

Hunton Andrews Kurth LLP
50 California Street, Suite 1700
San Francisco, California 94111

1 HUNTON ANDREWS KURTH LLP
2 SCOTT P. DEVRIES (State Bar No. 88221)
3 MICHAEL L. HUGGINS (State Bar No. 305562)
4 50 California Street, Suite 1700
5 San Francisco, California 94111
6 Telephone: 415 • 975 • 3700
7 Facsimile: 415 • 975 • 3701
8 sdevries@HuntonAK.com
9 mhuggins@HuntonAK.com

10 WALTER J. ANDREWS (*pro hac vice* forthcoming)
11 ANDREA DEFIELD (*pro hac vice* forthcoming)
12 Sabadell Financial Center
13 1111 Brickell Ave, Suite 2500
14 Miami, Florida 33131
15 Telephone: 305 • 810 • 2500
16 Facsimile: 305 • 810 • 2460
17 wandrews@HuntonAK.com
18 adefield@HuntonAK.com

19 Attorneys for Plaintiffs
20 Out West Restaurant Group Inc.; Cerca Trova Restaurant Group, Inc.;
21 Cerca Trova Steakhouse, L.P.; and Cerca Trova Southwest Restaurant Group, LLC

22 UNITED STATES DISTRICT COURT
23 NORTHERN DISTRICT OF CALIFORNIA

24 OUT WEST RESTAURANT GROUP
25 INC.; CERCA TROVA RESTAURANT
26 GROUP, INC.; CERCA TROVA
27 STEAKHOUSE, L.P.; AND CERCA
28 TROVA SOUTHWEST RESTAURANT
GROUP, LLC,

Plaintiffs,

v.

AFFILIATED FM INSURANCE
COMPANY,

Defendant.

CASE NO.:

**COMPLAINT AND DEMAND FOR
JURY TRIAL**

COMPLAINT

1
2 Plaintiffs OUT WEST RESTAURANT GROUP INC.; CERCA TROVA
3 RESTAURANT GROUP, INC.; CERCA TROVA STEAKHOUSE, L.P.; and
4 CERCA TROVA SOUTHWEST RESTAURANT GROUP, LLC (collectively, “Out
5 West”), file this Complaint for damages, declaratory relief, and punitive damages
6 against Defendant AFFILIATED FM INSURANCE COMPANY (“AFM”), alleging
7 the following:

INTRODUCTION

8
9 1. This diversity action arises from AFM’s improper investigation and
10 refusal to pay Out West’s claim for insurance coverage under an “all risks” insurance
11 policy that AFM sold to Plaintiff Cerca Trova Restaurant Group, Inc., the ultimate
12 parent of the other Plaintiffs in this litigation.

13 2. Like many businesses throughout the country, Out West has sustained
14 devastating monetary losses because of physical loss of and/or damage to, property
15 from COVID-19 and government orders that resulted from same.

16 3. COVID-19, and what flowed therefrom, caused direct and/or imminent
17 physical loss and/or damage to property and the AFM policy unambiguously provides
18 coverage for Out West’s COVID-19 related losses.

19 4. Out West had a reasonable expectation that the AFM All Risks Policy
20 would cover its COVID-19 related losses and promptly made a claim to AFM.

21 5. In response, AFM tried to wrongfully shoehorn Out West’s claim into a
22 narrow and limited grant of coverage, while contending – without textual support in
23 the Policy – that all other coverage is excluded.

24 6. In denying coverage, AFM ignored long accepted constructions of the
25 operative insurance policy terms, and the well-established policy of California courts
26 to, wherever reasonably possible, construe ambiguities in standard form policy
27 wording against its drafter.

28 7. At a minimum, this would merely mean the policy terms would be

Hunton Andrews Kurth LLP
50 California Street, Suite 1700
San Francisco, California 94111

1 ambiguous, in which case they would be construed in Out West's favor, as AFM's
 2 interpretation is not the only reasonable interpretation. The fact that decisions by
 3 federal court judges in *Studio 417, Inc., et. al. v. The Cincinnati Insurance Co.*, No.
 4 20-cv-03127-SRB (W.D. Mo. Aug. 12, 2020) and in *Urogynecology Specialist of*
 5 *Florida LLC v. Sentinel Insurance Co.*, No. 6:20-cv-1174 (M.D. Fla. Sept. 24, 2020),
 6 and by a New Jersey state court judge in *Optical Services USA/CI v. Franklin Mutual*
 7 *Insurance Co.*, No. BER-L-3681-20 (N.J. Super. Ct. Aug. 13, 2020) accepted the
 8 Policyholder's construction makes this construction *per se* reasonable.

9 8. By this action, Out West seeks to compel AFM to provide the insurance
 10 benefits it committed to provide when it sold the insurance policy. Further, given
 11 AFM's wrongful denial of coverage, its denial of Out West's claim without a
 12 reasonable investigation, its intentional misconstruction of the express terms of the
 13 insurance policy, its wrongful attempt to coerce Out West to forego a covered claim,
 14 and its flagrant disregard for California law, pursuant to which the policy provisions
 15 must be interpreted, Out West seeks punitive damages and other damages deemed
 16 appropriate by the Court.

PARTIES

17
 18 9. Plaintiff Out West Restaurant Group, Inc. is a California restaurant
 19 management company with its principal place of business in San Diego. It is the
 20 exclusive franchisee of Outback Steakhouse restaurants in Arizona, Colorado,
 21 Nevada, and New Mexico, and the predominate franchisee in California, operating
 22 approximately 100 Outback Steakhouse restaurants across those states.

23 10. Plaintiff Cerca Trova Steakhouse, L.P. is a California limited partnership
 24 that holds the leases for all California restaurants. Its principal place of business is in
 25 San Diego, California.

26 11. Plaintiff Cerca Trova Southwest Restaurant Group, LLC is a Florida
 27 limited liability company that holds all of the leases for the non-California restaurants.
 28 Its principal place of business is in San Diego, California and its manager and

1 president resides in San Diego, CA. Cerca Trova Southwest Restaurant Group, LLC's
 2 sole member is Cerca Trova Restaurant Group Holdings, Inc., a Delaware corporation
 3 with its principal place of business in San Diego, California.

4 12. Plaintiff Cerca Trova Restaurant Group, Inc., ("Cerca Trova") is the
 5 ultimate parent of the Out West entities. It is incorporated under the laws of the State
 6 of Delaware and has its principal place of business in San Diego, California.

7 13. Defendant AFM is incorporated under the laws of the State of Rhode
 8 Island, has its principal place of business in Johnston, Rhode Island, is licensed to do
 9 business in California, maintains an office in Walnut Creek, California¹ and is
 10 required to comply with California insurance requirements and law. AFM is a
 11 member of the FM Global Group.²

12 JURISDICTION AND VENUE

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

16 15. Venue is proper in this Court pursuant to 28 U.S.C. §1391(b)(1 and 2),
 17 §1391(c)(2) and §1391(d) because AFM does business in California and is an
 18 authorized property and casualty insurer in California, because AFM maintains an
 19 office in Walnut Creek, California, and because a substantial part of the events or
 20 omissions giving rise to the claim occurred, and/or a substantial part of property that is
 21 the subject of the action is situated in, this District.

22 FACTUAL BACKGROUND

23 **A. Out West's Operations**

24
 25 ¹ *Find an AFM Office*, AFFILIATED FM, [https://www.affiliatedfm.com/report-contact-](https://www.affiliatedfm.com/report-contact-page/find-an-afm-office-in-the-united-states)
 26 [page/find-an-afm-office-in-the-united-states](https://www.affiliatedfm.com/report-contact-page/find-an-afm-office-in-the-united-states) (last visited Sept. 29, 2020) (identifying a San
 27 Francisco AFM office at 1333 N. California Blvd. Suite 200 Walnut Creek, California
 94596).

28 ² *Business Profile*, AFFILIATED FM, <https://www.affiliatedfm.com/about/business-profile>
 (last visited Sept. 29, 2020).

Hunton Andrews Kurth LLP
50 California Street, Suite 1700
San Francisco, California 94111

1 16. Out West operates approximately 100 Outback Steakhouse locations
2 across Arizona, California, Colorado, Nevada, and New Mexico.

3 17. Outback Steakhouse is a chain of Australian-inspired steakhouse
4 restaurants that is beloved worldwide for its steak cuts, chicken, ribs, seafood, pasta,
5 and the famous Bloomin' Onion®.

6 18. Outback Steakhouse distinguishes itself by emphasizing consistently high
7 quality delicious food delivering a warm, welcoming environment.

8 19. The freshness of Outback Steakhouse's food inventory is critical to its
9 business operations and emblematic of its reputation and brand.

10 20. In addition, its excellent customer service and friendly and welcoming
11 atmosphere at its physical locations are critical to its business operations, reputation,
12 and brand.

13 21. Outback Steakhouses are not quick-service restaurants, "fast casual"
14 restaurants, or fast food restaurants. Rather, Outback Steakhouse, and thus Out
15 West's business, focuses on in-restaurant dining with in-house bars serving signature
16 drinks.

17 22. The vast majority of each relevant Outback Steakhouse's physical space
18 are dedicated exclusively to in-restaurant dining, and this accounts for the
19 overwhelming bulk of Out West's revenues. Indeed, the restaurant dining rooms are
20 designed to accommodate "a party of any size."³

21 23. The closure of Out West's in-restaurant dining rooms and in-house bars
22 significantly impaired its business operations. As a result, the restaurants themselves
23 were unable to be used for their intended purposes.

24 **B. COVID-19 as a Deadly Communicable Disease**

25 24. COVID-19 is a deadly communicable disease caused by the most
26

27 ³ See, e.g., *Our Restaurants*, BLOOMIN' BRANDS INC.,
28 <https://franchise.bloominbrands.com/global/brands/outback-steakhouse/our-restaurant> (last
visited Sept. 29, 2020).

1 recently discovered coronavirus.⁴

2 25. On March 11, 2020, the World Health Organization (the “WHO”)
3 declared the COVID-19 outbreak a pandemic.⁵

4 26. As of September 29, 2020, COVID-19 has infected over 7 million people
5 in the United States and caused more than 204,000 deaths.⁶ California has had over
6 802,300 confirmed cases of COVID-19, Colorado has had over 69,000 confirmed
7 cases of COVID-19, Arizona has had over 217,200 confirmed cases of COVID-19,
8 New Mexico has had over 28,800 confirmed cases of COVID-19, and Nevada has had
9 over 78,800 confirmed cases of COVID-19.⁷

10 **THE POLICY**

11 27. To protect itself from catastrophic losses, Out West’s parent company,
12 Cerca Trova Restaurant Group, Inc., purchased an insurance policy from AFM.

13 28. The AFM Policy issued to Out West is policy no. MN263 (the “AFM
14 Policy” or the “Policy”) and has an effective date of February 15, 2020 to December
15 1, 2020. A true copy of the Policy is attached as Exhibit A and incorporated herein *in*
16 *hac verbem*.

17 29. The AFM Policy is on AFM’s “proVision® 4100 Policy” form.

18 30. The Policy contains a “Location Schedule” that identifies 100 Out West
19 locations as insured locations, referred to as “described locations” in the Policy.

20 _____
21 ⁴ Press Release, Centers for Disease Control and Prevention (“CDC”), *First Travel-related*
22 *Case of 2019 Novel Coronavirus Detected in United States* (Jan. 21, 2020),
23 <https://www.cdc.gov/media/releases/2020/p0121-novel-coronavirus-travel-case.html> (last
visited Sept. 29, 2020).

24 ⁵ Heath Kelly, *The classical definition of a pandemic is not elusive*, 89 Bulletin of the World
25 Health Organization 7, at 540-41 (2011), <https://www.who.int/bulletin/volumes/89/7/11-088815/en/#:~:text=A%20pandemic%20is%20defined%20as> (last visited Sept. 29, 2020).

26 ⁶ CDC, *Cases in the U.S.* (last updated Sept. 27, 2020),
27 <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html> (last visited
Sept. 28, 2020).

28 ⁷ CDC, *CDC COVID Data Tracker* (last updated Sept. 27, 2020),
<https://covid.cdc.gov/covid-data-tracker/#cases> (last visited Sept. 28, 2020).

Hunton Andrews Kurth LLP
50 California Street, Suite 1700
San Francisco, California 94111

Hunton Andrews Kurth LLP
50 California Street, Suite 1700
San Francisco, California 94111

1 31. The Policy covers Out West for “all risks of physical loss or damage,”
2 except as excluded, to property, as described in the Policy. (Ex. A at COMPLAINT-
3 00005.) Thus all risks, not otherwise excluded, are covered causes of loss.

4 32. The Policy contains numerous different coverage parts, each with an
5 applicable deductible and limit or sublimit of liability. The majority of the coverage
6 parts are not mutually exclusive. Thus, a policyholder’s loss may trigger several
7 different coverage parts.

8 **A. Named Insured**

9 33. The Policy identifies Cerca Trova Restaurant Group, Inc. as the Named
10 Insured “and its wholly or majority owned subsidiaries and any interest which may
11 now exist or hereinafter be created or acquired which are owned, controlled or
12 operated by any one or more of those named insureds.” (Ex. A at COMPLAINT-
13 00007.)

14 34. Cerca Trova Restaurant Group, Inc. wholly owns the other Plaintiffs.
15 Accordingly, all Plaintiffs are Named Insureds as defined by the Policy.

16 35. The Policy provides up to \$100,000,000 total limit of liability, including
17 any insured Business Interruption loss, as a result of any one occurrence, subject to
18 any applicable sublimits. (Ex. A at COMPLAINT-00007.)

19 36. The substantial premium that AFM charged for the Policy was based on
20 the nature of Out West’s business, which as stated above, was dedicated to in-
21 restaurant dining at the 100 locations listed on the Policy’s Location Schedule.

22 37. The Policy provisions applicable to this case are standard form and were
23 drafted by AFM.⁸

24
25
26 ⁸ See e.g., *proVision 4100 All-Risk Property Policy*, AFM, MEMBER OF THE FM GLOBAL
27 GROUP, [https://www.affiliatedfm.com/property-coverage/-](https://www.affiliatedfm.com/property-coverage/-/media/74E064A2594B4B9B84D8ED8312DC80A3.ashx)
28 [/media/74E064A2594B4B9B84D8ED8312DC80A3.ashx](https://www.affiliatedfm.com/property-coverage/-/media/74E064A2594B4B9B84D8ED8312DC80A3.ashx) (last visited Sept. 28, 2020) (“The
proVision® 4100 policy was designed to simplify the interactions between AFM and our
broker partners, creating winning solutions for clients.”).

1 **B. AFM Issued the Policy in February 2020 Without a Pandemic or**
 2 **COVID-19 Exclusion, Despite AFM's Knowledge of COVID-19**

3 38. On January 21, 2020, the United States Centers for Disease Control
 4 (CDC) confirmed the first case of the 2019 Novel Coronavirus in the United States.⁹

5 39. On January 26, 2020, the CDC confirmed the first case of the 2019 Novel
 6 Coronavirus in Arizona, specifically in Maricopa County.¹⁰

7 40. By February 2, 2020, there were six confirmed cases of the 2019 Novel
 8 Coronavirus in California.¹¹ That same week, the United States government
 9 evacuated several planes full of Americans from China to military bases in Riverside
 10 (within 60 miles of 13 insured locations), Fairfield (within 60 miles of 9 insured
 11 locations), and San Diego, California (within 60 miles of 8 insured locations) for
 12 quarantine.¹²

13 41. On February 6, 2020, the first U.S. novel coronavirus death occurred in
 14 Santa Clara County, California, suggesting that the virus had been in the community
 15 and spreading for at least several weeks, if not months.¹³

16 _____
 17 ⁹ *Supra* n. 6.

18 ¹⁰ Carrie Feibel, *Coronavirus Case Confirmed in Arizona, Bringing U.S. Total to 5*, NPR
 19 (Jan. 26, 2020),
 20 <https://www.npr.org/sections/goatsandsoda/2020/01/26/799726161/coronavirus-case-confirmed-in-arizona-bringing-u-s-total-to-5> (last visited Sept. 29, 2020).

21 ¹¹ Ian Wheeler, *Orange County coronavirus patient released, in good condition, health*
 22 *officials say*, ORANGE COUNTY REGISTER (Feb. 4, 2020),
 23 <https://www.ocregister.com/2020/02/04/risk-of-catching-coronavirus-in-so-cal-is-low-health-officials-say/> (last visited Sept. 29, 2020); *see also* Press Release, Cal. Dep't of Public
 24 Health Office of Public Affairs, *Six Confirmed Cases of Novel Coronavirus in California*
 (Feb. 2, 2020), <https://www.cdph.ca.gov/Programs/OPA/Pages/NR20-003.aspx> (last visited
 Sept. 29, 2020).

25 ¹² Miriam Jordan and Julie Bosman, *Hundreds of Americans Were Evacuated from the*
 26 *Coronavirus Epicenter. Now Comes the Wait*, N.Y. TIMES (Feb. 5, 2020),
 27 <https://www.nytimes.com/2020/02/05/us/coronavirus-flights-wuhan.html> (last visited Sept.
 29, 2020).

28 ¹³ *See e.g.*, Matt Hamilton, Paige St. John, Rong-Gong Lin II, *Autopsies reveal first*
confirmed U.S. coronavirus-related deaths occurred in California in February, LOS

1 42. On February 11, 2020, several days before the Policy’s inception date,
2 the International Committee on Taxonomy of Viruses (ICTV) announced “severe
3 acute respiratory syndrome coronavirus 2” or “SARS-CoV-2” as the name of this new
4 coronavirus.¹⁴

5 43. AFM issued a binder for the Policy to Out West’s agent at Marsh USA
6 on February 13, 2020 and the Policy incepted on February 15, 2020.

7 44. On or about February 4, 2020, FM Global’s Vice President and Manager
8 of Research told Business Insurance magazine that FM Global had already received
9 notices from clients of business interruptions as a result of the novel coronavirus
10 (2019-nCoV, later named COVID-19).¹⁵

11 45. The Policy was issued weeks after the first cases of COVID-19 were
12 confirmed in the United States,¹⁶ including in California¹⁷ and Arizona¹⁸ – both states
13 where Out West has insured locations that were listed on the Policy’s Schedule.

14 _____
15 ANGELES TIMES (April 21, 2020), <https://www.latimes.com/california/story/2020-04-21/autopsies-reveal-first-confirmed-u-s-coronavirus-deaths-occurred-in-bay-area-in-early-february> (last visited Sept. 29, 2020).

16
17 ¹⁴ WHO, *Why do the virus and the disease have different names?*,
18 [https://www.who.int/emergencies/diseases/novel-coronavirus-2019/technical-guidance/naming-the-coronavirus-disease-\(covid-2019\)-and-the-virus-that-causes-it](https://www.who.int/emergencies/diseases/novel-coronavirus-2019/technical-guidance/naming-the-coronavirus-disease-(covid-2019)-and-the-virus-that-causes-it) (last
19 visited Sept. 29, 2020).

20 ¹⁵ Matthew Lerner and Claire Wilkinson, *Coronavirus should trigger risk management*
21 *protocols: Experts*, BUSINESS INSURANCE (Feb. 4, 2020),
22 <https://www.businessinsurance.com/article/20200204/NEWS06/912332881/Coronavirus-should-trigger-risk-management-protocols-Experts> (last visited Sept. 29, 2020).

23 ¹⁶ Press Release, CDC, *First Travel-related Case of 2019 Novel Coronavirus Detected in*
24 *United States* (Jan. 21, 2020), <https://www.cdc.gov/media/releases/2020/p0121-novel-coronavirus-travel-case.html> (last visited Sept. 29, 2020).

25 ¹⁷ Press Release, Cal. Dep’t of Public Health Office of Public Affairs, *Six Confirmed Cases of*
26 *Novel Coronavirus in California* (Feb. 2, 2020),
<https://www.cdph.ca.gov/Programs/OPA/Pages/NR20-003.aspx> (last visited Sept. 29, 2020).

27 ¹⁸ Carrie Feibel, *Coronavirus Case Confirmed in Arizona, Bringing U.S. Total to 5*, NPR
28 (Jan. 26, 2020),
<https://www.npr.org/sections/goatsandsoda/2020/01/26/799726161/coronavirus-case-confirmed-in-arizona-bringing-u-s-total-to-5> (last visited Sept. 29, 2020).

Hunton Andrews Kurth LLP
50 California Street, Suite 1700
San Francisco, California 94111

1 46. The Policy does not contain any COVID-19, pandemic, or communicable
2 disease exclusions, despite the fact that AFM knew of these imminent risks when it
3 sold the Policy to Out West.

4 47. While the Insurance Services Office (“ISO”), an entity charged with
5 drafting standard form policy language for use by the insurance industry, developed a
6 standard form and broadly worded “virus exclusion,” numbered CP 01 40 0706 and
7 titled “loss due to Virus or Bacteria” in 2006, AFM did not include that exclusion
8 here.

9 48. Before selling Out West the Policy, and unbeknownst to Out West at the
10 time it did purchase the Policy, AFM had adopted a company-wide directive on
11 coverage (or lack thereof) for COVID-19 claims to ensure that AFM’s adjusters
12 reached the same conclusion for all COVID-19 claims. Claims personnel are
13 instructed to follow “Talking Points” (hereinafter “AFM Talking Points”), without
14 regard to any individual investigation of each individual claim. A true copy of the
15 AFM Talking Points is attached as Exhibit B.

16 49. AFM instructed all of its claims personnel to deny coverage under
17 several pertinent coverage grants across the board and regardless of what the claims
18 handler’s investigation revealed.

19 50. The AFM Talking Points are titled “Talking Points on the 2019 Novel
20 Coronavirus (2019-nCoV)” and refer to COVID-19 only as the “2019 Novel
21 Coronavirus (2019-nCoV).” “2019 Novel Coronavirus (2019-nCoV)” was the prior
22 name of COVID-19, and was changed to COVID-19 (short for Coronavirus Disease
23 2019) by the WHO on February 11, 2020. By referring to COVID-19’s prior name,
24 AFM apparently issued the AFM Talking Points before the name change, which
25 occurred on or before February 11, 2020.

26 51. Thus, AFM issued the AFM Talking Points before AFM issued the
27 Policy to Out West.
28

Hunton Andrews Kurth LLP
50 California Street, Suite 1700
San Francisco, California 94111

1 **C. COVID-19 is a “Communicable Disease” and “Communicable**
2 **Disease” is a Covered Cause of Loss**

3 52. “Communicable Disease” is defined in the Policy in relevant part, as
4 “disease which is transmissible from human to human by direct or indirect contact
5 with an affected individual or the individual’s discharges.” (Ex. A at COMPLAINT-
6 00063.)

7 53. AFM has itself admitted in letters to Out West that COVID-19 is a
8 “Communicable Disease.” See a true copy of letter from AFM to Out West dated
9 April 17, 2020, attached as Exhibit C.

10 54. As discussed more fully below, the Policy includes “Communicable
11 Disease – Property Damage” coverage as part of the “All Risks” coverage part. This
12 demonstrates that COVID-19, as a “Communicable Disease” is a covered cause of
13 loss.

14 55. Further, there is no exclusion in the Policy for Communicable Disease,
15 making it a covered cause of loss under a plain reading of the “All Risks” coverage.

16 **D. COVID-19 Has Caused and Continues to Cause Physical Loss or**
17 **Damage to Property**

18 56. The relevant coverage grants in the Policy are triggered by physical loss
19 or damage to specified property: either Out West’s property (the insured locations
20 identified on the Schedule) or certain other specified property, such as the property of
21 others in Out West’s supply chain or the property of third-parties within a designated
22 mile-radius of Out West’s insured locations.

23 57. COVID-19 causes physical loss and/or damage to property.

24 • Physical “Damage” to Property

25 58. The Policy does not provide a definition of “damage” and the term
26 reasonably encompasses some and/or all of the loss Out West has sustained.

27 59. AFM construes the undefined term “damage” narrowly, enabling it to
28 avoid covering Out West’s losses, an assertion contrary to generally accepted rules of

Hunton Andrews Kurth LLP
50 California Street, Suite 1700
San Francisco, California 94111

1 construction in California which provide that wherever reasonably possible, courts
2 will construe ambiguities in a standard form policy against the drafter.

3 60. AFM’s position is also in conflict with the terms of the Policy.

4 61. As discussed more fully below, the Policy includes, in addition to, and
5 not in lieu of, other coverages in the Policy, a coverage grant titled “Communicable
6 Disease – Property Damage.”

7 62. The fact that the coverage is named “Communicable Disease – Property
8 Damage” must mean, contrary to FM’s recent coverage position, that Communicable
9 Disease causes damage to property.

10 63. The Communicable Disease – Property Damage coverage provides
11 coverage for costs incurred in the “cleanup, removal and disposal of . . .
12 communicable disease.” Thus, the Policy explicitly recognizes that Communicable
13 Disease, including COVID-19, causes a physical, tangible alteration to the integrity of
14 the property.

15 64. As set forth in AFM’s regulatory filings, the prior version of this policy
16 form listed the Communicable Disease – Property Damage coverage under the
17 heading “Additional Property Damage Coverages.”¹⁹ The heading was changed in
18 2016 to “Additional Coverages” with the intent to “simplify the coverage wordings
19 and to provide enhanced cover.”²⁰

20 65. The Policy also provides, in addition to, and not in lieu of, the other
21 coverages in the Policy, Communicable Disease – Business Interruption Coverage.

22 66. The deductible provision further demonstrates that, under the Policy,
23 Communicable Disease causes physical damage to property. It states that the Policy’s
24 specific Communicable Disease Business Interruption Deductible is determined in
25 reference to “the 100% actual annual business interruption value that would have been
26

27 ¹⁹ Affiliated FM Insurance Company, Product AFM-2016-3, at COMPLAINT-000121,
28 00123-24, 65-66 (New York, filed Aug. 18, 2020), attached as Exhibit F.

²⁰ *Id.*

Hunton Andrews Kurth LLP
50 California Street, Suite 1700
San Francisco, California 94111

1 earned had no loss occurred at the location where the physical damage happened . . .
2 .” (Exhibit A at COMPLAINT-00010 (emphasis added)).

3 • Physical “Loss” to Property

4 67. Moreover, the AFM All Risks Policy does not define the term “loss” and
5 the term reasonably encompasses some and/or all of the loss Out West has sustained.

6 68. AFM construes the undefined term “loss” narrowly, attempting to avoid
7 covering Out West’s losses, a construction contrary to generally accepted rules of
8 construction in California which provide that wherever reasonably possible, courts
9 will construe ambiguities in a standard form policy against the drafter.

10 69. The term “loss” has a separate and distinct meaning from the term
11 “damage,” including, but not limited to, loss of use, loss of functionality for intended
12 purpose, or loss of value, any and all of which would be reasonable constructions of
13 the term “loss.”

14 • How COVID-19 Causes Physical Loss and/or Damage to Property

15 70. Where COVID-19 is on-site at a location, it causes physical loss and/or
16 damage to that property.

17 71. Some studies find that COVID-19 present in the air causes physical loss
18 and/or damage to the property.

19 72. A cloud of droplets of saliva or nasal discharge of an infected person,
20 which may be released by a cough, a sneeze, or loud speech, can linger in the air for a
21 period of minutes to hours, and can be pulled into air circulation systems.²¹

22 73. This is a particular risk to restaurants. The CDC published a study in
23 July 2020 concluding that “droplet transmission was prompted by air-conditioned
24 ventilation” that caused an outbreak among people who dined in the same air-
25

26
27 ²¹ Ramon Padilla & Javier Zarracina, *Coronavirus might spread much farther than 6 feet in*
28 *the air. CDC says wear a mask in public.* USA Today (last updated Sept. 21, 2020),
www.usatoday.com/in-depth/news/2020/04/03/coronavirusprotection-how-masks-might-stop-spread-throughcoughs/5086553002/ (last visited Sept. 29, 2020).

Hunton Andrews Kurth LLP
50 California Street, Suite 1700
San Francisco, California 94111

1 conditioned restaurant.²²

2 74. The CDC notes that more studies are required to understand COVID-19
3 transmission, but the uncertainty has serious implications for food services safety.
4 Indeed, the CDC's risk assessment graphic for the restaurant industry demonstrates
5 that restaurants and bars that provide outdoor or indoor seating with no spacing
6 restrictions create the highest risk for the spread of COVID-19.²³

7 75. The presence of COVID-19 in the air at a property renders the property
8 unusable, uninhabitable, and/or unfit for its normal occupancy.

9 76. COVID-19 also can spread through surface- or object-to-person
10 transmission after an infected person has touched a surface.²⁴

11 77. The SARS-CoV-2 can remain on various objects and surfaces for a
12 period of hours to numerous days.²⁵

13 78. Thus, the presence of COVID-19 causes physical alteration of the
14 property.
15

16
17 ²² Jianyun Lu, *et al.*, *COVID-19 Outbreak Associated with Air Conditioning in Restaurant, Guangzhou, China, 2020*, 26 *Emerging Infectious Diseases* 7 (July 2020),
18 https://wwwnc.cdc.gov/eid/article/26/7/20-0764_article (last visited Sept. 29, 2020).

19 ²³ CDC, *Restaurants and Bars: Reduce the Spread of COVID-19*,
20 https://www.cdc.gov/coronavirus/2019-ncov/images/community/Rest_Bars_RiskAssessment.jpg (last visited Sept. 29, 2020).

21 ²⁴ WHO, *How does COVID-19 spread?*, <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/question-and-answers-hub/q-a-detail/q-a-coronaviruses#> (last visited Sept. 29, 2020).

22
23 ²⁵ Alex W H Chin, *et al.*, *Stability of SARS-CoV-2 in different environmental conditions*, *The Lancet* (Apr. 2, 2020), [https://www.thelancet.com/journals/lanmic/article/PIIS2666-5247\(20\)30003-3/fulltext](https://www.thelancet.com/journals/lanmic/article/PIIS2666-5247(20)30003-3/fulltext) (last visited Sept. 29, 2020); *The New England Journal of Medicine, Aerosol and Surface Stability of SARS-CoV-2 as Compared with SARS-CoV-1*, (Mar. 17, 2020), <https://www.nejm.org/doi/full/10.1056/NEJMc2004973> (last visited Sept. 29, 2020); Boris Pastorino, *et al.*, *Prolonged Infectivity of SARS-CoV-2 in Fomites*, 26 *Emerging Infectious Diseases* 9 (Sept. 2020), https://wwwnc.cdc.gov/eid/article/26/9/20-1788_article (last visited Sept. 29, 2020); National Institutes of Health, *New coronavirus stable for hours on surfaces* (Mar. 17, 2020, <https://www.nih.gov/news-events/news-releases/new-coronavirus-stable-hours-surfaces> (last visited Sept. 29, 2020)).

Hunton Andrews Kurth LLP
50 California Street, Suite 1700
San Francisco, California 94111

1 79. The existence of COVID-19 on surfaces renders that property unsafe or
2 unusable.²⁶

3 **E. COVID-19 Caused Physical Loss and/or Damage to Out West’s**
4 **Property and Other Relevant Property**

5 80. AFM’s All Risk Policy does not require physical presence of COVID-19
6 at an Insured Location in order to trigger coverage – all that is required is the
7 property’s loss of use or loss of functionality for its intended purpose.

8 81. COVID-19 in the air at and/or near the insured locations caused an
9 imminent threat to the property which constitutes “loss” and/or “damage.”

10 82. While the AFM All Risk Policy does not require physical presence of
11 COVID-19 at an Insured Location, Out West is currently aware of over 100
12 employees testing positive for COVID-19 across numerous of its insured locations.

13 83. There may be several more insured locations where customers visiting
14 the insured location to pick-up food for takeout may have tested positive shortly
15 before or after visiting the insured location, unbeknownst to Out West.

16 84. These situations, too, trigger coverage as Out West suffers physical loss
17 and/or damage as a result.

18 85. Out West undertakes full deep cleaning and sanitation procedures
19 immediately after it becomes aware of a positive test or positive exposure to COVID-
20 19, and additionally undertakes significant efforts to prevent the presence of COVID-
21 19 onsite.

22 86. The CDC estimates that infection rates for COVID-19 likely are at least
23 ten times higher than reported,²⁷ meaning that COVID-19 is omnipresent, particularly
24

25 ²⁶ See generally, Leah F. Moriarty, et al., *Public Health Responses to COVID-19 Outbreaks*
26 *on Cruise Ships — Worldwide, February–March 2020*, CDC (Mar. 27, 2020),
27 https://www.cdc.gov/mmwr/volumes/69/wr/mm6912e3.htm?s_cid=mm6912e3_w (last
visited Sept. 29, 2020).

28 ²⁷ Erika Edwards, *CDC says COVID-19 cases in U.S. may be 10 times higher than reported*,
NBC News (June 25, 2020), <https://www.nbcnews.com/health/health-news/cdc-says-covid->

Hunton Andrews Kurth LLP
50 California Street, Suite 1700
San Francisco, California 94111

1 in Arizona and California – states where 70% of Out West’s restaurants are located.

2 87. There may be instances where COVID-19 was present onsite at an
3 insured location, including with respect to a customer, but the individual was pre-
4 symptomatic, such that Out West was not aware of the presence of the virus.

5 88. During the incubation period, or “pre-symptomatic” period, infected
6 persons can be contagious, and disease transmission can occur before the infected
7 person shows any symptoms or has any reason to believe he or she has become
8 infected.²⁸ Thus, COVID-19 can be onsite at an insured location even if the infected
9 person is not showing symptoms of infection.

10 89. For the reasons discussed *supra*, the presence of COVID-19 at Out
11 West’s insured locations, including on surfaces, and/or other properties causes
12 physical alteration of the integrity of the property, causing physical loss and/or
13 damage.

14 90. For the reasons discussed *supra*, the presence of COVID-19 in the air at
15 Out West’s insured locations and/or other properties caused physical loss and/or
16 damage, including, but not limited to, by rendering the locations unusable,
17 uninhabitable and/or unsuitable for the property’s intended purpose.

18 91. For the reasons discussed *supra*, the presence of COVID-19 and damage
19 to property at and/or within five miles of Out West insured locations led to the
20 enactment of governmental orders which prevented access to Out West’s insured
21 locations and directly caused Out West to incur loss and/or damage.

22 92. COVID-19 and Governmental Orders issued as a result thereof, have
23 caused physical loss of and/or damage to Out West’s property by impairing the
24 “value, usefulness, or normal function of” Out West’s premises, rendering them
25

26 19-cases-u-s-may-be-10-n1232134 (last visited Sept. 29, 2020).

27 ²⁸ WHO, *Coronavirus disease 2019 (COVID-19) Situation Report – 73* (Apr. 2, 2020),
28 https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200402-sitrep-73-covid-19.pdf?sfvrsn=5ae25bc7_2 (last visited Sept. 29, 2020).

Hunton Andrews Kurth LLP
50 California Street, Suite 1700
San Francisco, California 94111

1 unusable and/or unfit for their normal business operations until such time as the
2 relevant governmental agencies determine it is safe to reopen, and otherwise by
3 damaging Out West’s property. Out West has suffered covered financial loss as a
4 result.

5 93. Specifically, unless and until the relevant governmental agencies
6 determine it is safe and permit it to fully reopen, Out West cannot resume its normal
7 operations because, in light of the factors alleged above, there is a near certainty
8 and/or imminence that COVID-19 will spread and/or further spread at such locations.

9 94. Out West’s loss of use of its property and/or damage to its property, due
10 to COVID-19 is “physical” because Out West has been deprived of the use and
11 function of its buildings, land on which the buildings are located, and the immovable
12 objects within these buildings (all of which are physical) and/or because the virus
13 itself is physical.

14 95. In addition, property loss or damage caused by COVID-19 caused Out
15 West to suspend all use of its dining rooms – the mainstay of its business – and
16 restricted Out West’s services to carry out and delivery at all locations for several
17 months.

18 96. Further, the Policy requires Out West to take reasonable actions to
19 mitigate its losses, a requirement which, in conjunction with COVID-19, the
20 Pandemic and/or the Governmental Orders, caused Out West to limit its operations at
21 its restaurants to delivery and takeout. These services replaced a small portion of the
22 revenues lost from the suspension of in-restaurant dining and these circumstances
23 continue to devastate Out West’s gross earnings and gross profits.

24 97. Out West has incurred covered losses as a direct result of physical loss
25 and/or damage of the type insured.

26 **F. Additional Applicable Coverages**

27 98. Coverage also is afforded under at least the following coverage grants:
28 (1) where infected persons are or have been on-site an insured location such that

1 COVID-19 causes physical loss and/or damage to the insured location; (2) where
 2 infected persons are, and/or physical loss and/or damage due to COVID-19 occurs, at
 3 third-party properties so as to impact the insured’s ingress or egress, supply chain, or
 4 “attraction properties”; and/or (3) where infected persons are and/or physical loss
 5 and/or damage occurs resulting in an order of a civil or military authority that impacts
 6 the insured’s business.

7 99. Additionally, Out West has suffered covered loss and/or damage due to
 8 COVID-19 under various additional coverage grants in the Policy. These additional
 9 relevant coverage sections include but are not limited to those identified below:

10 **1. Communicable Disease Coverage**

11 100. The Policy provides, in addition to, and not in lieu of, the other coverages
 12 in the Policy, a Communicable Disease – Property Damage coverage grant and a
 13 Communicable Disease – Business Interruption coverage grant. Both coverage grants
 14 apply when a Communicable Disease has caused property damage to one of Out
 15 West’s insured locations due to: (a) the actual, not suspected, presence of
 16 Communicable Disease on-site at that insured location owned, rented by, or leased to
 17 Out West; ***and*** (b) access to the location is limited, restricted or prohibited by a
 18 government order regulating the presence of the Communicable Disease or an officer
 19 of Out West limits access; ***and*** (c) the access is prohibited for at least 48-hours.

20 101. The Policy does ***not*** limit coverage for loss and/or damage to COVID-19
 21 to only the Communicable Disease – Property Coverage and Communicable Disease –
 22 Business Interruption coverages.

23 102. Unlike other policies issued by AFM’s parent company, FM Global, the
 24 Communicable Disease coverages here ***do not*** say that the sublimits provided for the
 25 Communicable Disease – Property Damage and Communicable Disease – Business
 26 Interruption coverages are the only amounts that the insurer will pay with respect to
 27 interruption by a Communicable Disease.

28 103. FM Global offers other the “Global Advantage” All Risk policy form –

1 not used here – which expressly limits the policyholder’s ability to claim losses due to
2 Communicable Disease under multiple coverage grants. That form states in the
3 Declarations that “[t]he Company’s maximum limit of liability for INTERRUPTION
4 BY COMMUNICABLE DISEASE and this coverage [Communicable Disease
5 Response] combined shall not exceed USD [insert appropriate limit] in the aggregate
6 during any policy year regardless of the number of locations, coverages or
7 occurrences involved.”

8 104. The Policy does not contain this or any other limitation as to what
9 coverage grants may be triggered by loss and/or damage caused by Communicable
10 Disease. Thus, where COVID-19 causes loss and/or damage that triggers other
11 coverage sections in the Policy, those coverage sections apply, too.

12 105. Alternatively, if as AFM suggests, coverage for losses incurred as a result
13 of physical loss and/or property damage due to COVID-19 at Out West’s insured
14 locations is limited to the Communicable Disease coverages only, the Communicable
15 Disease Coverages are ambiguous and must be interpreted against the drafter, AFM.

16 106. Alternatively, even if coverage for business interruption loss due to
17 *property damage* from COVID-19 at insured locations is limited to the
18 Communicable Disease coverages, the Communicable Disease coverages do not limit
19 coverage for business interruption loss incurred as a result of *physical loss* due to
20 COVID-19 at insured locations.

21 2. *Protection and Preservation of Property – Property Damage*

22 107. The Policy provides Protection and Preservation of Property – Property
23 Damage Coverage, which covers the reasonable and necessary costs incurred for, in
24 relevant part, actions to temporarily protect or preserve insured property; provided
25 such actions are necessary due to actual, or to prevent immediately impending, insured
26 physical loss or damage to such insured property. (Ex. A at COMPLAINT-00035-36.)

27 108. Out West has triggered the Protection and Preservation of Property –
28 Property Damage coverage because Out West has incurred and continues to incur

1 reasonable and necessary costs for actions to temporarily protect or preserve insured
2 property due to actual, and/or to prevent imminent insured physical loss or damage to
3 such insured property caused by COVID-19.

4 **3. Business Interruption**

5 109. The Policy insures Business Interruption loss as a direct result of physical
6 loss or damage of the type insured to property, described in and not otherwise
7 excluded by the Policy, used by Out West while at a location or while in transit,
8 during the Period of Liability identified in the Policy.

9 110. COVID-19 has caused physical loss or damage of the type insured to Out
10 West's property so as to trigger the Business Interruption coverage.

11 **4. Extra Expense**

12 111. As a result of physical loss of, or damage to Out West's property, due to
13 COVID-19, Out West has triggered Extra Expense Coverage under the Policy because
14 it has incurred and continues to incur reasonable and necessary Extra Expense to
15 temporarily continue as close to normal the conduct of its business.

16 112. These expenses include, but are not limited to expenses for paper menus
17 and other single use products, increased disinfection and cleaning costs, expenses
18 related to "touch free" operations, and personal protective equipment for employees.
19 In addition, Out West initiated tent operations in at least fifteen locations, incurring
20 additional cost of purchasing, erecting and lighting the tents, and the cost of tables,
21 chairs, and associated food serving, handling and warming equipment.

22 **5. Attraction Property**

23 113. The Policy covers the Business Interruption Coverage loss incurred by
24 Out West directly resulting from physical loss or damage of the type insured to
25 property that attracts business to one of Out West's insured locations and is within one
26 (1) statute mile of the insured location. (Ex. A at COMPLAINT-00045.)

27 114. COVID-19 has triggered Attraction Property Coverage under the Policy
28 because Out West has incurred and continues to incur Business Interruption Coverage

Hunton Andrews Kurth LLP
50 California Street, Suite 1700
San Francisco, California 94111

1 loss directly resulting from physical loss or damage from COVID-19 to property of
 2 the type insured that attracts business to Out West locations and is within one (1)
 3 statute mile of Out West locations.

4 115. For example:

- 5 a. Anaheim, California: Disney theme park, one mile from one of Out
 6 West's insured locations was closed for months and reportedly continues
 7 to find employees testing positive for COVID-19.²⁹
- 8 b. Las Vegas, Nevada: Wynn Resorts, less than one mile from Out West's
 9 insured location, tallied 548 positive tests for COVID-19 and three deaths
 10 among its employees as of September 17, 2020.³⁰
- 11 c. Santa Fe, New Mexico: A Santa Fe municipal court that is less than one-
 12 mile from Out West's insured location shut down for two weeks due to
 13 an employee testing positive for COVID-19.³¹
- 14 d. Albuquerque, New Mexico: A state motor vehicles division office that is
 15 within one-mile from Out West's insured location shut down due to an
 16 employee testing positive for COVID-19.³²
- 17 e. Colorado Springs, Colorado: The Colorado Department of Public Health
 18

19
 20 ²⁹ Graeme Guttman, *Disney World Reportedly Allowing COVID-Positive Employees To*
 21 *Work*, ScreenRant (Sept. 7, 2020), <https://screenrant.com/disney-world-coronavirus-positiive-workers-cover-up/> (last visited Sept. 29, 2020).

22 ³⁰ Associated Press, *Vegas Resort Tallies 548 COVID-19 Positives, 3 Worker Deaths* (Sept.
 23 17, 2020), <https://www.usnews.com/news/best-states/nevada/articles/2020-09-17/vegas-resort-tallies-548-positive-covid-19-tests-in-workers> (last visited Sept. 29, 2020).

24 ³¹ Robert Nott, *Santa Fe Municipal Court closes for 2 weeks after worker tests positive for*
 25 *virus*, SANTA FE NEW MEXICAN (July 28, 2020),
 26 https://www.santafenewmexican.com/news/local_news/santa-fe-municipal-court-closes-for-2-weeks-after-worker-tests-positive-for-virus/article_75152ada-d0e5-11ea-846e-37b08729ce60.html (last visited Sept. 29, 2020).

27 ³² Press Release, *MVD office closed after employee tests positive for COVID-19*, The State of
 28 New Mexico (July 9, 2020), <https://www.newmexico.gov/2020/07/09/mvd-office-closed-after-employee-tests-positive-for-covid-19/> (last visited Sept. 29, 2020).

1 & Environment confirms that a Colorado State Patrol Office less than
2 one mile from Out West’s insured location experienced an “outbreak” of
3 COVID-19.³³ Additionally, a local manufacturing company, Electronic
4 Metal Finishing, located one mile from Out West’s insured location
5 experienced an “outbreak” of COVID-19.³⁴

- 6 f. Castle Rock, Colorado: The Douglas County Jail, approximately one
7 mile from Out West’s insured location closed to visitors, including
8 attorneys, after an outbreak of COVID-19 at the jail.³⁵ The jail is located
9 in the Douglas County Justice Center, which also largely closed to
10 visitors other than for “public safety matters” and halted most in-person
11 hearings and all jury trials for several months as a result of COVID-19.³⁶
- 12 g. Tucson, Arizona: Tucson Medical Center is located less than one mile
13 from Out West’s insured location, where patients are treated for COVID-
14 19 and where at least one nurse has tested positive for COVID-19.³⁷

15 6. *Civil or Military Authority*

16 116. The Policy covers the Business Interruption Coverage loss incurred by
17

18
19 ³³ *Colorado COVID-19 Outbreak Map*, Colorado Dep’t Public Health & Environment (last
20 updated Sept. 23, 2020),
21 <https://cdphe.maps.arcgis.com/apps/SimpleViewer/index.html?appid=8f375dc9b2b64a45b65b9f36b6e8c8f4> (last visited Sept. 29, 2020).

22 ³⁴ *Id.*

23 ³⁵ Elliott Wenzler, *Douglas County Jail Protocol Pushes Back Against COVID-19*,
24 HIGHLANDS RANCH HERALD (May 20, 2020), <https://highlandsranchherald.net/stories/jail-protocol-pushes-back-against-covid-19,299719> (last visited Sept. 29, 2020).

25 ³⁶ Second Amended Chief Judge Order 20-03 (Mar. 27, 2020), Eighteenth Judicial District:
26 Arapahoe, Douglas, Elbert and Lincoln Counties, Colorado, available at
27 <https://www.da18.org/wp-content/uploads/SECOND-AMENDED-CJO-20-03-COVID-19-Courthouse-Operations.pdf> (last visited Sept. 29, 2020).

28 ³⁷ Hannah Tiede, *Tucson Medical Center nurse tests positive for COVID-19, isolates at home*, KOLD (Mar. 26, 2020), <https://www.kold.com/2020/03/27/tucson-medical-center-nurse-tests-positive-covid-isolates-home/> (last visited Sept. 29, 2020).

1 Out West if an order of civil or military authority prohibits access to an insured
2 location provided such order is the direct result of physical damage of the type insured
3 at a location or within five (5) miles of it. (Ex. A at COMPLAINT-00045.)

4 117. Out West has triggered Civil or Military Authority Coverage under the
5 Policy because Out West has incurred and continues to incur Business Interruption
6 Coverage loss due to numerous governmental orders that prohibit at least partial, if not
7 full, access to Out West's insured locations.

8 118. These governmental orders were issued as a result of physical damage to
9 property within five miles of an Out West location.

10 119. For example, the Solano County (California) Order of Health Officer No.
11 2020-04, issued on March 30, 2020, limited restaurants, including Out West, to
12 delivery and take-out, stating "this Order is given because of the propensity of the
13 virus to spread person to person and also because the virus physically is causing
14 property loss or damage due to its proclivity to attach to surfaces."

15 120. These governmental orders include, but are not limited to those set forth
16 in the attached Exhibit D.

17 7. *Ingress/Egress*

18 121. The Policy covers the Business Interruption Coverage loss incurred by
19 Out West due to the necessary interruption of Out West's business when ingress to or
20 egress from an insured location is physically prevented, either partially or totally, as a
21 direct result of physical loss or damage of the type insured to property of the type
22 insured whether or not at a described location. (Ex. A at COMPLAINT-00048.)

23 122. Out West has triggered Ingress/Egress Coverage under the Policy
24 because Out West has incurred and continues to incur Business Interruption Coverage
25 loss due to the necessary interruption of Out West's business because ingress to and/or
26 egress from certain Out West locations is physically prevented, either partially or
27 totally, as a direct result of physical loss or damage from COVID-19.

28 123. For example: The Outback Steakhouse located inside the Aquarius

1 Casino Resort in Laughlin, Nevada was closed from March 18, 2020 to June 6, 2020,
2 and the Outback Steakhouse located inside the Best Western Casino Royale was
3 closed from March 18, 2020 to June 6, 2020, both, due to the hotels' and casinos'
4 shutdown due to COVID-19. In addition, the Outback Steakhouse located on Las
5 Vegas Boulevard, was closed from March 18, 2020 to June 8, 2020 because the hotels
6 and casinos in the area were closed, and delivery drivers and guests would not go to
7 Las Vegas Blvd. to pick up food during the pandemic.

8 **8. Supply Chain**

9 124. The Policy covers the Business Interruption Coverage loss incurred by
10 Out West directly resulting from physical loss or damage of the type insured to
11 property of the type insured at the premises of any of the following within the Policy's
12 Territory: (a) Out West's direct suppliers, direct customers or direct contract service
13 providers; (b) any company under any royalty, licensing fee or commission agreement
14 with Out West; or (c) any company that is a direct or indirect supplier, customer or
15 contract service provider of those described in (a) above. (Ex. A at COMPLAINT-
16 00052.)

17 125. Out West has triggered Supply Chain Coverage under the Policy because
18 Out West has incurred and continues to incur Business Interruption Coverage loss
19 directly resulting from physical loss or damage from COVID-19 to property of the
20 type insured at the premises of: (a) Out West's direct suppliers, direct customers or
21 direct contract service providers; (b) companies under any royalty, licensing fee or
22 commission agreement with Out West; and/or (c) companies that are a direct or
23 indirect supplier, customer or contract service provider of those described in (a)
24 above.

25 126. As more facts develop and COVID-19 continues to impact Out West,
26 additional coverages set forth in the Policy may be triggered.

27 **9. Professional Fees Coverage**

28 127. The Policy provides coverage for the reasonable and necessary expenses

Hunton Andrews Kurth LLP
50 California Street, Suite 1700
San Francisco, California 94111

1 incurred by Out West for auditors, accountants, other professionals, and the Insured’s
2 own employees for producing and certifying details to determine the amount of loss
3 payable under the Policy for which this Company has accepted liability.

4 128. In this action, Out West seeks a determination of coverage so that this
5 coverage will be triggered and its relevant costs insured.

6 **G. No Exclusion in the Policy Precludes or Limits Coverage for Out**
7 **West’s Losses due to COVID-19**

8 129. No exclusions in the Policy preclude or limit coverage, in whole or in
9 part, for Out West’s claimed losses.

10 130. Specifically, the Policy’s Contamination Exclusion does not preclude or
11 limit coverage, in whole or in part, for Out West’s claim.

12 131. First, the contamination exclusion does not apply to “Additional
13 Coverages” set forth in the “All Risks” coverage form or to the “Business
14 Interruption” coverage form or “Business Interruption Coverage Extensions” set forth
15 therein. Thus, it does not apply to any of the coverage grants specifically addressed in
16 this Complaint and for which Out West seeks coverage under.

17 132. Second, the Contamination Exclusion does not and was never meant to
18 apply to “Communicable Disease” such as COVID-19.

19 133. Indeed, the Contamination Exclusion directly conflicts with the Policy’s
20 affirmative coverage grant for Communicable Disease. If the contamination exclusion
21 did apply to a “Communicable Disease” like COVID-19 as AFM suggests, the
22 exclusion would swallow the Communicable Disease coverages whole since neither
23 the Communicable Disease coverage parts nor the contamination exclusion contain a
24 carve-out stating that the exclusion does not apply to the Communicable Disease
25 coverages.

26 134. Thus, the references to “pathogen or pathogenic organism”, “virus”, or
27 “disease causing or illness causing agent,” as used in the definition of
28 “contamination,” cannot include a “Communicable Disease.”

1 135. To the extent AFM intended the Policy’s Contamination Exclusion to
 2 apply to communicable diseases such as COVID-19, for which coverage expressly is
 3 provided in the Policy, AFM could have included, but did not include Communicable
 4 Disease in the Policy’s definition of contaminant and/or contamination.

5 136. Further, even if COVID-19 could cause “contamination,” as AFM has
 6 represented to insurance regulators, “[t]he policy covers all risks, and damage arising
 7 from contamination . . . is covered when it directly results from insured physical
 8 damage.”³⁸

9 137. Thus, because the Policy’s Contamination Exclusion does not exclude
 10 coverage for communicable disease, it clearly and unambiguously does not preclude
 11 coverage for Out West’s claimed losses due to COVID-19.

12 138. Even if application of the Contamination Exclusion to COVID-19 was
 13 unclear (it is clear and does not apply), the exclusion is ambiguous, and such
 14 ambiguity must be construed in favor of coverage.

15 139. Third, pursuant to the doctrine of *ejusdem generis*, general words
 16 appearing in a series with words of a particular and specific meaning must be
 17 construed narrowly to apply to persons and things of the same general kind or class as
 18 those specifically mentioned. Thus, the words “virus” and “disease or illness causing
 19 agent” in the Contamination Exclusion must be construed as applying to
 20 circumstances similar to those that would apply with respect to the other words in the
 21 series, such as disease causing fungus, mold, or mildew, or a similar “pollutant.”

22 **H. AFM’s Breach of Good Faith and Fair Dealing**

23 140. AFM’s failure to diligently pursue a thorough, fair, and objective
 24 investigation of Out West’s claim and its improper denial of coverage constitute a
 25 breach of the covenant of good faith and fair dealing that is implied in every insurance
 26 policy.

27 _____
 28 ³⁸ Affiliated FM Insurance Company, Product AFM-2016-3, Ex. F at COMPLAINT-00119,
 00121 (New York, filed Aug. 18, 2020).

Hunton Andrews Kurth LLP
50 California Street, Suite 1700
San Francisco, California 94111

1 141. AFM’s denial of coverage misstates the terms of the Policy and fails to
2 adequately address the multiple coverages to which Out West is entitled under the
3 Policy for its claim, as alleged in this Complaint.

4 142. AFM’s bad faith denial of coverage for Out West’s claim, in direct
5 contradiction to the Policy’s plain and unambiguous terms, is evident from the
6 circumstance that AFM acknowledged that COVID-19 constitutes a Communicable
7 Disease as defined in the Policy. AFM nevertheless maintains that COVID-19 also
8 falls within the Contamination Exclusion, which does not define contamination to
9 include a communicable disease such as COVID-19, for purposes of all other
10 coverages under the Policy.

11 143. Further, AFM demanded additional information to investigate the loss,
12 after such information was already provided to it.

13 144. AFM’s conduct as respects Out West is consistent with and part of an
14 orchestrated campaign that AFM has engaged in throughout the country,
15 misrepresenting policy terms and making burdensome information requests to
16 innumerable other AFM policyholders, with the objective of dissuading them from
17 pursuing covered insurance claims.

18 145. Out West learned after submission of its claim that AFM had already
19 adopted a company-wide position on coverage for COVID-19 claims, and issued
20 guidelines to all of its claims handlers across the company to ensure that AFM’s
21 adjusters reached the same conclusion for all COVID-19 claims. Claims personnel
22 are instructed to follow the AFM Talking Points (Ex. B), without regard to any
23 individual investigation of each individual claim. Thus, AFM instructed all of its
24 claims personnel to blanket deny coverage under several pertinent coverage grants
25 regardless of what the claims handler’s investigation revealed.

26 146. By issuing a blanket directive to all of its claims personnel on what
27 portions of every COVID-19 claim to accept and/or deny, the AFM Talking Points
28 ensure that its claims personnel do not undertake any proper or independent

1 investigation of the claim to arrive at an independent coverage determination.

2 147. Further, the AFM Talking Points were issued even before Out West
3 procured the Policy. Thus, AFM accepted Out West's premium payment after
4 determining it would deny coverage for any resulting COVID-19 claim and without
5 including a COVID-19 or pandemic exclusion to make clear to Out West that AFM
6 did not intend to cover potential losses.

7 148. Further, Out West's conduct in this claim contradicts even its own
8 internal procedures. AFM's "Talking Points on the 2019 Novel Coronavirus," which
9 were sent to all of its claims personnel as instructions for handling COVID-19 claims,
10 state that "yes," "an employee at a location who is affected with the communicable
11 disease [shall] be considered the 'actual presence' of a communicable disease" are
12 sufficient to trigger at least the Policy's communicable disease coverages. Despite
13 Out West advising AFM that employees had tested positive for COVID-19, AFM
14 asked Out West whether the *property itself* had been tested for COVID-19 and for Out
15 West to provide testing reports of same.

16 149. This conduct conflicts with AFM's representations to its customers,
17 including that it is "recognized across the industry, as second to none in paying claims
18 promptly, fairly and professionally."³⁹

19 150. The premium that AFM charged for the Policy was based, in significant
20 part, on the size of the properties and operations on such properties that the Policy was
21 intended to insure.

22 151. Out West had a reasonable expectation that loss of use of any portion of a
23 location (*e.g.*, in-restaurant dining), would be covered even if Out West undertook
24 other actions (*e.g.*, take out services) to mitigate its losses and therefore the magnitude
25 of its claim.

26 152. By misconstruing the terms of the Policy to exclude any coverage for Out
27

28 ³⁹ *Why AFM: Client Benefits, Affiliated FM Insurance*,
<https://www.affiliatedfm.com/about/why-afm> (last visited Sept. 29, 2020).

Hunton Andrews Kurth LLP
50 California Street, Suite 1700
San Francisco, California 94111

1 West’s claim, AFM seeks to be unjustly enriched by the premium it charged for
2 property that is uninhabitable and/or unusable for its intended purpose, but for which
3 AFM denies coverage.

4 153. AFM’s actions throughout the history of this claim were unreasonable
5 and designed with the sole intent and purpose of denying Out West’s claim, no matter
6 what AFM’s investigation uncovered. This constitutes bad faith.

7 154. AFM’s bad faith conduct as described herein and otherwise as the facts
8 will show also violates California insurance laws and regulations.

9 155. California Insurance Code §790.03(h) provides that it constitutes unfair
10 methods of competition, and unfair and deceptive acts or practices, in the business of
11 insurance to knowingly commit or perform with such frequency as to indicate a
12 general business practice any of the following unfair claims settlement practices:

- 13 (1) Misrepresenting to claimants pertinent facts or insurance policy
14 provisions relating to any coverages at issue.
- 15 (2) Failing to acknowledge and act reasonably promptly upon
16 communications with respect to claims arising under insurance policies.
- 17 (3) Failing to adopt and implement reasonable standards for the prompt
18 investigation and processing of claims arising under insurance policies.
- 19 . . .
- 20 (5) Not attempting in good faith to effectuate prompt, fair, and equitable
21 settlements of claims in which liability has become reasonably clear.
- 22 (6) Compelling insureds to institute litigation to recover amounts due
23 under an insurance policy by offering substantially less than the amounts
24 ultimately recovered in actions brought by the insureds, when the
25 insureds have made claims for amounts reasonably similar to the amounts
26 ultimately recovered.
- 27 . . .
- 28 (11) Delaying the investigation or payment of claims by requiring an
insured, claimant, or the physician of either, to submit a preliminary
claim report, and then requiring the subsequent submission of formal
proof of loss forms, both of which submissions contain substantially the
same information.

Hunton Andrews Kurth LLP
50 California Street, Suite 1700
San Francisco, California 94111

1 (12) Failing to settle claims promptly, where liability has become
2 apparent, under one portion of the insurance policy coverage in order to
3 influence settlements under other portions of the insurance policy
4 coverage.

5 (13) Failing to provide promptly a reasonable explanation of the basis
6 relied on in the insurance policy, in relation to the facts or applicable law,
7 for the denial of a claim or for the offer of a compromise settlement.

8 156. The California Fair Claims Settlement Practices Regulations states in
9 §2695.7(b)(1) that, “Where an insurer denies or rejects a first party claim, in whole or
10 in part, it shall do so in writing and shall provide to the claimant a statement listing all
11 bases for such rejection or denial and the factual and legal bases for each reason given
12 for such rejection or denial which is then within the insurer’s knowledge. Where an
13 insurer’s denial of a first party claim, in whole or in part, is based on a specific statute,
14 applicable law or policy provision, condition or exclusion, the written denial shall
15 include reference thereto and provide an explanation of the application of the statute,
16 applicable law or provision, condition or exclusion to the claim.”

17 157. Additionally, on April 14, 2020, California Insurance Commissioner
18 Ricardo Lara issued the notice, titled “Requirement to Accept, Forward,
19 Acknowledge, and Fairly Investigate All Business Interruption Insurance Claims
20 Caused by the COVID-19 Pandemic” (the “Department of Insurance Notice”). A true
21 copy of the Notice is attached as Exhibit E.

22 158. The Department of Insurance Notice acknowledges that to help combat
23 the spread of COVID-19, government officials have issued emergency public health
24 orders and “shelter-in-place” directives, and that the COVID-19 pandemic “has
25 severely curtailed activities of policyholders in both personal and commercial lines,
26 causing significant and widespread economic loss in California.” The Notice states,
27 among other things, that after receipt of a notice of claim “every insurer is required to
28 conduct and diligently pursue a thorough, fair, and objective investigation of the
reported claim, and is prohibited from seeking information not reasonably required for

1 or material to the resolution of a claim dispute before determining whether the claim
2 will be accepted or denied, in whole or in part. (Regulations, section 2695.7(d).)” (*Id.*
3 at COMPLAINT-00103.)

4 159. AFM’s failure to diligently pursue a thorough, fair, and objective
5 investigation of Out West’s claim and improper denial of coverage constitutes a
6 violation of the California common law principles of good faith, California Insurance
7 Code and the UCI which are implied in insurance contracts.

8 **CAUSES OF ACTION**

9 **COUNT I**
10 **Declaratory Judgment**

11 160. Out West repeats and realleges the allegations in the preceding
12 paragraphs.

13 161. Out West seeks a declaration of the parties’ rights and duties under the
14 Policy pursuant to 28 U.S.C. §2201. A justiciable controversy exists between Out
15 West and AFM concerning the availability of coverage under the Policy for Out
16 West’s claim.

17 162. The controversy between Out West and AFM is ripe for judicial review.

18 163. Accordingly, Out West seeks a declaration from the Court that:

- 19 (1) Each coverage provision identified herein is triggered by Out
20 West’s claim;
- 21 (2) No exclusion in the Policy applies to bar or limit coverage for Out
22 West’s claim;
- 23 (3) The Policy covers Out West’s claim;
- 24 (4) AFM violated the implied covenant of good faith and fair dealing;
25 and
- 26 (5) Any other declaratory relief that would be useful to the resolution
27 of the dispute between the parties.

28 **COUNT II**
Breach of Contract

Hunton Andrews Kurth LLP
50 California Street, Suite 1700
San Francisco, California 94111

Hunton Andrews Kurth LLP
50 California Street, Suite 1700
San Francisco, California 94111

1
2 164. Out West repeats and realleges the allegations in the preceding
3 paragraphs.

4 165. The Policy is a valid and enforceable contract between Out West and
5 AFM.

6 166. Out West has sustained covered loss under the Policy and, accordingly,
7 submitted its claim to AFM.

8 167. AFM has wrongfully refused to provide coverage for Out West's claim in
9 breach of the Policy.

10 168. As set forth above, the Policy provides coverage for Out West's losses.

11 169. No exclusions apply to preclude or limit coverage.

12 170. Out West has fully complied with all of the terms and conditions of the
13 Policy and has satisfied any and all conditions precedent to coverage under the Policy,
14 including but not limited to paying premiums, providing timely notice of the claim,
15 taking all reasonable steps to protect the property from further damage.

16 171. To the extent Out West has not complied with a condition in the Policy, it
17 is because the condition does not apply or has been waived by AFM.

18 172. AFM's failure to pay amounts due and its actions in handling Out West's
19 claim under the Policy constitutes a breach of contract.

20 173. In consequence of AFM's breach of contract, Out West has suffered and
21 continues to suffer significant damages.

22 174. Out West is entitled to coverage up to the Policy's limit of liability or any
23 applicable sublimits.

24 175. Out West is entitled to damages as a result of AFM's breach of contract
25 in an amount to be determined at trial, including pre- and post-judgment interest and
26 any other costs and relief that this Court deems appropriate.

27 **COUNT III**

28 **Breach of the Implied Covenant of Good Faith and Fair Dealing**

176. Out West repeats and realleges the allegations in the preceding

Hunton Andrews Kurth LLP
50 California Street, Suite 1700
San Francisco, California 94111

1 paragraphs.

2 177. Out West has suffered loss covered under the Policy.

3 178. Out West properly presented its claim to AFM to be compensated for its
4 losses.

5 179. AFM failed to conduct a full, fair, prompt, and thorough investigation of
6 all of the bases of Out West's claim.

7 180. When investigating Out West's claim, AFM had a duty to diligently
8 search for and consider evidence that supported coverage for the claimed loss.

9 181. In connection with its efforts to sell the Policy, AFM represented that it
10 would evaluate claims on a good faith basis consistent with the plain language of the
11 Policy and pursuant to the law governing the interpretation of that Policy.

12 182. Instead of doing what it represented it would do, AFM implemented a
13 claims handling practice that was intended to deprive Out West of the coverage that
14 AFM was contractually required to provide under the Policy.

15 183. Rather than pay Out West's claim, and without even investigating it,
16 AFM refused to acknowledge coverage and refused to pay Out West's losses.

17 184. AFM's improper claims handling practices include the following ongoing
18 misconduct at the expense of its insured: (i) failing to diligently pursue a thorough,
19 fair, and objective investigation of Out West's claim; (ii) improperly denying
20 coverage based on its position that there was no direct physical loss of or damage to
21 property, which is incorrect; and (iii) improperly asserting that the Contamination
22 Exclusion bars coverage for Out West's claimed losses due to COVID-19, where such
23 exclusion clearly and unambiguously does not exclude coverage for a communicable
24 disease such as COVID-19 and where such exclusion directly contradicts affirmative
25 coverage grants in the Policy and contradicts AFM's own representations to the public
26 and to various insurance regulators.

27 185. In handling Out West's claim under the Policy, AFM has failed to
28 faithfully apply the language of the Policy that it drafted, ignored longstanding

Hunton Andrews Kurth LLP
50 California Street, Suite 1700
San Francisco, California 94111

1 principles of California insurance law, failed to conduct a reasonable investigation,
2 and failed to consider the facts relevant to the claim against the language of the Policy
3 as interpreted pursuant to California law.

4 186. AFM’s conduct, including its practice of avoiding its obligations under
5 the Policy at the expense of Out West, is unlawful because, as discussed *supra*, such
6 conduct violated and continues to violate California common law principles of good
7 faith, which are implied in every insurance contract, which has caused Out West to
8 incur substantial losses that should have been paid by AFM under the Policy.

9 187. AFM’s conduct is unfair because it offends the established California
10 public policies that require an insurer to act in good faith in dealings with its insured;
11 to treat the interests of its insured as it would its own; to diligently pursue a thorough,
12 fair, and objective investigation of claims; to construe ambiguous policy terms in
13 favor of coverage; to construe the grants of coverage broadly in favor of coverage and
14 exclusions or other limiting terms narrowly; to not unreasonably delay in providing
15 insurance benefits under a policy; and to not place its own interests above the
16 insured’s. Additionally, or alternatively, AFM’s conduct is unfair because it is
17 immoral, unethical, oppressive, unscrupulous and/or substantially injurious to
18 consumers.

19 188. Out West has been harmed by AFM’s conduct.

20 189. AFM’s failure to properly investigate Out West’s claim was a substantial
21 factor in causing Out West’s harm.

22 190. For the reasons set forth above, AFM’s withholding of the benefits due is
23 unreasonable and constitutes bad faith.

24 191. AFM’s wrongful conduct, including, but not limited to, its denial of
25 coverage was unreasonable based on the information available to AFM at the time of
26 such conduct.

27 192. Due to AFM’s conduct, Out West has suffered and continues to suffer an
28 ascertainable loss, and Out West will continue to incur reasonable attorneys’ fees in

1 order to enforce its rights.

2 193. AFM's unlawful and bad faith conduct was a substantial factor in causing
3 Out West's losses.

4 194. Due to AFM's conduct, Out West was forced to retain the services of the
5 undersigned to vindicate Out West's rights and pursue coverage owed under the
6 Policy and is entitled to attorneys' fees pursuant to *Brandt v. Superior Court.*, 37 Cal.
7 3d 813 (1985) and otherwise to the extent permissible under the law.

8 **PRAYER FOR RELIEF**

9 **Wherefore**, Out West prays for judgment against AFM as follows:

- 10 (1) A declaration from the Court that:
- 11 (a) Each of the coverage provisions identified herein is triggered by Out
12 West's claim;
 - 13 (b) No exclusion under the Policy applies to bar or limit coverage for
14 Out West's claim;
 - 15 (c) The Policy covers Out West's claim;
 - 16 (d) AFM breached the implied covenant of good faith and fair dealing;
17 and
 - 18 (e) Any other declaratory relief that would be useful to the resolution of
19 the dispute between the parties;
- 20 (2) For special and consequential damages against AFM in an amount to be
21 proved at trial in excess of \$75,000;
- 22 (3) For punitive and exemplary damages as provided by law;
- 23 (4) Pre- and post-judgment interest as provided by law;
- 24 (5) An award of attorney's fees and costs of suit incurred;
- 25 (6) For such other and further relief as the Court deems just and proper.

26 **DEMAND FOR JURY TRIAL**

27 Out West demands trial by jury on all issues so triable.
28

Hunton Andrews Kurth LLP
50 California Street, Suite 1700
San Francisco, California 94111

1 DATED: September 29, 2020

HUNTON ANDREWS KURTH LLP

2
3 By: /s/ Scott P. DeVries

4 Scott P. DeVries

5 Walter J. Andrews

6 Andrea DeField

7 Michael L. Huggins

8 *Attorneys for Plaintiffs*

9 *Out West Restaurant Group Inc.; Cerca*

10 *Trova Restaurant Group, Inc.;*

11 *Cerca Trova Steakhouse, L.P.; and*

12 *Cerca Trova Southwest Restaurant*
13 *Group, LLC*

14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
Hunton Andrews Kurth LLP
50 California Street, Suite 1700
San Francisco, California 94111

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 'Gerardo L. Alonso'. The signature is fluid and cursive.

Gerardo L. Alonso
Senior Vice President, AFM

Loss Reporting and Contact Information Cleveland Operations



Claims Manager:

Lisa A. Muckley
Affiliated FM Insurance Company
25050 Country Club Boulevard, Suite 300
North Olmsted, OH 44070

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 newlosscleveland@affiliatedfm.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:

Ivan Petrovic
Affiliated FM Insurance Company
25050 Country Club Boulevard, Suite 300
North Olmsted, OH 44070
Tel: (216) 898-4513
Ivan.Petrovic@affiliatedfm.com

Jurisdictional Services:

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



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

DECLARATIONS PAGE

Policy No. MN263 Account No. 1-87253	Previous Policy No. MN049	DATE OF ISSUE 13-Feb-2020
---	-------------------------------------	-------------------------------------

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:

Cerca Trova Restaurant Group, Inc.
 7676 Hazard Center Drive
 Suite 1500
 San Diego, CA 92108

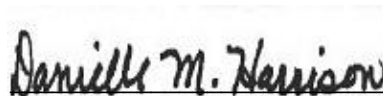
(For Complete Title See Policy)

The term of this Policy is from the **15th day of February 2020 to the 1st day of December 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 North Olmsted, Ohio this 13th day of February 2020.



 Authorized Signature
 DH/jgk


 Secretary


 President

DECLARATIONS

A. **POLICY TERM:**

15-February-2020 to 01-December-2020

B. **NAMED INSURED:**

Cerca Trova Restaurant Group, Inc., 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 \$100,000,000 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 except as follows:

Cyber Coverage Territory

Coverage provided in Data Restoration; Data Service Provider Property Damage and Business Interruption and Owned Network Interruption 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:

See Attached Location Schedule.

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. | \$5,000,000 | 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 Data Service Provider, Errors and Omissions, Off-Premises Service Interruption, Unnamed Property and Supply Chain combined. |
| 2. | \$5,000,000 | 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 Data Service Provider, Errors and Omissions, Off-Premises Service Interruption, Unnamed Property and Supply Chain combined. |
| 3. | \$50,000 | Cyber event annual aggregate as respects Data Restoration and Owned Network Interruption combined. |
| 4. | \$50,000 | Cyber event annual aggregate for loss or damage to stock in process or finished goods manufactured by or for the Insured caused by or resulting from cyber event that impacts the processing, manufacturing, or testing of such property or while it is otherwise being worked on. |

Additional Coverages

\$1,000,000	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 Restoration annual aggregate
\$50,000	Data Service Provider - Property Damage annual aggregate
Policy Limit	Debris Removal
Policy Limit	Decontamination Costs
\$100,000	Deferred Payment
Policy Limit	Demolition and Increased Cost of Construction
\$1,000,000	Errors and Omissions
\$250,000	Expediting Expenses
\$250,000	Fine Arts not to exceed \$10,000 per item for irreplaceable Fine Arts
\$100,000	Green Coverage not to exceed 25% of the amount of the property damage loss
\$250,000	Land and Water Clean Up Expense annual aggregate
\$100,000	Locks and Keys
\$100,000	Money and Securities
\$2,500,000	Newly Acquired Property
\$2,500,000	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
\$100,000,000	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
\$2,000,000	Unnamed Property
\$1,000,000	Valuable Papers and Records not to exceed \$10,000 per item for irreplaceable Valuable Papers and Records

Business Interruption Coverage

Policy Limit	Gross Earnings not to exceed 90 days for ordinary payroll
Policy Limit	Gross Profits for 12 months Period of Liability not to exceed 90 days for ordinary payroll
Policy Limit	Rental Income
\$5,000,000	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
\$100,000	Contractual Penalties
\$100,000	Crisis Management not to exceed 30 Days
Included in DSP-PD Limit	Data Service Provider - Business Interruption annual aggregate
365 Days	Extended Period of Liability
\$500,000	Ingress/Egress
\$250,000	Leasehold Interest
\$100,000	Logistics Extra Cost
\$1,500,000	Off-Premises Service Interruption - Business Interruption
Included in Cyber Event Limit	Owned Network Interruption annual aggregate
Policy Limit	Protection and Preservation of Property - Business Interruption
Policy Limit	Research and Development
\$350,000	Soft Costs
\$500,000	Supply Chain

Retail Endorsement

\$100,000	Removal and Restocking Expenses
\$1,000,000	Spoilage

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. Earthquake (per **location** for all coverages provided):

A. \$100,000 at all **locations**

Except:

B. As respects to the following **locations**:

Any property in the State of California and the following **locations**:

99. 3645 South Virginia Street, Reno, NV, 89502-6002

100. 1805 East Lincoln Way, Sparks, NV, 89434-8952

The following will apply:

This Company will not be liable for loss or damage unless the amount of loss or damage exceeds 5% of the combined value of the property and annual business interruption value that would have been earned at the time of such loss or damage at the **location** where loss or damage occurs plus that proportion of the 100% business interruption value at all other **locations** where business interruption loss ensues, in accordance with the valuation and business interruption sections of this policy, subject to a minimum deductible amount of \$100,000 per **location**. If coverage is provided for more than one **location**, this deductible percentage or minimum deductible amount will be applied separately to each **location**.

2. \$100,000 Flood (per **location** for all coverages provided).

DECLARATIONS

3. Wind and/or Hail (per **location** for all coverages provided in this policy) at the following **locations**:

This Company will not be liable for loss or damage unless the amount of loss or damage exceeds 3% of the combined value of the property and annual business interruption value that would have been earned at the time such loss or damage at the **location** where loss or damage occurs plus that proportion of the 100% business interruption value at all other **locations** where business interruption loss ensues, in accordance with the valuation and business interruption sections of this policy, subject to a minimum deductible amount of \$250,000 per **location**. If coverage is provided for more than one **location**, this deductible percentage or minimum deductible amount will be applied separately to each **location**.

71. 2066 South Abilene Street, Aurora, CO, 80014-1442
72. 4687 Mileston Lane, Castle Rock, CO, 80104-7900
73. 7065 Commerce Center Drive, Colorado Springs, CO, 80919-2651
74. 2825 Geyser Drive, Colorado Springs, CO, 80906-4005
75. 16301 East 40th Avenue, Denver, CO, 80239-5739
76. 10443 East Costilla Avenue, Englewood, CO, 80112-3737
77. 807 East Harmony Road, Fort Collins, CO, 80525-4877
78. 14295 West Colfax Avenue, Golden, CO, 80401-3211
80. 15 West Springer Drive, Highlands Ranch, CO, 80129-2315
81. 8601 West Cross Drive, Littleton, CO, 80123-0702
82. 1315 Dry Creek Road, Longmont, CO, 80503-6502
83. 988 Dillon Road, Louisville, CO, 80027-9448
84. 497 120th Avenue, Thornton, CO, 80233-5706
85. 9329 North Sheridan Boulevard, Westminster, CO, 80031-6531

4. Boiler and Machinery:

- A. Property Damage: \$25,000
- B. Business Interruption Qualifying Period:

This Company will not be liable for Business Interruption loss unless the period of liability exceeds 24 hours. Should the period of liability exceed this time period, the loss will be calculated beginning from the time of loss, subject to a minimum deductible amount of \$25,000 per **location**. If coverage is provided for more than one **location**, this minimum deductible amount will be applied separately to each **location**.

5. 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: \$25,000
- 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

6. Data Restoration:

Qualifying Period: 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: \$25,000

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. Data Service Provider - Property Damage and Business Interruption:

Qualifying Period: 24 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: \$25,000

B. Business Interruption Day Equivalent Deductible:

The business interruption deductible will be determined by multiplying the one hundred percent day equivalent (DEQ) by 1.

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: \$25,000

B. Business Interruption Day Equivalent Deductible:

The business interruption deductible will be determined by multiplying the one hundred percent day equivalent (DEQ) by 1.

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. Owned Network Interruption:

Qualifying Period: 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.

10. \$25,000 All Other Losses.

DECLARATIONS

H. SPECIAL TERMS AND CONDITIONS:

1. National Flood Insurance Program

LOSS ADJUSTMENT AND SETTLEMENT, OTHER INSURANCE is amended by the addition of the following:

This Policy shall respond as excess over those terms and conditions concurrent with the Standard Flood Insurance Policy issued to the Insured, its renewal or replacement thereof.

It is agreed that the Insured will purchase flood insurance for the following locations :

- 9. 7000 East Mayo Boulevard, Phoenix, AZ, 85054-6151
- 44. 2485 Vista Way, Oceanside, CA, 92054-6168
- 70. 549 Westminster Mall, Westminster, CA, 92683-4982
- 97. 1900 South Casino Drive, Laughlin, NV, 89029-1513

from the National Flood Insurance Program and will maintain the maximum amount of available flood insurance for building and contents under the National Flood Insurance Program.

If for any reason the National Flood Insurance Program Standard Flood Insurance Policy should not be in force at the time of loss, this Policy will respond as if the terms and conditions of the Standard Flood Insurance policy were in force and the maximum amount of available flood insurance for building and contents coverage had been purchased from the National Flood Insurance Program.

2. Combined Data Service Provider Limit - PRO 1031 (6/19)

The Company's total liability for Data Service Provider - Property Damage and Data Service Provider - Business Interruption combined:

- \$50,000 **annual aggregate**, not to exceed:
- \$50,000 **annual aggregate** for **cyber event**

As a result of one occurrence and replaces the corresponding limits of liability shown in the sublimit section.

3. Application of Flood and Wind and/or Hail Deductibles - PRO 149 (1/17)

If an occurrence involves loss or damage caused by or resulting from both:

a. Wind and/or hail; and

b. Flood;

Then:

- 1) A specific wind and/or hail deductible; and
- 2) A specific **flood** deductible;

Will apply separately to each location.

Such loss or damage will be adjusted separately and will be subject to its respective deductible.

DECLARATIONS

4. United States Certified Act of Terrorism - PRO 207 (01/20)

As respects the United States, its territories and possessions and the Commonwealth of Puerto Rico, the definition of **terrorism** is declared null and void and it is agreed that 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

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)
Retail Endorsement	PRO RT 4100	(01/17)
Cyber Event Endorsement	PRO CYBER EVENT 4100	(06/19)
Supplemental United States Certified Act of Terrorism Endorsement	7312	(01/20)
Arizona Amendatory Endorsement	AFM 6487	(04/15)
California Amendatory Endorsement	AFM 6488	(04/15)
Colorado Amendatory Endorsement	AFM 6489	(04/15)
Nevada Amendatory Endorsement	AFM 6513	(04/15)
New Mexico Amendatory Endorsement	AFM 4599	(04/15)

DECLARATIONS

Location Schedule

1. 1080 North 54th Street, Chandler, AZ, 85226-1030
2. 2600 East Lucky Lane, Flagstaff, AZ, 86004-8520
3. 2687 South Market Street, Gilbert, AZ, 85295-1301
4. 5605 West Bell Road, Glendale, AZ, 85308-3867
5. 1650 South Clearview Avenue, Mesa, AZ, 85209-4048
6. 1860 East McKellips Road, Mesa, AZ, 85203-2850
7. 4715 East Cactus Road, Phoenix, AZ, 85032-7725
8. 9801 North Black Canyon Highway, Phoenix, AZ, 85021-1612
9. 7000 East Mayo Boulevard, Phoenix, AZ, 85054-6151
10. 99 South Highway 92, Sierra Vista, AZ, 85635-3637
11. 14225 West Grand Avenue, Surprise, AZ, 85374-4297
12. 1734 East Southern Avenue, Tempe, AZ, 85282-5613
13. 4871 East Grant Road, Tucson, AZ, 85712-2704
14. 2240 West Ina Road, Tucson, AZ, 85741-2649
15. 166 East Huntington Drive, Arcadia, CA, 91006-3211
16. 5051 Stockdale Highway, Bakersfield, CA, 93309-2649
17. 30 Pointe Drive, Brea, CA, 92821-3652
18. 7575 Beach Boulevard, Buena Park, CA, 90620-1835
19. 1761 North Victory Place, Burbank, CA, 91502-1646
20. 1990 East 20th Street, Chico, CA, 95928-6342
21. 1418 South Azusa Avenue, City of Industry, CA, 91748-1500
22. 151 North McKinley Street, Corona, CA, 92879-6566
23. 1670 Newport Boulevard, Costa Mesa, CA, 92627-3717
24. 1476 North Azusa Avenue, Covina, CA, 91722-1251
25. 20630 Valley Green Drive, Cupertino, CA, 95014-1702
26. 371 Gellert Boulevard, Daly City, CA, 94015-2613
27. 6505 Regional Street, Dublin, CA, 94568-2913
28. 722 Jamacha Road, El Cajon, CA, 92019-3201
29. 7221 Laguna Boulevard, Elk Grove, CA, 95758-5059
30. 26652 Portola Parkway, Foothill Ranch, CA, 92610-1755
31. 5525 Stevenson Boulevard, Fremont, CA, 94538-2447
32. 2765 West Shaw Avenue, Fresno, CA, 93711-3314
33. 12001 Harbor Boulevard, Garden Grove, CA, 92840-4001
34. 25322 Cabot Road, Laguna Hills, CA, 92653-5506
35. 5305 Clark Avenue, Lakewood, CA, 90712-1909
36. 20 West Shoreline Drive, Long Beach, CA, 90802-4570
37. 1246 Great Mall Drive, Milpitas, CA, 95035-8036
38. 2045 West Briggsmore Avenue, Suite D, Modesto, CA, 95350-3770
39. 22680 Centerpoint Drive, Moreno Valley, CA, 92553-5242
40. 2980 Plaza Bonita Road, National City, CA, 91950-8015
41. 25261 The Old Road, Newhall, CA, 91381
42. 18711 Devonshire Street, Northridge, CA, 91324-1312
43. 12850 Norwalk Boulevard, Norwalk, CA, 90650-3174
44. 2485 Vista Way, Oceanside, CA, 92054-6168
45. 4492 Ontario Mills Parkway, Ontario, CA, 91764-5107
46. 2341 Lockwood Street, Oxnard, CA, 93036-0618
47. 72-220 Highway 111, Palm Desert, CA, 92260
48. 1061 West Avenue P, Palmdale, CA, 93551-3933
49. 1361 Fitzgerald Drive, Pinole, CA, 94564-2251
50. 4350 Century Boulevard, Pittsburg, CA, 94565-7100
51. 150-A Longbrook Way, Pleasant Hill, CA, 94523-7717
52. 14701 Pomerado Road, Poway, CA, 92064-2802
53. 2100 Golden Centre Lane, Rancho Cordova, CA, 95670-4490
54. 910 Dana Drive, Redding, CA, 96003-4079

DECLARATIONS

55. 4619 Redwood Drive, Rohnert Park, CA, 94928-7941
56. 181 North Sunrise Avenue, Roseville, CA, 95661-2900
57. 1340 Howe Avenue, Sacramento, CA, 95825-3202
58. 1401 North Davis Road, Salinas, CA, 93907-1990
59. 620 East Hospitality Lane, San Bernardino, CA, 92408-3524
60. 4196 Clairemont Mesa Boulevard, San Diego, CA, 92117-2718
61. 1640 Camino del Rio North, San Diego, CA, 92108-1506
62. 7676 Hazard Center Drive, Suite 1500, San Diego, CA, 92108-4518
63. 177 San Marcos Boulevard, San Marcos, CA, 92069-2916
64. 40275 Winchester Road, Temecula, CA, 92591-5501
65. 3525 West Carson Street, Torrance, CA, 90503-5738
66. 530 North Mountain Avenue, Upland, CA, 91786-5015
67. 521 Davis Street, Vacaville, CA, 95688-4632
68. 12400 Amargosa Road, Suite B, Victorville, CA, 92392-5447
69. 4004 South Mooney Boulevard, Visalia, CA, 93277-9306
70. 549 Westminster Mall, Westminster, CA, 92683-4982
71. 2066 South Abilene Street, Aurora, CO, 80014-1442
72. 4687 Mileston Lane, Castle Rock, CO, 80104-7900
73. 7065 Commerce Center Drive, Colorado Springs, CO, 80919-2651
74. 2825 Geyser Drive, Colorado Springs, CO, 80906-4005
75. 16301 East 40th Avenue, Denver, CO, 80239-5739
76. 10443 East Costilla Avenue, Englewood, CO, 80112-3737
77. 807 East Harmony Road, Fort Collins, CO, 80525-4877
78. 14295 West Colfax Avenue, Golden, CO, 80401-3211
79. 2432 Highway 6 And 50, Grand Junction, CO, 81505-1102
80. 15 West Springer Drive, Highlands Ranch, CO, 80129-2315
81. 8601 West Cross Drive, Littleton, CO, 80123-0702
82. 1315 Dry Creek Road, Longmont, CO, 80503-6502, Index No. 003492.05
83. 988 Dillon Road, Louisville, CO, 80027-9448
84. 497 120th Avenue, Thornton, CO, 80233-5706
85. 9329 North Sheridan Boulevard, Westminster, CO, 80031-6531
86. 4921 Jefferson Street NE, Albuquerque, NM, 87109-2326
87. 10022 Coors Boulevard NW, Albuquerque, NM, 87114-4443
88. 4921 East Main Street, Farmington, NM, 87402-8657
89. 940 North Telshor Boulevard, Las Cruces, NM, 88011-8244
90. 4250 Cerrillos Road, Santa Fe, NM, 87507-4697
91. 521 North Stephanie Street, Henderson, NV, 89014-6613
92. 1950 North Rainbow Boulevard, Las Vegas, NV, 89108-2797
93. 8671 West Sahara Avenue, Las Vegas, NV, 89117-5830
94. 3411 South Las Vegas Boulevard, Las Vegas, NV, 89109-8955, Index No. 079312.40
95. 7380 South Las Vegas Boulevard, Las Vegas, NV, 89123-1007
96. 3785 Las Vegas Boulevard, Las Vegas, NV, 89115-1504
97. 1900 South Casino Drive, Laughlin, NV, 89029-1513
98. 2625 West Craig Road, North Las Vegas, NV, 89032-0719
99. 3645 South Virginia Street, Reno, NV, 89502-6002
100. 1805 East Lincoln Way, Sparks, NV, 89434-8952



ALL RISK COVERAGE

Table of Contents

PROPERTY INSURED	1
Real Property.....	1
Personal Property	1
PROPERTY EXCLUDED	1
EXCLUSIONS	2
Group I.....	2
Group II.....	3
Group III.....	4
ADDITIONAL COVERAGES	5
Accounts Receivable	5
Arson or Theft Reward.....	5
Brand Protection.....	6
Change of Temperature	6
Communicable Disease – Property Damage	6
Data, Programs or Software	7
Debris Removal.....	8
Decontamination Costs.....	8
Deferred Payment.....	8
Demolition and Increased Cost of Construction.....	9
Earth Movement.....	10
Errors and Omissions	10
Expediting Expenses	10
Fine Arts and Valuable Papers and Records	11
Flood	11
Green Coverage.....	11
Land and Water Clean Up Expense.....	12
Locks and Keys	12
Money and Securities	12
Newly Acquired Property.....	12



Off-Premises Data Services – Property Damage.....13

Off-Premises Service Interruption – Property Damage.....13

Professional Fees.....13

Property Removed from a Location14

Protection and Preservation of Property – Property Damage.....14

Tax Treatment14

Tenants Legal Liability15

Terrorism.....15

Transit16

Unnamed Property.....18

BUSINESS INTERRUPTION 19

 Loss Insured 19

 Business Interruption Coverage 20

 Gross Earnings 20

 Gross Profits..... 20

 Rental Income 21

 Extra Expense..... 22

 BI Select..... 22

 Period of Liability 22

 Business Interruption Exclusions 23

BUSINESS INTERRUPTION COVERAGE EXTENSIONS 24

 Attraction Property..... 24

 Civil or Military Authority..... 24

 Communicable Disease – Business Interruption..... 24

 Computer Systems Non-Physical Damage..... 25

 Contractual Penalties..... 25

 Crisis Management..... 26

 Extended Period of Liability 26

 Ingress/Egress..... 27

 Leasehold Interest 27

 Logistics Extra Cost 27

 Off-Premises Data Services – Business Interruption..... 28

 Off-Premises Service Interruption – Business Interruption..... 29

 Protection and Preservation of Property – Business Interruption..... 30

 Research and Development..... 30



Soft Costs 30

Supply Chain 30

LOSS ADJUSTMENT AND SETTLEMENT 32

Abandonment 32

Appraisal 32

Collection From Others 32

Company Option 32

Currency for Loss Payment 32

Legal Action Against this Company 33

Loss Adjustment and Payable 33

Other Insurance 33

Requirements in Case of Loss 33

Settlement of Claims 34

Subrogation 35

Valuation 35

GENERAL CONDITIONS 37

Application of Policy to Date or Time Recognition 37

Cancellation/Non-Renewal 37

Conformity to Statute 37

First Named Insured 37

Increase in Hazard 38

Inspections 38

Liberalization Clause 38

Misrepresentation and Fraud 38

Mortgagee/Lenders Loss Payable 38

Policy Modification 40

Reinstatement of Limits after a Loss 40

Suspension 40

Transfer or Rights and Duties under this Policy 40

DEFINITIONS 41



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



- e) 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.



Member of the FM Global Group



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; tsunami; 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.



Retail Endorsement

This Endorsement is a part of this Policy and the terms and conditions of this Policy are amended as described herein. All other terms and conditions of this Policy remain unchanged.

1. Removal and Restocking Expenses

This Policy covers the reasonable and necessary expenses incurred by the Insured for the removal and restocking of finished goods and other merchandise held for sale resulting from the recall of such property by the product's manufacturer or by an order of a governmental authority.

Coverage is limited to such expenses incurred in the first 90 consecutive days following the recall.

Removal and Restocking Exclusions: With respect to Removal and Restocking Expenses, the following additional exclusions apply:

This Policy does not cover:

- a) Expenses for the recall of such property manufactured by the Insured, including products that the Insured incorporates into other products.
- b) Expenses for the recall of such property recalled prior to the inception date of this Policy.
- c) The cost to recall such property.
- d) The cost to replace such property.

2. Spoilage

Change of Temperature under Additional Property Damage Coverages in the Property Damage section of this Policy is replaced with the following:

This Policy covers spoilage of insured finished goods and other merchandise held for sale due to:

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

Directly resulting from an accidental event at a **location**.

3. Valuation

Items 2 and 4 under the Valuation clause in the Loss Adjustment and Settlement section of this Policy are replaced with the following:

2. On raw materials and supplies, the replacement cost.
4. On finished goods and other merchandise held for sale, the regular cash selling price, less all discounts and charges to which such finished goods or other merchandise held for sale would have been subject had no loss happened.



CYBER EVENT ENDORSEMENT

This Endorsement is a part of this Policy and the terms and conditions of this Policy are amended as described herein. All other terms and conditions of this Policy remain unchanged.

1. Cyber Event Definition

The following definition is added to this Policy:

cyber event means any act involving the malicious or unauthorized access to, operation of, or use of **electronic data processing equipment or media**, regardless of any other cause or event contributing concurrently or in any other sequence of loss. However, physical loss or damage by fire, explosion or sprinkler leakage resulting from **cyber event** is not considered to be loss by **cyber event** within the terms and conditions of this Policy.

2. Exclusions

PROPERTY EXCLUDED item **12.** is replaced with the following:

12. Electronic data, programs or software, except when incorporated into physical goods intended to be sold as:

- a) Finished goods manufactured by the Insured; or
- b) Other merchandise not manufactured by the Insured;

or as provided by the Data Restoration coverage in this Policy.

EXCLUSIONS Group I item **4.** is replaced with the following:

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 Data Service Provider 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.

3. Additional Coverages

ADDITIONAL COVERAGES items **6.** and **21.** are replaced with the following:

6. Data Restoration

This Policy covers insured **physical loss or damage to electronic data, programs or software**, while anywhere within this Policy's Territory, including while in transit.

With respect to **physical loss or damage to electronic data, programs or software** caused by or resulting from a **cyber event**, this coverage will apply when the time to recreate or restore such data, programs or software with due diligence and dispatch is in excess of the Qualifying Period shown in the Declarations section of this Policy.

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 Additional Coverage excludes loss or damage to data, programs or software when incorporated into physical goods intended to be sold as:

- a) Finished goods manufactured by the Insured, or
- b) Other merchandise not manufactured by the Insured.

Data Restoration Exclusions: As respects Data Restoration, 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.
- c) Deterioration, inherent vice, vermin or wear and tear.

The Period of Liability for this Additional Coverage Extension will be:

- a) The period of time starting from the time of insured **physical loss or damage to electronic data, programs or software**; and
- b) Ending when with due diligence and dispatch the electronic data, programs or software could have been recreated or restored and made ready for production or business operations or services under the same or equivalent physical operating conditions that existed prior to the physical loss or damage.

Data Restoration 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.

21. Data Service Provider - 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 will apply when such interruption of **off-premises data processing or data transmission services** is in excess of the Qualifying Period shown in the Declarations section of this Policy. Such interruption is the time when an interruption of provided services happens; and ending when with due diligence and dispatch the service could be wholly restored.

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.

Data Service Provider - Property Damage Exclusions: As respects Data Service Provider - 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.

4. Business Interruption Coverage

BUSINESS INTERRUPTION COVERAGE EXTENSIONS items **4.** and **11.** are replaced with the following:

4. **Owned Network Interruption**

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 **cyber event** 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 **cyber event** 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.

As respects item **a)** above, this coverage will apply when the Period of Liability below is in excess of the Qualifying Period shown 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**.

11. Data Service Provider - 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 will apply when the Period of Liability of **off-premises data processing or data transmission services** below is in excess of the Qualifying Period shown 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 Owned Network Interruption coverage as provided in this section of this Policy.

Data Service Provider - Business Interruption Exclusions: As respects Data Service Provider - 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 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).

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 \$5,000, 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**.

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 a **Certified Act 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 80% 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**.

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. 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.



ARIZONA

AMENDATORY ENDORSEMENT

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

ASSIGNMENT – This policy may not be assigned without the Company’s written consent.

CANCELLATION – This policy may be cancelled by the named insured by mailing to the Company written notice stating when thereafter such cancellation shall be effective.

The Company may cancel this policy. However, if this policy has been in effect for 45 days or more, or if it is a renewal of a policy issued by the Company, effective immediately, the Company may cancel this policy only if one or more of the following reasons applies:

1. Nonpayment of premium;
2. Conviction of the Named Insured of a crime arising out of acts increasing the hazard insured against;
3. Acts or omissions by the Named Insured or their representative constituting fraud or material misrepresentation in obtaining this policy, in continuing this policy or in presenting a claim under this policy;
4. A substantial change in the risk assumed, except to the extent that the Company should reasonably have foreseen the change or contemplated the risk in writing the contract;
5. A substantial breach of contractual duties or conditions;
6. Loss of reinsurance applicable to the risk insured against, but only if the absence of reinsurance has resulted from termination of treaty or facultative reinsurance initiated or implemented by the reinsurer or reinsurers of the Company issuing the policy;
7. A determination by the Director of Insurance that the continuation of this policy would place the Company in violation of the insurance laws of this state, or would jeopardize the solvency of the Company; or
8. Acts or omissions by the company or the Named Insured’s representative which materially increase the hazard insured against.

The Company will give the Named Insured and their agent notice of cancellation at least 45 days before the cancellation is to take effect, except 10 days of notice is required where cancellation is for nonpayment of premium.

The cancellation notice must include the reason or reasons for cancellation.

ANNIVERSARY CANCELLATION – The Company may cancel this policy or coverage on any anniversary date by giving the Named Insured and their agent notice at least 45 days prior to the anniversary date on which cancellation is to be effective.

NONRENEWAL - If the Company decides not to renew this policy, it will give the Named Insured and their agent notice of nonrenewal at least 45 days before the end of the policy period.



Notice of nonrenewal is not required if the Named Insured has obtained replacement coverage or has agreed in writing to obtain replacement coverage, or if this Company or another company in the same insurance group have offered to issue a renewal policy.

RENEWAL – The Company will give the Named Insured written notice at least 45 days before expiration of this policy if it decides to renew this policy subject to any of the following:

1. Premium increase;
2. Change in deductible;
3. Reduction in limits; or
4. Substantial reduction in coverage.

If the Company fails to provide the 45 days of notice, the coverage provided to the Named Insured shall remain in effect until notice is given or until the effective date of replacement coverage obtained by the Named Insured, whichever occurs first.

NOTICE – Our notice of cancellation, nonrenewal, or renewal subject to the changes listed above will be mailed to the Named Insured by certified mail at the address shown in the policy, or to the last known address of the Named Insured. Proof of mailing to the Named Insured at the address shown in this Policy is sufficient proof of notice.



CALIFORNIA

AMENDATORY ENDORSEMENT

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

CANCELLATION - The Insured may cancel this policy by returning it to the Company or by giving it written notice and stating at what future date coverage is to cease.

During the first 60 days this policy is in effect, the Company may cancel it or one or more of its parts for any reason. The Company will give the Insured notice at least 30 days before the cancellation takes effect.

After this policy has been in effect 60 days, or if it is a renewal of a policy issued by the Company it may cancel only for one or more of the following reasons:

1. The premium has not been paid when due;
2. Discovery of fraud or material misrepresentation in obtaining this insurance, or in pursuing a claim under this policy;
3. A judgment by a court or an administrative tribunal that the Insured has violated a law of this state or the United States involving an act that materially increases a hazard insured against;
4. Discovery of willful or grossly negligent acts or omissions or of violations of state laws or regulations establishing safety standards, that materially increase a hazard insured against;
5. Failure to implement reasonable loss control requirements which the Insured agreed to as a condition of the issue of this policy, or which were required in order to qualify for a particular rate or rating plan, if the failure materially increases a hazard insured against;
6. A determination by the Insurance Commissioner that the loss of, or changes in, the Company reinsurance would threaten its financial integrity or solvency;
7. A determination by the Insurance Commissioner that a continuation of this policy would place the Company in violation of the law or that continuation of coverage would threaten its solvency; or
8. A change in the Insured's activities or property which results in a materially added, increased or changed hazard that is not included in the policy.

If the premium has not been paid when due or if fraud is discovered, the Company will give the Insured notice at least 10 days before the cancellation takes effect. If the Company cancels for one of the reasons described under items 3 through 8 of this condition, the Company will give the insured notice at least 30 days before the cancellation takes effect.

The Company may cancel this policy by delivering or mailing written notice to the producer of record and to the Insured's mailing address last known to it. The notice will state the time that the cancellation is to take effect and include the reason for cancellation.

The Insured's return premium, if any, will be calculated according to the Company rules. It will be refunded to the Insured with the cancellation notice or within a reasonable time. Payment or tender of the unearned premium is not a condition of cancellation.

NONRENEWAL AND RENEWAL WITH ALTERED TERMS – The Company may elect not to renew or continue this policy by delivering or mailing written notice to the producer of record and to the Insured's mailing address last known to it. The notice will include the reason for the company action.



The Company will give the Insured notice at least 60 days, but not more than 120 days, before the expiration or anniversary date.

The Company will give the Insured the same number of days notice if it offers to renew this policy subject to a reduction of limits, elimination of coverages, an increase in deductibles, or an increase of more than 25 percent in the rate upon which the premium is based.

The Company is not required to send a notice of nonrenewal if:

1. This policy is transferred to or renewed by another insurer in its insurance group without changing policy “terms” or the rate on which the premium is based;
2. The policy has been extended for 90 days or less after notice was given in accordance with the requirements of this condition;
3. The Insured has obtained replacement coverage or have agreed in writing to obtain replacement coverage within 60 days of the termination of this policy;
4. This policy was issued for a term of 60 days or less and the Insured were notified when the policy was issued that it would not be renewed;
5. The Insured requests a change in “terms” or hazards covered within 60 days of the end of the policy period; or
6. In accordance with the requirements of this condition, the Company has made a written offer to renew the policy with changed “terms” or at a change to the rate on which the premium is based.

REQUIREMENTS IN CASE LOSS OCCURS – After a covered loss, the Company shall provide, free of charge, a complete, current copy of this policy within 30 calendar days of receipt of a request from the Insured. The time period for providing this policy may be extended by the Insurance Commissioner. An Insured who does not experience a covered loss shall, upon request, be entitled to one free copy of this policy annually. The policy provided to the Insured shall include, where applicable, the policy declarations page.



COLORADO

AMENDATORY ENDORSEMENT

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

CANCELLATION - We may cancel this policy by mailing to the Named Insured a notice of cancellation at least 10 days before the cancellation is to be effective, if the cancellation is for nonpayment of premium, or 45 days before the cancellation is to be effective if the cancellation is for other reasons. The notice of cancellation shall be accompanied by the reasons for cancellation.

We may cancel only if one or more of the following reasons apply:

- a. nonpayment of premium;
- b. a false statement made by the Insured on the application for insurance;
- c. a substantial change in the exposure or risk other than that indicated in the application and underwritten as of the effective date of the policy unless the Insured has notified the Company of the change and the Company accepts such change; or
- d. such other reasons as the Commissioner may determine are reasonable and necessary.

NONRENEWAL - If we decide not to renew this policy, we will mail our notice of nonrenewal to the Named Insured at least 45 days before the policy expiration date.

INCREASE IN PREMIUM OR DECREASE IN COVERAGE - If we decide to increase the premium unilaterally or decrease the coverage benefits on renewal, we will mail notice to the Named Insured at least 45 days before the policy expiration date. The notice will be accompanied by the reasons for the increase in premium or decrease in coverage.

We may decrease the coverage during the term of the policy only if one of the reasons for cancellation applies. Our notice will include the reason for the decrease.



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.



NEW MEXICO

AMENDATORY ENDORSEMENT

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

CANCELLATION - The Insured may cancel this policy by returning it to the Company or by giving it a written notice and stating at what future time coverage is to cease.

The Company may cancel this policy, or one or more of its parts, by giving the Insured a written notice.

1. If the premium has not been paid when due, the Company may cancel at any time by giving the required notice at least 10 days before the cancellation is effective.
2. If the policy has been in effect less than 60 days and is not a renewal policy, the Company may cancel by giving the required notice at least 10 days before the cancellation is effective.
3. If the policy has been in effect for 60 days or more or is a renewal policy, the Company may cancel only for one or more of the following reasons:
 - a) The policy was obtained through material misrepresentation, fraudulent statements, omissions or concealment of fact material to the acceptance of the risk or to the hazard assumed by the Company;
 - b) Willful and negligent acts or omission by the Insured have substantially increased the hazards insured against;
 - c) The Insured presented a claim based on fraud or material misrepresentation; or
 - d) There has been a substantial change in the risk assumed by the company since the policy was issued.

The Company will give the required Notice of Cancellation stating the reason(s) for cancellation at least 30 days before the cancellation is effective.

The notice will state the time that the cancellation is to take effect. The notice will be sent to the Insured's mailing address last known to the company.

The Insured's return premium, if any, will be calculated as follows:

1. If the Company cancels, it will return all unearned premiums;
2. If the Insured cancels, the refund will be calculated according to the company rules.

The Insured's return premium will be refunded to them with the cancellation notice or within a reasonable time. Payment or tender of the unearned premium is not a condition of cancellation.

NON-RENEWAL – If the Company decides not to renew this policy, it must give the Insured written notice of its intention not less than 30 days prior to the expiration of the policy.

This section does not apply to any policy of insurance issued to an Insured who has its principal place of business outside this state.

EXHIBIT B

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 proVizion 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 proVizion 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 proVizion 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 proVizion 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 proVizion

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 proVizion 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 C



Member of the FM Global Group

AFM Insurance Company
Great Northern Corporate Center
25050 Country Club Boulevard, Suite 300
North Olmsted, OH 44070
T: (216) 898-4663 F: (216) 898-4652
Email: Philip.Dresden@fmglobal.com

April 17, 2020

A. Keith Wall
Chief Financial Officer
Out West Restaurant Group, Inc.
7676 Hazard Center Drive
Suite 1500
San Diego, CA 92108
Via Email To: kwall@outwestrg.com

RE: Cerca Trova Restaurant Group, Inc.
7676 Hazard Center Drive
Suite 1500
San Diego, CA 92108
Account No. 87253
Date Reported: 07-Apr-2020
Claim ID: 501577

Mr. Wall:

This letter will follow our discussion of April 16, 2020 regarding the above captioned claim.

Recapping the loss notice, six locations have been fully closed as a result of COVID-19: Store Nos. 3222 (Las Vegas, NV (Coke Building)); 3219 (Laughlin, NV); 3218 (Las Vegas, NV (Casino Royale)); 515 (Sacramento, CA); 514 (Cupertino, CA); 524 (Salinas, CA). All other stores not specifically listed above remain open only for take-out or delivery services as a result of local and/or state governmental orders due to COVID-19. In addition, Store No. 527 (Daly City, CA) experienced an employee being diagnosed with COVID-19. At the time of this writing, it remains uncertain when all locations, including those open only for take-out or delivery services, will reopen for normal business activities.

We originally received a loss report for the Daly City, CA location from the Restaurant Manager and Risk Manager. After some initial discussion, it was our understanding that the costs associated with the clean-up of this location would not exceed the applicable deductible and we would not plan any follow up adjustment activity. However, you have recently indicated that all locations should now be included as part of the claim reported.

Your loss notice also states “this notice of loss is based on COVID-19 including, without limitation, the direct physical loss of or damage to property, actual detection of COVID-19, orders from civil and/or governmental authorities restricting or prohibiting partial or total access to property, orders from civil and/or governmental authorities resulting in the suspension of business operations or services, and orders from civil and/or governmental authorities necessitating the preservation and protection of property.”



AFM Policy No. MN263 does provide coverage for “communicable disease” under the Additional Coverages for Communicable Disease – Property Damage and Communicable Disease – Business Interruption, subject to all policy terms and conditions. AFM has determined that 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 Cerca Trova Restaurant Group, Inc., access to which has been limited, restricted or prohibited for more than 48 hours. Pertinent sections of AFM Policy No. MN263 are included below:

(AFM Policy No. MN263, Page 7 of 44)

“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:



Member of the FM Global Group

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.”

(AFM Policy No. MN263, Page 25 of 44)

“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.”

Please note that the applicable qualifying period for Communicable Disease coverage is 48 hours. The applicable Communicable Disease deductible is \$25,000 Property Damage and 2-day equivalent Business Interruption. 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.

Additionally, please note that the sublimit for Communicable Disease – Property Damage is \$100,000 and the sublimit for Communicable Disease – Business Interruption is \$100,000.

To obtain coverage under the Communicable Disease coverages set forth above, a described location owned, leased or rented by the Insured must have the actual not the suspected presence of communicable disease. With the exception of the Daly City, CA location, which we will address separately below, in your notice letter, you have not reported any confirmed case of COVID-19 at any other Insured location(s) that are owned, leased or rented by Cerca Trova. If you become aware of any employee or other individuals who were at an insured location, other than the Daly City, CA location, who have tested positive for COVID-19, or any other information that the virus was present at an insured location, please advise us.

Since you have indicated that Cerca Trova owned a location in Daly City, CA where an employee was infected with the virus, we have included a request for information below which will allow us to proceed with our investigation. We will need to gather the information on the below list for any insured location which the virus was present:

1. Please identify each location owned, leased or rented by Cerca Trova Restaurant Group which had the actual, not suspected, presence of COVID-19.
2. How did you determine that the location(s) identified above had the actual presence of COVID-19?
3. Have the identified location(s) been tested for COVID-19? If yes, please provide copies of the test reports.
4. Have the location(s) been cleaned due to the presence of COVID-19? If yes, please provide copies of the contractor notes, invoices, and any documents confirming that the location was cleaned.



Member of the FM Global Group

5. Have any employees (including outside workers, sub-contractors, etc.) and others who were in the location(s) been tested for COVID-19? Please answer only “yes” or “no.”
6. Have any of these individuals tested positive for COVID-19? Please answer only “yes” or “no.”
7. Please request and provide the employee’s or other person's test results (with all personal identifying information redacted).
8. For each employee who tested positive, please provide the date of the employee’s positive test result.
9. For each employee who tested positive, please provide support to establish when the employee was present at the location(s). This may include, but is not limited to, information such as payroll records and building entry data. Please redact identifying personal information of the employee(s) if required.
10. Have you contacted or been contacted by any local, state, or federal agency (e.g. local/state Department of Health, CDC, etc.) regarding COVID-19 test results of your employees? If yes, please provide those communications. If the communications contain any personal private information of employees, please forward a redacted copy of the communications.
11. Has access to the location(s) been limited, restricted or prohibited by an order of an authorized governmental agency or an Officer of [client name]? Please provide a copy of all such order(s).

Please provide this information as soon as you are able. This list is not intended to be all inclusive and additional requests for information may be necessary to assist in our investigation of this claim.

To the extent Cerca Trova 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 AFM Policy excludes coverage for contamination, and a virus such as COVID-19 is a form of contamination as defined in our Policy which is therefore excluded. The relevant provisions, in part, are set forth below:

“Group II: This Policy excludes...

- 1) **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 13. DEFINITIONS within the GENERAL PROVISIONS of the Policy on Page 74:

“contamination:

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 our 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 Cerca Trova 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. Once we have had an opportunity to complete our investigation and review of your policy information, we will confirm any applicable coverages or loss payables in effect.

Pursuant to section 2695.5 of the California insurance regulation, and other pertinent sections of California claims practice law and regulations, we are notifying you that our investigation is not complete and although neither policy coverage, if any, nor the extent of liability, if any has been determined, any claim that is submitted should contain:

1. A letter stating the amount of the claim.
2. A spreadsheet listing the items being claimed, as well as documentation to support each item being claimed.

Fair Claims Settlement Practices Regulations govern how insurance claims must be processed in this State. As defined in Section 790.03 of the Insurance Code, these regulations are available at the Department of Insurance internet site, www.insurance.ca.gov, or by calling the department’s consumer information line at 1-800-927-HELP (4357). You may also obtain a copy of these regulations free of charge from this insurer.

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 AFM Insurance Company Policy. Anything done or to be done by AFM 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 for your cooperation in this matter and we look forward to working with you on this loss. 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



Member of the FM Global Group

contact us so we can consider any such additional information. In the interim, should you have any questions or comments, please feel free to contact us.

Sincerely,

A handwritten signature in dark ink, appearing to read "Philip Dresden". The signature is fluid and cursive.

Philip Dresden
Senior Adjuster
Cleveland Operations – Claims

EM: Walter Andrews; wandrews@huntonak.com
EM: Andrea DeField; adefield@huntonak.com
EM: Greg Pendergast; greg.pendergast@marshmma.com
EM: Dennis Gutknecht; dennis.gutknecht@fmglobal.com
EM: Steve Shea; steve.shea@marshmma.com

FOR YOUR PROTECTION, CALIFORNIA LAW REQUIRES THE FOLLOWING TO APPEAR ON THIS FORM:

ANY PERSON WHO KNOWINGLY PRESENTS FALSE OR FRAUDULENT CLAIM FOR THE PAYMENT OF A LOSS IS GUILTY OF A CRIME AND MAY BE SUBJECT TO FINES AND CONFINEMENT IN STATE PRISON.

EXHIBIT D

EXHIBIT D
Examples of Civil Authority Orders Impacting Out West Locations¹

CALIFORNIA				
Order Title (shortened)	Authority	Date Issued	Statement	Relevant Out West Locations
Public Order Under City of Los Angeles Emergency Authority	Los Angeles City	3/19/2020, revised 4/10/2020	Imposing "safer at home" requirements and stating: "This Order is given because, among other reasons, the <u>COVID-19 virus</u> can spread easily from person to person and it <u>is physically causing property loss or damage due to its tendency to attach to surfaces for prolonged periods of time</u> "	18711 Devonshire Street, Northridge, CA, 91324-1312
Variance to Stage 2 of California's Roadmap to Modify the Stay-at-Home Order	Monterey County	5/18/2020	Requiring closure of all dine-in services, and stating: "This order is given because of the propensity of the virus to spread person to person and also <u>because the virus physically is causing property loss or damage due to its proclivity to attach to surfaces for prolonged periods of time</u> . . . COVID-19 is thought to survive on hard surfaces for up to three days which is why <u>cleaning and disinfection is essential</u> ."	1401 North Davis Road, Salinas, CA, 93907-1990
Executive Order No. 2020-4	San Diego City	5/21/2020	Limiting operations of certain businesses, limiting vehicle access to certain roads, and stating: "The closures and restrictions in these orders were and remain necessary because of the propensity of the virus to spread person to person and <u>also because COVID-19 physically causes property loss and damage</u> ."	4196 Clairemont Mesa Boulevard, San Diego, CA, 92117-2718; 1640 Camino del Rio North, San Diego, CA, 92108-1506; 7676 Hazard Center Drive, Suite 1500, San Diego, CA, 92108-4518

¹ Note, this exhibit lists examples only and is not meant to be exhaustive. Several additional civil authority orders have impacted Out West locations and orders continue to be updated and issued. Out West reserves all rights to provide additional information on orders, and to supplement that information, during the course of this litigation.

Order of the Health Officer No. 2020-04	Solano County	3/30/2020	Limiting restaurants to delivery and takeout, and stating: "this Order is given because of the propensity of the virus to spread person to person and also because <u>the virus physically is causing property loss or damage due to its proclivity to attach to surfaces.</u> "	521 Davis Street, Vacaville, CA, 95688-4632
No. C19-05 Extending Shelter In Place Order No. C19-03 Beyond April 7, 2020 to May 3, 2020	Sonoma County	3/31/2020	"This order is given because of the propensity of the virus to spread person-to-person, and also because <u>the virus physically is causing property loss or damage due to its proclivity to stay airborne and to attach to surfaces for prolonged periods of time.</u> "	4619 Redwood Drive, Rohnert Park, CA, 94928-7941
No. C19-09 Extending Shelter In Place Order No. C19-05 Beyond May 3, 2020	Sonoma County	5/1/2020	"The Health Officer has determined that this Order, and its prior Orders, were and are necessary because cases of COVID-19 have been confirmed throughout Sonoma County. COVID-19 is highly contagious and <u>has a propensity to spread in various ways including, but not limited to, by attaching to surfaces or remaining in the air, resulting in physical damage and/or physical loss.</u> "	4619 Redwood Drive, Rohnert Park, CA, 94928-7941
COLORADO				
Order Title (shortened)	Authority	Date Issued	Statement	Relevant Out West Locations
D 2020 003 Executive Order Declaring a Disaster Emergency Due to the Presence of Coronavirus Disease 2019 in	Colorado	3/11/2020	"The Governor is responsible for meeting the dangers to the State and people presented by disasters. C.R.S. § 24-33.5-704(1). The Act defines a disaster as 'the <u>occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property</u> resulting from any natural cause or cause of human origin, including but not limited to . . . epidemic.' C.R.S. § 24- 33.5-703(3). The threat currently posed by COVID-19, a respiratory illness that can spread	2066 South Abilene Street, Aurora, CO, 80014-1442; 4687 Mileston Lane, Castle Rock, CO, 80104-7900; 7065 Commerce Center Drive, Colorado Springs, CO, 80919-2651; 2825 Geyser Drive, Colorado Springs,

Colorado			from person to person, constitutes a disaster for purposes of the Act."	CO, 80906-4005; 16301 East 40th Avenue, Denver, CO, 80239-5739; 10443 East Costilla Avenue, Englewood, CO, 80112-3737; 807 East Harmony Road, Fort Collins, CO, 80525-4877; 14295 West Colfax Avenue, Golden, CO, 80401-3211; 2432 Highway 6 And 50, Grand Junction, CO, 81505-1102; 15 West Springer Drive, Highlands Ranch, CO, 80129-2315; 8601 West Cross Drive, Littleton, CO, 80123-0702; 1315 Dry Creek Road, Longmont, CO, 80503-6502; 988 Dillon Road, Louisville, CO, 80027-9448; 497 120th Avenue, Thornton, CO, 80233-5706; 9329 North Sheridan Boulevard, Westminster, CO, 80031-6531
Updated Notice of Public Health Order 20-22 Closing Bars, Restaurants, Theaters,	Colorado Health Dept.	3/19/2020	"6. Pursuant to Colo. Rev. Stat. § 25-1.5-101(1)(a) and §25-1.5-102(1)(a)(I), this Public Health Order <u>closes bars, restaurants</u> , gyms, theaters, casinos, nonessential personal services facilities and horse track and off-track betting facilities <u>to slow the spread of the COVID-19 virus</u> . CDPHE has	See all Colorado locations above

<p>Gymnasiums, Casinos, Nonessential Personal Services Facilities, and Horse Track and Off-Track Betting Facilities Statewide</p>			<p>the <i>duty to investigate and control the causes of epidemic or communicable diseases</i> and conditions affecting public health and to establish, to close public places and forbid gatherings of people when necessary to protect the public health, and to establish, maintain and enforce isolation and quarantine, and, in pursuance thereof and for this purpose only, <i>to exercise such physical control over property</i> and the persons of the people within this state as the department may find necessary for the protection of public health."</p>	
<p>Amended Public Health Order 20-24 Implementing Stay at Home Requirements</p>	<p>Colorado Health Dept.</p>	<p>3/25/2020</p>	<p>"2. Scientific evidence and best practices regarding the most effective manner to slow the transmission of <i>communicable diseases generally and COVID-19 specifically</i>, and evidence that the population of Colorado is at risk for serious health complications, including death, from COVID-19 make it imperative that the measures included in this PHO be taken immediately.</p> <p>3. There is clear evidence that some individuals who contract the COVID-19 virus have no symptoms or have mild symptoms, which means they may not be aware they carry the virus. Because <i>even people without symptoms can transmit the disease</i>, and because evidence shows the disease is easily spread, gatherings promote transmission of COVID-19. <i>COVID-19 also physically contributes to property loss, contamination, and damage due to its propensity to attach to surfaces for prolonged periods of time.</i></p> <p>4. The scientific evidence also shows that at this stage of the emergency, it is critical to slow transmission as much as possible to protect the most vulnerable and to prevent Colorado's health care system from being overwhelmed. One proven way to slow the transmission is to limit interactions among people to the greatest extent practicable</p>	<p>See all Colorado locations above</p>

			and increase the distance between people in the work environment. <u><i>This PHO helps to reduce the property damage caused by COVID-19</i></u> and preserves the welfare of our residents by reducing the spread of the disease in our communities and our workplaces, and preserving critical emergency and healthcare capacity in the State."	
D 2020 024 Executive Order Amending and Extending Executive Order D 2020 017 Ordering Coloradans to Stay at Home Due to the Presence of COVID-19	Colorado	4/6/2020	"My administration, along with other State, local, and federal authorities, has taken a wide array of actions to mitigate the effects of the pandemic, prevent further spread, and protect against overwhelming our health care resources. <u><i>COVID-19 also physically contributes to property loss, contamination, and damage due to its propensity to attach to surfaces for prolonged periods of time.</i></u> "	See all Colorado locations above
City and County of Denver State of Local Disaster Emergency Declaration (EOC 100)	Denver City and County	3/12/2020	"WHEREAS, people are at risk from a novel coronavirus, now designated COVID-19 in the City and County of Denver; WHEREAS, the risks posed by this natural threat require early warning for, and preparation by, those potentially or actually affected; as well as prompt coordination of response and recovery actions, or special regulations of access, activities, persons, property, or the environment in order to protect the health, safety, or welfare of people, <u><i>to limit damage to property</i></u> , or the environment within the City and County of Denver;"	16301 East 40th Avenue, Denver, CO, 80239-5739;
A Declaration of Local Disaster Emergency	Englewood City	3/13/2020	"WHEREAS, pursuant to the Colorado Disaster Emergency Act, C.R.S., Section 24-33. 5-701, et seq., the City of Englewood ("City") has identified a local disaster currently present in the City, to wit, <u><i>the occurrence or imminent threat</i></u>	10443 East Costilla Avenue, Englewood, CO, 80112-3737

			<p><u>of widespread or severe damage, injury or loss of life or property resulting from COVID19</u> requiring emergency action <u>to avert danger or damage</u> and to protect public health;</p> <p>...</p> <p>Section 1. That there is a local disaster emergency in the City of Englewood, Colorado, to wit, <u>the occurrence or imminent threat of widespread or severe damage, injury or loss of life or property resulting from COVID19</u> requiring emergency action to avert danger or damage."</p>	
A Declaration of Local Disaster Emergency in and for the City of Louisville	Louisville City	3/15/2020	<p>"WHEREAS, on March 14, 2020, the Chair of the Board of the Boulder County Commissioners, as principal executive officer of Boulder County, pursuant to § 24-33.5-709, C.R.S., declared a local disaster emergency in the unincorporated area of Boulder County, Colorado, to wit, <u>the occurrence of imminent threat of widespread or severe damage, injury or loss of life or property, resulting from the COVID-19 Pandemic</u> requiring emergency <u>action to avert danger or damage</u>;</p> <p>...</p> <p>1. There is hereby declared to be a local disaster emergency in the City of Louisville, to wit, the occurrence of imminent threat of widespread or severe damage, injury or loss of life or property, resulting from the COVID-19 Pandemic requiring emergency action to avert danger or damage."</p>	988 Dillon Road, Louisville, CO, 80027-9448
Public Health Order	Larimer County	3/17/2020	<p>"This Order is adopted pursuant to the legal authority set forth in sections 25-1-506, Colorado Revised Statutes. Under this law, the Larimer County Public Health Director <u>has the duty to investigate and control the causes of epidemic or communicable diseases</u> and conditions affecting public health and to establish, maintain, and enforce isolation and quarantine, and in pursuance thereof, and for this purpose only, <u>to exercise physical control over property</u> and over the</p>	807 East Harmony Road, Fort Collins, CO, 80525-4877

			persons of the people within the jurisdiction of the agency as the agency may find necessary for the protection of the public health."	
"Stay at Home" Public Health Order	Tri-County Health Dept.	3/25/2020	"Whereas, TCHD has public health jurisdiction over Adams, Araphahoe, and Douglas Counties. In furtherance of its jurisdiction, TCHD has the <u>power and duty to investigate and control the causes of epidemic or communicable diseases</u> and conditions affecting the public health within its jurisdiction, as well as the power and duty to close schools and public places and to prohibit gatherings of people when necessary to protect public health, and to establish, maintain, and enforce isolation and quarantine, and in pursuance thereof, <u>to exercise physical control over property</u> and over persons with TCHD's jurisdiction as it may find necessary for the protection of public health."	4687 Mileston Lane, Castle Rock, CO, 80104-7900; 15 West Springer Drive, Highlands Ranch, CO, 80129-2315; 497 120th Avenue, Thornton, CO, 80233-5706; 2066 South Abilene Street, Aurora, CO, 80014-1442; 10443 East Costilla Avenue, Englewood, CO, 80112-3737; 8601 West Cross Drive, Littleton, CO, 80123-0702
"Stay at Home" Public Health Order	Boulder County Public Health	3/25/2020	"Whereas, BCPH has public health jurisdiction over Boulder County, including all the cities and towns therein. In furtherance of its jurisdiction, BCPH has the <u>power and duty to investigate and control the causes of epidemic or communicable diseases</u> and conditions affecting the public health within Boulder County, as well as the power and duty to close schools and public places and to prohibit gatherings of people when necessary to protect public health, and to establish, maintain, and enforce isolation and quarantine, and in pursuance thereof, <u>to exercise physical control over property</u> and over persons within Boulder County as it may find necessary for the protection of public health."	1315 Dry Creek Road, Longmont, CO, 80503-6502; 988 Dillon Road, Louisville, CO, 80027-9448
NEW MEXICO				

Order Title (shortened)	Authority	Date Issued	Statement	Relevant Out West Locations
Declaration of Local State of Emergency Due to Novel Coronavirus COVID-19	Albuquerque City	3/18/2020	<p>"WHEREAS, the City of Albuquerque faces the continuing threat of the spread of COVID-19 and <u>damage caused by COVID-19</u> until the pandemic subsides and unless the City takes proactive measures to prevent or control the spread of the virus;</p> <p>...</p> <p>WHEREAS, this local emergency constitutes a public health emergency, and the resulting damage is of such magnitude as to be beyond local control and requires the resources of the State to minimize economic <u>and physical harm</u> necessary to protect the public health, safety, and welfare of the people and property in Albuquerque.</p> <p>...</p> <p>Pursuant to §§ 5-5-19(B)(I) and 5-5-35, I find that there are urgent and compelling reasons, including the unforeseen and dangerous situation of the COVID-19 pandemic, enabling the City to make emergency procurements to preserve the peace, health, or safety of people or property within the jurisdiction of the City or to prevent significant economic loss;"</p>	<p>4921 Jefferson Street NE, Albuquerque, NM, 87109-2326;</p> <p>10022 Coors Boulevard NW, Albuquerque, NM, 87114-4443</p>
Executive Order 2020-004	New Mexico	3/11/2020	<p>"On March 11, 2020, the first confirmed cases of COVID-19 were reported in New Mexico. For this reason, it is necessary for all branches of State government to take immediate action to minimize the spread of COVID-19 <u>and to minimize the attendant physical and economic harms.</u></p> <p>...</p> <p>1. I hereby invoke and exercise all powers vested in my office under the All Hazard Emergency Management Act, NMSA 1978, §§ 12-10-1 through 12-10-10. All branches of State government shall cooperate with federal authorities, other</p>	<p>4921 Jefferson Street NE, Albuquerque, NM, 87109-2326;</p> <p>10022 Coors Boulevard NW, Albuquerque, NM, 87114-4443;</p> <p>4921 East Main Street, Farmington, NM, 87402-8657;</p> <p>940 North Telshor Boulevard, Las Cruces, NM, 88011-8244;</p>

			<p>states, and private agencies to provide resources and services <u>necessary to minimize physical and economic harm</u> and assist in the provision of lodging, shelter, health care, food, transportation, or shipping <u>necessary to protect lives or public property</u>. Further, all political subdivisions within New Mexico shall adhere to Section 12-10-10, which mandates compliance with and enforcement of this Order.</p> <p>...</p> <p>10. In accordance with NMSA 1978, §§ 12-11-23 through 12-11-25 and § 12-10-4(B)(3), the Department of Finance and Administration shall make available emergency financial resources on a continuing basis as necessary to address this emergency to the Department of Health. NMSA 1978, § 12-11-25 (2005). The funds shall be expended to protect the public health, safety, and welfare; to provide those resources and services <u>necessary to avoid or minimize economic or physical harm</u> on a temporary, emergency basis. The funds shall be paid out only in an amount specified by warrants drawn by the Secretary of the Department of Finance and Administration upon vouchers approved by the Governor or the Department of Health."</p>	4250 Cerrillos Road, Santa Fe, NM, 87507-4697
Executive Order 2020-022	New Mexico	4/6/2020	"Due to the continued spread of the COVID-19, it is necessary for all branches of State government to continue taking actions to minimize the spread of COVID-19 and to reduce <u>its attendant physical and economic harms</u> ."	See all New Mexico locations above

EXHIBIT E



RICARDO LARA
CALIFORNIA INSURANCE COMMISSIONER

NOTICE

TO: All Admitted and Non-Admitted Insurance Companies, All Licensed Insurance Adjusters and Producers, and Other Licensees and Interested Parties

FROM: Insurance Commissioner Ricardo Lara

DATE: April 14, 2020

RE: Requirement to Accept, Forward, Acknowledge, and Fairly Investigate All Business Interruption Insurance Claims Caused by the COVID-19 Pandemic

To help combat the spread of the COVID-19 virus, various federal, state, and local government officials have issued emergency public health orders and “shelter-in-place” directives. The COVID-19 pandemic has severely curtailed activities of policyholders in both personal and commercial lines, causing significant and widespread economic loss in California.

Business Interruption insurance is an optional coverage that may be purchased as part of a comprehensive multi-peril commercial policy, business owners’ policy, or on a stand-alone basis. Many small and large California businesses purchase Business Interruption insurance to protect against the loss of income and other losses caused by an interruption to the normal operations of the business.

The California Department of Insurance (Department) continues to encourage businesses to review their policies, including policy exclusions, coverage limits, and applicable deductibles, and contact their insurance companies to determine what their policies cover as each insurance policy is different and the coverage varies. However, despite the Department’s on-going guidance to businesses statewide during the COVID-19 pandemic, it has received numerous complaints from businesses, public officials, and other stakeholders asserting that certain insurers, agents, brokers, and insurance company representatives are attempting to dissuade policyholders from filing a notice of claim under its Business Interruption insurance coverage, or refusing to open and investigate these claims upon receipt of a notice of claim.

Therefore, Insurance Commissioner Ricardo Lara finds it necessary to issue this Notice to ensure that all agents, brokers, insurance companies, and other licensees accept,

CALIFORNIA DEPARTMENT OF INSURANCE
PROTECT • PREVENT • PRESERVE
300 Capitol Mall, 17th Floor
Sacramento, California 95814
(916) 492-3500

COMPLAINT-00102

Notice on Requirement to Accept, Forward, Acknowledge, and Fairly Investigate All Business Interruption Insurance Claims Caused by the COVID-19 Pandemic

Page 2
April 14, 2020

forward, acknowledge, and fairly investigate all business interruption insurance claims submitted by businesses.

Commissioner Lara hereby notifies all agents, brokers, insurance companies, and other Department licensees that they are required to comply with their contractual, statutory, regulatory, and other legal obligations, including but not limited to, the obligations set forth in the California Fair Claims Settlement Practices Regulations (Cal. Code Regs. tit. 10; sections 2695.1 et seq.) (the "Regulations") in connection with all California insurance claims including, but not limited to, Business Interruption insurance claims, event cancellation claims, and other related claims filed by California businesses.

The Regulations require, among other things, that all insurers, insurance agents, brokers, insurance company representatives, and other Department licensees accept any communication from the policyholder or its representative indicating that the policyholder desires to make a claim against a policy that reasonably suggests that a response is expected as a notice of claim. (Regulations, section 2695.5(b).) Upon receipt of a notice of claim, every Department licensee is required to transmit such notice of claim to the insurer immediately. (Regulations, section 2695.5(d).)

Upon receipt of a notice of claim, subject to certain exceptions, every insurer is required to acknowledge the notice of claim immediately, but in no event more than 15 calendar days after receipt of the notice of claim. (Regulations, section 2695.5(e).) If the acknowledgment of a claim is not in writing, a written acknowledgment of the receipt and date of the notice of claim must be made in the claim file of the insurer. (Regulations, section 2695.5(e)(1).) Failure of an insurance agent or claims agent to transmit a notice of claim to the insurer promptly will be imputed to the insurer, except where the subject policy was issued pursuant to the California Automobile Assigned Risk Program. (Regulations, section 2695.5(e)(1).)

Upon receipt of a notice of claim, the insurer is required to provide the policyholder with the necessary forms, instructions, and reasonable assistance, including but not limited to, specifying the information the policyholder must provide in connection with the proof of claim and begin any necessary investigation of the claim. (Regulations, section 2695.5(e)(2).) Thereafter, every insurer is required to conduct and diligently pursue a thorough, fair, and objective investigation of the reported claim, and is prohibited from seeking information not reasonably required for or material to the resolution of a claim dispute before determining whether the claim will be accepted or denied, in whole or in part. (Regulations, section 2695.7(d).)

After conducting a thorough, fair, and objective investigation of the claim, the insurer must accept or deny the claim, in whole or in part, immediately, but in no event more than 40 days after receipt of the proof of claim. The amount of the claim accepted or denied by the insurer must be clearly documented in the claim file unless the claim has been denied in its entirety. (Regulations, section 2695.7(b).)

Notice on Requirement to Accept, Forward, Acknowledge, and Fairly Investigate All Business Interruption Insurance Claims Caused by the COVID-19 Pandemic

Page 3
April 14, 2020

If the claim is denied in whole or in part, the insurer is required to communicate the denial in writing to the policyholder listing all the legal and factual bases for such denial. (Regulations, section 2695.7(b)(1).) Where the denial of a first party claim is based on a specific statute, applicable law or policy provision, condition, or exclusion, the written denial must include reference to and provide an explanation of the application of the statute, applicable law, or policy provision, condition, or exclusion to the claim. Lastly, every insurer that denies or rejects a third party claim, in whole or in part, or disputes liability or damages must do so in writing. (Regulations, section 2695.7(b)(1).)

Based on the foregoing, every insurer, insurance agent, broker, insurance company representative, and other Department licensees is required to comply with their contractual, statutory, regulatory, and other legal obligations in connection with all California insurance claims, including but not limited to, Business Interruption insurance claims, event cancellation claims, and other related claims filed by California businesses. Additionally, no insurer, insurance agent, broker, insurance company representative, or other Department licensee shall dissuade policyholders from filing a notice of claim under its Business Interruption insurance coverage, or refuse to open and investigate such claims upon receipt of a notice of claim.

EXHIBIT F

SERFF Tracking #: FMGL-130740749 State Tracking #: R2016003582

Company Tracking #: AFM-2016-3

State: New York **Filing Company:** Affiliated FM Insurance Company
TOI/Sub-TOI: 01.0 Property/01.0001 Commercial Property (Fire and Allied Lines)
Product Name: AFM-2016-3
Project Name/Number: proVision/AFM-2016-3

Table of Contents

User Usage Agreement Attachments

Usage Agreement [Usage Agreement.pdf](#)

Form Attachments	(ex. Form Name	Form Number	Attachment Name)
Declarations	PRO S-1 4100		PRO S-1 4100 01_17.pdf
All Risks Coverage Form	PRO AR 4100		PRO AR 4100 01_17_bkmd.pdf
Condominium Endorsement	PRO CO-N 4100		PRO CO-N 4100 (0117).pdf
Healthcare Endorsement	PRO HC 4100		PRO HC 4100 01_17_rev.pdf
Real Estate Endorsement	PRO RE-N 4100		PRO RE-N 4100 (01_17).pdf
Retail Endorsement	PRO RT 4100		PRO RT 4100 (01_17).pdf
Special Terms and Conditions	7554		7554 (01_17).pdf
Special Terms and Conditions	7555		7555 (01_17).pdf
Special Terms and Conditions	7556		7556 (01_17).pdf
Special Terms and Conditions	7557		7557 (01_17).pdf

Supporting Document Attachments

(ex. Supporting Document Name Attachment Name)

Property Review Standards Checklist		NY Cancel Non Renew Compl Q 2016-3.pdf
Property Review Standards Checklist		NY CL Form Comp Q 2016-3 .pdf
Property Review Standards Checklist		NY SFP 2016-3.pdf
Property Review Standards Checklist		NY REVIEW STANDARDS 2016-3.pdf
State Amendatory Endorsement		AFM Form 6497 - New York.pdf
Explanatory Memorandum		NY Explanatory Memo AFM 2016-3.pdf
PRO S-1 Redline Compare		PRO S-1 Redline.pdf
PRO AR 4100 Redline Compare		PRO AR 4100 Redline.pdf
PRO HC 4100 Redline Compare		PRO HC 1 17 redline.pdf
PRO RT 4100 Redline Compare		PRO RT 1 17 redline.pdf
7554 Redline Compare		7554 redline (01_17).pdf
7555 Redline Compare		7555 redline (01_17).pdf

SERFF Tracking #: FMGL-130740749 **State Tracking #:** R2016003582

Company Tracking #: AFM-2016-3

State: New York **Filing Company:** Affiliated FM Insurance Company
TOI/Sub-TOI: 01.0 Property/01.0001 Commercial Property (Fire and Allied Lines)
Product Name: AFM-2016-3
Project Name/Number: proVision/AFM-2016-3

7556 Redline Compare

[7556 redline \(0 17\).pdf](#)

ST&C previous filing

[NY AFM 2015 STC 22 clauses Expl Memo for filing.pdf](#)

Company Response

[NY AFM 2016-3 response for SERFF.pdf](#)

SERFF Tracking #: FMGL-130740749 **State Tracking #:** R2016003582**Company Tracking #:** AFM-2016-3

State: New York **Filing Company:** Affiliated FM Insurance Company
TOI/Sub-TOI: 01.0 Property/01.0001 Commercial Property (Fire and Allied Lines)
Product Name: AFM-2016-3
Project Name/Number: proVision/AFM-2016-3

Filing at a Glance

Company: Affiliated FM Insurance Company
Product Name: AFM-2016-3
State: New York
TOI: 01.0 Property
Sub-TOI: 01.0001 Commercial Property (Fire and Allied Lines)
Filing Type: Form
Date Submitted: 10/14/2016
SERFF Tr Num: FMGL-130740749
SERFF Status: Closed-Approved
State Tr Num: R2016003582
State Status: Closed
Co Tr Num: AFM-2016-3

Effective Date: 01/01/2017
Requested (New):
Effective Date: 01/01/2017
Requested (Renewal):
Author(s): Jennifer Russo, Ian Saiz, Lauren Whatmough
Reviewer(s): Bob Pothiwala (primary)
Disposition Date: 11/22/2016
Disposition Status: Approved
Effective Date (New): 01/01/2017
Effective Date (Renewal): 01/01/2017

SERFF Tracking #: FMGL-130740749 **State Tracking #:** R2016003582

Company Tracking #: AFM-2016-3

State: New York **Filing Company:** Affiliated FM Insurance Company
TOI/Sub-TOI: 01.0 Property/01.0001 Commercial Property (Fire and Allied Lines)
Product Name: AFM-2016-3
Project Name/Number: proVision/AFM-2016-3

General Information

Project Name: proVision
Project Number: AFM-2016-3

Reference Organization:
Reference Title:

Filing Status Changed: 11/22/2016
State Status Changed: 11/22/2016

Created By: Jennifer Russo
Corresponding Filing Tracking Number:

Filing Description:

Status of Filing in Domicile: Not Filed

Domicile Status Comments: We are not required to file in our state of domicile, RI, per statute 27-65-1.

Reference Number:
Advisory Org. Circular:

Deemer Date:
Submitted By: Jennifer Russo

SERFF Tracking #: FMGL-130740749 State Tracking #: R2016003582

Company Tracking #: AFM-2016-3

State:	New York	Filing Company:	Affiliated FM Insurance Company
TOI/Sub-TOI:	01.0 Property/01.0001 Commercial Property (Fire and Allied Lines)		
Product Name:	AFM-2016-3		
Project Name/Number:	proVision/AFM-2016-3		

For your reference, this filing is a revision to previously approved forms reviewed by Bharat (Bob) Pothiwala, Senior Insurance Examiner in 2015.

The relevant previous tracking numbers are as follows:

State Tracking Number R2015002359 / SERFF Tracking Number FMGL-129724877 / Company Tracking Number AFM-2015-1 and State Tracking Number R2015004167 / SERFF Tracking Number FMGL-130226203 / Company Tracking Number AFM-2015-14.

Affiliated FM Insurance Company (hereinafter the "Company") specializes in insuring large and complex commercial and industrial entities commonly referred to as Highly Protected Risk (HPR) business.

This filing description is provided only for informational purposes. It does not modify, limit or enlarge insurance policy provisions. The actual rights and responsibilities of the Insurer and the Insured are contained in the policy's terms and conditions.

There is no change in the rate manual and no filing is required in the Company's state of domicile, Rhode Island. This filing is being submitted nationwide where required.

In this filing, the Company is submitting a revised all risk coverage property damage and business interruption policy, the S-1 Declarations, four optional occupancy endorsements and several optional special terms and conditions clauses. The majority of the policy coverages in these forms were previously filed and approved in the proVision Policy series of forms in 2015, in Company Filing Numbers AFM 2015-1 and 2015-4. The Company's intent is to simplify the coverage wordings and to provide enhanced cover.

Also included in this filing is an Explanatory Memo and an Appendix A– Previous Filing Reference (hereinafter the Appendix A). Appendix A contains the previous Company Filing Number and the specific form number of the previously filed form.

The Company requests an effective date of January 1, 2017 for each form contained in this filing. The Company intends to make the enclosed forms available for new and renewal business for use from that effective date.

The forms included in this filing are as follows:

PRO AR 4100: All Risk Coverage Policy (1 Form) and a side by side compare

PRO S-1 4100: Declarations (1 Form) and a red-line compare

PRO CO-N 4100 (1 Form)

PRO HC 4100 (1 Form) and a red-line compare

PRO RE-N 4100 (1 Form)

PRO RT 4100 (1 Form) and a red-line compare

FORMS 7554, 7555, 7556, 7557 - PRO Clauses - Special Terms and Conditions and a red-line compare where applicable

STATE AMENDATORY ENDORSEMENT for informational purposes

Company and Contact

Filing Contact Information

Jennifer Russo, Assistant Manager Gov't & jennifer.russo@fmglobal.com

Ind Services

270 Central Avenue

401-415-1145 [Phone] 1145 [Ext]

Johnston, RI 02919

401-275-3032 [FAX]

SERFF Tracking #: FMGL-130740749

State Tracking #: R2016003582

Company Tracking #: AFM-2016-3

State: New York **Filing Company:** Affiliated FM Insurance Company
TOI/Sub-TOI: 01.0 Property/01.0001 Commercial Property (Fire and Allied Lines)
Product Name: AFM-2016-3
Project Name/Number: proVision/AFM-2016-3

Filing Company Information

Affiliated FM Insurance Company	CoCode: 10014	State of Domicile: Rhode
270 Central Ave.	Group Code: 65	Island
P.O.B. 7500	Group Name: FM Global	Company Type: Property &
Government & Industry Services	FEIN Number: 05-0254496	Casualty
Johnston, RI 02919		State ID Number:
(800) 343-7722 ext. 1863[Phone]		

Filing Fees

Fee Required? No

Retaliatory? No

Fee Explanation:

State Specific

Speed-To-Market Field: enter code "98" for Speed-To-Market filings. Enter "0" for N/A.: NA

Terrorism Exclusion Field: enter code "46-01" for filings which includes forms, rates or rules for the Terrorism Exclusion. Enter "0" for N/A.: NA

Mold (Fungi, Bacteria, Virus) Exclusion Field: enter code "46-02" for filings which includes forms, rates or rules for the Mold Exclusion. Enter "0" for N/A.: NA

On the Rate/Rule Schedule Tab, the "Add Rate Data" button must be changed to "yes" for all rating rules and rate filings in order for the appropriate fields to be completed. Please enter "Yes" for filings with the rate data fields completed and "No" for all other filings.: No

SERFF Tracking #: FMGL-130740749 **State Tracking #:** R2016003582 **Company Tracking #:** AFM-2016-3

State: New York **Filing Company:** Affiliated FM Insurance Company
TOI/Sub-TOI: 01.0 Property/01.0001 Commercial Property (Fire and Allied Lines)
Product Name: AFM-2016-3
Project Name/Number: proVision/AFM-2016-3

Correspondence Summary

Dispositions

Status	Created By	Created On	Date Submitted
Approved	Bob Pothiwala	11/22/2016	11/22/2016

Objection Letters and Response Letters

Objection Letters

Status	Created By	Created On	Date Submitted
Pending	Bob Pothiwala	11/10/2016	11/10/2016

Response Letters

Responded By	Created On	Date Submitted
Jennifer Russo	11/21/2016	11/21/2016

SERFF Tracking #:	FMGL-130740749	State Tracking #:	R2016003582	Company Tracking #:	AFM-2016-3
--------------------------	----------------	--------------------------	-------------	----------------------------	------------

State:	New York	Filing Company:	Affiliated FM Insurance Company
TOI/Sub-TOI:	01.0 Property/01.0001 Commercial Property (Fire and Allied Lines)		
Product Name:	AFM-2016-3		
Project Name/Number:	proVision/AFM-2016-3		

Disposition

Disposition Date: 11/22/2016
 Effective Date (New): 01/01/2017
 Effective Date (Renewal): 01/01/2017
 Status: Approved

Comment: This refers to your October 14, 2016 submission of the captioned filing. This also refers to our correspondence and your response/amendment providing additional information and/or amending the filing.

This captioned filing, as amended, is hereby approved in accordance with Article 23 of the New York Insurance Law. This approval is limited to the forms and does not extend to the rating rules and schedules of rates. Such information should be submitted in accordance with the instructions contained in Department Circular Letter No. 5 (2009), available at <http://www.dfs.ny.gov/insurance/filer.htm>

Very truly yours,

Maria T. Vullo
 Superintendent of Financial Services

By:

Bharat (Bob) Pothiwala
 Senior Insurance Examiner
 Property Bureau
 (212) 480-5471
 Bharat.Pothiwala@dfs.ny.gov

Rate data does NOT apply to filing.

Schedule	Schedule Item	Schedule Item Status	Public Access
Supporting Document	Explanatory Memorandum		Yes

SERFF Tracking #: FMGL-130740749 State Tracking #: R2016003582 Company Tracking #: AFM-2016-3

State: New York Filing Company: Affiliated FM Insurance Company
 TOI/Sub-TOI: 01.0 Property/01.0001 Commercial Property (Fire and Allied Lines)
 Product Name: AFM-2016-3
 Project Name/Number: proVision/AFM-2016-3

Schedule	Schedule Item	Schedule Item Status	Public Access
Supporting Document	Property Review Standards Checklist		Yes
Supporting Document	Side-By-Side Comparisons		Yes
Supporting Document	State Amendatory Endorsement		Yes
Supporting Document	Explanatory Memorandum		Yes
Supporting Document	PRO S-1 Redline Compare		Yes
Supporting Document	PRO AR 4100 Redline Compare		Yes
Supporting Document	PRO HC 4100 Redline Compare		Yes
Supporting Document	PRO RT 4100 Redline Compare		Yes
Supporting Document	7554 Redline Compare		Yes
Supporting Document	7555 Redline Compare		Yes
Supporting Document	7556 Redline Compare		Yes
Supporting Document	ST&C previous filing		Yes
Supporting Document	Company Response		Yes
Form	Declarations		Yes
Form	All Risks Coverage Form		Yes
Form	Condominium Endorsement		Yes
Form	Healthcare Endorsement		Yes
Form	Real Estate Endorsement		Yes
Form	Retail Endorsement		Yes
Form	Special Terms and Conditions		Yes
Form	Special Terms and Conditions		Yes
Form	Special Terms and Conditions		Yes
Form	Special Terms and Conditions		Yes

SERFF Tracking #: FMGL-130740749 State Tracking #: R2016003582

Company Tracking #: AFM-2016-3

State: New York **Filing Company:** Affiliated FM Insurance Company
TOI/Sub-TOI: 01.0 Property/01.0001 Commercial Property (Fire and Allied Lines)
Product Name: AFM-2016-3
Project Name/Number: proVision/AFM-2016-3

Objection Letter

Objection Letter Status	Pending
Objection Letter Date	11/10/2016
Submitted Date	11/10/2016
Respond By Date	11/25/2016

Dear Jennifer Russo,

Introduction:

This refers to your captioned submission. We have the following concerns and/or questions:

- [1] We note that the company is revising all risk coverage property damage and business interruption policy and proposing several optional endorsements. Also, the intent is to simplify the coverage wordings and to provide enhanced coverages. However, the company indicates that there is no change in the rate manual. Please clarify how this would not result in action that could be considered to be unfairly discriminatory. Will the expansion of coverage be available to all applicable insureds? Please advise.
- [2] Please advise on the rate impact and any effect on the existing policyholders.
- [3] The submission includes Special Terms and Conditions clauses. When and how they will be attached? Please advise. In addition, please clarify how this will not result in action that could be unfairly discriminatory. Also, please explain of any rate effects.
- [4] Are there any eligibility criteria for the company as to when they agree to apply the proposed clauses? Please note that the criteria to be used for this program must be mutually exclusive and specific and should be applied in a uniform and non-discriminatory manner. Kindly confirm.
- [5] The submission contains mold and fungus language. Please be advised that the Department is continuing to review the various issues surrounding mold/fungus language, and advising insurers to remove such references in order to expedite the processing of the filing. Please advise.
- [6] We note the attachment of State Amendatory Endorsement (AFM Form 6497 – New York) under the Supporting Documentation tab. Please clarify the intent. Under what filing this endorsement was approved? Please provide the Department filing number.
- [7] The Filing Description indicates that the company specializes in insuring large and complex commercial and industrial entities commonly referred to as Highly Protected Risk (HPR) business. Kindly provide the minimum thresholds for this program.
- [8] Does it include writing some small and mid-sized highly protected risks (HPR), as well as better quality non-HPR accounts of all sizes? Please clarify. Please be advised that we do not allow any subjectivity in the application of forms and rates unless it is for highly protected risks (HPR) only.
- [9] We note your indication that the company is not required to file in their state of domicile, RI. Please advise.

We await your prompt reply. In the meantime, the captioned filing is not approved for use in New York State. Pursuant to the Department's 2nd Supplement to Circular Letter No. 11 (1998), a substantive reply is expected within 15 days. If such response is not received, this file will be considered withdrawn and closed accordingly without further communication. Thereafter, to request further review of the subject matter of this filing, a new submission must be made, in accordance with the provisions of Circular Letter No. 11 (1998) and supplements (and SERFF filing submission guidelines), which should address any outstanding issues included in this and any earlier communications.

Please provide notification by e-mail at Bharat.Pothiwalla@dfs.ny.gov when you have responded to an objection letter or sent a Note to Reviewer via SERFF. This will help expedite review of this filing. This e-mail address should not be used for any correspondence

SERFF Tracking #: FMGL-130740749

State Tracking #: R2016003582

Company Tracking #: AFM-2016-3

State: New York

Filing Company: Affiliated FM Insurance Company

TOI/Sub-TOI: 01.0 Property/01.0001 Commercial Property (Fire and Allied Lines)

Product Name: AFM-2016-3

Project Name/Number: proVision/AFM-2016-3

other than for notification that the company has sent correspondence through SERFF.

Conclusion:

Sincerely,

Bob Pothiwala

SERFF Tracking #: FMGL-130740749 State Tracking #: R2016003582 Company Tracking #: AFM-2016-3

State: New York Filing Company: Affiliated FM Insurance Company
 TOI/Sub-TOI: 01.0 Property/01.0001 Commercial Property (Fire and Allied Lines)
 Product Name: AFM-2016-3
 Project Name/Number: proVision/AFM-2016-3

Response Letter

Response Letter Status Submitted to State
 Response Letter Date 11/21/2016
 Submitted Date 11/21/2016

Dear Bob Pothiwala,

Introduction:

Thank you for your comments.

Response 1

Comments:

Please see attached response under the supporting documentation tab, as the full text will not enter in this space.

Changed Items:

Supporting Document Schedule Item Changes	
Satisfied - Item:	ST&C previous filing
Comments:	
Attachment(s):	NY AFM 2015 STC 22 clauses Expl Memo for filing.pdf

Supporting Document Schedule Item Changes	
Satisfied - Item:	ST&C previous filing
Comments:	
Attachment(s):	NY AFM 2015 STC 22 clauses Expl Memo for filing.pdf

Satisfied - Item:	Company Response
Comments:	
Attachment(s):	NY AFM 2016-3 response for SERFF.pdf

No Form Schedule items changed.

No Rate/Rule Schedule items changed.

Conclusion:

We hope this meets with your approval. Please contact me at (401)415-1145 should you wish to discuss.

Sincerely,

SERFF Tracking #: FMGL-130740749 **State Tracking #:** R2016003582 **Company Tracking #:** AFM-2016-3

State: New York **Filing Company:** Affiliated FM Insurance Company
TOI/Sub-TOI: 01.0 Property/01.0001 Commercial Property (Fire and Allied Lines)
Product Name: AFM-2016-3
Project Name/Number: proVision/AFM-2016-3

Jennifer Russo

New York AFM-2016-3

State Tracking Number R2016003582 / SERFF Tracking Number: FMGL-130740749

[1] We note that the company is revising all risk coverage property damage and business interruption policy and proposing several optional endorsements. Also, the intent is to simplify the coverage wordings and to provide enhanced coverages. However, the company indicates that there is no change in the rate manual. Please clarify how this would not result in action that could be considered to be unfairly discriminatory. Will the expansion of coverage be available to all applicable insureds? Please advise.

This would not result in action that could be considered to be unfairly discriminatory because the expansion of coverage will be available to all applicable insureds.

[2] Please advise on the rate impact and any effect on the existing policyholders.

There is no Rate impact because there is no change to the existing approved rate manual.

[3] The submission includes Special Terms and Conditions clauses. When and how they will be attached? Please advise. In addition, please clarify how this will not result in action that could be unfairly discriminatory. Also, please explain of any rate effects.

The clause(s) would be added (attached) to the PRO S-1 4100: Declarations form under Section H. SPECIAL TERMS AND CONDITIONS. The PRO S-1 4100: Declarations form is applicable to the proVision PRO AR 4100: All Risk Coverage Policy.

This will not result in action that could be unfairly discriminatory because the individual optional clauses are applied when the Insured and the Company agree to use it/them to compliment the Policy. Each clause is optional to the insured based on whether or not the insured has the type of exposure relating to the clause. Therefore, the class of policyholders that are in the same or similar class would be treated fairly and equally, and would be offered the same coverage. The clauses add or subtract cover for these clients without being discriminatory toward other clients, because other clients have no need for the unusual cover, and do not declare values for property they do not own. Since all the insureds with the particular insurance need will be offered the cover that is applicable to the insureds property, it will not result in action that could be unfairly discriminatory

Also, there is no rate effect because there is no change in the rate manual. The previously approved Explanatory Memorandum, now attached under the supporting documentation tab, addresses each clause. For example, if the insured chooses not to insure the property in the clause, it will not declare its value and premium will not be charged. Likewise, if the insured chooses to insure the property in the clause, it will be underwritten based on its value and additional premium will be charged based on existing approved rates.

The only new Special Terms and Conditions clause in this filing is PRO 666 Worldwide

Unnamed Property and Supply Chain Coverage Territory. The new ST&C will be treated as follows:

PRO 666 (01/17)

This clause extends coverage and the rules allow for an increased premium based on existing approved rates.

The ST&C clauses were previously approved in State Tracking Number R2015004167 / FMGL-130226203 / Company Filing Number AFM-2015-4 and in State Filing Number R2015002359 / SERFF FMGL-129724877 / Company Filing Number 2015-1.

Attached for your reference under the Supporting Documentation Tab is the last ST&C clause filing State Tracking Number R2015004167 “NY AFM 2015 STC 22 clauses Expl Memo for filing”.

[4] Are there any eligibility criteria for the company as to when they agree to apply the proposed clauses? Please note that the criteria to be used for this program must be mutually exclusive and specific and should be applied in a uniform and non-discriminatory manner. Kindly confirm.

If the insured has a need for the cover, the Insured may choose to include the clause. The criteria used is mutually exclusive and specific and is applied in a uniform and non-discriminatory manner.

Our clients are large and complex organizations with features peculiar to their occupancy / operations and unique to their company. Our basic insurance contract cannot address this variety of unusual exposures. Therefore, when we learn about an unusual exposure (i.e. from the client, broker or due to an engineering visit), we discuss with the client what its needs are and provide them with options. Appropriate engineering and underwriting review is conducted as part of the contract negotiations, and the clauses are offered if the particular risk that the clause addresses is present and the client has a need for the particular cover.

[5] The submission contains mold and fungus language. Please be advised that the Department is continuing to review the various issues surrounding mold/fungus language, and advising insurers to remove such references in order to expedite the processing of the filing. Please advise.

This policy covers all risks, and damage arising from contamination (including mold and fungus) is covered when it directly results from insured physical damage.

[6] We note the attachment of State Amendatory Endorsement (AFM Form 6497 – New York) under the Supporting Documentation tab. Please clarify the intent. Under what filing this endorsement was approved? Please provide the Department filing number.

This is a countrywide Policy and as such is issued nationwide to Insureds, the intent of the State Amendatory Endorsement is to amend the Policy to comply with the specific laws of New York that differ from the contract terms.

The State Amendatory Endorsement (AFM Form 6497) was approved in State Filing Number R2015002359 / SERFF FMGL-129724877 / Company Filing Number 2015-1.

[7] The Filing Description indicates that the company specializes in insuring large and complex commercial and industrial entities commonly referred to as Highly Protected Risk (HPR) business. Kindly provide the minimum thresholds for this program.

The target minimum threshold for this program is \$25,000 premium.

[8] Does it include writing some small and mid-sized highly protected risks (HPR), as well as better quality non-HPR accounts of all sizes? Please clarify. Please be advised that we do not allow any subjectivity in the application of forms and rates unless it is for highly protected risks (HPR) only.

The business is considered highly protected risks (HPR).

[9] We note your indication that the company is not required to file in their state of domicile, RI. Please advise.

FM Global is exempt from filing requirements in our state of domicile, Rhode Island by way of *RI Gen. Laws 1956, S 27-65-1. Commercial special risks*. See attached law under the supporting documentation tab.



- 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. D.-ADDITIONAL PROPERTY DAMAGE COVERAGECOVERAGES

The Additional ~~Property Damage~~ 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. Brands and Labels~~

3. Brand Protection

~~If this Company elects to take all or any part of branded and labeled property that is damaged by physical loss or damage insured by this Policy, 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.~~

4.1. 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. Control of Damaged Property~~

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.

~~Property so~~ Physically damaged property judged by the Insured to be ~~unfit;~~



~~e~~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.

~~d~~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.

CIVIL COVER SHEET

The JS-CAND 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 in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Out West Restaurant Group Inc.; Cerca Trova Restaurant Group, Inc.; Cerca Trova Steakhouse, L.P.; and Cerca Trova Southwest Restaurant Group, LLC

(b) County of Residence of First Listed Plaintiff COUNTY OF SAN DIEGO, CA (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) Hunton Andrews Kurth LLP 50 California Street, Suite 1700, San Francisco, CA 94111 (415) 975-3700

DEFENDANTS

Affiliated FM Insurance Company

County of Residence of First Listed Defendant PROVIDENCE COUNTY, RI (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 3 Federal Question (U.S. Government Not a Party) 2 U.S. Government Defendant 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: 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)

Large table with categories: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, HABEAS CORPUS, OTHER, 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:

Declaratory relief, breach of contract, and breach of the implied covenant of good faith and fair dealing

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P. DEMAND \$

CHECK YES only if demanded in complaint: JURY DEMAND: X Yes No

VIII. RELATED CASE(S), IF ANY (See instructions):

JUDGE

DOCKET NUMBER

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)

(Place an "X" in One Box Only) X SAN FRANCISCO/OAKLAND SAN JOSE EUREKA-MCKINLEYVILLE

DATE 09/29/2020

SIGNATURE OF ATTORNEY OF RECORD

/s/ Scott P. DeVries

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS-CAND 44

Authority For Civil Cover Sheet. The JS-CAND 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 in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate 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 Federal Rule of Civil Procedure 8(a), 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.
- (1) United States plaintiff. Jurisdiction based on 28 USC §§ 1345 and 1348. Suits by agencies and officers of the United States are included here.
 - (2) United States defendant. When the plaintiff is suing the United States, its officers or agencies, place an “X” in this box.
 - (3) Federal question. This refers to suits under 28 USC § 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.
 - (4) Diversity of citizenship. This refers to suits under 28 USC § 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-CAND 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 the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an “X” in one of the six boxes.
- (1) Original Proceedings. Cases originating in the United States district courts.
 - (2) Removed from State Court. Proceedings initiated in state courts may be removed to the district courts under Title 28 USC § 1441. When the petition for removal is granted, check this box.
 - (3) Remanded from Appellate Court. Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 - (4) Reinstated or Reopened. Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 - (5) Transferred from Another District. For cases transferred under Title 28 USC § 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 - (6) Multidistrict Litigation Transfer. Check this box when a multidistrict case is transferred into the district under authority of Title 28 USC § 1407. When this box is checked, do not check (5) above.
 - (8) Multidistrict Litigation Direct File. Check this box when a multidistrict litigation case is filed in the same district as the Master MDL docket. Please note that there is no 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 Federal Rule of Civil Procedure 23. 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-CAND 44 is used to identify related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.
- IX. Divisional Assignment.** If the Nature of Suit is under Property Rights or Prisoner Petitions or the matter is a Securities Class Action, leave this section blank. For all other cases, identify the divisional venue according to Civil Local Rule 3-2: “the county in which a substantial part of the events or omissions which give rise to the claim occurred or in which a substantial part of the property that is the subject of the action is situated.”
- Date and Attorney Signature.** Date and sign the civil cover sheet.

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

UNITED STATES DISTRICT COURT

for the

Northern District of California

OUT WEST RESTAURANT GROUP INC.; CERCA
TROVA RESTAURANT GROUP, INC.; CERCA
TROVA STEAKHOUSE, L.P.; and CERCA TROVA
SOUTHWEST RESTAURANT GROUP, LLC

Plaintiff(s)

v.

AFFILIATED FM INSURANCE COMPANY

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) AFFILIATED FM INSURANCE COMPANY
BY AND THROUGH REGISTERED AGENT
C T CORPORATION SYSTEM
818 WEST SEVENTH STREET, SUITE 930
LOS ANGELES, CA 90017

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: HUNTON ANDREWS KURTH LLP
c/o SCOTT P. DEVRIES
50 CALIFORNIA STREET, SUITE 1700
SAN FRANCISCO, CA 94111

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 \$ _____ 0.00 _____ .

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: