (Jan. 21, 2020), <https://abcnews.go.com/Health/1st-confirmed-case-coronavirus-reported-washington-state-cdc/story?id=68430795>.

¹² Mike Baker and Sheri Fink, *Covid-19 Arrives in Seattle. Where It Went From There Stunned the Scientists*, N.Y. TIMES (last updated Jul. 6, 2020), <https://www.nytimes.com/2020/04/22/us/coronavirus-sequencing.html>.

¹³ Anne Schuchat, MD, et al., *Morbidity and Mortality Weekly Report Public Health Response to the Initiation and Spread of Pandemic COVID-19 in the United States, February 24–April 21, 2020*, Ctr. for Disease Control and Prevention (May 8, 2020), <https://www.cdc.gov/mmwr/volumes/69/wr/mm6918e2.htm>.

¹⁴ *Id.*

reported COVID-19 caseload of fewer than 10,000 by January 31, 2020.”¹⁵ Indeed, “there were at least 1.5 daily infected air travel passengers originating in China and dispersing worldwide by January 31, 2020” to countries that included the United States.¹⁶

37. Analysis from the CDC on the origins and spread of COVID-19 further confirms a causal relationship between air travel and the presence of COVID-19 in the United States, noting that “[f]our separate lines of evidence (syndromic surveillance, virus surveillance, phylogenetic analysis, and retrospectively identified cases) suggest that limited U.S. community transmission likely began in late January or early February 2020, *after a single importation from China, followed by multiple importations from Europe.*”¹⁷

38. After the late January/early February time period, COVID-19 spread rapidly across the country, going from 24 confirmed cases at the end of February to over 186,000 confirmed cases by the end of March.

39. Upon information and belief, many thousands (if not millions) more cases of COVID-19 went unconfirmed due to, among other things, lack of adequate testing infrastructure and capacity and lack of public and scientific understanding about COVID-19, including the ability for individuals to carry and/or shed the virus while pre-symptomatic and/or asymptomatic.

40. The CDC identified several factors contributing to the rapid spread of COVID-19 during March:

- a. *continued importation of the virus by travelers infected elsewhere* (e.g., on cruise ships or in countries experiencing outbreaks);
- b. attendance at professional and social events, resulting in amplification in the host locations and multistate spread;
- c. introduction of the virus into facilities or settings prone to amplification (e.g., long-term care facilities and high-density urban areas) with the potential for seeding the broader community; and

¹⁵ Christopher A. Mouton, et al., *COVID-19 Air Traffic Visualization: By January 31, 2020, at Least 1.5 Daily Infected Passengers Were Originating in China*, RAND Corp. (last visited Aug. 31, 2020), https://www.rand.org/pubs/research_reports/RRA248-2.html.

¹⁶ *Id.*

¹⁷ Gregory L. Armstrong, et al., *Evidence for Limited Early Spread of COVID-19 Within the United States, January–February 2020*, Ctr. for Disease Control and Prevention (Jun. 5, 2020), <https://www.cdc.gov/mmwr/volumes/69/wr/mm6922e1.htm>.

- d. challenges in virus detection, including limited testing, emergence during the peak months of influenza circulation and influenza and pneumonia hospitalizations, and other cryptic transmission including from persons who were asymptomatic or pre-symptomatic.¹⁸

41. During February and March 2020, U.S. airlines transported more than 93 million passengers on domestic routes and more than 12 million passengers on international routes.¹⁹ Indeed, until mid-March 2020, the U.S. Transportation Security Administration continued to process between one and two million people a day.²⁰

42. Many of these air travelers were individuals who knowingly or unknowingly carried COVID-19, increasing community spread throughout the country.

43. Inevitably, many of the millions of air travelers in February and March 2020 stayed at hotels, including Graduate Hotels' Properties, which are located in major destination university towns and cities across the country, including in COVID-19 "ground zero," Seattle, Washington.

44. In addition to the obvious role of air travel in spreading COVID-19, Graduate Hotels is informed and believes that its employees and guests brought COVID-19 into its Properties as a result of vehicles.

45. Prior to the COVID-19 outbreak, Graduate Hotels' Properties employed approximately 1,745 individuals.

46. According to data from the U.S. Census Bureau's American Community Survey, more than 85% of American workers, or more than 130 million Americans, commute to work by driving alone or in a carpool.²¹ An additional 5% of workers, or about 7.7 million people, commute by taking a "vehicle" in the form of public transportation.²²

¹⁸ *Id.*

¹⁹ *February 2020 U.S. Airline Traffic Data (Preliminary)*, U.S. Dep't of Transp. Bureau of Transp. Statistics (Apr. 14, 2020), <https://www.bts.gov/newsroom/february-2020-us-airline-traffic-data-preliminary>; *Preliminary Air Traffic Data, March 2020: 50% Reduction in U.S. Airline Passengers*, U.S. Dep't of Transp. Bureau of Transp. Statistics (May 12, 2020), <https://www.bts.gov/newsroom/preliminary-air-traffic-data-march-2020-50-reduction-us-airline-passengers>.

²⁰ *TSA checkpoint travel numbers for 2020 and 2019*, U.S. Dep't of Homeland Sec. (last visited Aug. 31, 2020), <https://www.tsa.gov/coronavirus/passenger-throughput>.

²¹ Richard Florida, *The Great Divide in How Americans Commute to Work*, BLOOMBERG CITYLAB (Jan. 22, 2019), <https://www.bloomberg.com/news/articles/2019-01-22/how-americans-commute-to-work-in-maps>.

²² *Id.*; see also U.S. Census Bureau (last visited Sep. 1, 2020), <https://data.census.gov/cedsci/all?t=Commuting>.

47. In addition, on information and belief, nearly all of the 152,385 guests who stayed at Graduate Hotels' Properties from February through April 2020, and the many others who visited a Graduate Hotels' restaurant or bar, arrived through the use of a vehicle, whether by driving in a personal car or being transported by a taxicab, rideshare, or friend.

48. From February through April 2020, more than 33,054 vehicles paid to park at Graduate Hotels' Properties.

49. Graduate Hotels offers valet parking services at many of its Properties, which exposed Graduate Hotels' employees or agents to any SARS-CoV-2 particles in the air or on surfaces within the vehicle, only for those same employees or agents to later enter into the premises and further spread virus particles to which they had previously been exposed.

50. From February 1, 2020 through the end of April 2020, at least one of the Properties, the Graduate Cincinnati, had an employee present on that property who tested positive for COVID-19 within a short time after being at the property.

51. During that same period, Graduate Hotels recorded 47 employee sick days. Simultaneously, Graduate Hotels hosted more than 152,385 guests at its Properties.

52. Based on: (1) the timing of the spread of COVID-19, (2) the prevalence of COVID-19 in cities where Graduate Hotels has Properties (including in Seattle, Washington), (3) the fact that the Properties are almost universally within the immediate area of at least one major hospital that has been treating COVID-19 patients during the relevant timeframe, (4) the lack of available testing during the relevant timeframe, and (5) the lack of public knowledge that COVID-19 can be spread by pre-symptomatic and asymptomatic individuals; Graduate Hotels states, on information and belief, that COVID-19 was present at all Properties during February and/or March 2020 and at relevant times thereafter.

The COVID-19 Outbreak: The Domestic Response and Graduate Hotels Losses

53. On January 31, 2020, Health and Human Services Secretary Alex M. Azar II declared a public health emergency to combat COVID-19.²³

54. That same day, the White House issued a proclamation suspending, with certain limitations, entry into the country of “aliens who were physically present within the People’s Republic of China, excluding the Special Administrative Regions of Hong Kong and Macau, during the 14-day period preceding their entry or attempted entry into the United States,” with certain exceptions.²⁴

55. On March 11, 2020, the WHO declared COVID-19 to be a “pandemic.”

56. On March 13, 2020, the White House issued a Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak.

57. During the same general time period, state and local governments in each of the Properties’ jurisdictions issued orders that, among other things, prohibited restaurants and bars within the Properties from providing in-person service and/or required the restaurants and bars to limit their service area and/or incur costs to provide for social distancing of customers; closed all but “essential” businesses; urged and/or required the public to avoid all non-essential travel; and barred large group gatherings and events, (the “Government Shutdown Orders”).

58. Additionally, starting as early as March 9, 2020, the colleges and universities upon which Graduate Hotels depends to draw guests to its Properties announced a series of orders and actions throughout March 2020 that effectively shut down all campus operations and shifted students to online/remote learning, (the “University Shutdown Orders”).

59. Prior to the Government Shutdown Orders and University Shutdown Orders, (collectively, the “Orders”), Graduate Hotels had a thriving, growing portfolio of Properties.

²³ *Secretary Azar Declares Public Health Emergency for United States for 2019 Novel Coronavirus*, U.S. Dep’t of Health and Human Serv. (Jan. 31, 2020), <https://www.hhs.gov/about/news/2020/01/31/secretary-azar-declares-public-health-emergency-us-2019-novel-coronavirus.html>.

²⁴ *Proclamation on Suspension of Entry as Immigrants and Nonimmigrants of Persons who Pose a Risk of Transmitting 2019 Novel Coronavirus*, The White House (Jan. 31, 2020), <https://www.whitehouse.gov/presidential-actions/proclamation-suspension-entry-immigrants-nonimmigrants-persons-pose-risk-transmitting-2019-novel-coronavirus>.

60. As a result of the Orders, Graduate Hotels incurred direct physical loss and damage to the Properties as its restaurants and bars and event spaces were rendered physically nonfunctional, it could not safely provide lodging services to its guests, and – for those Properties under construction and/or renovation – it could not continue receiving supplies and/or safely performing work.

61. By the end of March 2020, Graduate Hotels had closed or substantially closed its Properties, incurring substantial losses in an amount to be proven at trial.

62. As of this filing, nearly all Properties have reopened, but certain of the Properties remain closed. All Properties incurred costs in preparing to safely reopen in compliance with applicable municipal, state, and/or federal guidance concerning COVID-19.

63. Certain of the “Dependent Property” universities around which Graduate Hotels framed its business have reopened for residential education; while others remain in a remote learning environment, severely limiting Graduate Hotels’ ability to reach anything resembling full operational status.

Hartford’s Denial of Coverage

64. The Graduate Hotels provided Hartford with timely notice of a claim for Fund II under the Fund II Policy and for Fund III under the Fund III Policy and provided additional rolling notices as losses spread to each of the Properties.

65. On April 24, 2020, Hartford sent parallel letters to Fund II and Fund III denying coverage under each respective policy without any meaningful investigation. True and correct copies of the April 24, 2020 Hartford letters are attached as **Exhibit D** and **Exhibit E**, respectively.

66. On May 19, 2020, Graduate Hotels sent correspondence to Hartford disputing Hartford’s denial and requesting that Hartford “reopen” its coverage investigation. A true and correct copy of Graduate Hotels May 19, 2020 letter is attached as **Exhibit F**.

67. On June 15, 2020, Hartford again sent letters to Fund II and Fund III denying coverage under each respective policy without any further apparent investigation. True and correct

copies of the June 15, 2020 Hartford letters are attached as **Exhibit G** and **Exhibit H**, respectively. Notably, Hartford's letters do not substantively engage with or respond to Graduate Hotels' coverage requests concerning the Virus Property Coverage Extension and Virus BI Coverage Extension.

Graduate Hotels' Claim is, at a Minimum, Covered by The Policies' Virus Property Coverage Extension and Virus BI Coverage Extension

68. Graduate Hotels suffered a necessary interruption of its business operations and incurred extra expenses by "virus" under the Virus BI Coverage Extension and suffered loss or damage by "virus" due to: (1) presence of SARS-CoV-2 (the virus which causes COVID-19) at the Properties and/or (2) the Government Shutdown Orders and University Shutdown Orders related to the same. The presence of the SARS-CoV-2 virus at the Properties and the issuance of the Government Shutdown Orders and University Shutdown Orders were each "the result of" at least one of the "Specified Causes of Loss" other than fire or lightning in the Policies.

69. By way of example but not limitation, the presence of SARS-CoV-2, the loss or damage caused by SARS-CoV-2, as well as the loss or damage caused by the Government Shutdown Orders and University Shutdown Orders, are all inextricably "the result of" aircraft or vehicles.

70. Graduate Hotels' losses at the Properties were the "result of" aircraft or vehicles because, among other things:

- a. the threat of individuals using aircraft to bring SARS-CoV-2 into the United States was so severe that the CDC announced health screening checkpoints at three major airports as early as January 17, 2020 because those airports had incoming flights from affected areas in China;
- b. the first reported case of COVID-19 in the United States involved an individual who arrived in the United States on January 15, 2020 by taking an airplane from China after visiting family near Wuhan City, China, the epicenter of the pandemic;
- c. the next thirteen reported cases of COVID-19 in January and February 2020 in the United States also involved individuals who either traveled to the

United States by airplane from China, or were exposed to the virus by individuals who contracted COVID-19 in China and flew to the United States;

- d. the CDC stated that a major factor in the spread of SARS-CoV-2 throughout the United States after the initial outbreak was “continued importation of the virus by travelers infected elsewhere” and recognized that individuals arriving from China and Europe were the sources of SARS-CoV-2 spread within the United States;
- e. on domestic air carriers alone (not including international carriers operating in the United States), more than 93 million passengers took domestic flights and more than 12 million took international flights during February and March 2020, all during a period when airlines and airport security were not mandating masks or other precautions to suppress the potential shedding of SARS-CoV-2;
- f. based on the aforementioned data, it is all but certain that an individual who had COVID-19 traveled on an aircraft during February or March 2020 and then stayed at or visited one of the Properties, effectively using that aircraft to bring the SARS-CoV-2 virus to the property;
- g. more than 90% of Americans in the workforce commute to and from their job by a vehicle, including more than 85% who travel specifically by an individual or carpoled automobile;
- h. Graduate Hotels had 47 employee sick days in February and March 2020;
- i. as such, upon information and belief, many employees who were knowingly or unknowingly carrying SARS-CoV-2 either drove or were transported by a “vehicle” to the Properties and transmitted SARS-CoV-2 to the Properties – Graduate Hotels is aware of at least one such confirmed situation;
- j. upon information and belief, infected employees brought SARS-CoV-2 into the Properties by performing valet parking services on vehicles where SARS-CoV-2 was present and then entering back into the Properties;
- k. Graduate Hotels had at least one confirmed instance where an employee tested positive for COVID-19 within a short period of time after being present at an insured property;
- l. upon information and belief, infected hotel guest(s) drove to an insured property in a vehicle or were driven to the insured property in a vehicle and then transmitted SARS-CoV-2 to the property; and
- m. upon information and belief, infected hotel guest(s) drove to the property and parked a vehicle (which was also infected with SARS-CoV-2) at that property’s parking space, and both the guest(s) and vehicle(s) transmitted the SARS-CoV-2 to the property.

71. In applying the “Specified Causes of Loss” definition to under the Virus Property Coverage Extension and Virus BI Coverage Extension, Graduate Hotels notes that Hartford could

have used other policy forms in the marketplace that require an “impact by” aircraft or vehicles, but Hartford did not do so.

72. Graduate Hotels employed all reasonable means to save and preserve its Properties from further damage at all relevant times, including being forced to temporarily close its Properties.

73. Graduate Hotels has complied in all material respects with the conditions and requirements of the Policies, or such conditions and requirements have been waived or their satisfaction otherwise excused by operation of law or by Hartford’s conduct.

74. No exclusions in the Policies apply here.

75. As such, Hartford is obligated to provide Graduate Hotels with coverage under the Virus Property Coverage Extension and Virus BI Coverage Extension.

Additionally, Graduate Hotels’ Claim is Covered Under the Property Choice Elite Coverage Form, BI Coverage, Civil Authority Extension, Dependent Properties Extension, and Ingress or Egress Extension

76. Since the Policies contain express coverage extensions for “Virus” that are triggered here, a “Virus” is a “Covered Cause of Loss” under the Policies and any losses from “Virus” constitute direct physical loss or direct physical damage under the Policies.

SARS-CoV-2 Has Triggered the Property Choice Elite Coverage Form Beyond the “Virus” Coverage

77. The Graduate Hotels have incurred direct physical loss or direct physical damage at an “Insured Premises” (*i.e.*, the Properties) caused by or resulting from a Covered Cause of Loss due to the presence of SARS-CoV-2 at its properties, which was the result of “aircraft or vehicles.”

78. The direct physical loss or direct physical damages include without limitation, Claim Expenses and cleaning and sanitizing of Properties to prepare them for reopening, in an amount to be proven at trial.

SARS-CoV-2 and Related Orders Have Triggered the BI Coverage Form Beyond the “Virus” Coverage

79. The presence of SARS-CoV-2 has caused Graduate Hotels to suffer a substantial actual loss of Business Income and incur necessary and reasonable Extra Expense due to the necessary interruption of its business operations during the Period of Restoration due to direct physical loss of or direct physical damage to property caused by or resulting from a Covered Cause of Loss – Virus – at the Properties.

80. SARS-CoV-2 and/or the related Government Shutdown Orders and University Shutdown Orders caused direct physical loss and/or direct physical damage to the Properties by, among other things, requiring material alterations to the Properties and operations and systems used therein, forcing closure of the Properties that rendered them physically nonfunctional, and forcing material alterations to the restaurant, bar, and/or other services provided at the Properties.

81. The Period of Restoration remains on-going as the Properties cannot be fully “repaired, rebuilt, or replaced” until the SARS-CoV-2 virus and the risks posed by COVID-19 are eradicated.

82. These same losses trigger the Extended Income coverage extension.

SARS-CoV-2 and Related Orders Have Triggered the Civil Authority Extension

83. The Government Shutdown Orders and University Shutdown Orders impacting its Properties caused Graduate Hotels to incur an actual loss of Business Income and the actual necessary and reasonable Extra Expense at the Properties by specifically prohibiting access to areas within the Properties, including dine-in restaurant and bar service and the use of any event space of public or private gatherings.

84. All of the foregoing loss and expense was a direct result of a Covered Cause of Loss – “Virus” – to property in the immediate area: the colleges and universities which Graduate Hotels seek to serve.

SARS-CoV-2 and Related Orders Have Triggered the Dependent Properties Extension

85. For each of the Properties, the college and/or university and related attractions thereto, including event venues and athletic stadiums, sustained direct physical loss or direct physical damage due to a Covered Cause of Loss – a “Virus.”

86. This direct physical loss or direct physical damage caused the surrounding colleges and/or universities to issue the University Shutdown Orders which, in turn, caused Graduate Hotels to sustain an actual loss of Business Income and incur actual, necessary and reasonable Extra Expenses due to the necessary suspension of its operations during the Period of Restoration.

87. Given that the SARS-CoV-2 virus is still prevalent and each of the colleges and universities around which the Graduate Hotels are located are in a state of flux concerning fall courses, university events, and fall athletics, the Period of Restoration remains ongoing.

SARS-CoV-2 and Related Orders Have Triggered the Ingress or Egress Extension

88. Graduate Hotels has sustained an actual loss of Business Income and incurred actual, necessary and reasonable Extra Expenses due to ingress or egress being specifically prohibited to its Properties due to the Government Shutdown Orders.

89. The Government Shutdown Orders were the direct result of a Covered Cause of Loss – a “Virus” – to property at premises that is contiguous to the Properties.

The Virus Exclusion Does Not Apply Here

90. Hartford has denied Graduate Hotels' claim under the aforementioned coverages in part because of the Policies' exclusion of "loss or damage caused directly or indirectly by . . . [p]resence, growth, proliferation, spread or any activity of . . . virus."

91. However, by its own terms, this exclusion does not apply because the direct physical loss or direct physical damage to the Properties was "by a 'Specified Cause of Loss'" for reasons explained above and such "Specified Cause of Loss" caused the "resulting loss or damage" to the Properties.

92. The exclusion additionally does not apply because the Virus Property Coverage Extension and Virus BI Coverage Extension are triggered here and there is no fire or lightning involved in this claim.

The Pollution Exclusion Does Not Apply Here

93. Hartford's assertion that the Policies' exclusion for a "[d]ischarge, dispersal, seepage, migration, release or escape of 'Pollutants and Contaminants'" applies here is incorrect and not supported by the plain language of the Policies.

94. The Policies' definition of "Pollutants and Contaminants" does not identify a virus, a communicable disease, or any government or university order(s).

95. Moreover, SARS-CoV-2, COVID-19, the Government Shutdown Orders, and/or the University Shutdown Orders are not a "solid, liquid, gaseous or thermal irritant or contaminant" as those terms are commonly understood.

96. Even if SARS-CoV-2 or COVID-19 could be considered an "irritant or contaminant," which it is not, there was no "[d]ischarge, dispersal, seepage, migration, release or escape," as those terms are understood and applied by Illinois courts. This exclusion is applied as a matter of law only to traditional forms of environmental pollution, which this matter does not involve.

97. If this exclusion even potentially applied to a virus or communicable disease (which it does not), several provisions in the Policies would then be superfluous and illusory, including but not limited to, the Virus Property Coverage Extension, the Virus BI Coverage Extension, and the “virus exclusion.”

The “Delay, Loss of Use, or Loss of Market” Exclusion Does Not Apply Here

98. Hartford wrongfully claims that Graduate Hotels’ claim is excluded by the Policies bar for “loss or damage caused by, resulting from, or arising out of delay, loss of use, or loss of market.”

99. The purpose of this exclusion is to bar consequential damages outside the scope of business interruption and extra expense losses caused by a Covered Cause of Loss.

100. Graduate Hotels have not suffered any loss caused by, resulting from, or arising out of “delay.”

101. Graduate Hotels have not suffered any loss caused by, resulting from, or arising out of “loss of use” as the Properties have been physically altered and/or damaged by, among other things, SARS-CoV-2, the Government Shutdown Orders, and the University Shutdown Orders.

102. Hartford’s asserted interpretation of “loss of use” would render the BI Coverage Form and coverage extensions for Civil Authority, Dependent Properties, and Ingress or Egress superfluous and illusory.

103. Graduate Hotels have not suffered any loss caused by, resulting from, or arising out of “loss of market” as the Properties have been physically altered and/or damaged by, among other things, SARS-CoV-2, the Government Shutdown Orders, and the University Shutdown Orders.

104. Hartford’s interpretation of “loss of market” would render the Policies’ coverage extensions for Civil Authority and Dependent Properties superfluous and illusory.

Hartford Has Long Acknowledged That Its Policies Cover Pandemic-Related Losses

105. Since at least 2006, Hartford's parent company, The Hartford Financial Services Group, Inc. ("The Hartford"), has admitted in public filings that pandemics like COVID-19 fall within The Hartford's insurable risks.

106. For example, The Hartford stated in Securities and Exchange Commission ("SEC") Form 10-Q filed on July 27, 2006 that "[o]ur property and casualty insurance operations expose us to claims arising out of catastrophes. Catastrophes can be caused by various unpredictable events, including earthquakes, hurricanes, hailstorms, severe winter weather, floods, fires, tornadoes, explosions and other natural or man-made disasters. *We also face substantial exposure to losses resulting from* acts of war, acts of terrorism, *disease pandemics* and political instability."

107. The Hartford's recognition that it insures such risks has only increased over time. Starting in at least 2010, The Hartford dedicated an entire subsection of certain SEC annual and quarterly filings to "Pandemic Risk." For example, The Hartford's annual report for fiscal year 2020 stated in relevant part:

Pandemic risk is the exposure to loss in the Company's market value, earnings or surplus arising from widespread influenza or other pathogens or bacterial infections that create an aggregation of loss across the Company's insurance or asset portfolios. Consistent with industry practice, The Hartford assesses exposure to pandemics by analyzing the potential impact from a variety of pandemic scenarios based on conditions consistent with earlier outbreaks of flu-like viruses, including the "Severe" 1918 Spanish Flu, the Asian flu in 1957, the Hong Kong flu in 1968, and the 2009 outbreak of swine flu. In evaluating these scenarios, The Hartford assesses the impact on . . . *property & casualty claims*, and losses in the investment portfolio associated market declines in the event of a widespread pandemic.

108. Hartford's corporate parent continued to acknowledge that it insures pandemic-related losses in SEC filings addressing the relevant period when Hartford issued the Policies to Graduate Hotels. For instance, The Hartford's SEC Form 10-Q covering the quarterly period ending September 30, 2019 recognized "the possibility of a pandemic" right alongside other natural and man-made disasters as one of its "Insurance Industry and Product-Related Risks."

109. The Hartford's Form-10K for the 2019 fiscal year stated "[o]ur businesses also have exposure to global or nationally occurring pandemics caused by highly infectious and potentially

fatal diseases spread through human, animal or plant populations” and identified “the spread of disease” as a “catastrophe exposure.” Indeed, in a section sub-headlined “[w]e are vulnerable to losses from catastrophes, both natural and man-made,” The Hartford notes that “[o]ur insurance operations expose us to claims arising out of catastrophes. Catastrophes can be caused by various unpredictable natural events, including, among others . . . *pandemics*.” The Hartford acknowledged in its Enterprise Risk Management statements that it insures “Pandemic” losses, but “generally limits its estimated pre-tax loss from a single 250 year pandemic event to less than 18% of the aggregate projected total available capital at year end of the property and casualty and group benefits insurance subsidiaries.”

110. Hartford’s coverage position here, including without limitation its insistence that COVID-19 does not cause direct physical loss or damage to property **and** that its virus-specific coverage does not apply here, flies in the face of the admissions by its corporate parent that The Hartford has broad corporate exposure to pandemic-related losses.

COUNT ONE
Breach of Contract - Fund II

111. Graduate Hotels realleges and incorporates by reference the allegations of the foregoing paragraphs as if fully set forth herein.

112. Fund II and Hartford entered into a legally binding written contract when Hartford issued the Fund II Policy.

113. Fund II made a claim to Hartford under the Fund II Policy for substantial, multi-million-dollar losses arising out of the COVID-19 pandemic and related Government Shutdown Orders and University Shutdown Orders, all of which were “the result of” a “Specified Cause of Loss.”

114. Fund II’s property damage costs, business interruption losses, extra expenses, and other losses are covered under various coverages in the Fund II Policy as outlined herein and not excluded.

115. Fund II has complied in all material respects with the conditions and requirements of the Policies, or such conditions and requirements have been waived, or their satisfaction otherwise excused by operation of law or by Hartford's conduct. Such conditions or requirements include without limitation paying the premium and providing timely notice of its claim.

116. By failing and refusing to provide coverage to Fund II, Hartford has breached the Fund II Policy.

117. As a direct and proximate result of such breach, Graduate Hotels has been deprived of the benefit of its bargained-for insurance coverage and has incurred damages in an amount to be proven at trial.

COUNT TWO
Breach of Contract - Fund III

118. Graduate Hotels realleges and incorporates by reference the allegations of the foregoing paragraphs as if fully set forth herein.

119. Fund III and Hartford entered into a legally binding written contract when Hartford issued the Fund III Policy.

120. Fund III made a claim to Hartford under the Fund III Policy for substantial, multi-million-dollar losses arising out of the COVID-19 pandemic and related Government Shutdown Orders and University Shutdown Orders, all of which were "the result of" a "Specified Cause of Loss."

121. Fund III's property damage costs, business interruption losses, extra expenses, and other losses are covered under various coverages in the Fund III Policy as outlined herein and not excluded.

122. Fund III has complied in all material respects with the conditions and requirements of Policies, or such conditions and requirements have been waived, or their satisfaction otherwise excused by operation of law or by Hartford's conduct. Such conditions or requirements include without limitation paying the premium and providing timely notice of its claim.

123. By failing and refusing to provide coverage to Fund III, Hartford has breached the Fund III Policy.

124. As a direct and proximate result of such breach, Graduate Hotels has been deprived of the benefit of its bargained-for insurance coverage and has incurred damages in an amount to be proven at trial.

COUNT THREE
Declaratory Judgment Pursuant to 735 ILCS § 5/2-701

125. Graduate Hotels realleges and incorporates by reference the allegations of the foregoing paragraphs as if fully set forth herein.

126. Fund II is an insured under the Fund II Policy, a valid and enforceable contract issued by Hartford that provides up to \$500,000,000 in coverage “in any one occurrence” under several forms of property, business interruption, and extra expense coverage.

127. Fund III is an insured under the Fund III Policy, a valid and enforceable contract issued by Hartford that provides up to \$433,672,580 in coverage “in any one occurrence” under several forms of property, business interruption, and extra expense coverage that are substantially identical to the Fund II Policy.

128. Graduate Hotels gave Hartford timely notice of its claims for property damage, business interruption loss, and extra expenses that are, at a minimum, sufficient to trigger the Virus Property Coverage Extension and Virus BI Coverage Extension because they involve a “virus” and were incurred as a result of a “Specified Cause of Loss.” Additionally, and in the alternative, Graduate Hotels’ claims involve a “Covered Cause of Loss” that is sufficient to trigger the Property Choice Elite Coverage Form, BI Coverage Form (including the Extra Income coverage extension), Civil Authority coverage extension, Dependent Properties coverage extension, and Ingress or Egress coverage extension.

129. Hartford denied coverage to Graduate Hotels under the Policies because, among other reasons, Hartford believes that there was no direct physical loss or damage to property at an insured premises caused by or resulting from a Covered Cause of Loss, the “virus exclusion”

applies, Graduate Hotels did not trigger the Virus Property Coverage Extension or Virus BI Coverage Extension, and certain other inapplicable exclusions apply such as the exclusion for “delay, loss of use, or loss of market” and the exclusion for “pollutants and contaminants.”

130. As such, an actual and justiciable controversy exists between Hartford and Graduate Hotels concerning the construction of the Virus Property Coverage Extension or Virus BI Coverage Extension, whether the Virus Property Coverage Extension or Virus BI Coverage Extension constituted a “Covered Cause of Loss,” whether the “virus exclusion” applies, and whether certain other exclusions, such as the “delay, loss of use, or loss of market” and exclusion for “pollutants and contaminants” apply.

131. Graduate Hotels seeks a declaration from the Court that: (a) Graduate Hotels is entitled to coverage under the Policies’ Virus Property Coverage Extension for its COVID-19-related losses or damages; (b) Graduate Hotels is entitled to coverage under the Policies’ Virus BI Coverage Extension for its COVID-19-related losses or damages; (c) the Virus Property Coverage Extension and Virus BI Coverage Extension make a “virus” a “Covered Cause of Loss” under the Policies; (d) Graduate Hotels is entitled to coverage under the Property Choice Elite Coverage Form for its COVID-19-related losses or damages; (e) Graduate Hotels is entitled to coverage under the BI Coverage Form for its COVID-19-related losses or damages; (f) Graduate Hotels is entitled to coverage under Civil Authority coverage extension for its COVID-19-related losses or damages; (g) Graduate Hotels is entitled to coverage under the Dependent Properties coverage extension for its COVID-19-related losses or damages; (h) Graduate Hotels is entitled to coverage under the Ingress or Egress coverage extension for its COVID-19-related losses or damages.

COUNT FOUR
Violation of 215 ILCS § 5/155

132. Graduate Hotels realleges and incorporates by reference the allegations of the foregoing paragraphs as if fully set forth herein.

133. Section 155 of the Illinois Insurance Code, 215 ILCS § 5/155, provides in relevant part that “[i]n any action by or against a[n insurance] company wherein there is in issue the

liability of a company on a policy or policies of insurance or the amount of the loss payable thereunder, or for an unreasonable delay in settling a claim, and it appears to the court that such action or delay is vexatious and unreasonable, the court may allow as part of the taxable costs in the action reasonable attorney fees, other costs, plus an amount not to exceed any one of the following amounts: (a) 60% of the amount which the court or jury finds such party is entitled to recover against the company, exclusive of all costs; (b) \$60,000; (c) the excess of the amount which the court or jury finds such party is entitled to recover, exclusive of costs, over the amount, if any, which the company offered to pay in settlement of the claim prior to the action.”

134. The totality of the circumstances relevant to this matter reflect that Hartford’s conduct has been vexatious and unreasonable with respect to its investigation of Graduate Hotels’ claims and its denial of coverage. Among other things, Hartford:

- a. made no effort to conduct any meaningful investigation into Graduate Hotels’ claims;
- b. did not hire an investigator to visit and/or evaluate any of the Properties;
- c. requested no documents or information beyond a generic questionnaire that sought minimal information and included several questions not relevant to coverage under the Policies;
- d. did not attempt to determine whether any Specified Cause of Loss such as “aircraft or vehicles” triggered the Virus Property Coverage Extension or Virus BI Coverage Extension, even after receiving an explanation from its insured about this broad policy language and Graduate Hotels’ requesting that Hartford reopen its investigation;
- e. denied coverage for losses clearly covered by the Policies;
- f. denied coverage for covered losses for reasons that contradict public disclosures by Hartford’s corporate parent concerning insurance for pandemic-related risks; and
- g. denied coverage because SARS-CoV-2/COVID-19 allegedly did not cause direct physical damage or loss despite well-known and well-publicized Illinois case law indicating otherwise.

135. Hartford’s conduct and denial is particularly vexatious and unreasonable given the broad, ambiguous language in the Virus Property Coverage Extension, Virus BI Coverage Extension, and definition of “Specified Cause of Loss,” considered against the well-known and publicized facts that COVID-19 was brought to the United States by infected individuals traveling

from other countries by aircraft and Illinois' courts broad, policyholder-favorable interpretation of "is the result of" and substantially similar terms when they appear in an insurance policy.

PRAYERS FOR RELIEF

WHEREFORE, Plaintiff GRADUATE HOTELS REAL ESTATE FUND III LP, on behalf of itself and AJ CAPITAL REAL ESTATE FUND II LP prays for the following relief:

A. Enter a judgment in favor of Graduate Hotels and against Hartford, as requested herein, on each of the Counts in Graduate Hotels' Complaint;

B. Award Graduate Hotels its actual and consequential damages sustained as a result of Hartford's breach of the Policies in an amount to be established through proof;

C. Enter a declaration that: (a) Graduate Hotels is entitled to coverage under the Policies' Virus Property Coverage Extension for its COVID-19-related losses or damages; (b) Graduate Hotels is entitled to coverage under the Policies' Virus BI Coverage Extension for its COVID-19-related losses or damages; (c) the Virus Property Coverage Extension and Virus BI Coverage Extension make a "virus" a "Covered Cause of Loss" under the Policies; (d) Graduate Hotels is entitled to coverage under the Property Choice Elite Coverage Form for its COVID-19-related losses or damages; (e) Graduate Hotels is entitled to coverage under the BI Coverage Form for its COVID-19-related losses or damages; (f) Graduate Hotels is entitled to coverage under Civil Authority coverage extension for its COVID-19-related losses or damages; (g) Graduate Hotels is entitled to coverage under the Dependent Properties coverage extension for its COVID-19-related losses or damages; (h) Graduate Hotels is entitled to coverage under the Ingress or Egress coverage extension for its COVID-19-related losses or damages;

D. Enter a judgment awarding Graduate Hotels its reasonable attorney fees, other costs, plus the applicable additional statutory amount for Hartford's violation of Section 155 of the Illinois Insurance Code, 215 ILCS § 5/155;

E. Enter a judgment awarding Graduate Hotels pre-judgment interest and post-judgment interest under applicable law; and

F. Enter a judgment awarding Graduate Hotels its costs of court and any other and further relief to which it may justly be entitled.

Dated: September 3, 2020

Respectfully submitted,

By: /s/ James M. Davis

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