
**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION**

ATMA BEAUTY, INC., individually and on behalf of all others similarly situated,

Plaintiff,

v.

HDI GLOBAL SPECIALTY SE, AXIS SPECIALTY EUROPE SE, UNDERWRITERS AT LLOYD’S LONDON SUBSCRIBING TO POLICY NUMBER RSK003959, and UNDERWRITERS AT LLOYD’S LONDON KNOWN AS SYNDICATES AFB 2623, AFB 623, APL 1969, ARG 2121, BRT 2987, BRT 2988, HIS 33, KLN 510, MMX 2010, MSP 318, NVA 2007, TRV 5000, XLC 2003,

Defendants.

Civil Action No.: 1:20-cv-21745-DPG

Judge: Darrin P. Gayles

DEFENDANTS CERTAIN UNDERWRITERS AT LLOYD’S, LONDON SUBSCRIBING TO POLICY NO. RSK003959’S MOTION TO DISMISS THE COMPLAINT AND INCORPORATED MEMORANDUM OF LAW

Plaintiff in this putative class action, Atma Beauty, Inc. (“Plaintiff”), seeks insurance coverage for business interruption related to the COVID-19 pandemic from Defendants HDI Global Specialty SE, Underwriter’s at Lloyd’s London Subscribing to Policy Number RSK003959, and Underwriters at Lloyd’s London known as Syndicates AFB 2623, AFB 623, APL 1969, ARG 2121, BRT 2987, BRT 2988, HIS 33, KLN 510, MMX 2010, MSP 318, NVA 2007, TRV 5000, and XLC 2003 (“Underwriters”).

Plaintiff’s Complaint must be dismissed for several reasons:

- (1) The insurance policy at issue is a Commercial Property policy that insures Plaintiff’s property against direct physical loss or damage. The policy does provide “Business

Income” coverage, but in order for that coverage to apply, consistent with the property coverage being provided, there must be direct physical loss of or damage to the insured property. Plaintiff’s Complaint fails to sufficiently allege that fundamental predicate, nor could it ever do so under the alleged circumstances.

- (2) The policy also provides Business Income coverage if a civil authority prohibits access to insured property because of direct physical damage to nearby property. Again, Plaintiff fails to allege direct physical damage to nearby property or that access to the insured property has been prohibited by a civil authority because of such direct physical damage.
- (3) Even if the policy’s requirements discussed above had been met, coverage is excluded by the policy’s microorganism exclusion, which excludes coverage for any claim arising directly or indirectly out of a microorganism. The novel Coronavirus, also known as SARS-CoV-2, is unquestionably a microorganism.
- (4) Additionally, the policy contains pollution exclusions, which preclude coverage for any claim related to substances that pose a threat to human health. Here, Plaintiff’s insurance claim arises out of SARS-CoV-2, which poses a threat to human health.
- (5) The Complaint fails to sufficiently allege causes of action for breach of contract, as Plaintiff provides no supporting facts to support its claim.

Accordingly, Underwriters’ Motion to Dismiss should be granted

I. FACTUAL BACKGROUND

A. THE POLICY

Plaintiff owns and operates a beauty salon and spa named “Atma Beauty” in Miami Beach, Florida. Underwriters subscribed to a policy that insures the property on which the beauty salon is located. Policy No. RSK003959, issued to Plaintiff, provides coverage for direct physical loss of

or damage to the property located at 1874 West Avenue, Miami Beach, Florida 33139¹ (the “Property”) effective for the policy period of December 19, 2019, to December 19, 2020 (the “Policy”). (Exhibit A).²

The Policy’s insuring clause provides:

A. Coverage

We will pay for direct physical loss of or damage to Covered Property at the Premises described in the Declarations caused by or resulting from any Covered Cause of Loss.

(Policy, Exhibit A, Form CP 00 10 10 12, at p. 1 of 16). “Covered Cause of Loss” is defined in the Policy as “risks of direct physical loss unless the loss is... excluded... or...limited.” (Policy, Exhibit A, Form CP 10 30 06 07, at p. 1 of 10).

While the Policy does provide coverage for loss of “Business Income,” the loss must also arise out of direct physical loss or damage to the insured property as identified in the “declarations” page of the Policy. With respect to business income, the Policy’s “Business Income” coverage states, in part:

1. Business Income

* * *

We will pay for the actual loss of Business Income you sustain due to the necessary “suspension” of your “operations” during the “period of restoration”. *The “suspension” must be caused by direct physical loss of or damage to property at premises which are described in the Declarations* and for which a Business Income Limit of Insurance is shown in the Declarations. The loss or damage must be caused by or result from a Covered Cause of Loss. With respect to loss or damage to personal property in the open or personal property in a vehicle, the described premises include the area within 100 feet of such premises.

(Policy, Exhibit A, Form CP 00 30 10 12, at p. 1 of 9) (emphasis added).

The Policy also provide coverage for “Extra Expense” which is defined, in part, as:

¹ The insured property is identified on the Schedule of Locations of the Policy.

² The Policy is attached to the Complaint and reattached here for the Court’s convenience.

2. Extra Expense

- a. Extra Expense means necessary expenses you incur during the “period of restoration” that you would not have incurred if there had been no ***direct physical loss or damage to property*** caused by or resulting from a Covered Cause of Loss.

(Policy, Exhibit A, Form CP 00 30 10 12, at p. 1 of 9) (emphasis added)). As noted above, “Business Income” and “Extra Expense” coverages are only provided during the “period of restoration” which is defined as:

... the period of time that:

a. Begins:

- (1) 72 hours after the time of ***direct physical loss or damage*** for Business Income Coverage; or
- (2) Immediately after the time of ***direct physical loss or damage*** for Extra Expense Coverage;

caused by or resulting from any Covered Cause of Loss at the described premises; and

b. Ends on the earlier of:

- (1) The date when the property at the described premises should ***be repaired, rebuilt or replaced*** with reasonable speed and similar quality; or
- (2) The date when business is resumed at a new permanent location.

(Policy, Exhibit A, Form CP 00 30 10 12, at p. 9 of 9) (emphasis added). In other words, the Policy does not provide coverage for business income and extra expense if the loss is caused by something other than direct physical loss or damage resulting from a covered cause of loss. And coverage is only provided for that time needed to repair, rebuild, or replace the damaged property.

The Policy provides “Civil Authority” coverage but, and again consistent with the fundamental principle of a property insurance policy, direct physical loss or damage to property is required as the civil authority action must result from damage to property caused by a Covered Cause of Loss:

a. Civil Authority

In this Additional Coverage, Civil Authority, the described premises are premises to which this Coverage Form applies, as shown in the Declarations.

When a ***Covered Cause of Loss causes damage to property other than property at the described premises***, we will pay for the actual loss of Business Income you sustain and necessary Extra Expense caused by action of civil authority that prohibits access to the described premises, provided that both of the following apply:

- (1) ***Access to the area immediately surrounding the damaged property is prohibited by civil authority as a result of the damage***, and the described premises are within that area but are not more than one mile from the damaged property; and
- (2) The action of civil authority is taken in response to dangerous physical conditions resulting from the damage or continuation of the Covered Cause of Loss that caused the damage, or the action is taken to enable a civil authority to have unimpeded access to the damaged property.

Civil Authority Coverage for Business Income will begin 72 hours after the time of the first action of civil authority that prohibits access to the described premises and will apply for a period of up to four consecutive weeks from the date on which such coverage began.

Civil Authority Coverage for Extra Expense will begin immediately after the time of the first action of civil authority that prohibits access to the described premises and will end:

- (1) Four consecutive weeks after the date of that action; or
 - (2) When your Civil Authority Coverage for Business Income ends;
- whichever is later.

(Policy, Exhibit A, Form CP 00 30 10 12, at p. 2 of 9) (emphasis added).

The Policy contains an endorsement that modifies the Civil Authority coverage. However, none of those modifications change the basic coverage requirements of direct physical loss or damage to nearby property and a prohibition on access to the insured property because of such damage. The Policy modifies the Civil Authority extension as follows:

The following applies to the Additional Coverage – Civil Authority under the Business Income (And Extra Expense) Coverage Form, Business Income (Without Extra Expense) Coverage Form and Extra Expense Coverage Form:

1. The Additional Coverage – Civil Authority includes a requirement that the described premises are not more than one mile from the damaged property.

With respect to described premises located in Florida, such one-mile radius does not apply.

2. The Additional Coverage – Civil Authority is limited to a coverage period of up to four weeks. With respect to described premises located in Florida, such four-week period is replaced by a three-week period.
3. Civil Authority coverage is subject to all other provisions of that Additional Coverage.

(Policy, Exhibit A, Form CP 01 25 07 08, at p. 2 of 2). Thus, among the requirements to trigger civil authority coverage, damage to property must prohibit access to the Property.

The Policy contains certain applicable exclusions. Among those exclusions are the microorganism exclusion (Policy, Exhibit A, Form LMA 5018), and broad pollution exclusions (Policy, Exhibit A, Form NMA 2340 and Form CP 10 30 06 07, at p. 4 of 10).

B. THE INSURANCE CLAIM

On April 2, 2020, Plaintiff submitted a claim seeking recovery for business income loss as a result of local and state orders related to COVID-19 (the “Claim”). (Exhibit B, Notice of Loss). A short time later, before Underwriters could conduct any investigation into the Claim, Plaintiff filed this lawsuit. (Doc. 1). In the Complaint, Plaintiff alleges that

The presence of COVID-19 caused direct physical loss of and/or damage to the covered premises...by...damaging the property, denying access to the property, preventing customers from physically occupying the property, causing the property to be physically uninhabitable by customers, causing its function to be nearly eliminated or destroyed, and/or causing suspension of business operations on the premises.

(Doc. 1 ¶ 46). The Complaint also alleges that “Plaintiff was forced to suspend business operations at the [Property], as a result of COVID-19” and that “[r]elated actions of civil authorities also prohibited access to and occupancy of the [Property].” (*Id.* at ¶ 8). Notably, however, the Complaint fails to provide any description of the “direct physical loss and damage”, but instead gives an incomplete recitation of the various orders. All the referenced government measures were put in place to promote social distancing and slow the spread of COVID-19 by minimizing contact

between residents. These orders were not issued as a result of any “direct physical loss of or damage” to property, as required under the Policy to trigger coverage. Moreover, the orders did not “prohibit access” to the Property, as they only restricted public access to the Property, but did not restrict Plaintiff, nor its employees, from entering the premises.

II. LEGAL STANDARD

A motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) tests the sufficiency of the complaint. *Jacobs v. Tempur-Pedic Int’l, Inc.*, 626 F.3d 1327, 1332-33 (11th Cir. 2010). A complaint must include “a short and plain statement of the claim showing that the pleader is entitled to relief,” but must allege more than “labels and conclusions,” “formulaic recitation of the elements of a cause of action,” or “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements.” Fed. R. Civ. P. 8(a)(2); *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). Courts are not required to accept the labels and legal conclusions in the complaint as true. *Sinaltrainal v. Coca-Cola Co.*, 578 F.3d 1252, 1261 (11th Cir. 2009).

To survive a motion to dismiss, a complaint must contain facts that, when assumed to be true, sufficiently “state a claim to relief that is *plausible on its face*.” *Iqbal*, 556 U.S. at 678 (emphasis added). “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.*; see also *Oxford Asset Mgmt., Ltd. v. Jaharis*, 297 F.3d 1182, 1188 (11th Cir. 2002) (explaining that “conclusory allegations, unwarranted deductions of facts or legal conclusions masquerading as facts will not prevent dismissal”). A complaint that does not “contain sufficient factual matter, accepted as true, to state a claim . . . plausible on its face” is subject to dismissal.

Am. Dental Ass'n v. Cigna Corp., 605 F.3d 1283, 1289 (11th Cir. 2010) (citing *Twombly*, 550 U.S. at 570).

Moreover, “when the allegations of the complaint, however true, could not raise a claim of entitlement to relief, this basic deficiency should be exposed at the point of minimum expenditure of time and money by the parties and the court.” *Twombly*, 550 U.S. at 558 (citation and quotations omitted).

III. ARGUMENT

A. **PLAINTIFF’S COMPLAINT FAILS TO ALLEGE DIRECT PHYSICAL LOSS OF OR DAMAGE TO PROPERTY COVERED BY THE POLICY**

The Complaint contains no plausible allegations that the Property has suffered “direct physical loss or damage.” The Policy provides coverage for business income and extra expense losses only if such losses are the result of “direct physical loss of or damage to” the insured Property. (Policy, Exhibit A, Form CP 00 30 10 12, at p. 1 of 9). Further, business income and extra expense coverages are only provided during the “period of restoration”, which is the time it takes to repair, rebuild or replace the Property. (Policy, Exhibit A, Form CP 00 30 10 12, at p. 9 of 9). Here, there has been no direct physical loss or damage to the Property, as evidenced by the fact that there is nothing to repair, rebuild or replace at the Property.

The plain language of the Policy “requires direct physical loss or damage to the properties in order to trigger payment” for a business income loss. *See Lubell & Rosen LLC v. Sentinel Ins. Co., Ltd.*, No. 0:16-CV-60429-WPD, 2016 WL 8739330, at *4 (S.D. Fla. June 10, 2016). Florida law places the initial burden on an insured seeking to recover under an all-risk policy of proving that a loss occurred. *See S.O. Beach Corp. v. Great Am. Ins. Co. of New York*, 305 F. Supp. 3d 1359, 1364 (S.D. Fla. 2018), *aff’d*, 791 F. App’x 106 (11th Cir. 2019). An insured’s pleading must sufficiently allege that its losses are covered within a policy’s insuring agreement. *See Timber*

Pines Plaza, LLC v. Kinsale Ins. Co., 192 F. Supp. 3d 1287, 1293 (M.D. Fla. 2016). “A complaint that does not ‘contain sufficient factual matter, accepted as true, to state a claim . . . plausible on its face’ is subject to dismissal.” *Id.* at 1292 (quoting *Am. Dental Ass’n*, 605 F.3d at 1289).

Accordingly, to recover for business income loss, Plaintiff must plead and then prove that it sustained damage to property that is insured by its Policy, that the damage was caused by a covered cause of loss, and that there was an interruption to its business that was caused by the property damage. *Dictiomatic, Inc. v. U.S. Fid. & Guar. Co.*, 958 F. Supp. 594, 602 (S.D. Fla. 1997); *cf. Nat’l Union Fire Ins. Co. of Pittsburgh, Pa. v. Texpak Grp. N.V.*, 906 So. 2d 300, 302 (Fla. 3d DCA 2005) (holding that business interruption and extra expense losses are covered “only if ‘resulting from’ damage or destruction of real or personal property caused by a covered peril.”). In the Complaint, Plaintiff merely alleges that “COVID-19 caused direct physical loss of and damage to [the Property].” (Doc. 1 ¶¶ 77, 87, 97, and 107). Plaintiff also alleges that “[t]he presence of COVID-19 caused direct physical loss of and/or damage” to the Property “by, among other things, damaging the property, denying access to the property, preventing customers from physically occupying the property, causing the property to be physically uninhabitable by customers, causing its function to be nearly limited or destroyed, and/or causing the suspension of business operations on the premises.” (Doc. 1 ¶ 46).

Under the federal rules, pleading the bare elements of a claim is insufficient—Plaintiff “must include some supporting facts.” *N.P.V. Realty Corp. v. Nationwide Mut. Ins. Co.*, No. 8:11-CV-1121-T-17TBM, 2011 WL 4948542, at *4 (M.D. Fla. Oct. 17, 2011). Here, Plaintiff makes conclusory allegations that it has suffered direct physical damage, but the Complaint is devoid of any mention of what physical damage occurred, how the physical damage occurred, and when the physical damage occurred. Moreover, Plaintiff appears to assert that the presence of COVID-19

somehow inexplicably caused property damage by “denying access to the property” and “preventing customers from physically occupying the property.” (Doc. 1 ¶ 46). None of Plaintiff’s allegations, however, even if taken as true, state a plausible claim that Plaintiff has suffered a “direct physical loss or damage” as required to trigger coverage under the Policy. *See Timber Pines Plaza, LLC v. Kinsale Ins. Co.*, No. 8:15-cv-1821-T-17TBM, 2016 WL 8943313, at *2 (M.D. Fla. Feb. 4, 2016) (“[I]t is not sufficient to plead that the Plaintiff has suffered damages in the form of ‘direct physical damage to its property.’”).

The phrase “direct physical loss or damage” “must be given its common meaning.” *Rockhill Ins. Co. v. Northfield Ins. Co.*, 297 F. Supp. 3d 1279, 1286 (M.D. Fla. 2017). This Court has concluded that “[a] direct physical loss ‘contemplates an actual change in insured property then in a satisfactory state, occasioned by accident or other fortuitous event directly upon the property causing it to become unsatisfactory for future use or requiring that repairs be made to make it so.’” *Mama Jo’s, Inc. v. Sparta Ins. Co.*, No. 17-cv-23362-KMM, 2018 WL 3412974, at *9 (S.D. Fla. June 11, 2018) (quoting *Healthcare Ctr. of Glendale, Inc. v. State Farm Gen. Ins. Co.*, 187 Cal. App. 4th 766, 779 (2010)). If the property can be cleaned and restored to its original function, no covered loss has been suffered. *Id.* (“cleaning is not considered direct physical loss”). The relevant inquiry is whether the structure continues to function. Indeed, “[t]he fact that the restaurant needed to be cleaned more frequently does not mean [the plaintiff] suffered a direct physical loss or damage.” *Id.* Furthermore, as stated by the oft-cited Couch on Insurance, and as explicitly adopted by this Court:

The requirement that the loss be “physical,” given the ordinary definition of that term, is widely held to exclude alleged losses that are intangible or incorporeal and, thereby, to preclude any claim against the property insurer when the insured merely suffers a detrimental economic impact unaccompanied by a distinct, demonstrable, physical alteration of the property.

Id. (quoting 10A Couch on Ins. § 148:46 (3d. Ed. West 1998)); *see also Port Auth. of N.Y. & N.J. v. Affiliated FM Ins. Co.*, 311 F.3d 226, 235 (3d Cir. 2002) (“In ordinary parlance and widely accepted definition, physical damage to property means ‘a distinct, demonstrable, and physical alteration’ of its structure.”).

In the context of a lawsuit seeking injunctive relief against an insurer for business income coverage related to COVID-19, one court already found that the disease, and the virus that causes it, do not cause physical loss or damage. Teleconference, Order to Show Cause at 4-5, *Soc. Life Magazine, Inc. v. Sentinel Ins. Co. Ltd.*, No. 20-CV-3311-VEC (S.D.N.Y. May 14, 2020) (Transcript with oral findings attached hereto as Exhibit C). With regard to COVID-19, the Court in *Soc. Life Magazine* noted: “It damages lungs. It doesn’t damage printing presses.” (*Id.* at 4:25-5:4). Additionally, another court recently granted summary disposition in favor of an insurer, finding there was no coverage for the plaintiff’s COVID-19 related business income loss, since there was no direct physical loss of or damage. *See* Hearing, Motion for Summary Disposition, *Gavrilides Mgmt. Co. v. Mich. Ins. Co.*, No. 20-000258-CB (Mich. Cir. Ct. July 1, 2020) (“Plaintiff just can’t avoid the requirement that there has to be something that physically alters the integrity of the property. There has to be some tangible, i.e. physical damage to the property.”). (Transcript with oral findings attached hereto as Exhibit D).³

Moreover, the Policy only provides coverage for business income and extra expense losses incurred during the “period of restoration” which begins with the “direct physical loss or damage” and ends on the earlier of “(1) The date when the property at the described premises should be repaired, rebuilt or replaced . . . or (2) The date when business is resumed at a new permanent

³ Plaintiff attempts to argue that the presence of COVID-19 somehow caused “direct physical loss of and/or damage” to the Property, by “causing the property to be physically uninhabitable” and “causing its function to be nearly eliminated or destroyed. Such creative interpretations fail as this Court, in *Mama Jo’s*, rejected the notion that loss of use equates to physical damage. *Mama Jo’s*, 2018 WL 3412974, at *9.

location.” (Policy, Exhibit A, Form CP 00 30 10 12, at p. 9 of 9). Thus, it follows that for there to be coverage under the Policy’s business income or extra expense coverage, Plaintiff’s loss must involve some physical damage to covered property that needs to be repaired, rebuilt, or replaced. As explained by the Southern District of New York, “the words ‘repair’ and ‘replace’ contemplate physical damage to the insured premises as opposed to loss of use of it.” *Newman Myers Kreines Gross Harris, P.C. v. Great N. Ins. Co.*, 17 F. Supp. 3d 323, 332 (S.D.N.Y. 2014) (citations omitted); *see also Phila. Parking Auth. v. Fed. Ins. Co.*, 385 F. Supp. 2d 280, 287 (S.D.N.Y. 2005) (“‘Rebuild,’ ‘repair’ and ‘replace’ all strongly suggest that the damage contemplated by the Policy is physical in nature.”).

Any other reading of the Policy to allow recovery for Plaintiff’s Claim would render central contract terms superfluous. Under Florida law, “insurance contracts are construed according to their plain meaning.” *Taurus Holdings, Inc. v. U.S. Fid. & Guar. Co.*, 913 So. 2d 528, 532 (Fla. 2005). Further, “courts must not construe insurance policy provisions in isolation, but instead should read all terms in light of the policy as a whole, with every provision given its full meaning and operative effect.” *Office Depot, Inc. v. Nat’l Union Fire Ins. Co. of Pittsburgh, Pa.*, 734 F. Supp. 2d 1304, 1314 (S.D. Fla. 2010) (citations omitted). Courts may not “rewrite contracts, add meaning that is not present, or otherwise reach results contrary to the intentions of the parties.” *Deni Assocs. of Fla., Inc. v. State Farm Fire & Cas. Ins. Co.*, 711 So. 2d 1135, 1138 (Fla. 1998).

Thus, under the plain language of the Policy, coverage is only afforded for business income and extra expense losses if those losses are caused by direct physical loss or damage. Here, Plaintiff’s Claim is solely economic in nature and does not relate to any sort of physical damage, and, therefore, is not covered under the Policy. *See Bahama Bay II Condo. Ass’n, Inc v. United Nat’l Ins. Co.*, 374 F. Supp. 3d 1274, 1278 (M.D. Fla. 2019) (“cost of security guards and security

fencing . . . is not property damage, or ‘physical loss . . .’ but is an economic loss. There is nothing in the Policy that covers economic loss.”); *see also* Exhibit C, Order to Show Cause at 15 (“[T]his kind of business interruption needs some damage to the property . . . this is just not what’s covered under these insurance policies.”).

Accordingly, Plaintiff’s Complaint does not allege any facts that trigger coverage under the Policy and its claims fail as a matter of law.

B. PLAINTIFF HAS NOT PLED A VALID CIVIL AUTHORITY CLAIM

As the basis for its civil authority claim, Plaintiff points to governmental orders issued by the State of Florida, Miami-Dade County, and the City of Miami Beach throughout the months of March and April 2020. (Doc. 1 ¶¶ 39-45). On March 1, 2020, Florida Governor Ron DeSantis issued Executive Order 20-51 directing the State Health Officer and Surgeon General to declare a public health emergency. (Exhibit E, Florida Executive Order 20-51).⁴ Then, on March 9, 2020, Governor DeSantis issued Executive Order 20-52, declaring a state of emergency. (Exhibit F, Florida Executive Order 20-52). On March 12, 2020, the City of Miami Beach also declared a State of Emergency. (Doc. 1 ¶ 41; Exhibit G, City of Miami Beach Declaration of State of Emergency).

The City of Miami Beach then issued an emergency order on March 16, 2020, requiring non-essential business to limit their hours of operation and occupancy. (Exhibit H, City of Miami Beach Emergency Order March 16, 2020). On March 18, 2020, the City of Miami Beach issued another emergency order, requiring message therapy centers and spas to be “closed to the public.” (Exhibit I, City of Miami Beach Emergency Order March 18, 2020). On March 19, 2020, Miami-

⁴ These government orders are a matter of public record. When ruling on a motion to dismiss, a district court may consider evidence if its authenticity is a matter of public record. *See Myers v. Foremost Ins. Co.*, No. 8:15-CV-1363-MSS-JSS, 2015 WL 12830477, at *3 (M.D. Fla. Oct. 23, 2015) (citing *SFM Holdings, Ltd. v. Banc of Am. Secs., LLC*, 600 F.3d 1334, 1337 (11th Cir. 2010)).

Dade County issued Emergency Order 07-20, requiring the closure of all non-essential businesses. (Doc Exhibit J, Miami-Dade Emergency Order 07-20). Beauty salons were not deemed essential businesses. (*See id.*).

On March 30, 2020, Governor DeSantis issued Executive Order 20-89, requiring Miami-Dade, Broward, Palm Beach, and Monroe Counties to “restrict public access” to non-essential businesses pursuant to the guidelines established by Miami-Dade County Emergency Order 07-20. (Doc. 1 ¶ 44; Exhibit K Florida Executive Order 20-89). On April 23, the City of Miami Beach extended the State of Emergency declaration. (Doc. 1 ¶ 41; Exhibit L, City of Miami Beach Declaration of State of Emergency Extended). Plaintiff alleges that the City of Miami Beach extended the State of Emergency, allegedly in part because of “the propensity of COVID-19 to ‘caus[e] property loss and damage in certain circumstances.’” (Doc. 1 ¶ 41). However, the Emergency Order does not state it was issued in response to any property damage, but was issued to “take immediate action to control and reduce threats associated with the COVID-19 [sic], to protect the public health, safety and welfare of the people of the City of Miami Beach.” (Exhibit L). In fact, none of the above-referenced orders were issued as a result of any “direct physical loss of or damage” to property, nor did the orders “prohibit access” to the Property for Plaintiff or its employees.

Plaintiff’s allegations fail to trigger the Policy’s civil authority coverage. In Florida, the “policyholder bears the initial burden of proving that a loss occurred under the insuring agreement during the policy period.” *Some Things Fishy Enter., Inc. v. Atl. Cas. Ins. Co.*, 415 F. Supp. 3d 1137, 1142 (S.D. Fla. 2019). The civil authority coverage requires physical loss or damage to property near the insured property, and further requires that access to the insured property is prohibited

because of that damage.⁵ Plaintiff's effort to obtain civil authority coverage fails because (1) it alleges no such physical loss or damage, and (2) access to the Property has never been prohibited.

In the Complaint, Plaintiff alleges that "the presence of COVID-19 caused direct physical loss of and/or damage to covered premises under the Policy." (Doc. 1, ¶ 46). Plaintiff argues that the orders of Mayor Gimenez, Governor DeSantis, and the City of Miami Beach trigger the "Civil Authority" coverage under its Policy. (*See* Doc. 1, ¶ 118). As noted above, the civil authority coverage requires that a "Covered Cause of Loss causes damage to property other than property at the described premises." A "Covered Cause of Loss" is defined as "risk of direct physical loss." Accordingly, the first requirement of the civil authority coverage is that there be direct physical loss that causes damage to property other than the insured property. Next, because of that damage to nearby property, a civil authority must prohibit access to the insured property. The action of the civil authority must also be "taken in response to dangerous physical conditions resulting from the damage or continuation of the Covered Cause of Loss that caused the damage." (Policy, Exhibit A, Form CP 00 30 10 12, at p. 2 of 9). In other words, because of direct physical loss that causes damage to other property, the civil authority must prohibit access to the insured location because the nearby property damage has created a dangerous condition. Plaintiff fails to sufficiently allege these necessary elements.

The plain language of the Policy makes clear that the civil authority coverage requires damage to property other than the described premises *and* an order of civil authority prohibiting access to the insured's property because of such damage. *See, e.g., Dickie Brennan & Co. v. Lexington Ins. Co.*, 636 F.3d 683, 686-87 (5th Cir. 2011) ("Civil authority coverage is intended to

⁵ Plaintiff may contend that the Policy's language does not require the damaged property to be near the insured premises. Even if this were true, Plaintiff's civil authority claim fails because it does not allege direct physical loss or damage to *any* property, near or far.

apply to situations where access to an insured's property is prevented or prohibited by an order of civil authority issued as a direct result of physical damage to other premises in the proximity of the insured's property.”). As explained above, COVID-19 does not cause physical damage or loss to property, and therefore, Plaintiff cannot satisfy the conditions of the civil authority coverage extension. Even looking beyond that shortcoming, there are two more reasons why Plaintiff cannot fulfill the conditions of the civil authority coverage extension: (1) access to the Property has not been “prohibited;” and (2) the subject government orders were not taken “in response” to damaged property.

While the subject government orders prohibited Plaintiff from allowing customers into the Property for business purposes, no government order prevented Plaintiff itself, or its employees, from entering the Property. Although Florida courts do not appear to have considered the issue, numerous other courts have recognized that government orders that hamper access to insured property—but do not entirely *prohibit* it—are insufficient to trigger civil authority coverage. *See, e.g., S. Hosp., Inc. v. Zurich Am. Ins. Co.*, 393 F.3d 1137, 1140 (10th Cir. 2004) (upholding denial of hotel operators' claim for lost business income sustained when customers cancelled visits due to order grounding of flights after the 9/11 attacks); *Kean, Miller, Hawthorne, D'Armond McCowan & Jarman, LLP v. Nat'l Fire Ins. Co. of Hartford*, No. 06-770-C, 2007 WL 2489711, at *1 (M.D. La. Aug. 29, 2007) (holding that civil authority provision was not triggered by Louisiana government order prior to Hurricane Katrina advising residents to stay off the streets because advisories did not “prohibit access” to the insured premises); *By Dev. Inc. v. United Fire & Cas. Co.*, No. Civ. 04-5116, 2006 WL 694991, at *6 (D.S.D. Mar. 14, 2006) (finding that road closures after wildfire did not prohibit access to insured's business); *54th Street Partners v. Fid. & Guar. Ins. Co.*, 305 A.2d 67, 67 (N.Y. Super. Ct. App. Div. 2003) (holding that civil authority

extension did not apply to insured who made lost business income claim due to city government's diversion of vehicular and pedestrian traffic in the proximity of its restaurant, because access to the restaurant was not denied). Since the civil authority extension requires Plaintiff to demonstrate that access to its Property was "prohibited" by civil authority, and Plaintiff did not make any such allegations (nor indeed could it), the civil authority extension does not apply.

Second, the subject government orders were not issued "in response" to dangerous physical conditions resulting from physical property damage to nearby property. Rather the orders were issued as precautionary measures to prevent the further spread of COVID-19. In such situations, the civil authority extension is not triggered. *See Syufy Enter. v. Home Ins. Co. of Ind.*, No. 94-0756 FMS, 1995 WL 129229 (N.D. Cal. Mar. 21, 1995). As detailed in *Syufy*, after the return of the Rodney King verdict and subsequent riots, the cities of Los Angeles, San Francisco, and Las Vegas imposed dawn-to-dusk curfews. *Id.* at *1. An insured movie theater operator, who ran theaters in all three cities, submitted a business interruption claim because it closed its theaters during these curfew periods. *Id.* The court concluded there was no civil authority coverage because not only did the civil orders not specifically prohibit individuals from entering the theaters, but the "requisite causal link between damage to adjacent property and denial of access to a Syufy theater [was] absent." *Id.* at *2. In other words, Syufy had closed its theaters as a "direct result of the city-wide curfews," not as a result of adjacent property damage. Furthermore, the court noted that even though the curfews were imposed to "prevent" property damage, they were not the result of the damage itself. *Id.* at *2. Other courts have reached similar conclusions. *See United Airlines, Inc. v. Ins. Co. of State of Pa.*, 385 F. Supp. 2d 343, 353 (S.D.N.Y. 2005) (holding civil authority coverage did not apply to airport's business interruption claim arising from grounding of flights after the 9/11 attacks because the order to ground flights and bar access to the airport was "to

prevent further attacks and as a matter of national security,” not because of damage to the Pentagon); *City of Chi. v. Factory Mut. Ins. Co.*, No. 02-C-7023, 2004 WL 549447, at *4 (N.D. Ill. Mar. 18, 2004) (“The business interruption . . . was due to the ground stop order imposed by the FAA in order to prevent further terrorist attacks.”); *cf. Prime Alliance Grp., Ltd. v. Hartford Fire Ins. Co.*, No. 06-22535-CIV-UNGARO, 2007 WL 9703576, at *4 (S.D. Fla. Oct. 19, 2007) (“[A] plain language reading of this section provides coverage when a peril—such as a windstorm—causes damage to property and, as a result, access to property is precluded by a civil authority order. The order of civil authority cannot in any reasonable manner be construed as a ‘peril.’”).

Plaintiff cannot establish that physical damage occurred due to COVID-19, nor can it establish that the government orders prohibited access to the Property. Moreover, these government orders were not taken in response to covered physical damage but were instead preventative measures issued for public health purposes. Accordingly, the Policy’s civil authority coverage extension is not triggered.

C. COVERAGE IS BARRED BY THE MICROORGANISM EXCLUSION

The Complaint must be dismissed because Plaintiff’s Claim is excluded from coverage by the plain language of the Policy. When resolving insurance coverage disputes, courts “routinely dismiss complaints for failure to state a claim when a review of the insurance policy and the underlying claim for which coverage is sought unambiguously reveals that the underlying claim is not covered.” *Cammarota v. Penn-Am. Ins. Co.*, No. 17-CV-21605-Williams, 2017 WL 5956881, at *2 (S.D. Fla. Nov. 13, 2017); *see also Arias-Bonello v. Progressive Select Ins. Co.*, No. 0:17-CV-60897-UU, 2017 WL 7792704, at *5 (S.D. Fla. Aug. 8, 2017) (dismissing putative class member’s breach of contract claims because the claims were expressly excluded from the policy);

MJCM, Inc. v. Hartford Cas. Ins. Co., No. 8:09-CV-2275-T-17TBM, 2010 WL 1949585, at *7 (M.D. Fla. May 14, 2010) (granting motion to dismiss under Rule 12(b)(6) because underlying lawsuit was not covered under the subject insurance policy). Here, even if Plaintiff could demonstrate a claim within the Policy's coverage grant (which it cannot), coverage nonetheless is barred by the Microorganism Exclusion.

The Microorganism Exclusion provides:

This policy does not insure any loss, damage, claim, cost, expense or other sum directly or indirectly arising out of or relating to:

mold, mildew, fungus, spores or other micro-organisms of any type, nature, or description, including but not limited to any substance whose presence poses an actual or potential threat to human health.

This exclusion applies regardless whether there is (i) any physical loss or damage to insured property; (ii) any insured peril or cause, whether or not contributing concurrently or in any sequence; (iii) any loss of use, occupancy, or functionality; or (iv) any action required, including but not limited to repair, replacement, removal, cleanup, abatement, disposal, relocation, or steps taken to address medical or legal concerns.

This exclusion replaces and supersedes any provision in the policy that provides insurance, in whole or in part for these matters.

(Policy, Exhibit A and B, Form LMA 5018). As set forth below, SARS-CoV-2, which causes COVID-19 is a microorganism. Therefore, the plain language of this exclusion bars Plaintiff's Claim, which directly or indirectly arises from SARS-CoV-2.

Florida law requires that the Microorganism Exclusion be applied as written. *See Taurus Holdings, Inc. v. U.S. Fid. & Guar. Co.*, 913 So. 2d 528, 532 (Fla. 2005) (“[I]f a policy provision is clear and unambiguous, it should be enforced according to its terms whether it is a basic policy provision or an exclusionary provision”). Stated differently, when interpreting unambiguous policy terms, “there is no special construction or interpretation required, and the plain language of the policy will be given the meaning it clearly expresses.” *Phila Indem. Ins. Co. v. Yachtsman's Inn Condo Ass'n, Inc.*, 595 F. Supp. 2d 1319, 1323 (S.D. Fla. 2009).

The only two jurisdictions to have substantively addressed similar microorganism exclusions, with one being a Florida circuit court, both found the exclusion to be valid and enforceable. *See Certain Underwriters at Lloyd's of London Subscribing to Policy No. SMP 3791 v. Creagh*, 563 F. App'x 209, 211 (3d Cir. 2014) (holding that the district court correctly applied the microorganism exclusion to the plaintiff's claim); *Certain Underwriters at Lloyd's, London Subscribing to Policy No. W15F03160301 v. Houligan's Pub & Club, Inc.*, No. 2017-31808-CICI, 2019 WL 5611557, at *11 (Fla. Cir. Ct. Oct. 24, 2019) (concluding that "the Microorganism Exclusion bars coverage for the claims in this case"). In *Creagh*, the insured's claim arose after a tenant of its building died and the decomposition of the tenant's body damaged his apartment unit. *Creagh*, 563 F. App'x at 209. The United States District Court for the Eastern District of Pennsylvania held that the subject microorganism exclusion applied because the fluids that escaped the tenant's body and contaminated the unit contained bacteria, which are microorganisms. *See Certain Underwriters at Lloyd's London v. Creagh*, No. 12-571, 2013 WL 3213345, at *3 (E.D. Pa. June 26, 2013). The Third Circuit upheld the decision on appeal. *Creagh*, 563 F. App'x at 211.

A Florida circuit court similarly recognized the unambiguous nature and enforceability of microorganism exclusions in the *Houligan's* case. In *Houligan's*, an insured suffered damage when its building was flooded with sewage and waste following a hurricane. *Houligan's*, 2019 WL 5611557, at *1. In applying the microorganism exclusion to the plaintiff's claim, the *Houligan's* court stated:

For better or worse, the parties bargained for an insurance policy that contains an extremely broad Microorganism Exclusion, one which supersedes and replaces any language in the Policy that might otherwise provide coverage for the loss in question. As noted, the exclusion applies even in the presence of an insured peril or cause that contributes concurrently to the insureds' loss. This Court must apply the Policy in a manner consistent with its plain language. Doing so leads the Court

to conclude that the Microorganism Exclusion bars coverage for the claims in this case.

Id. at *11. Significantly, the *Houligan's* court looked to the Center for Disease Control's website and dictionary definitions to find that E. Coli and enterococcus, both of which were present in the sewage and waster, are bacteria, and thus, microorganisms that cause an actual or potential threat to human health. *Id.* The decision in *Houligan's* provides a legal roadmap for this Court because SARS-CoV-2 is a microorganism that causes an actual or potential threat to human health, and any claim arising out of SARS-CoV-2, regardless of whether physical damage occurred or whether there is some other contributing or concurrent cause, is therefore excluded from coverage.

Secondary sources, like those relied upon by the *Houligan's* court, support a determination that SARS-CoV-2 is a microorganism. No less than the foremost U.S. governmental authorities in the fight against COVID-19—the U.S. Department of Health and Human Services, National Institutes of Health and National Institute of Allergy and Infectious Diseases—defined microorganism as “microscopic organisms, including bacteria, viruses, fungi, plants, and animals.”⁶ This is consistent with the findings of other governmental agencies.⁷ Adding additional support, scientific journals and textbooks also state that viruses are microorganisms.⁸ Even non-scientific sources such as Encyclopedia Britannica, for instance, lists the following “major groups of microorganism”: bacteria, archaea, fungi, algae, protozoa, and viruses.⁹

⁶ *Understanding Microbes in Sickness and in Health*, U.S. DEP'T OF HEALTH & HUMAN SERVS., NAT'L INST. OF HEALTH 47 (Jan. 2006) (Attached hereto as Exhibit M).

⁷ *What is a Microorganism?* NAT'L PARK SERV., U.S. DEP'T OF INTERIOR, 2 (April 2014), <https://www.nps.gov/common/uploads/teachers/lessonplans/What%20is%20a%20Microorganism%20Activity%20Guide2.pdf> (listing viruses as one of the five categories of microorganisms).

⁸ *See, e.g.*, Wendy Keenleyside, MICROBIOLOGY: CANADIAN EDITION, § 1.3 (June 23, 2019) (“Viruses are acellular microorganisms.”); Kathryn Nixdorff, et al., *Critical Aspects of Biotechnology in Relation to Proliferation*, 150 NATO SCI. SERIES II: MATHEMATICS PHYSICS & CHEMISTRY, 33, 33 (2004) (“Viruses are microorganisms”).

⁹ *See Types of Microorganisms*, ENCYCLOPEDIA BRITANNICA (last visited May 6, 2020), <https://www.britannica.com/science/microbiology/Types-of-microorganisms>.

As a result, the Microorganism Exclusion unambiguously excludes coverage for the Plaintiff's Claim.

D. COVERAGE IS BARRED BY THE POLLUTION EXCLUSIONS

In addition to the Microorganism Exclusion, the Policy contains two enforceable exclusions barring coverage for contaminants and contamination. First, the Policy contains the Seepage and/or Pollution and/or Contamination Exclusion, which provides:

**SEEPAGE AND/OR POLLUTION AND/OR CONTAMINATION EXCLUSION
USA & CANADA**

Notwithstanding any provisions to the contrary within the Policy of which this Endorsement forms part (or within any other Endorsement which forms part of this Policy, this Policy does not insure:

- (a) any loss, damage, cost or expense, or
- (b) any increase in insured loss, damage, cost or expense, or
- (c) any loss, damage, cost, expense, fine or penalty, which is incurred, sustained or imposed by order, direction, instructions or request of, or by agreement with, any court, government agency or any public, civil or military authority, or threat thereof, (and whether or not as a result of public or private litigation.)

which arises from any kind of seepage or any kind of pollution and/or contamination, or threat thereof, whether or not caused by or resulting from a Peril Insured, or from steps or measures taken in connection with the avoidance, prevention, abatement, mitigation, remediation, clean-up or removal of such seepage or pollution and/or contamination or threat thereof.

* * *

The term 'any kind of seepage or any kind of pollution and/or contamination' as used in this Endorsement includes (but not limited to):

- (a) seepage of, or pollution and/or contamination by, anything, including but not limited to, any material designated as 'hazardous material' by the United States Environmental Protection Agency or as 'hazardous material' by the United States Department of Transportation, or defined as a 'toxic substance' by the Canadian Environmental Protection Act for the purposes of Part II of that Act, or any substance designated or defined as toxic, dangerous, hazardous or deleterious to persons or the environment under any Federal, State, Provincial, Municipal or other law, ordinance or regulation; and
- (b) the presence, existence, or release of anything which endangers or threatens to endanger the health, safety or welfare of persons or the environment.

(Policy, Exhibit A, Form NMA 2340).¹⁰ The Policy also contains the following exclusion, which states:

2. We will not pay for loss or damage caused by or resulting from any of the following:

* * *

1. Discharge, dispersal, seepage, migration, release or escape of “pollutants” unless the discharge, dispersal, seepage, migration, release or escape is itself caused by any of the “specified causes of loss.” But if the discharge, dispersal, seepage, migration, release or escape of “pollutants” results in a “specified cause of loss”, we will pay for the loss or damage caused by that “specified cause of loss.”

(Policy, Exhibit A, Form CP 10 30 06 07, at p. 4 of 10). The term “pollutant” is defined, in part, as “any solid, liquid gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste.” (Policy, Exhibit A, Form CP 00 10 10 12, at p. 16 of 16). Under the plain language of either of these exclusions (collectively, the “Pollution Exclusions”), and Florida law, coverage for the Claim is excluded.

The Florida Supreme Court has recognized that pollution exclusions extend beyond merely “environmental or industrial pollution.” *Deni Assocs. of Fla., Inc. v. State Farm Fire & Cas. Ins. Co.*, 711 So. 2d 1135, 1138 (Fla. 1998) (holding that a claim arising from an ammonia spill fell within a pollution exclusion). Instead, the plain language of pollution exclusions should be enforced as written and Florida courts should not “place limitations upon the plain language of a policy exclusion simply because [they] may think it should have been written that way.” *Id.* at 1139. This includes the term “contaminant,” which the Florida Supreme Court held to be unambiguous. *See id.*

SARS-CoV-2 undoubtedly qualifies as a “pollutant” and/or “contamination.” The Southern District of Florida has recognized that “living organisms,” “microbial populations,” “microbial

¹⁰ Notably, the “pollutant/contamination” exclusion applies “[n]otwithstanding any provision to the contrary” and it does not replace or supersede any similar provisions.

contaminants,” and “indoor allergens” fit the ordinary definition of a “contaminant.” *Nova Cas. Co. v. Waserstein*, 424 F. Supp. 2d 1325, 1334 (S.D. Fla. 2006). In *Nova*, this Court reasoned that these substances “infected the plaintiffs’ bodies or made them impure by contact, thereby fitting the ordinary meaning of a ‘contaminant,’ and having an effect commonly known as ‘contamination.’” *Id.* Relatedly, this Court has enforced a pollution exclusion to exclude coverage for a claim arising from “viral contaminants” and “harmful microbe[s]” found in an insured’s swimming pool, from which a guest alleged that he contracted the Coxsackie virus. *See First Specialty Ins. Corp. v. GRS Mgmt. Assocs., Inc.*, No. 08-81356-CIV, 2009 WL 2524613, at *4-5 (S.D. Fla. Aug. 17, 2009); *see also James River Ins. Co. v. Epic Hotel, LLC*, No. 11-CV-24292-UU, 2013 WL 12085984, at *4 (S.D. Fla. Jan. 9, 2013) (applying pollution exclusion to bar coverage for claims arising from Legionnaire bacteria). Other courts have reached analogous conclusions. *See, e.g., U.S. Fire Ins. Co. v. City of Warren*, 87 F. App’x 485, 487, 490 (6th Cir. 2003) (applying a pollution exclusion to sewage water that was alleged to contain “pathogens, carcinogens, and disease carrying organisms including but not limited to HIV viruses, *e. coli* bacteria, hepatitis (all strains), and other bacteria”); *Certain Underwriters at Lloyd’s London v. B3, Inc.*, 262 P.3d 397, 400-401 (Okla. Ct. App. 2011) (holding a pollution exclusion applied to claim stemming from contaminated water alleged to contain, among other things, “bacteria (including E. Coli) [and] viruses”).

The Policy’s definitions of “contamination” and “pollutant” unambiguously encompass SARS-CoV-2. Just as this Court reasoned in *Nova*, SARS-CoV-2 is a virus that infects peoples’ bodies, thereby fitting the ordinary meaning of “contaminant.” *Nova Cas. Co.* 424 F. Supp. 2d at 1334.¹¹ Similarly, under pollution exclusions like the Policy’s “pollution exclusion,” claims

¹¹ To be sure, COVID-19 is a disease caused by the virus SARS-CoV-2. Alexander E. Gorbalenya et al., *The species Severe acute respiratory syndrome-related coronavirus: classifying 2019-nCoV and naming it SARS-CoV-2*, 6

stemming from viruses are precluded from coverage under such exclusions, as demonstrated by this Court’s decision in *First Specialty Ins. Corp.* See 2009 WL 2524613, at *4-5. SARS-CoV-2 has been “designated or defined” as “dangerous” by both Federal and State ordinances or regulations. Indeed, the U.S. Department of Health and Human Services has determined that the “SARS coronavirus” (SARS-CoV), to which COVID-19 is related,¹² is a “biological agent . . . and toxin” with “the potential to pose a severe threat to public health and safety.” 42 C.F.R. § 73.3(a) & (b) (2017). Moreover, in the subject executive orders issued by Governor DeSantis, the Governor stated that he is “responsible for meeting the *dangers* presented to this state and its people by [COVID-19].” (Exhibit F (emphasis added)); see also Exhibit K). Thus, SARS-CoV-2 has been defined as dangerous to human health by both the federal government and government of Florida.

Having established that SARS-CoV-2 qualifies as a pollutant and/or contaminant under the Policy and Florida law, the Pollution Exclusions clearly apply, given that they exclude coverage for claims “arising from” or “resulting from” pollution and/or contamination. (Policy, Exhibit A, Form NMA 2340; Form CP 10 30 06 07, at p. 4 of 10). Causation phrases such as these are broadly construed in Florida. See *Taurus Holdings, Inc. v. U.S. Fid. & Guar. Co.*, 913 So. 2d 528, 532

NATURE MICROBIOLOGY 526, 526 (March 2, 2020). Continuing, this Court has repeatedly considered at the motion to dismiss stage secondary sources such as scholarly articles. See *Jones v. Santander Consumer USA Inc.*, No. 16-14012-CIV-ROSENBERG/LYNCH, 2016 WL 11570406, at *3 (S.D. Fla. Aug. 2, 2016) (listing secondary sources that conflict with argument in motion to dismiss); *Dapeer v. Neutrogena Corp.*, 95 F. Supp. 3d 1366, 1371 n. 1 (S.D. Fla. 2015) (incorporating numerous secondary sources cited in Rule 12(b)(6) motion to dismiss); cf. *Aldar Tobacco Grp., LLC v. Am. Cigarette Company, Inc.*, No. 08-62018-CIV-JORDAN, 2010 WL 11601994, at *1 (S.D. Fla. Dec. 29, 2010) (admonishing attorney for citing “zero cases, statutes, codes, or *secondary sources* in his motion to dismiss) (emphasis added). Ultimately, this Court has “complete discretion” to accept material beyond the pleadings when considering a motion to dismiss. *Continental Cas. Co. v. Hardin*, No. 8:16-cv-322-17GW, 2016 WL 11234458, at *11 (M.D. Fla. Dec. 5, 2016).

¹² See *COVID-19, MERS & SARS*, NAT’L INST. OF ALLERGY & INFECTIOUS DISEASES (April 6, 2020), <https://www.niaid.nih.gov/diseases-conditions/covid-19>; Alping Wu, et al., *Genome Composition & Divergence of the Novel Coronavirus (2019-nCov) Originating in China*, Commentary, 27 Cell Host & Microbe 325, 326 (Mar. 11, 2020) (“[T]he 2019-nCov is in the same *Betacoronavirus* clade as MERS-CoV, SARS-like bat CoV, and SARS-CoV.”).

(Fla. 2005) (holding that causation phrase “arising out of” is broader than “caused by” as used in an exclusion). Moreover, Plaintiff asserts that its Claim was the result of “COVID-19¹³ caus[ing] direct physical loss of and damage to [Plaintiff] and other Class members’ insured premises, resulting in suspension[] of business operations at these premises.” (Doc. 1, ¶ 77). Accordingly, the Claim as alleged arose from or resulted from SARS-CoV-2 and is excluded from coverage under the Policy.

E. COUNTS II, IV, AND VI FAIL TO ALLEGE UNDERWRITERS HAVE BREACHED THE POLICY

Plaintiff has not stated valid claims for breach of contract. To sufficiently plead a claim for breach of contract under Florida law, a plaintiff “must assert the existence of a contract, a breach of such contract, and damages resulting from such breach.” *Cruz v. Underwriters at Lloyd's London*, No. 8:14-CV-1539-T-33TBM, 2014 WL 3809179, at *2 (M.D. Fla. Aug. 1, 2014). While Plaintiff’s 131-paragraph Complaint sets forth an expansive background facts section, it fails to allege specific facts supporting its claims of breach in Counts II, IV, and VI.

Plaintiff alleges that “[b]y denying coverage” Underwriters “are in breach of the Policy” and conclusory alleges that its alleged losses trigger the Policy’s business income, civil authority, and extra expense coverages. (Doc. 1 ¶¶ 90, 110, 130). However, Plaintiff fails to include necessary factual information to support these claims. These allegations are wholly conclusory and must, therefore, be dismissed. *See Whitney Nat. Bank v. SDC Communities, Inc.*, No. 809CV01788EAKTBM, 2010 WL 1270264, at *3 (M.D. Fla. Apr. 1, 2010) (dismissing claims for breach of contract because plaintiff failed to allege sufficient factual information to support its claims); *Davidson v. Georgia*, 622 F.2d 895, 897 (11th Cir. 1980) (“When the allegations

¹³ As discussed above, COVID-19 is the disease caused by SARS-CoV-2. The virus, SARS-CoV-2, does not cause direct physical loss of or damage to property for the reasons discussed above, and the disease that it causes of course does not also cause such damage.

contained in a complaint are wholly conclusory ... and fail to set forth facts which, if proved, would warrant the relief sought, it is proper to dismiss for failure to state a claim.”); *see also Timber Pines Plaza*, 2016 WL 8943313, at *2 (“To be clear, it is not sufficient under *Iqbal* to merely plead that the Defendant breached the Policy by failing to pay the benefits owed under the Policy.”).

Moreover, even if Plaintiff’s allegations are considered true, Underwriters have not breached the Policy because there is no coverage for Plaintiff’s Claim. Accordingly, Plaintiff has failed to sufficiently plead that coverage is provided by the Policy, as the express language of the Policy expressly contradicts Plaintiff’s allegations that its losses are covered under the Policy. *See Cruz*, 2014 WL 3809179, at *4 (finding that plaintiff failed to sufficiently plead that its loss was covered under a policy, since the express language of an exclusion contradicted plaintiff’s allegations that its claim was covered).

Accordingly Counts II, IV and VI for breach of contract must be dismissed.

IV. CONCLUSION

Plaintiff has failed to satisfy its burden to plead facts that would give rise to a covered claim. Additionally, Plaintiff cannot allege facts that sufficiently demonstrate it has suffered a direct physical loss of or damage to its Property. Even if Plaintiff could allege a covered cause of loss, its claims are unambiguously excluded under the Policy. Because Plaintiff cannot plead a covered cause of loss under the Policy, it cannot assert its breach of contract actions.

Thus, for the foregoing reasons, Underwriters respectfully request the Court dismiss Plaintiffs’ Complaint.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Motion to Dismiss was served via CM/ECF on July 14, 2020 upon all parties.

/s/ Armando P. Rubio
By: Armando P. Rubio
Attorneys for Defendants

EXHIBIT A

**State of Florida
Policy Cover Page**

Named Insured: ATMA Beauty, Inc
Policy Number: RSK003959
Policy Period: Effective From: 12/19/2019 To: 12/19/2020
Surplus Lines Agent's Name: Edward P. Jackson
Surplus Lines Agent's Address: 6951 W. Sunrise Blvd
Plantation, FL 33313
Surplus Lines Agent's License: A128903
Producing Agent's Name: Robert Roberts
Producing Agent's Address: 3201 North Federal Hwy, Suite 200, Ft.Lauderdale, FL 33306

"THIS INSURANCE IS ISSUED PURSUANT TO THE FLORIDA SURPLUS LINES LAW. PERSONS INSURED BY SURPLUS LINES CARRIERS DO NOT HAVE THE PROTECTION OF THE FLORIDA INSURANCE GUARANTY ACT TO THE EXTENT OF ANY RIGHT OF RECOVERY FOR THE OBLIGATION OF AN INSOLVENT INSURER."

SURPLUS LINES INSURERS' POLICY RATES AND FORMS ARE NOT APPROVED BY ANY FLORIDA REGULATORY AGENCY.

Total Premium:		\$2,211.00
Fees:	Insp Fee	\$0.00
	Policy Fee	\$100.00
	Broker Fee	
Surplus Lines Tax:		\$115.55
Service Office		\$2.31
Fee: FEMA		\$4.00
Surcharge: FHCF		
CPIE:		
Total:		\$2,432.86

Surplus Lines Agent's Countersignature:  _____

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COMMERCIAL PROPERTY COVERAGE PART DECLARATIONS PAGE

CERTIFICATE NO. RSK003959

EFFECTIVE DATE 12/19/2019
12.01 A.M. Standard Time

THIS SUPPLEMENTAL DECLARATIONS AND THE COMMERCIAL PROPERTY DECLARATIONS, TOGETHER WITH THE COMMON POLICY CONDITIONS, COVERAGE FORM(S) AND ENDORSEMENTS COMPLETE THE ABOVE NUMBERED CERTIFICATE.

"X" If Supplemental
Declarations Is Attached

NAMED INSURED

ATMA Beauty, Inc

DESCRIPTION OF PREMISES

Prem. No.	Bldg. No.	Location, Construction And Occupancy
1	1	1874 West Avenue, Miami Beach, FL. 33139, Masonry Non-Combustible, Beauty Salon X-WIND Property

COVERAGES PROVIDED Insurance At The Described Premises Applies Only For Coverages For Which A Limit Of Insurance Is Shown

Prem. #	Bldg. #	Coverage	Limit Of Ins.	Covered Cause Of Loss	Val	Coins/Monthly	AOP Ded.	Rates	Premium
1	1	BPP & Content	\$200,000	Special X-Theft	RCV	80%	\$1,000	0.2106	421.00
1	1	IMP/BETT	\$450,000	Special X-Theft	RCV	80%	\$1,000	0.2106	948.00
1	1	Business Income	\$400,000	Special X-Theft		1/4 Monthly		0.2106	842.00

DEDUCTIBLE

Coverage:

Coverage:

Coverage:

Coverage:

Coverage:

Coverage:

Lloyds PropDec (00/00)

Policy Number: RSK003959

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

SCHEDULE OF FORMS AND ENDORSEMENTS

Common Forms

Form Number	Form Description
BassForms (04-17)	Schedule Of Forms And Endorsements
BassPart (06-19)	Insurer Participation Schedule
AOL COM 100 (08-19)	Contract Allocation Endorsement
BU-AOB-001 (10-19)	Assignment Of Claim Benefits
CCE 100 (00-00)	Collective Certificate Endorsement
CommonDec (06-19)	Common Policy Declarations
IL 0017 (11-98)	Common Policy Conditions
IL 0255 (03-16)	Florida Changes-Cancellation And Non-Renewal
IL 0935 (07-02)	Exclusion Of Certain Computer-Related Losses
LMA 3100 (08-10)	Sanction Limitation And Exclusion Clause
LMA 5018 (09-05)	Absolute Microorganism Exclusion
LMA 5019 (09-05)	Asbestos Exclusion
LMA 5020 (09-05)	Service Of Suit (U.S.A)
LMA 5021 (09-05)	Applicable Law
LMA 5062 (04-06)	Fraudulent Claim Clause
LMA 5092 (12-07)	U.S. Terrorism Risk Insurance Act Of 2002 As Amended Not Purchased Clause
LMA 9037 (09-13)	Florida Guaranty Act Notice
LMA 9038 (11-13)	Florida Rates And Forms Notice
LMA 9040 (09-13)	Florida Co-Pay Notice
LSW 1001 (08-94)	Several Liability Notice
LSW 1135B (00-00)	Lloyds Privacy Policy Statement
NMA 1191 (07-59)	Radioactive Contamination Clause
NMA 1256 (03-60)	Nuclear Incident Exclusion
NMA 1331 (4-61)	Cancellation Clause
NMA 2340 (11-88)	Land, Water And Air Exclusion/Seepage And/Or Pollution And/Or Contamination Exclusion/Debris Removal Endorsement
NMA 2802 (12-97)	Electronic Date Recognition Exclusion
NMA 2915 (01-01)	Electronic Data Endorsement B
NMA 2920 (10-01)	Terrorism Exclusion Endorsement
NMA 2962 (02-03)	Biological Or Chemical Materials Exclusion
NMA 464 (1-38)	War And Civil War Exclusion
Syndicate (10-17)	Syndicate Split Breakdown

Property Forms

Form Number	Form Description
BassProp (00-00)	Commercial Property Declarations
BU-CP-002 (12-16)	Protective Safeguard Endorsement
BU-CP-009 (07-12)	Total Or Constructive Total Loss Endorsement
CP 0010 (10-12)	Building And Personal Property Coverage

ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.

Policy Number: RSK003959

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

SCHEDULE OF FORMS AND ENDORSEMENTS

Property Forms

Form Number	Form Description
CP 0030 (10-12)	Business Income W/Ee
CP 0090 (07-88)	Commercial Property Conditions
CP 0125 (07-08)	Florida Changes
CP 1030 (06-07)	Special Form
CP 1033 (10-12)	Theft Exclusion
CP 1054 (06-95)	Windstorm Or Hail Exclusion
LSW699 (02-98)	Minimum Earned Premium
NMDSTRMEXCL06 (09-19)	Hurricane Or Tropical Storm Dorian Exclusion

ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.

Policy Number: RSK003959

INSURER PARTICIPATION SCHEDULE

Coverage under this Policy is provided by the subscribing insurers listed below:

	Peril	Premium	Participation
Lloyds of London	Property	\$221	10%
	Property	\$1,106	50%
	Total	\$1,327	60%
HDI Global Specialty SE	Property	\$221	10%
	Total	\$221	10%
AXIS Specialty Europe SE	Property	\$663	30%
	Total	\$663	30%

CONTRACT ALLOCATION ENDORSEMENT

This insurance is effected with certain insurance underwriters (hereinafter called the "Underwriters"). The following words shall be deemed to be synonymous: "Underwriters", "Insurers" and "Company". The liability of each Underwriter on this contract with the Insured is limited to the participation amount shown in the schedule below. The liability of each separate contract listed and for each Underwriter represented thereby for any loss or losses or amounts payable is several as to each and shall not exceed its participation percentage shown below and there is no joint liability of any Underwriters pursuant to this contract. An Underwriter shall not have its liability hereunder increased or decreased by reason of failure or delay of another Underwriter, its successors, assigns, or legal representatives. Any loss otherwise payable under the provisions of the attached policy that exceeds the allocation of "Risk" as defined herein shall be borne proportionately by the contracts as to their limit of liability at the time and place of the loss bears to the total allocated limits herein.

This contract shall be constructed as a separate contract between the Insured and each of the Underwriters. This evidence of coverage consists of separate sections of a composite insurance for all Underwriter's at Lloyd's combined and separate policies issued by the insurance company(ies), all as identified below. This evidence of coverage does not constitute in any manner or form a joint certificate of coverage by Underwriter's at Lloyd's with any other insurance company(ies).

In witness whereof, the following Underwriters execute and attest these presents, and subscribe for the amount of insurance provided.

The security is as noted below.

PERILS (AS PER POLICY)	CONTRACT #	COMPANY CODE	POLICY #	PARTICIPATION	PREMIUM
SP EXCL WH	B0831P020742018RS	001	RSK003959	\$105,000 10%	\$221
SP EXCL WH	B08313031302019	002	RSK003959	\$315,000 30%	\$663
SP EXCL WH	B08313019002019RS	003	RSK003959	\$525,000 50%	\$1,106
SP EXCL WH	B08313040002018RS	003	RSK003959	\$105,000 10%	\$221

ALLOCATION OF LIABILITY:

The contracts herein cover mutually exclusive perils. The maximum limit of liability is not to exceed the per occurrence participation stated herein, regardless of whether multiple perils and multiple contracts are involved. Recognition of liability by either of the contracts reduces the limit of liability of any corresponding contract.

The liability otherwise determined to exist under the terms and conditions of this policy shall be borne by the contract covering the proximate cause of loss identified in the allocation of security. Any loss covered by the policy by a peril not allocated to a contract herein shall be borne by the contract covering the most comprehensive perils, generally in accordance with the ISO Special Causes of Loss Contracts. The liability of the policy shall not be increased or decreased by any condition of the allocation to specific contracts on this endorsement.

Covered perils shall be defined by the applicable forms attached to this policy or otherwise as per the industry standard definition.

SYMBOLS USED HEREIN:

LINE OF COVERAGE / CAUSE OF LOSS	SYMBOL	COMPANY CODE	INSURER
Occurrence General Liability (CG 00 01)	GL-O	001	HDI Global Specialty SE
Claims Made General Liability (CG 00 02)	GL-C	002	AXIS Specialty Europe SE
Assault & Battery	AB	003	Lloyds of London
Abuse & Molestation	AM		
Tenant Discrimination	TD		
Basic (CP 10 10)	BA		
Broad (CP 10 20)	BR		
Special (CP 10 30)	SP		
All Risk excl F/Q	AR		
Difference in Conditions	DIC		
Windstorm and Hail	WH		
Named Storm	NS		
Hurricane	H		
All Other Windstorm	AOW		
Named Storm Flood	NF		
Flood	F		
All Other Flood	AOF		
Earthquake	Q		
Certified Terrorism as Defined by TRIA	T1		
Equipment Breakdown	EBD		
Cyber and Data Compromise	CYB		
Excluding	EXCL		
Including	INCL		

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ASSIGNMENT OF CLAIM BENEFITS

No assignment of claim benefits, regardless of whether made before a loss or after a loss, shall be valid without the written consent of all insureds, all additional insureds and all mortgagee(s) named in this policy. Such written consent must be signed and dated by those providing the consent prior to any assignment.

ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.

Policy Number: RSK003959

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

PROTECTIVE SAFEGUARD ENDORSEMENT

Issued To: ATMA Beauty, Inc

Endorsement Effective Date: 12/19/2019

This endorsement modifies insurance provided under the following:

COMMERCIAL PROPERTY COVERAGE PART – BUILDING AND PERSONAL PROPERTY COVERAGE FORM

FAILURE TO COMPLY WITH THE PROTECTIVE SAFEGUARD CLAUSES SPECIFIED AS APPLICABLE IN THE SCHEDULE BELOW SHALL SUSPEND THIS INSURANCE.

In consideration of the premium at which this policy is written, based on the protection of the premises by the protective safeguard system or systems indicated below, it is a condition of this policy that the insured shall exercise due diligence in maintaining in complete working order all equipment and services pertaining to the system which are under the control of the insured, including any special maintenance or service requirements indicated below. It is also a condition of this insurance that the insured shall give immediate notice to your insurance agent of any impairment in or suspension of any equipment or service pertaining to the system within the knowledge of the insured.

Location/Building #'s:

Automatic Sprinkler System

In further consideration of the premium at which this policy is written, it is a condition of this policy that the insured shall have the automatic sprinkler system serviced by an independent contractor licensed to service and maintain automatic sprinkler systems in the state in which the premises are located. It is also a condition of this policy that the insured shall have the automatic sprinkler system inspected and tested at least once per year by an independent contractor licensed to inspect and test automatic sprinkler systems in the state in which the premises are located.

Location/Building #'s:

Automatic Fire Alarm, reporting to a public or private fire alarm station

Location/Building #'s: 1-1

Activated and operational Central Station Burglar Alarm, (Certified 'Underwriters Laboratory')

To cover all openings in the insured's premises; with motion detectors, covering all Contents/Business Personal Property covered for burglary. Alarm must be in the "on" position during all non-working hours and/or whenever the insured's premises are unoccupied.

Location/Building #'s:

Automatic Extinguishing System and Hood and Duct Cleaning

It is a condition of this insurance that all ranges, deep-fat fryers, broilers and other cooking appliances, including their hoods, are protected by an approved, automatic fire extinguishing system, and insofar as such protective equipment is under the control of the insured, due diligence shall be used to maintain such system in complete working order.

All automatic extinguishing systems and hoods and duct work shall be cleaned and inspected by an outside cleaning service no less than twice a year. It is a condition of this insurance that all hoods and ducts are equipped with approved grease filters, which shall be routinely cleaned.

Location/Building #'s:

Professional on Premises Guard Service: 24 Hour

Overnight

Location/Building #'s:

'Underwriters Laboratory' (U/L) approved Spray Paint Booth

Location/Building #'s:

Activated and operational Dust Abatement or Collection System

Location/Building #'s:

Fully functional and actively engaged smoke detectors in all units and hallways.

Location/Building #'s:

All flammables (including paints and solvents) must be in NFPA30 approved containers and stored in an approved NFPA flammable liquids storage cabinet. Used or soiled rags must be stored in metal containers and removed daily.

Location/Building #'s:

NFPA33 approved spray booth with proper exhaust system and fire extinguishing system.

Location/Building #'s:

Property to be fully secured against unauthorized entry and visited at least every two weeks by the insured or a representative of the insured.

Location/Building #'s: 1-1

Other:

P-9 Portable Fire Extinguisher. (1-1)

This Endorsement must be attached to change endorsement when issued after the policy is written.

ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.

BU-CP-009 (07/12) Total or Constructive Total Loss Endorsement

*Entry is optional if shown in the Common Policy Declarations. If no entry is shown, the effective date of the endorsement is the same as the effective date of the policy.

*ATTACHED TO AND FORMING PART OF POLICY NO:	*EFFECTIVE DATE OF ENDORSEMENT:	*ISSUED TO:
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Property Earned Premium Endorsement – It is understood and agreed that in the event of a total loss or constructive total loss under this policy, the entire policy premium shall be earned in full and no return premium shall be due the named insured.

Nothing herein contained shall be held to vary, alter, waive or extend any of the terms, conditions, provisions, agreements or limitations of the above-mentioned Certificate, other than as above stated

LLOYDS COLLECTIVE CERTIFICATE ENDORSEMENT

The Underwriters whose contract numbers are hereunto subscribed, hereby agree that:

1. Bass Underwriters, Inc., has procured insurance with certain Underwriters through our Broker in London, England, under the below listed contract numbers. The subscribing Insurers' obligations under contracts of Insurance to which they subscribe are several and not joint and are limited solely to the extent of their individual subscriptions. The subscribing insurers are not responsible for the subscription of any co-subscribing insurer who for any reason does not satisfy all or part of its obligations.
2. Each contract shall be liable for such proportion of any loss as the amount underwritten by such contract, as specified hereunder, in no event shall any of the Underwriters under such contract be liable for an amount greater than that underwritten by it, as specified herein.
3. It is understood and agreed that service of process or suit or any notice as proof of loss required by the Certificate when served upon any of the Underwriters of such contract executing the "Collective Certificate" endorsement shall be deemed to be service upon all such Underwriters under each contract.

UMR	Percentage			Premium			Total
	Property	Liability	EQB	Property	Liability	EQB	
B08313019002019RS	83%			\$1,106.00			\$1,106.00
B08313040002018RS	17%			\$221.00			\$221.00
Total	100%			\$1,327.00	\$0.00		\$1,327.00

CCE100

COMMON POLICY DECLARATIONS

This Declaration Page is attached to and forms part of certificate provisions.

Previous No. Authority Ref. No. Certificate No. RSK003959

1 Name and address of the Assured
 ATMA Beauty, Inc
 1874 West Avenue, Miami Beach, FL 33139

Broker
 Gulfstream Insurance Group, Inc.
 3201 North Federal Hwy, Suite 200, Ft.Lauderdale, FL 33306

Business description: Beauty Parlor

2 Effective from 12/19/2019 to 12/19/2020
 both days at 12:01 a.m. standard time

3 INSURER
 See attached form BassPart (06/19).

4 This Certificate consists of the following Coverage Parts for which a Premium is indicated. This Premium may be subject to adjustment.

	Premium
Commercial Property Coverage Part	\$ <u>2,211.00</u>
Commercial Inland Marine Coverage Part	\$ <u>Not Covered</u>
Commercial General Liability Coverage Part	\$ <u>Not Covered</u>
Commercial Crime Coverage Part	\$ <u>Not Covered</u>
Commercial Auto Coverage Part	\$ <u>Not Covered</u>
Commerical Equipment Breakdown Coverage Part	\$ <u>Not Covered</u>
	\$ _____
Policy Fee \$100.00	FEES: \$ <u>100.00</u>
Inspection Fee \$0.00	
Surplus Lines Tax \$115.55	TAXES: \$ <u>121.86</u>
FEMA \$4.00	
Service Office Fee \$2.31	Total: \$ <u>2,432.86</u>

This insurance is issued pursuant to the Florida Surplus Lines Law. Persons insured by surplus lines carriers do not have the protection of the Florida Insurance Guaranty Act to the extent of any right of recovery for the obligation of an insolvent insurer.

5 Forms Applicable to all Coverage Parts: SEE ATTACHED SCHEDULE OF FORMS AND ENDORSEMENTS TERMS: 25% MINIMUM EARNED PREMIUM

6 Service of Suit may be made upon: SEE FORM LMA 5020

In return for the Payment of the premium, and subject to all the terms of this Certificate, we agree to provide the insurance as stated in this certificate.

by



AUTHORIZED REPRESENTATIVE

Agency Code

Correspondent: BASS UNDERWRITERS
 6951 W. SUNRISE BLVD.
 PLANTATION, FL 33313

BUILDING AND PERSONAL PROPERTY COVERAGE FORM

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy, the words "you" and "your" refer to the Named Insured shown in the Declarations. The words "we", "us" and "our" refer to the company providing this insurance.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section **H**. Definitions.

A. Coverage

We will pay for direct physical loss of or damage to Covered Property at the premises described in the Declarations caused by or resulting from any Covered Cause of Loss.

1. Covered Property

Covered Property, as used in this Coverage Part, means the type of property described in this section, **A.1.**, and limited in **A.2**. Property Not Covered, if a Limit Of Insurance is shown in the Declarations for that type of property.

a. Building, meaning the building or structure described in the Declarations, including:

- (1) Completed additions;
- (2) Fixtures, including outdoor fixtures;
- (3) Permanently installed:
 - (a) Machinery; and
 - (b) Equipment;
- (4) Personal property owned by you that is used to maintain or service the building or structure or its premises, including:
 - (a) Fire-extinguishing equipment;
 - (b) Outdoor furniture;
 - (c) Floor coverings; and
 - (d) Appliances used for refrigerating, ventilating, cooking, dishwashing or laundering;
- (5) If not covered by other insurance:
 - (a) Additions under construction, alterations and repairs to the building or structure;
 - (b) Materials, equipment, supplies and temporary structures, on or within 100 feet of the described premises, used for making additions, alterations or repairs to the building or structure.

b. Your Business Personal Property

consists of the following property located in or on the building or structure described in the Declarations or in the open (or in a vehicle) within 100 feet of the building or structure or within 100 feet of the premises described in the Declarations, whichever distance is greater:

- (1) Furniture and fixtures;
- (2) Machinery and equipment;
- (3) "Stock";
- (4) All other personal property owned by you and used in your business;
- (5) Labor, materials or services furnished or arranged by you on personal property of others;
- (6) Your use interest as tenant in improvements and betterments. Improvements and betterments are fixtures, alterations, installations or additions:
 - (a) Made a part of the building or structure you occupy but do not own; and
 - (b) You acquired or made at your expense but cannot legally remove;
- (7) Leased personal property for which you have a contractual responsibility to insure, unless otherwise provided for under Personal Property Of Others.

c. Personal Property Of Others that is:

- (1) In your care, custody or control; and
- (2) Located in or on the building or structure described in the Declarations or in the open (or in a vehicle) within 100 feet of the building or structure or within 100 feet of the premises described in the Declarations, whichever distance is greater.

However, our payment for loss of or damage to personal property of others will only be for the account of the owner of the property.

2. Property Not Covered

Covered Property does not include:

- a. Accounts, bills, currency, food stamps or other evidences of debt, money, notes or securities. Lottery tickets held for sale are not securities;
- b. Animals, unless owned by others and boarded by you, or if owned by you, only as "stock" while inside of buildings;
- c. Automobiles held for sale;
- d. Bridges, roadways, walks, patios or other paved surfaces;
- e. Contraband, or property in the course of illegal transportation or trade;
- f. The cost of excavations, grading, backfilling or filling;
- g. Foundations of buildings, structures, machinery or boilers if their foundations are below:
 - (1) The lowest basement floor; or
 - (2) The surface of the ground, if there is no basement;
- h. Land (including land on which the property is located), water, growing crops or lawns (other than lawns which are part of a vegetated roof);
- i. Personal property while airborne or waterborne;
- j. Bulkheads, pilings, piers, wharves or docks;
- k. Property that is covered under another coverage form of this or any other policy in which it is more specifically described, except for the excess of the amount due (whether you can collect on it or not) from that other insurance;
- l. Retaining walls that are not part of a building;
- m. Underground pipes, flues or drains;

- n. Electronic data, except as provided under the Additional Coverage, Electronic Data. Electronic data means information, facts or computer programs stored as or on, created or used on, or transmitted to or from computer software (including systems and applications software), on hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other repositories of computer software which are used with electronically controlled equipment. The term computer programs, referred to in the foregoing description of electronic data, means a set of related electronic instructions which direct the operations and functions of a computer or device connected to it, which enable the computer or device to receive, process, store, retrieve or send data. This paragraph, **n.**, does not apply to your "stock" of prepackaged software, or to electronic data which is integrated in and operates or controls the building's elevator, lighting, heating, ventilation, air conditioning or security system;
- o. The cost to replace or restore the information on valuable papers and records, including those which exist as electronic data. Valuable papers and records include but are not limited to proprietary information, books of account, deeds, manuscripts, abstracts, drawings and card index systems. Refer to the Coverage Extension for Valuable Papers And Records (Other Than Electronic Data) for limited coverage for valuable papers and records other than those which exist as electronic data;
- p. Vehicles or self-propelled machines (including aircraft or watercraft) that:
 - (1) Are licensed for use on public roads; or
 - (2) Are operated principally away from the described premises.

This paragraph does not apply to:

- (a) Vehicles or self-propelled machines or autos you manufacture, process or warehouse;

- (b) Vehicles or self-propelled machines, other than autos, you hold for sale;
 - (c) Rowboats or canoes out of water at the described premises; or
 - (d) Trailers, but only to the extent provided for in the Coverage Extension for Non-owned Detached Trailers; or
- q. The following property while outside of buildings:
- (1) Grain, hay, straw or other crops;
 - (2) Fences, radio or television antennas (including satellite dishes) and their lead-in wiring, masts or towers, trees, shrubs or plants (other than trees, shrubs or plants which are "stock" or are part of a vegetated roof), all except as provided in the Coverage Extensions.

3. Covered Causes Of Loss

See applicable Causes Of Loss form as shown in the Declarations.

4. Additional Coverages

a. Debris Removal

- (1) Subject to Paragraphs (2), (3) and (4), we will pay your expense to remove debris of Covered Property and other debris that is on the described premises, when such debris is caused by or results from a Covered Cause of Loss that occurs during the policy period. The expenses will be paid only if they are reported to us in writing within 180 days of the date of direct physical loss or damage.
- (2) Debris Removal does not apply to costs to:
 - (a) Remove debris of property of yours that is not insured under this policy, or property in your possession that is not Covered Property;
 - (b) Remove debris of property owned by or leased to the landlord of the building where your described premises are located, unless you have a contractual responsibility to insure such property and it is insured under this policy;
 - (c) Remove any property that is Property Not Covered, including property addressed under the Outdoor Property Coverage Extension;

- (d) Remove property of others of a type that would not be Covered Property under this Coverage Form;
 - (e) Remove deposits of mud or earth from the grounds of the described premises;
 - (f) Extract "pollutants" from land or water; or
 - (g) Remove, restore or replace polluted land or water.
- (3) Subject to the exceptions in Paragraph (4), the following provisions apply:
- (a) The most we will pay for the total of direct physical loss or damage plus debris removal expense is the Limit of Insurance applicable to the Covered Property that has sustained loss or damage.
 - (b) Subject to (a) above, the amount we will pay for debris removal expense is limited to 25% of the sum of the deductible plus the amount that we pay for direct physical loss or damage to the Covered Property that has sustained loss or damage. However, if no Covered Property has sustained direct physical loss or damage, the most we will pay for removal of debris of other property (if such removal is covered under this Additional Coverage) is \$5,000 at each location.
- (4) We will pay up to an additional \$25,000 for debris removal expense, for each location, in any one occurrence of physical loss or damage to Covered Property, if one or both of the following circumstances apply:
- (a) The total of the actual debris removal expense plus the amount we pay for direct physical loss or damage exceeds the Limit of Insurance on the Covered Property that has sustained loss or damage.
 - (b) The actual debris removal expense exceeds 25% of the sum of the deductible plus the amount that we pay for direct physical loss or damage to the Covered Property that has sustained loss or damage.

Therefore, if **(4)(a)** and/or **(4)(b)** applies, our total payment for direct physical loss or damage and debris removal expense may reach but will never exceed the Limit of Insurance on the Covered Property that has sustained loss or damage, plus \$25,000.

(5) Examples

The following examples assume that there is no Coinsurance penalty.

Example 1

Limit of Insurance:	\$ 90,000
Amount of Deductible:	\$ 500
Amount of Loss:	\$ 50,000
Amount of Loss Payable:	\$ 49,500
	(\$50,000 – \$500)
Debris Removal Expense:	\$ 10,000
Debris Removal Expense Payable:	\$ 10,000
	(\$10,000 is 20% of \$50,000.)

The debris removal expense is less than 25% of the sum of the loss payable plus the deductible. The sum of the loss payable and the debris removal expense (\$49,500 + \$10,000 = \$59,500) is less than the Limit of Insurance. Therefore, the full amount of debris removal expense is payable in accordance with the terms of Paragraph **(3)**.

Example 2

Limit of Insurance:	\$ 90,000
Amount of Deductible:	\$ 500
Amount of Loss:	\$ 80,000
Amount of Loss Payable:	\$ 79,500
	(\$80,000 – \$500)
Debris Removal Expense:	\$ 40,000
Debris Removal Expense Payable	
Basic Amount:	\$ 10,500
Additional Amount:	\$ 25,000

The basic amount payable for debris removal expense under the terms of Paragraph **(3)** is calculated as follows: \$80,000 (\$79,500 + \$500) x .25 = \$20,000, capped at \$10,500. The cap applies because the sum of the loss payable (\$79,500) and the basic amount payable for debris removal expense (\$10,500) cannot exceed the Limit of Insurance (\$90,000).

The additional amount payable for debris removal expense is provided in accordance with the terms of Paragraph **(4)**, because the debris removal expense (\$40,000) exceeds 25% of the loss payable plus the deductible (\$40,000 is 50% of \$80,000), and because the sum of the loss payable and debris removal expense (\$79,500 + \$40,000 = \$119,500) would exceed the Limit of Insurance (\$90,000). The additional amount of covered debris removal expense is \$25,000, the maximum payable under Paragraph **(4)**. Thus, the total payable for debris removal expense in this example is \$35,500; \$4,500 of the debris removal expense is not covered.

b. Preservation Of Property

If it is necessary to move Covered Property from the described premises to preserve it from loss or damage by a Covered Cause of Loss, we will pay for any direct physical loss or damage to that property:

- (1)** While it is being moved or while temporarily stored at another location; and
- (2)** Only if the loss or damage occurs within 30 days after the property is first moved.

c. Fire Department Service Charge

When the fire department is called to save or protect Covered Property from a Covered Cause of Loss, we will pay up to \$1,000 for service at each premises described in the Declarations, unless a higher limit is shown in the Declarations. Such limit is the most we will pay regardless of the number of responding fire departments or fire units, and regardless of the number or type of services performed.

This Additional Coverage applies to your liability for fire department service charges:

- (1)** Assumed by contract or agreement prior to loss; or
- (2)** Required by local ordinance.

No Deductible applies to this Additional Coverage.

d. Pollutant Clean-up And Removal

We will pay your expense to extract "pollutants" from land or water at the described premises if the discharge, dispersal, seepage, migration, release or escape of the "pollutants" is caused by or results from a Covered Cause of Loss that occurs during the policy period. The expenses will be paid only if they are reported to us in writing within 180 days of the date on which the Covered Cause of Loss occurs.

This Additional Coverage does not apply to costs to test for, monitor or assess the existence, concentration or effects of "pollutants". But we will pay for testing which is performed in the course of extracting the "pollutants" from the land or water.

The most we will pay under this Additional Coverage for each described premises is \$10,000 for the sum of all covered expenses arising out of Covered Causes of Loss occurring during each separate 12-month period of this policy.

e. Increased Cost Of Construction

- (1) This Additional Coverage applies only to buildings to which the Replacement Cost Optional Coverage applies.
- (2) In the event of damage by a Covered Cause of Loss to a building that is Covered Property, we will pay the increased costs incurred to comply with the minimum standards of an ordinance or law in the course of repair, rebuilding or replacement of damaged parts of that property, subject to the limitations stated in e.(3) through e.(9) of this Additional Coverage.
- (3) The ordinance or law referred to in e.(2) of this Additional Coverage is an ordinance or law that regulates the construction or repair of buildings or establishes zoning or land use requirements at the described premises and is in force at the time of loss.
- (4) Under this Additional Coverage, we will not pay any costs due to an ordinance or law that:
 - (a) You were required to comply with before the loss, even when the building was undamaged; and
 - (b) You failed to comply with.

(5) Under this Additional Coverage, we will not pay for:

- (a) The enforcement of or compliance with any ordinance or law which requires demolition, repair, replacement, reconstruction, remodeling or remediation of property due to contamination by "pollutants" or due to the presence, growth, proliferation, spread or any activity of "fungus", wet or dry rot or bacteria; or
- (b) Any costs associated with the enforcement of or compliance with an ordinance or law which requires any insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants", "fungus", wet or dry rot or bacteria.

(6) The most we will pay under this Additional Coverage, for each described building insured under this Coverage Form, is \$10,000 or 5% of the Limit of Insurance applicable to that building, whichever is less. If a damaged building is covered under a blanket Limit of Insurance which applies to more than one building or item of property, then the most we will pay under this Additional Coverage, for that damaged building, is the lesser of \$10,000 or 5% times the value of the damaged building as of the time of loss times the applicable Coinsurance percentage.

The amount payable under this Additional Coverage is additional insurance.

(7) With respect to this Additional Coverage:

- (a) We will not pay for the Increased Cost of Construction:
 - (i) Until the property is actually repaired or replaced at the same or another premises; and
 - (ii) Unless the repair or replacement is made as soon as reasonably possible after the loss or damage, not to exceed two years. We may extend this period in writing during the two years.

- (b) If the building is repaired or replaced at the same premises, or if you elect to rebuild at another premises, the most we will pay for the Increased Cost of Construction, subject to the provisions of **e.(6)** of this Additional Coverage, is the increased cost of construction at the same premises.
- (c) If the ordinance or law requires relocation to another premises, the most we will pay for the Increased Cost of Construction, subject to the provisions of **e.(6)** of this Additional Coverage, is the increased cost of construction at the new premises.
- (8) This Additional Coverage is not subject to the terms of the Ordinance Or Law Exclusion to the extent that such Exclusion would conflict with the provisions of this Additional Coverage.
- (9) The costs addressed in the Loss Payment and Valuation Conditions and the Replacement Cost Optional Coverage, in this Coverage Form, do not include the increased cost attributable to enforcement of or compliance with an ordinance or law. The amount payable under this Additional Coverage, as stated in **e.(6)** of this Additional Coverage, is not subject to such limitation.

f. Electronic Data

- (1) Under this Additional Coverage, electronic data has the meaning described under Property Not Covered, Electronic Data. This Additional Coverage does not apply to your "stock" of prepackaged software, or to electronic data which is integrated in and operates or controls the building's elevator, lighting, heating, ventilation, air conditioning or security system.
 - (2) Subject to the provisions of this Additional Coverage, we will pay for the cost to replace or restore electronic data which has been destroyed or corrupted by a Covered Cause of Loss. To the extent that electronic data is not replaced or restored, the loss will be valued at the cost of replacement of the media on which the electronic data was stored, with blank media of substantially identical type.
- (3) The Covered Causes of Loss applicable to Your Business Personal Property apply to this Additional Coverage, Electronic Data, subject to the following:
 - (a) If the Causes Of Loss – Special Form applies, coverage under this Additional Coverage, Electronic Data, is limited to the "specified causes of loss" as defined in that form and Collapse as set forth in that form.
 - (b) If the Causes Of Loss – Broad Form applies, coverage under this Additional Coverage, Electronic Data, includes Collapse as set forth in that form.
 - (c) If the Causes Of Loss form is endorsed to add a Covered Cause of Loss, the additional Covered Cause of Loss does not apply to the coverage provided under this Additional Coverage, Electronic Data.
 - (d) The Covered Causes of Loss include a virus, harmful code or similar instruction introduced into or enacted on a computer system (including electronic data) or a network to which it is connected, designed to damage or destroy any part of the system or disrupt its normal operation. But there is no coverage for loss or damage caused by or resulting from manipulation of a computer system (including electronic data) by any employee, including a temporary or leased employee, or by an entity retained by you or for you to inspect, design, install, modify, maintain, repair or replace that system.

- (4) The most we will pay under this Additional Coverage, Electronic Data, is \$2,500 (unless a higher limit is shown in the Declarations) for all loss or damage sustained in any one policy year, regardless of the number of occurrences of loss or damage or the number of premises, locations or computer systems involved. If loss payment on the first occurrence does not exhaust this amount, then the balance is available for subsequent loss or damage sustained in but not after that policy year. With respect to an occurrence which begins in one policy year and continues or results in additional loss or damage in a subsequent policy year(s), all loss or damage is deemed to be sustained in the policy year in which the occurrence began.

5. Coverage Extensions

Except as otherwise provided, the following Extensions apply to property located in or on the building described in the Declarations or in the open (or in a vehicle) within 100 feet of the described premises.

If a Coinsurance percentage of 80% or more, or a Value Reporting period symbol, is shown in the Declarations, you may extend the insurance provided by this Coverage Part as follows:

a. Newly Acquired Or Constructed Property

(1) Buildings

If this policy covers Building, you may extend that insurance to apply to:

- (a) Your new buildings while being built on the described premises; and
- (b) Buildings you acquire at locations, other than the described premises, intended for:
 - (i) Similar use as the building described in the Declarations; or
 - (ii) Use as a warehouse.

The most we will pay for loss or damage under this Extension is \$250,000 at each building.

(2) Your Business Personal Property

- (a) If this policy covers Your Business Personal Property, you may extend that insurance to apply to:
 - (i) Business personal property, including such property that you newly acquire, at any location you acquire other than at fairs, trade shows or exhibitions; or
 - (ii) Business personal property, including such property that you newly acquire, located at your newly constructed or acquired buildings at the location described in the Declarations.

The most we will pay for loss or damage under this Extension is \$100,000 at each building.

- (b) This Extension does not apply to:
 - (i) Personal property of others that is temporarily in your possession in the course of installing or performing work on such property; or
 - (ii) Personal property of others that is temporarily in your possession in the course of your manufacturing or wholesaling activities.

(3) Period Of Coverage

With respect to insurance provided under this Coverage Extension for Newly Acquired Or Constructed Property, coverage will end when any of the following first occurs:

- (a) This policy expires;
- (b) 30 days expire after you acquire the property or begin construction of that part of the building that would qualify as covered property; or
- (c) You report values to us.

We will charge you additional premium for values reported from the date you acquire the property or begin construction of that part of the building that would qualify as covered property.

b. Personal Effects And Property Of Others

You may extend the insurance that applies to Your Business Personal Property to apply to:

- (1) Personal effects owned by you, your officers, your partners or members, your managers or your employees. This Extension does not apply to loss or damage by theft.
- (2) Personal property of others in your care, custody or control.

The most we will pay for loss or damage under this Extension is \$2,500 at each described premises. Our payment for loss of or damage to personal property of others will only be for the account of the owner of the property.

c. Valuable Papers And Records (Other Than Electronic Data)

- (1) You may extend the insurance that applies to Your Business Personal Property to apply to the cost to replace or restore the lost information on valuable papers and records for which duplicates do not exist. But this Extension does not apply to valuable papers and records which exist as electronic data. Electronic data has the meaning described under Property Not Covered, Electronic Data.
- (2) If the Causes Of Loss – Special Form applies, coverage under this Extension is limited to the "specified causes of loss" as defined in that form and Collapse as set forth in that form.
- (3) If the Causes Of Loss – Broad Form applies, coverage under this Extension includes Collapse as set forth in that form.
- (4) Under this Extension, the most we will pay to replace or restore the lost information is \$2,500 at each described premises, unless a higher limit is shown in the Declarations. Such amount is additional insurance. We will also pay for the cost of blank material for reproducing the records (whether or not duplicates exist) and (when there is a duplicate) for the cost of labor to transcribe or copy the records. The costs of blank material and labor are subject to the applicable Limit of Insurance on Your Business Personal Property and, therefore, coverage of such costs is not additional insurance.

d. Property Off-premises

- (1) You may extend the insurance provided by this Coverage Form to apply to your Covered Property while it is away from the described premises, if it is:
 - (a) Temporarily at a location you do not own, lease or operate;
 - (b) In storage at a location you lease, provided the lease was executed after the beginning of the current policy term; or
 - (c) At any fair, trade show or exhibition.
- (2) This Extension does not apply to property:
 - (a) In or on a vehicle; or
 - (b) In the care, custody or control of your salespersons, unless the property is in such care, custody or control at a fair, trade show or exhibition.
- (3) The most we will pay for loss or damage under this Extension is \$10,000.

e. Outdoor Property

You may extend the insurance provided by this Coverage Form to apply to your outdoor fences, radio and television antennas (including satellite dishes), trees, shrubs and plants (other than trees, shrubs or plants which are "stock" or are part of a vegetated roof), including debris removal expense, caused by or resulting from any of the following causes of loss if they are Covered Causes of Loss:

- (1) Fire;
- (2) Lightning;
- (3) Explosion;
- (4) Riot or Civil Commotion; or
- (5) Aircraft.

The most we will pay for loss or damage under this Extension is \$1,000, but not more than \$250 for any one tree, shrub or plant. These limits apply to any one occurrence, regardless of the types or number of items lost or damaged in that occurrence.

Subject to all aforementioned terms and limitations of coverage, this Coverage Extension includes the expense of removing from the described premises the debris of trees, shrubs and plants which are the property of others, except in the situation in which you are a tenant and such property is owned by the landlord of the described premises.

f. Non-owned Detached Trailers

- (1) You may extend the insurance that applies to Your Business Personal Property to apply to loss or damage to trailers that you do not own, provided that:
 - (a) The trailer is used in your business;
 - (b) The trailer is in your care, custody or control at the premises described in the Declarations; and
 - (c) You have a contractual responsibility to pay for loss or damage to the trailer.
- (2) We will not pay for any loss or damage that occurs:
 - (a) While the trailer is attached to any motor vehicle or motorized conveyance, whether or not the motor vehicle or motorized conveyance is in motion;
 - (b) During hitching or unhitching operations, or when a trailer becomes accidentally unhitched from a motor vehicle or motorized conveyance.
- (3) The most we will pay for loss or damage under this Extension is \$5,000, unless a higher limit is shown in the Declarations.
- (4) This insurance is excess over the amount due (whether you can collect on it or not) from any other insurance covering such property.

g. Business Personal Property Temporarily In Portable Storage Units

- (1) You may extend the insurance that applies to Your Business Personal Property to apply to such property while temporarily stored in a portable storage unit (including a detached trailer) located within 100 feet of the building or structure described in the Declarations or within 100 feet of the premises described in the Declarations, whichever distance is greater.

- (2) If the applicable Covered Causes of Loss form or endorsement contains a limitation or exclusion concerning loss or damage from sand, dust, sleet, snow, ice or rain to property in a structure, such limitation or exclusion also applies to property in a portable storage unit.
- (3) Coverage under this Extension:
 - (a) Will end 90 days after the business personal property has been placed in the storage unit;
 - (b) Does not apply if the storage unit itself has been in use at the described premises for more than 90 consecutive days, even if the business personal property has been stored there for 90 or fewer days as of the time of loss or damage.
- (4) Under this Extension, the most we will pay for the total of all loss or damage to business personal property is \$10,000 (unless a higher limit is indicated in the Declarations for such Extension) regardless of the number of storage units. Such limit is part of, not in addition to, the applicable Limit of Insurance on Your Business Personal Property. Therefore, payment under this Extension will not increase the applicable Limit of Insurance on Your Business Personal Property.
- (5) This Extension does not apply to loss or damage otherwise covered under this Coverage Form or any endorsement to this Coverage Form or policy, and does not apply to loss or damage to the storage unit itself.

Each of these Extensions is additional insurance unless otherwise indicated. The Additional Condition, Coinsurance, does not apply to these Extensions.

B. Exclusions And Limitations

See applicable Causes Of Loss form as shown in the Declarations.

C. Limits Of Insurance

The most we will pay for loss or damage in any one occurrence is the applicable Limit Of Insurance shown in the Declarations.

The most we will pay for loss or damage to outdoor signs, whether or not the sign is attached to a building, is \$2,500 per sign in any one occurrence.

The amounts of insurance stated in the following Additional Coverages apply in accordance with the terms of such coverages and are separate from the Limit(s) Of Insurance shown in the Declarations for any other coverage:

1. Fire Department Service Charge;
2. Pollutant Clean-up And Removal;
3. Increased Cost Of Construction; and
4. Electronic Data.

Payments under the Preservation Of Property Additional Coverage will not increase the applicable Limit of Insurance.

D. Deductible

In any one occurrence of loss or damage (hereinafter referred to as loss), we will first reduce the amount of loss if required by the Coinsurance Condition or the Agreed Value Optional Coverage. If the adjusted amount of loss is less than or equal to the Deductible, we will not pay for that loss. If the adjusted amount of loss exceeds the Deductible, we will then subtract the Deductible from the adjusted amount of loss and will pay the resulting amount or the Limit of Insurance, whichever is less.

When the occurrence involves loss to more than one item of Covered Property and separate Limits of Insurance apply, the losses will not be combined in determining application of the Deductible. But the Deductible will be applied only once per occurrence.

Example 1

(This example assumes there is no Coinsurance penalty.)

Deductible:	\$ 250
Limit of Insurance – Building 1:	\$ 60,000
Limit of Insurance – Building 2:	\$ 80,000
Loss to Building 1:	\$ 60,100
Loss to Building 2:	\$ 90,000

The amount of loss to Building 1 (\$60,100) is less than the sum (\$60,250) of the Limit of Insurance applicable to Building 1 plus the Deductible.

The Deductible will be subtracted from the amount of loss in calculating the loss payable for Building 1:

\$ 60,100
– 250
<hr style="width: 50px; margin-left: 0;"/>

\$ 59,850 Loss Payable – Building 1

The Deductible applies once per occurrence and therefore is not subtracted in determining the amount of loss payable for Building 2. Loss payable for Building 2 is the Limit of Insurance of \$80,000.

Total amount of loss payable:
\$59,850 + \$80,000 = \$139,850

Example 2

(This example, too, assumes there is no Coinsurance penalty.)

The Deductible and Limits of Insurance are the same as those in Example 1.

Loss to Building 1:	\$ 70,000
(Exceeds Limit of Insurance plus Deductible)	
Loss to Building 2:	\$ 90,000
(Exceeds Limit of Insurance plus Deductible)	
Loss Payable – Building 1:	\$ 60,000
(Limit of Insurance)	
Loss Payable – Building 2:	\$ 80,000
(Limit of Insurance)	
Total amount of loss payable:	\$ 140,000

E. Loss Conditions

The following conditions apply in addition to the Common Policy Conditions and the Commercial Property Conditions:

1. Abandonment

There can be no abandonment of any property to us.

2. Appraisal

If we and you disagree on the value of the property or the amount of loss, either may make written demand for an appraisal of the loss. In this event, each party will select a competent and impartial appraiser. The two appraisers will select an umpire. If they cannot agree, either may request that selection be made by a judge of a court having jurisdiction. The appraisers will state separately the value of the property and amount of loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding. Each party will:

- a. Pay its chosen appraiser; and
- b. Bear the other expenses of the appraisal and umpire equally.

If there is an appraisal, we will still retain our right to deny the claim.

3. Duties In The Event Of Loss Or Damage

a. You must see that the following are done in the event of loss or damage to Covered Property:

- (1) Notify the police if a law may have been broken.

- (2) Give us prompt notice of the loss or damage. Include a description of the property involved.
 - (3) As soon as possible, give us a description of how, when and where the loss or damage occurred.
 - (4) Take all reasonable steps to protect the Covered Property from further damage, and keep a record of your expenses necessary to protect the Covered Property, for consideration in the settlement of the claim. This will not increase the Limit of Insurance. However, we will not pay for any subsequent loss or damage resulting from a cause of loss that is not a Covered Cause of Loss. Also, if feasible, set the damaged property aside and in the best possible order for examination.
 - (5) At our request, give us complete inventories of the damaged and undamaged property. Include quantities, costs, values and amount of loss claimed.
 - (6) As often as may be reasonably required, permit us to inspect the property proving the loss or damage and examine your books and records.
Also, permit us to take samples of damaged and undamaged property for inspection, testing and analysis, and permit us to make copies from your books and records.
 - (7) Send us a signed, sworn proof of loss containing the information we request to investigate the claim. You must do this within 60 days after our request. We will supply you with the necessary forms.
 - (8) Cooperate with us in the investigation or settlement of the claim.
- b.** We may examine any insured under oath, while not in the presence of any other insured and at such times as may be reasonably required, about any matter relating to this insurance or the claim, including an insured's books and records. In the event of an examination, an insured's answers must be signed.

4. Loss Payment

- a.** In the event of loss or damage covered by this Coverage Form, at our option, we will either:
 - (1) Pay the value of lost or damaged property;
 - (2) Pay the cost of repairing or replacing the lost or damaged property, subject to **b.** below;
 - (3) Take all or any part of the property at an agreed or appraised value; or
 - (4) Repair, rebuild or replace the property with other property of like kind and quality, subject to **b.** below.

We will determine the value of lost or damaged property, or the cost of its repair or replacement, in accordance with the applicable terms of the Valuation Condition in this Coverage Form or any applicable provision which amends or supersedes the Valuation Condition.
- b.** The cost to repair, rebuild or replace does not include the increased cost attributable to enforcement of or compliance with any ordinance or law regulating the construction, use or repair of any property.
- c.** We will give notice of our intentions within 30 days after we receive the sworn proof of loss.
- d.** We will not pay you more than your financial interest in the Covered Property.
- e.** We may adjust losses with the owners of lost or damaged property if other than you. If we pay the owners, such payments will satisfy your claims against us for the owners' property. We will not pay the owners more than their financial interest in the Covered Property.
- f.** We may elect to defend you against suits arising from claims of owners of property. We will do this at our expense.
- g.** We will pay for covered loss or damage within 30 days after we receive the sworn proof of loss, if you have complied with all of the terms of this Coverage Part, and:
 - (1) We have reached agreement with you on the amount of loss; or
 - (2) An appraisal award has been made.

h. A party wall is a wall that separates and is common to adjoining buildings that are owned by different parties. In settling covered losses involving a party wall, we will pay a proportion of the loss to the party wall based on your interest in the wall in proportion to the interest of the owner of the adjoining building. However, if you elect to repair or replace your building and the owner of the adjoining building elects not to repair or replace that building, we will pay you the full value of the loss to the party wall, subject to all applicable policy provisions including Limits of Insurance, the Valuation and Coinsurance Conditions and all other provisions of this Loss Payment Condition. Our payment under the provisions of this paragraph does not alter any right of subrogation we may have against any entity, including the owner or insurer of the adjoining building, and does not alter the terms of the Transfer Of Rights Of Recovery Against Others To Us Condition in this policy.

5. Recovered Property

If either you or we recover any property after loss settlement, that party must give the other prompt notice. At your option, the property will be returned to you. You must then return to us the amount we paid to you for the property. We will pay recovery expenses and the expenses to repair the recovered property, subject to the Limit of Insurance.

6. Vacancy

a. Description Of Terms

(1) As used in this Vacancy Condition, the term building and the term vacant have the meanings set forth in **(1)(a)** and **(1)(b)** below:

(a) When this policy is issued to a tenant, and with respect to that tenant's interest in Covered Property, building means the unit or suite rented or leased to the tenant. Such building is vacant when it does not contain enough business personal property to conduct customary operations.

(b) When this policy is issued to the owner or general lessee of a building, building means the entire building. Such building is vacant unless at least 31% of its total square footage is:

- (i)** Rented to a lessee or sublessee and used by the lessee or sublessee to conduct its customary operations; and/or
- (ii)** Used by the building owner to conduct customary operations.

(2) Buildings under construction or renovation are not considered vacant.

b. Vacancy Provisions

If the building where loss or damage occurs has been vacant for more than 60 consecutive days before that loss or damage occurs:

(1) We will not pay for any loss or damage caused by any of the following, even if they are Covered Causes of Loss:

- (a)** Vandalism;
- (b)** Sprinkler leakage, unless you have protected the system against freezing;
- (c)** Building glass breakage;
- (d)** Water damage;
- (e)** Theft; or
- (f)** Attempted theft.

(2) With respect to Covered Causes of Loss other than those listed in **b.(1)(a)** through **b.(1)(f)** above, we will reduce the amount we would otherwise pay for the loss or damage by 15%.

7. Valuation

We will determine the value of Covered Property in the event of loss or damage as follows:

- a.** At actual cash value as of the time of loss or damage, except as provided in **b.**, **c.**, **d.** and **e.** below.
- b.** If the Limit of Insurance for Building satisfies the Additional Condition, Coinsurance, and the cost to repair or replace the damaged building property is \$2,500 or less, we will pay the cost of building repairs or replacement.

The cost of building repairs or replacement does not include the increased cost attributable to enforcement of or compliance with any ordinance or law regulating the construction, use or repair of any property.

However, the following property will be valued at the actual cash value, even when attached to the building:

- (1) Awnings or floor coverings;
 - (2) Appliances for refrigerating, ventilating, cooking, dishwashing or laundering; or
 - (3) Outdoor equipment or furniture.
- c. "Stock" you have sold but not delivered at the selling price less discounts and expenses you otherwise would have had.
- d. Glass at the cost of replacement with safety-glazing material if required by law.
- e. Tenants' Improvements and Betterments at:
- (1) Actual cash value of the lost or damaged property if you make repairs promptly.
 - (2) A proportion of your original cost if you do not make repairs promptly. We will determine the proportionate value as follows:
 - (a) Multiply the original cost by the number of days from the loss or damage to the expiration of the lease; and
 - (b) Divide the amount determined in (a) above by the number of days from the installation of improvements to the expiration of the lease.

If your lease contains a renewal option, the expiration of the renewal option period will replace the expiration of the lease in this procedure.

- (3) Nothing if others pay for repairs or replacement.

F. Additional Conditions

The following conditions apply in addition to the Common Policy Conditions and the Commercial Property Conditions:

1. Coinsurance

If a Coinsurance percentage is shown in the Declarations, the following condition applies:

- a. We will not pay the full amount of any loss if the value of Covered Property at the time of loss times the Coinsurance percentage shown for it in the Declarations is greater than the Limit of Insurance for the property.

Instead, we will determine the most we will pay using the following steps:

- (1) Multiply the value of Covered Property at the time of loss by the Coinsurance percentage;
- (2) Divide the Limit of Insurance of the property by the figure determined in Step (1);
- (3) Multiply the total amount of loss, before the application of any deductible, by the figure determined in Step (2); and
- (4) Subtract the deductible from the figure determined in Step (3).

We will pay the amount determined in Step (4) or the Limit of Insurance, whichever is less. For the remainder, you will either have to rely on other insurance or absorb the loss yourself.

Example 1 (Underinsurance)

When:	The value of the property is:	\$ 250,000
	The Coinsurance percentage for it is:	80%
	The Limit of Insurance for it is:	\$ 100,000
	The Deductible is:	\$ 250
	The amount of loss is:	\$ 40,000

Step (1): $\$250,000 \times 80\% = \$200,000$
 (the minimum amount of insurance to meet your Coinsurance requirements)

Step (2): $\$100,000 \div \$200,000 = .50$

Step (3): $\$40,000 \times .50 = \$20,000$

Step (4): $\$20,000 - \$250 = \$19,750$

We will pay no more than \$19,750. The remaining \$20,250 is not covered.

Example 2 (Adequate Insurance)

When:	The value of the property is:	\$ 250,000
	The Coinsurance percentage for it is:	80%
	The Limit of Insurance for it is:	\$ 200,000
	The Deductible is:	\$ 250
	The amount of loss is:	\$ 40,000

The minimum amount of insurance to meet your Coinsurance requirement is \$200,000 ($\$250,000 \times 80\%$). Therefore, the Limit of Insurance in this example is adequate, and no penalty applies. We will pay no more than \$39,750 ($\$40,000$ amount of loss minus the deductible of \$250).

- b. If one Limit of Insurance applies to two or more separate items, this condition will apply to the total of all property to which the limit applies.

Example 3

When: The value of the property is:

Building at Location 1:	\$ 75,000
Building at Location 2:	\$ 100,000
Personal Property at Location 2:	<u>\$ 75,000</u>
	\$ 250,000
The Coinsurance percentage for it is: 90%	
The Limit of Insurance for Buildings and Personal Property at Locations 1 and 2 is:	\$ 180,000
The Deductible is:	\$ 1,000
The amount of loss is:	
Building at Location 2:	\$ 30,000
Personal Property at Location 2:	<u>\$ 20,000</u>
	\$ 50,000

Step (1): $\$250,000 \times 90\% = \$225,000$
 (the minimum amount of insurance to meet your Coinsurance requirements and to avoid the penalty shown below)

Step (2): $\$180,000 \div \$225,000 = .80$

Step (3): $\$50,000 \times .80 = \$40,000$

Step (4): $\$40,000 - \$1,000 = \$39,000$

We will pay no more than \$39,000. The remaining \$11,000 is not covered.

2. Mortgageholders

- a. The term mortgageholder includes trustee.
- b. We will pay for covered loss of or damage to buildings or structures to each mortgageholder shown in the Declarations in their order of precedence, as interests may appear.
- c. The mortgageholder has the right to receive loss payment even if the mortgageholder has started foreclosure or similar action on the building or structure.
- d. If we deny your claim because of your acts or because you have failed to comply with the terms of this Coverage Part, the mortgageholder will still have the right to receive loss payment if the mortgageholder:
 - (1) Pays any premium due under this Coverage Part at our request if you have failed to do so;

- (2) Submits a signed, sworn proof of loss within 60 days after receiving notice from us of your failure to do so; and
- (3) Has notified us of any change in ownership, occupancy or substantial change in risk known to the mortgageholder.

All of the terms of this Coverage Part will then apply directly to the mortgageholder.

- e. If we pay the mortgageholder for any loss or damage and deny payment to you because of your acts or because you have failed to comply with the terms of this Coverage Part:
 - (1) The mortgageholder's rights under the mortgage will be transferred to us to the extent of the amount we pay; and
 - (2) The mortgageholder's right to recover the full amount of the mortgageholder's claim will not be impaired.

At our option, we may pay to the mortgageholder the whole principal on the mortgage plus any accrued interest. In this event, your mortgage and note will be transferred to us and you will pay your remaining mortgage debt to us.

- f. If we cancel this policy, we will give written notice to the mortgageholder at least:
 - (1) 10 days before the effective date of cancellation if we cancel for your nonpayment of premium; or
 - (2) 30 days before the effective date of cancellation if we cancel for any other reason.
- g. If we elect not to renew this policy, we will give written notice to the mortgageholder at least 10 days before the expiration date of this policy.

G. Optional Coverages

If shown as applicable in the Declarations, the following Optional Coverages apply separately to each item:

1. Agreed Value

- a. The Additional Condition, Coinsurance, does not apply to Covered Property to which this Optional Coverage applies. We will pay no more for loss of or damage to that property than the proportion that the Limit of Insurance under this Coverage Part for the property bears to the Agreed Value shown for it in the Declarations.

- b. If the expiration date for this Optional Coverage shown in the Declarations is not extended, the Additional Condition, Coinsurance, is reinstated and this Optional Coverage expires.
- c. The terms of this Optional Coverage apply only to loss or damage that occurs:
 - (1) On or after the effective date of this Optional Coverage; and
 - (2) Before the Agreed Value expiration date shown in the Declarations or the policy expiration date, whichever occurs first.

2. Inflation Guard

- a. The Limit of Insurance for property to which this Optional Coverage applies will automatically increase by the annual percentage shown in the Declarations.
- b. The amount of increase will be:
 - (1) The Limit of Insurance that applied on the most recent of the policy inception date, the policy anniversary date, or any other policy change amending the Limit of Insurance, times
 - (2) The percentage of annual increase shown in the Declarations, expressed as a decimal (example: 8% is .08), times
 - (3) The number of days since the beginning of the current policy year or the effective date of the most recent policy change amending the Limit of Insurance, divided by 365.

Example

If: The applicable Limit of Insurance is: \$ 100,000
 The annual percentage increase is: 8%
 The number of days since the beginning of the policy year (or last policy change) is: 146
 The amount of increase is:
 $\$100,000 \times .08 \times 146 \div 365 =$ \$ 3,200

3. Replacement Cost

- a. Replacement Cost (without deduction for depreciation) replaces Actual Cash Value in the Valuation Loss Condition of this Coverage Form.
- b. This Optional Coverage does not apply to:
 - (1) Personal property of others;
 - (2) Contents of a residence;
 - (3) Works of art, antiques or rare articles, including etchings, pictures, statuary, marbles, bronzes, porcelains and bric-a-brac; or

- (4) "Stock", unless the Including "Stock" option is shown in the Declarations.

Under the terms of this Replacement Cost Optional Coverage, tenants' improvements and betterments are not considered to be the personal property of others.

- c. You may make a claim for loss or damage covered by this insurance on an actual cash value basis instead of on a replacement cost basis. In the event you elect to have loss or damage settled on an actual cash value basis, you may still make a claim for the additional coverage this Optional Coverage provides if you notify us of your intent to do so within 180 days after the loss or damage.
- d. We will not pay on a replacement cost basis for any loss or damage:
 - (1) Until the lost or damaged property is actually repaired or replaced; and
 - (2) Unless the repair or replacement is made as soon as reasonably possible after the loss or damage.

With respect to tenants' improvements and betterments, the following also apply:

- (3) If the conditions in d.(1) and d.(2) above are not met, the value of tenants' improvements and betterments will be determined as a proportion of your original cost, as set forth in the Valuation Loss Condition of this Coverage Form; and
- (4) We will not pay for loss or damage to tenants' improvements and betterments if others pay for repairs or replacement.
- e. We will not pay more for loss or damage on a replacement cost basis than the least of (1), (2) or (3), subject to f. below:
 - (1) The Limit of Insurance applicable to the lost or damaged property;
 - (2) The cost to replace the lost or damaged property with other property:
 - (a) Of comparable material and quality; and
 - (b) Used for the same purpose; or
 - (3) The amount actually spent that is necessary to repair or replace the lost or damaged property.

If a building is rebuilt at a new premises, the cost described in e.(2) above is limited to the cost which would have been incurred if the building had been rebuilt at the original premises.

- f. The cost of repair or replacement does not include the increased cost attributable to enforcement of or compliance with any ordinance or law regulating the construction, use or repair of any property.

4. Extension Of Replacement Cost To Personal Property Of Others

a. If the Replacement Cost Optional Coverage is shown as applicable in the Declarations, then this Extension may also be shown as applicable. If the Declarations show this Extension as applicable, then Paragraph **3.b.(1)** of the Replacement Cost Optional Coverage is deleted and all other provisions of the Replacement Cost Optional Coverage apply to replacement cost on personal property of others.

b. With respect to replacement cost on the personal property of others, the following limitation applies:

If an item(s) of personal property of others is subject to a written contract which governs your liability for loss or damage to that item(s), then valuation of that item(s) will be based on the amount for which you are liable under such contract, but not to exceed the lesser of the replacement cost of the property or the applicable Limit of Insurance.

H. Definitions

1. "Fungus" means any type or form of fungus, including mold or mildew, and any mycotoxins, spores, scents or by-products produced or released by fungi.
2. "Pollutants" means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.
3. "Stock" means merchandise held in storage or for sale, raw materials and in-process or finished goods, including supplies used in their packing or shipping.

BUSINESS INCOME (AND EXTRA EXPENSE) COVERAGE FORM

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy, the words "you" and "your" refer to the Named Insured shown in the Declarations. The words "we", "us" and "our" refer to the company providing this insurance.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section **F**. Definitions.

A. Coverage

1. Business Income

Business Income means the:

- a. Net Income (Net Profit or Loss before income taxes) that would have been earned or incurred; and
- b. Continuing normal operating expenses incurred, including payroll.

For manufacturing risks, Net Income includes the net sales value of production.

Coverage is provided as described and limited below for one or more of the following options for which a Limit Of Insurance is shown in the Declarations:

- (1) Business Income Including "Rental Value".
- (2) Business Income Other Than "Rental Value".
- (3) "Rental Value".

If option (1) above is selected, the term Business Income will include "Rental Value". If option (3) above is selected, the term Business Income will mean "Rental Value" only.

If Limits of Insurance are shown under more than one of the above options, the provisions of this Coverage Part apply separately to each.

We will pay for the actual loss of Business Income you sustain due to the necessary "suspension" of your "operations" during the "period of restoration". The "suspension" must be caused by direct physical loss of or damage to property at premises which are described in the Declarations and for which a Business Income Limit Of Insurance is shown in the Declarations. The loss or damage must be caused by or result from a Covered Cause of Loss. With respect to loss of or damage to personal property in the open or personal property in a vehicle, the described premises include the area within 100 feet of such premises.

With respect to the requirements set forth in the preceding paragraph, if you occupy only part of a building, your premises means:

- (a) The portion of the building which you rent, lease or occupy;
- (b) The area within 100 feet of the building or within 100 feet of the premises described in the Declarations, whichever distance is greater (with respect to loss of or damage to personal property in the open or personal property in a vehicle); and
- (c) Any area within the building or at the described premises, if that area services, or is used to gain access to, the portion of the building which you rent, lease or occupy.

2. Extra Expense

- a. Extra Expense Coverage is provided at the premises described in the Declarations only if the Declarations show that Business Income Coverage applies at that premises.
- b. Extra Expense means necessary expenses you incur during the "period of restoration" that you would not have incurred if there had been no direct physical loss or damage to property caused by or resulting from a Covered Cause of Loss.

We will pay Extra Expense (other than the expense to repair or replace property) to:

- (1) Avoid or minimize the "suspension" of business and to continue operations at the described premises or at replacement premises or temporary locations, including relocation expenses and costs to equip and operate the replacement location or temporary location.

- (2) Minimize the "suspension" of business if you cannot continue "operations".

We will also pay Extra Expense to repair or replace property, but only to the extent it reduces the amount of loss that otherwise would have been payable under this Coverage Form.

3. Covered Causes Of Loss, Exclusions And Limitations

See applicable Causes Of Loss form as shown in the Declarations.

4. Additional Limitation – Interruption Of Computer Operations

- a. Coverage for Business Income does not apply when a "suspension" of "operations" is caused by destruction or corruption of electronic data, or any loss or damage to electronic data, except as provided under the Additional Coverage, Interruption Of Computer Operations.
- b. Coverage for Extra Expense does not apply when action is taken to avoid or minimize a "suspension" of "operations" caused by destruction or corruption of electronic data, or any loss or damage to electronic data, except as provided under the Additional Coverage, Interruption Of Computer Operations.
- c. Electronic data means information, facts or computer programs stored as or on, created or used on, or transmitted to or from computer software (including systems and applications software), on hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other repositories of computer software which are used with electronically controlled equipment. The term computer programs, referred to in the foregoing description of electronic data, means a set of related electronic instructions which direct the operations and functions of a computer or device connected to it, which enable the computer or device to receive, process, store, retrieve or send data.
- d. This Additional Limitation does not apply when loss or damage to electronic data involves only electronic data which is integrated in and operates or controls a building's elevator, lighting, heating, ventilation, air conditioning or security system.

5. Additional Coverages

a. Civil Authority

In this Additional Coverage, Civil Authority, the described premises are premises to which this Coverage Form applies, as shown in the Declarations.

When a Covered Cause of Loss causes damage to property other than property at the described premises, we will pay for the actual loss of Business Income you sustain and necessary Extra Expense caused by action of civil authority that prohibits access to the described premises, provided that both of the following apply:

- (1) Access to the area immediately surrounding the damaged property is prohibited by civil authority as a result of the damage, and the described premises are within that area but are not more than one mile from the damaged property; and
- (2) The action of civil authority is taken in response to dangerous physical conditions resulting from the damage or continuation of the Covered Cause of Loss that caused the damage, or the action is taken to enable a civil authority to have unimpeded access to the damaged property.

Civil Authority Coverage for Business Income will begin 72 hours after the time of the first action of civil authority that prohibits access to the described premises and will apply for a period of up to four consecutive weeks from the date on which such coverage began.

Civil Authority Coverage for Extra Expense will begin immediately after the time of the first action of civil authority that prohibits access to the described premises and will end:

- (1) Four consecutive weeks after the date of that action; or
 - (2) When your Civil Authority Coverage for Business Income ends;
- whichever is later.

b. Alterations And New Buildings

We will pay for the actual loss of Business Income you sustain and necessary Extra Expense you incur due to direct physical loss or damage at the described premises caused by or resulting from any Covered Cause of Loss to:

- (1) New buildings or structures, whether complete or under construction;
- (2) Alterations or additions to existing buildings or structures; and
- (3) Machinery, equipment, supplies or building materials located on or within 100 feet of the described premises and:
 - (a) Used in the construction, alterations or additions; or
 - (b) Incidental to the occupancy of new buildings.

If such direct physical loss or damage delays the start of "operations", the "period of restoration" for Business Income Coverage will begin on the date "operations" would have begun if the direct physical loss or damage had not occurred.

c. Extended Business Income

(1) Business Income Other Than "Rental Value"

If the necessary "suspension" of your "operations" produces a Business Income loss payable under this policy, we will pay for the actual loss of Business Income you incur during the period that:

- (a) Begins on the date property (except "finished stock") is actually repaired, rebuilt or replaced and "operations" are resumed; and
- (b) Ends on the earlier of:
 - (i) The date you could restore your "operations", with reasonable speed, to the level which would generate the business income amount that would have existed if no direct physical loss or damage had occurred; or
 - (ii) 60 consecutive days after the date determined in (1)(a) above.

However, Extended Business Income does not apply to loss of Business Income incurred as a result of unfavorable business conditions caused by the impact of the Covered Cause of Loss in the area where the described premises are located.

Loss of Business Income must be caused by direct physical loss or damage at the described premises caused by or resulting from any Covered Cause of Loss.

(2) "Rental Value"

If the necessary "suspension" of your "operations" produces a "Rental Value" loss payable under this policy, we will pay for the actual loss of "Rental Value" you incur during the period that:

- (a) Begins on the date property is actually repaired, rebuilt or replaced and tenantability is restored; and
- (b) Ends on the earlier of:
 - (i) The date you could restore tenant occupancy, with reasonable speed, to the level which would generate the "Rental Value" that would have existed if no direct physical loss or damage had occurred; or
 - (ii) 60 consecutive days after the date determined in (2)(a) above.

However, Extended Business Income does not apply to loss of "Rental Value" incurred as a result of unfavorable business conditions caused by the impact of the Covered Cause of Loss in the area where the described premises are located.

Loss of "Rental Value" must be caused by direct physical loss or damage at the described premises caused by or resulting from any Covered Cause of Loss.

d. Interruption Of Computer Operations

- (1) Under this Additional Coverage, electronic data has the meaning described under Additional Limitation – Interruption Of Computer Operations.

- (2) Subject to all provisions of this Additional Coverage, you may extend the insurance that applies to Business Income and Extra Expense to apply to a "suspension" of "operations" caused by an interruption in computer operations due to destruction or corruption of electronic data due to a Covered Cause of Loss. However, we will not provide coverage under this Additional Coverage when the Additional Limitation – Interruption Of Computer Operations does not apply based on Paragraph **A.4.d.** therein.
- (3) With respect to the coverage provided under this Additional Coverage, the Covered Causes of Loss are subject to the following:
- (a) If the Causes Of Loss – Special Form applies, coverage under this Additional Coverage, Interruption Of Computer Operations, is limited to the "specified causes of loss" as defined in that form and Collapse as set forth in that form.
 - (b) If the Causes Of Loss – Broad Form applies, coverage under this Additional Coverage, Interruption Of Computer Operations, includes Collapse as set forth in that form.
 - (c) If the Causes Of Loss form is endorsed to add a Covered Cause of Loss, the additional Covered Cause of Loss does not apply to the coverage provided under this Additional Coverage, Interruption Of Computer Operations.
 - (d) The Covered Causes of Loss include a virus, harmful code or similar instruction introduced into or enacted on a computer system (including electronic data) or a network to which it is connected, designed to damage or destroy any part of the system or disrupt its normal operation. But there is no coverage for an interruption related to manipulation of a computer system (including electronic data) by any employee, including a temporary or leased employee, or by an entity retained by you or for you to inspect, design, install, maintain, repair or replace that system.
- (4) The most we will pay under this Additional Coverage, Interruption Of Computer Operations, is \$2,500 (unless a higher limit is shown in the Declarations) for all loss sustained and expense incurred in any one policy year, regardless of the number of interruptions or the number of premises, locations or computer systems involved. If loss payment relating to the first interruption does not exhaust this amount, then the balance is available for loss or expense sustained or incurred as a result of subsequent interruptions in that policy year. A balance remaining at the end of a policy year does not increase the amount of insurance in the next policy year. With respect to any interruption which begins in one policy year and continues or results in additional loss or expense in a subsequent policy year(s), all loss and expense is deemed to be sustained or incurred in the policy year in which the interruption began.
- (5) This Additional Coverage, Interruption Of Computer Operations, does not apply to loss sustained or expense incurred after the end of the "period of restoration", even if the amount of insurance stated in (4) above has not been exhausted.

6. Coverage Extension

If a Coinsurance percentage of 50% or more is shown in the Declarations, you may extend the insurance provided by this Coverage Part as follows:

Newly Acquired Locations

- a. You may extend your Business Income and Extra Expense Coverages to apply to property at any location you acquire other than fairs or exhibitions.
- b. The most we will pay under this Extension, for the sum of Business Income loss and Extra Expense incurred, is \$100,000 at each location, unless a higher limit is shown in the Declarations.
- c. Insurance under this Extension for each newly acquired location will end when any of the following first occurs:
 - (1) This policy expires;

- (2) 30 days expire after you acquire or begin to construct the property; or
- (3) You report values to us.

We will charge you additional premium for values reported from the date you acquire the property.

The Additional Condition, Coinsurance, does not apply to this Extension.

B. Limits Of Insurance

The most we will pay for loss in any one occurrence is the applicable Limit Of Insurance shown in the Declarations.

Payments under the following coverages will not increase the applicable Limit of Insurance:

1. Alterations And New Buildings;
2. Civil Authority;
3. Extra Expense; or
4. Extended Business Income.

The amounts of insurance stated in the Interruption Of Computer Operations Additional Coverage and the Newly Acquired Locations Coverage Extension apply in accordance with the terms of those coverages and are separate from the Limit(s) Of Insurance shown in the Declarations for any other coverage.

C. Loss Conditions

The following conditions apply in addition to the Common Policy Conditions and the Commercial Property Conditions:

1. Appraisal

If we and you disagree on the amount of Net Income and operating expense or the amount of loss, either may make written demand for an appraisal of the loss. In this event, each party will select a competent and impartial appraiser.

The two appraisers will select an umpire. If they cannot agree, either may request that selection be made by a judge of a court having jurisdiction. The appraisers will state separately the amount of Net Income and operating expense or amount of loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding. Each party will:

- a. Pay its chosen appraiser; and
- b. Bear the other expenses of the appraisal and umpire equally.

If there is an appraisal, we will still retain our right to deny the claim.

2. Duties In The Event Of Loss

a. You must see that the following are done in the event of loss:

- (1) Notify the police if a law may have been broken.
- (2) Give us prompt notice of the direct physical loss or damage. Include a description of the property involved.
- (3) As soon as possible, give us a description of how, when and where the direct physical loss or damage occurred.
- (4) Take all reasonable steps to protect the Covered Property from further damage, and keep a record of your expenses necessary to protect the Covered Property, for consideration in the settlement of the claim. This will not increase the Limit of Insurance. However, we will not pay for any subsequent loss or damage resulting from a cause of loss that is not a Covered Cause of Loss. Also, if feasible, set the damaged property aside and in the best possible order for examination.
- (5) As often as may be reasonably required, permit us to inspect the property proving the loss or damage and examine your books and records.

Also permit us to take samples of damaged and undamaged property for inspection, testing and analysis, and permit us to make copies from your books and records.

- (6) Send us a signed, sworn proof of loss containing the information we request to investigate the claim. You must do this within 60 days after our request. We will supply you with the necessary forms.
 - (7) Cooperate with us in the investigation or settlement of the claim.
 - (8) If you intend to continue your business, you must resume all or part of your "operations" as quickly as possible.
- b. We may examine any insured under oath, while not in the presence of any other insured and at such times as may be reasonably required, about any matter relating to this insurance or the claim, including an insured's books and records. In the event of an examination, an insured's answers must be signed.

3. Loss Determination

- a. The amount of Business Income loss will be determined based on:
 - (1) The Net Income of the business before the direct physical loss or damage occurred;
 - (2) The likely Net Income of the business if no physical loss or damage had occurred, but not including any Net Income that would likely have been earned as a result of an increase in the volume of business due to favorable business conditions caused by the impact of the Covered Cause of Loss on customers or on other businesses;
 - (3) The operating expenses, including payroll expenses, necessary to resume "operations" with the same quality of service that existed just before the direct physical loss or damage; and
 - (4) Other relevant sources of information, including:
 - (a) Your financial records and accounting procedures;
 - (b) Bills, invoices and other vouchers; and
 - (c) Deeds, liens or contracts.
- b. The amount of Extra Expense will be determined based on:
 - (1) All expenses that exceed the normal operating expenses that would have been incurred by "operations" during the "period of restoration" if no direct physical loss or damage had occurred. We will deduct from the total of such expenses:
 - (a) The salvage value that remains of any property bought for temporary use during the "period of restoration", once "operations" are resumed; and
 - (b) Any Extra Expense that is paid for by other insurance, except for insurance that is written subject to the same plan, terms, conditions and provisions as this insurance; and
 - (2) Necessary expenses that reduce the Business Income loss that otherwise would have been incurred.

c. Resumption Of Operations

We will reduce the amount of your:

- (1) Business Income loss, other than Extra Expense, to the extent you can resume your "operations", in whole or in part, by using damaged or undamaged property (including merchandise or stock) at the described premises or elsewhere.
 - (2) Extra Expense loss to the extent you can return "operations" to normal and discontinue such Extra Expense.
- d. If you do not resume "operations", or do not resume "operations" as quickly as possible, we will pay based on the length of time it would have taken to resume "operations" as quickly as possible.

4. Loss Payment

We will pay for covered loss within 30 days after we receive the sworn proof of loss, if you have complied with all of the terms of this Coverage Part, and:

- a. We have reached agreement with you on the amount of loss; or
- b. An appraisal award has been made.

D. Additional Condition

COINSURANCE

If a Coinsurance percentage is shown in the Declarations, the following condition applies in addition to the Common Policy Conditions and the Commercial Property Conditions.

We will not pay the full amount of any Business Income loss if the Limit of Insurance for Business Income is less than:

- 1. The Coinsurance percentage shown for Business Income in the Declarations; times
- 2. The sum of:
 - a. The Net Income (Net Profit or Loss before income taxes), and
 - b. Operating expenses, including payroll expenses,

that would have been earned or incurred (had no loss occurred) by your "operations" at the described premises for the 12 months following the inception, or last previous anniversary date, of this policy (whichever is later).

Instead, we will determine the most we will pay using the following steps:

Step (1): Multiply the Net Income and operating expense for the 12 months following the inception, or last previous anniversary date, of this policy by the Coinsurance percentage;

Step (2): Divide the Limit of Insurance for the described premises by the figure determined in Step (1); and

Step (3): Multiply the total amount of loss by the figure determined in Step (2).

We will pay the amount determined in Step (3) or the limit of insurance, whichever is less. For the remainder, you will either have to rely on other insurance or absorb the loss yourself.

In determining operating expenses for the purpose of applying the Coinsurance condition, the following expenses, if applicable, shall be deducted from the total of all operating expenses:

- (1) Prepaid freight – outgoing;
- (2) Returns and allowances;
- (3) Discounts;
- (4) Bad debts;
- (5) Collection expenses;
- (6) Cost of raw stock and factory supplies consumed (including transportation charges);
- (7) Cost of merchandise sold (including transportation charges);
- (8) Cost of other supplies consumed (including transportation charges);
- (9) Cost of services purchased from outsiders (not employees) to resell, that do not continue under contract;
- (10) Power, heat and refrigeration expenses that do not continue under contract (if Form **CP 15 11** is attached);
- (11) All payroll expenses or the amount of payroll expense excluded (if Form **CP 15 10** is attached); and
- (12) Special deductions for mining properties (royalties unless specifically included in coverage; actual depletion commonly known as unit or cost depletion – not percentage depletion; welfare and retirement fund charges based on tonnage; hired trucks).

Example 1 (Underinsurance)

When: The Net Income and operating expenses for the 12 months following the inception, or last previous anniversary date, of this policy at the described premises would have been: \$ 400,000
 The Coinsurance percentage is: 50%
 The Limit of Insurance is: \$ 150,000
 The amount of loss is: \$ 80,000

Step (1): $\$400,000 \times 50\% = \$200,000$
 (the minimum amount of insurance to meet your Coinsurance requirements)

Step (2): $\$150,000 \div \$200,000 = .75$

Step (3): $\$80,000 \times .75 = \$60,000$

We will pay no more than \$60,000. The remaining \$20,000 is not covered.

Example 2 (Adequate Insurance)

When: The Net Income and operating expenses for the 12 months following the inception, or last previous anniversary date, of this policy at the described premises would have been: \$ 400,000
 The Coinsurance percentage is: 50%
 The Limit of Insurance is: \$ 200,000
 The amount of loss is: \$ 80,000

The minimum amount of insurance to meet your Coinsurance requirement is \$200,000 ($\$400,000 \times 50\%$). Therefore, the Limit of Insurance in this example is adequate and no penalty applies. We will pay no more than \$80,000 (amount of loss).

This condition does not apply to Extra Expense Coverage.

E. Optional Coverages

If shown as applicable in the Declarations, the following Optional Coverages apply separately to each item.

1. Maximum Period Of Indemnity

- a. The Additional Condition, Coinsurance, does not apply to this Coverage Form at the described premises to which this Optional Coverage applies.

- b. The most we will pay for the total of Business Income loss and Extra Expense is the lesser of:
 - (1) The amount of loss sustained and expenses incurred during the 120 days immediately following the beginning of the "period of restoration"; or
 - (2) The Limit Of Insurance shown in the Declarations.

2. Monthly Limit Of Indemnity

- a. The Additional Condition, Coinsurance, does not apply to this Coverage Form at the described premises to which this Optional Coverage applies.
- b. The most we will pay for loss of Business Income in each period of 30 consecutive days after the beginning of the "period of restoration" is:
 - (1) The Limit of Insurance, multiplied by
 - (2) The fraction shown in the Declarations for this Optional Coverage.

Example

When: The Limit of Insurance is: \$ 120,000
 The fraction shown in the Declarations for this Optional Coverage is: 1/4
 The most we will pay for loss in each period of 30 consecutive days is: \$ 30,000
 (\$120,000 x 1/4 = \$30,000)
 If, in this example, the actual amount of loss is:

Days 1–30:	\$ 40,000
Days 31–60:	\$ 20,000
Days 61–90:	\$ 30,000
	\$ 90,000

We will pay:

Days 1–30:	\$ 30,000
Days 31–60:	\$ 20,000
Days 61–90:	\$ 30,000
	\$ 80,000

The remaining \$10,000 is not covered.

3. Business Income Agreed Value

- a. To activate this Optional Coverage:
 - (1) A Business Income Report/Work Sheet must be submitted to us and must show financial data for your "operations":
 - (a) During the 12 months prior to the date of the Work Sheet; and

- (b) Estimated for the 12 months immediately following the inception of this Optional Coverage.
- (2) The Declarations must indicate that the Business Income Agreed Value Optional Coverage applies, and an Agreed Value must be shown in the Declarations. The Agreed Value should be at least equal to:
 - (a) The Coinsurance percentage shown in the Declarations; multiplied by
 - (b) The amount of Net Income and operating expenses for the following 12 months you report on the Work Sheet.
- b. The Additional Condition, Coinsurance, is suspended until:
 - (1) 12 months after the effective date of this Optional Coverage; or
 - (2) The expiration date of this policy; whichever occurs first.
- c. We will reinstate the Additional Condition, Coinsurance, automatically if you do not submit a new Work Sheet and Agreed Value:
 - (1) Within 12 months of the effective date of this Optional Coverage; or
 - (2) When you request a change in your Business Income Limit of Insurance.
- d. If the Business Income Limit of Insurance is less than the Agreed Value, we will not pay more of any loss than the amount of loss multiplied by:
 - (1) The Business Income Limit of Insurance; divided by
 - (2) The Agreed Value.

Example

When: The Limit of Insurance is: \$ 100,000
 The Agreed Value is: \$ 200,000
 The amount of loss is: \$ 80,000
 Step (1): $\$100,000 \div \$200,000 = .50$
 Step (2): $.50 \times \$80,000 = \$40,000$

We will pay \$40,000. The remaining \$40,000 is not covered.

4. Extended Period Of Indemnity

Under Paragraph A.5.c., **Extended Business Income**, the number 60 in Subparagraphs (1)(b) and (2)(b) is replaced by the number shown in the Declarations for this Optional Coverage.

F. Definitions

1. "Finished stock" means stock you have manufactured.

"Finished stock" also includes whiskey and alcoholic products being aged, unless there is a Coinsurance percentage shown for Business Income in the Declarations.

"Finished stock" does not include stock you have manufactured that is held for sale on the premises of any retail outlet insured under this Coverage Part.

2. "Operations" means:
 - a. Your business activities occurring at the described premises; and
 - b. The tenantability of the described premises, if coverage for Business Income Including "Rental Value" or "Rental Value" applies.
3. "Period of restoration" means the period of time that:
 - a. Begins:
 - (1) 72 hours after the time of direct physical loss or damage for Business Income Coverage; or
 - (2) Immediately after the time of direct physical loss or damage for Extra Expense Coverage;
caused by or resulting from any Covered Cause of Loss at the described premises; and
 - b. Ends on the earlier of:
 - (1) The date when the property at the described premises should be repaired, rebuilt or replaced with reasonable speed and similar quality; or
 - (2) The date when business is resumed at a new permanent location.

"Period of restoration" does not include any increased period required due to the enforcement of or compliance with any ordinance or law that:

- (1) Regulates the construction, use or repair, or requires the tearing down, of any property; or

- (2) Requires any insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants".

The expiration date of this policy will not cut short the "period of restoration".

4. "Pollutants" means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.
5. "Rental Value" means Business Income that consists of:
 - a. Net Income (Net Profit or Loss before income taxes) that would have been earned or incurred as rental income from tenant occupancy of the premises described in the Declarations as furnished and equipped by you, including fair rental value of any portion of the described premises which is occupied by you; and
 - b. Continuing normal operating expenses incurred in connection with that premises, including:
 - (1) Payroll; and
 - (2) The amount of charges which are the legal obligation of the tenant(s) but would otherwise be your obligations.
6. "Suspension" means:
 - a. The slowdown or cessation of your business activities; or
 - b. That a part or all of the described premises is rendered untenable, if coverage for Business Income Including "Rental Value" or "Rental Value" applies.

COMMERCIAL PROPERTY

COMMERCIAL PROPERTY CONDITIONS

This Coverage Part is subject to the following conditions, the Common Policy Conditions and applicable Loss Conditions and Additional Conditions in Commercial Property Coverage Forms.

A. CONCEALMENT, MISREPRESENTATION OR FRAUD

This Coverage Part is void in any case of fraud by you as it relates to this Coverage Part at any time. It is also void if you or any other insured, at any time, intentionally conceal or misrepresent a material fact concerning:

1. This Coverage Part;
2. The Covered Property;
3. Your interest in the Covered Property; or
4. A claim under this Coverage Part.

B. CONTROL OF PROPERTY

Any act or neglect of any person other than you beyond your direction or control will not affect this insurance.

The breach of any condition of this Coverage Part at any one or more locations will not affect coverage at any location where, at the time of loss or damage, the breach of condition does not exist.

C. INSURANCE UNDER TWO OR MORE COVERAGES

If two or more of this policy's coverages apply to the same loss or damage, we will not pay more than the actual amount of the loss or damage.

D. LEGAL ACTION AGAINST US

No one may bring a legal action against us under this Coverage Part unless:

1. There has been full compliance with all of the terms of this Coverage Part; and
2. The action is brought within 2 years after the date on which the direct physical loss or damage occurred.

E. LIBERALIZATION

If we adopt any revision that would broaden the coverage under this Coverage Part without additional premium within 45 days prior to or during the policy period, the broadened coverage will immediately apply to this Coverage Part.

F. NO BENEFIT TO BAILEE

No person or organization, other than you, having custody of Covered Property will benefit from this insurance.

G. OTHER INSURANCE

1. You may have other insurance subject to the same plan, terms, conditions and provisions as the insurance under this Coverage Part. If you do, we will pay our share of the covered loss or damage. Our share is the proportion that the applicable Limit of Insurance under this Coverage Part bears to the Limits of Insurance of all insurance covering on the same basis.
2. If there is other insurance covering the same loss or damage, other than that described in 1. above, we will pay only for the amount of covered loss or damage in excess of the amount due from that other insurance, whether you can collect on it or not. But we will not pay more than the applicable Limit of Insurance.

H. POLICY PERIOD, COVERAGE TERRITORY

Under this Coverage Part:

1. We cover loss or damage commencing:
 - a. During the policy period shown in the Declarations; and
 - b. Within the coverage territory.
2. The coverage territory is:
 - a. The United States of America (including its territories and possessions);
 - b. Puerto Rico; and
 - c. Canada.

I. TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US

If any person or organization to or for whom we make payment under this Coverage Part has rights to recover damages from another, those rights are transferred to us to the extent of our payment. That person or organization must do everything necessary to secure our rights and must do nothing after loss to impair them. But you may waive your rights against another party in writing:

1. Prior to a loss to your Covered Property or Covered Income.
2. After a loss to your Covered Property or Covered Income only if, at time of loss, that party is one of the following:
 - a. Someone insured by this insurance;
 - b. A business firm:
 - (1) Owned or controlled by you; or
 - (2) That owns or controls you; or
 - c. Your tenant.

This will not restrict your insurance.

COMMERCIAL PROPERTY
CP 01 25 07 08

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

FLORIDA CHANGES

This endorsement modifies insurance provided under the following:

COMMERCIAL PROPERTY COVERAGE PART

A. When this endorsement is attached to the Standard Property Policy **CP 00 99**, the term Coverage Part in this endorsement is replaced by the term Policy.

B. The following provision applies when a Coinsurance percentage is shown in the Declarations:

Florida law states as follows:

Coinsurance contract: The rate charged in this policy is based upon the use of the coinsurance clause attached to this policy, with the consent of the Insured.

C. The following is added:

If windstorm is a Covered Cause of Loss and loss or damage to Covered Property is caused by or results from windstorm, the following exclusion applies in:

1. Broward County;
2. Dade County;
3. Martin County;
4. Monroe County;
5. Palm Beach County; and
6. All the areas east of the west bank of the Intra-Coastal Waterway in the Counties of:
 - a. Indian River; and
 - b. St. Lucie.

WINDSTORM EXTERIOR PAINT AND WATERPROOFING EXCLUSION

We will not pay for loss or damage caused by windstorm to:

1. Paint; or
2. Waterproofing material;

applied to the exterior of Buildings unless the Building to which such loss or damage occurs also sustains other loss or damage by windstorm in the course of the same storm event. But such coverage applies only if windstorm is a Covered Cause of Loss.

When loss or damage to exterior paint or waterproofing material is excluded, we will not include the value of paint or waterproofing material to determine:

- a. The amount of the Windstorm or Hail Deductible; or
- b. The value of Covered Property when applying the Coinsurance Condition.

D. The **Loss Payment** Condition dealing with the number of days within which we must pay for covered loss or damage is replaced by the following:

Provided you have complied with all the terms of this Coverage Part, we will pay for covered loss or damage upon the earliest of the following:

- (1) Within 20 days after we receive the sworn proof of loss and reach written agreement with you;
- (2) Within 30 days after we receive the sworn proof of loss and:
 - (a) There is an entry of a final judgment; or
 - (b) There is a filing of an appraisal award with us; or
- (3) Within 90 days of receiving notice of claim, unless we deny the claim during that time or factors beyond our control reasonably prevent such payment. If a portion of the claim is denied, then the 90-day time period for payment of claim relates to the portion of the claim that is not denied.

Paragraph (3) applies only to the following:

- (a) A claim under a policy covering residential property;
- (b) A claim for building or contents coverage if the insured structure is 10,000 square feet or less and the policy covers only locations in Florida; or

- (c) A claim for contents coverage under a tenant's policy if the rented premises are 10,000 square feet or less and the policy covers only locations in Florida.

E. Sinkhole Collapse Coverage Removed

Sinkhole Collapse coverage is removed as indicated in Paragraphs **E.1.** through **E.4.**; and coverage for Catastrophic Ground Cover Collapse is added instead as set forth in Paragraph **F.**

1. In the Causes of Loss – Basic Form and in the Standard Property Policy, Sinkhole Collapse is deleted from the Covered Causes of Loss and sinkhole collapse is no longer an exception to the Earth Movement exclusion.
2. In the Causes of Loss – Broad Form, Sinkhole Collapse is deleted from the Covered Causes of Loss and from the Additional Coverage – Collapse; and sinkhole collapse is no longer an exception to the Earth Movement exclusion.
3. In the Causes of Loss – Special Form, sinkhole collapse is deleted from the "specified causes of loss" and is no longer an exception to the Earth Movement exclusion.
4. In the Mortgageholders Errors And Omissions Coverage Form, sinkhole collapse is deleted from the Covered Causes of Loss under Coverage **B** and from the "specified causes of loss", and is no longer an exception to the Earth Movement exclusion.

Further, this Coverage Part does not insure against Sinkhole Loss as defined in Florida law unless an endorsement for Sinkhole Loss is made part of this policy. However, if Sinkhole Loss causes Catastrophic Ground Cover Collapse, coverage is provided for the resulting Catastrophic Ground Cover Collapse even if an endorsement for Sinkhole Loss is not made part of this policy.

- F.** The following is added to this Coverage Part as a Covered Cause Of Loss. In the Causes Of Loss – Special Form and Mortgageholders Errors And Omissions Coverage Form, the following is also added as a "specified cause of loss". However, as a "specified cause of loss", the following does not apply to the Additional Coverage – Collapse.

CATASTROPHIC GROUND COVER COLLAPSE

We will pay for direct physical loss or damage to Covered Property caused by or resulting from catastrophic ground cover collapse, meaning geological activity that results in all of the following:

- (a) The abrupt collapse of the ground cover;
- (b) A depression in the ground cover clearly visible to the naked eye;
- (c) Structural damage to the building, including the foundation; and
- (d) The insured structure being condemned and ordered to be vacated by the governmental agency authorized by law to issue such an order for that structure.

However, structural damage consisting merely of the settling or cracking of a foundation, structure or building does not constitute loss or damage resulting from a catastrophic ground cover collapse.

The Earth Movement exclusion and the Collapse exclusion do not apply to coverage for Catastrophic Ground Cover Collapse.

Coverage for Catastrophic Ground Cover Collapse does not increase the applicable Limit of Insurance. Regardless of whether loss or damage attributable to catastrophic ground cover collapse also qualifies as Sinkhole Loss or Earthquake (if either or both of those causes of loss are covered under this Coverage Part), only one Limit of Insurance will apply to such loss or damage.

- G.** The following applies to the **Additional Coverage – Civil Authority** under the Business Income (And Extra Expense) Coverage Form, Business Income (Without Extra Expense) Coverage Form and Extra Expense Coverage Form:

1. The Additional Coverage – Civil Authority includes a requirement that the described premises are not more than one mile from the damaged property. With respect to described premises located in Florida, such one-mile radius does not apply.
2. The Additional Coverage – Civil Authority is limited to a coverage period of up to four weeks. With respect to described premises located in Florida, such four week period is replaced by a three-week period.
3. Civil Authority coverage is subject to all other provisions of that Additional Coverage.

CAUSES OF LOSS – SPECIAL FORM

Words and phrases that appear in quotation marks have special meaning. Refer to Section **G.**, Definitions.

A. Covered Causes Of Loss

When Special is shown in the Declarations, Covered Causes of Loss means Risks Of Direct Physical Loss unless the loss is:

1. Excluded in Section **B.**, Exclusions; or
2. Limited in Section **C.**, Limitations; that follow.

B. Exclusions

1. We will not pay for loss or damage caused directly or indirectly by any of the following. Such loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss.

a. Ordinance Or Law

The enforcement of any ordinance or law:

- (1) Regulating the construction, use or repair of any property; or
- (2) Requiring the tearing down of any property, including the cost of removing its debris.

This exclusion, Ordinance Or Law, applies whether the loss results from:

- (a) An ordinance or law that is enforced even if the property has not been damaged; or
- (b) The increased costs incurred to comply with an ordinance or law in the course of construction, repair, renovation, remodeling or demolition of property, or removal of its debris, following a physical loss to that property.

b. Earth Movement

- (1) Earthquake, including any earth sinking, rising or shifting related to such event;
- (2) Landslide, including any earth sinking, rising or shifting related to such event;
- (3) Mine subsidence, meaning subsidence of a man-made mine, whether or not mining activity has ceased;

- (4) Earth sinking (other than sinkhole collapse), rising or shifting including soil conditions which cause settling, cracking or other disarrangement of foundations or other parts of realty. Soil conditions include contraction, expansion, freezing, thawing, erosion, improperly compacted soil and the action of water under the ground surface.

But if Earth Movement, as described in **b.(1)** through **(4)** above, results in fire or explosion, we will pay for the loss or damage caused by that fire or explosion.

- (5) Volcanic eruption, explosion or effusion. But if volcanic eruption, explosion or effusion results in fire, building glass breakage or Volcanic Action, we will pay for the loss or damage caused by that fire, building glass breakage or Volcanic Action.

Volcanic Action means direct loss or damage resulting from the eruption of a volcano when the loss or damage is caused by:

- (a) Airborne volcanic blast or airborne shock waves;
- (b) Ash, dust or particulate matter; or
- (c) Lava flow.

All volcanic eruptions that occur within any 168-hour period will constitute a single occurrence.

Volcanic Action does not include the cost to remove ash, dust or particulate matter that does not cause direct physical loss or damage to the described property.

c. Governmental Action

Seizure or destruction of property by order of governmental authority.

But we will pay for loss or damage caused by or resulting from acts of destruction ordered by governmental authority and taken at the time of a fire to prevent its spread, if the fire would be covered under this Coverage Part.

d. Nuclear Hazard

Nuclear reaction or radiation, or radioactive contamination, however caused.

But if nuclear reaction or radiation, or radioactive contamination, results in fire, we will pay for the loss or damage caused by that fire.

e. Utility Services

The failure of power, communication, water or other utility service supplied to the described premises, however caused, if the failure:

- (1) Originates away from the described premises; or
- (2) Originates at the described premises, but only if such failure involves equipment used to supply the utility service to the described premises from a source away from the described premises.

Failure of any utility service includes lack of sufficient capacity and reduction in supply.

Loss or damage caused by a surge of power is also excluded, if the surge would not have occurred but for an event causing a failure of power.

But if the failure or surge of power, or the failure of communication, water or other utility service, results in a Covered Cause of Loss, we will pay for the loss or damage caused by that Covered Cause of Loss.

Communication services include but are not limited to service relating to Internet access or access to any electronic, cellular or satellite network.

f. War And Military Action

- (1) War, including undeclared or civil war;
- (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- (3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

g. Water

- (1) Flood, surface water, waves, tides, tidal waves, overflow of any body of water, or their spray, all whether driven by wind or not;
- (2) Mudslide or mudflow;
- (3) Water that backs up or overflows from a sewer, drain or sump; or
- (4) Water under the ground surface pressing on, or flowing or seeping through:
 - (a) Foundations, walls, floors or paved surfaces;
 - (b) Basements, whether paved or not; or
 - (c) Doors, windows or other openings.

But if Water, as described in **g.(1)** through **g.(4)** above, results in fire, explosion or sprinkler leakage, we will pay for the loss or damage caused by that fire, explosion or sprinkler leakage.

h. "Fungus", Wet Rot, Dry Rot And Bacteria

Presence, growth, proliferation, spread or any activity of "fungus", wet or dry rot or bacteria.

But if "fungus", wet or dry rot or bacteria results in a "specified cause of loss", we will pay for the loss or damage caused by that "specified cause of loss".

This exclusion does not apply:

- 1. When "fungus", wet or dry rot or bacteria results from fire or lightning; or
- 2. To the extent that coverage is provided in the Additional Coverage – Limited Coverage For "Fungus", Wet Rot, Dry Rot And Bacteria with respect to loss or damage by a cause of loss other than fire or lightning.

Exclusions **B.1.a.** through **B.1.h.** apply whether or not the loss event results in widespread damage or affects a substantial area.

- 2. We will not pay for loss or damage caused by or resulting from any of the following:
 - a. Artificially generated electrical, magnetic or electromagnetic energy that damages, disturbs, disrupts or otherwise interferes with any:
 - (1) Electrical or electronic wire, device, appliance, system or network; or
 - (2) Device, appliance, system or network utilizing cellular or satellite technology.

For the purpose of this exclusion, electrical, magnetic or electromagnetic energy includes but is not limited to:

- (a) Electrical current, including arcing;
- (b) Electrical charge produced or conducted by a magnetic or electromagnetic field;
- (c) Pulse of electromagnetic energy; or
- (d) Electromagnetic waves or micro-waves.

But if fire results, we will pay for the loss or damage caused by that fire.

- b. Delay, loss of use or loss of market.
- c. Smoke, vapor or gas from agricultural smudging or industrial operations.
- d. (1) Wear and tear;
- (2) Rust or other corrosion, decay, deterioration, hidden or latent defect or any quality in property that causes it to damage or destroy itself;
- (3) Smog;
- (4) Settling, cracking, shrinking or expansion;
- (5) Nesting or infestation, or discharge or release of waste products or secretions, by insects, birds, rodents or other animals.
- (6) Mechanical breakdown, including rupture or bursting caused by centrifugal force. But if mechanical breakdown results in elevator collision, we will pay for the loss or damage caused by that elevator collision.
- (7) The following causes of loss to personal property:
 - (a) Dampness or dryness of atmosphere;
 - (b) Changes in or extremes of temperature; or
 - (c) Marring or scratching.

But if an excluded cause of loss that is listed in **2.d.(1)** through **(7)** results in a "specified cause of loss" or building glass breakage, we will pay for the loss or damage caused by that "specified cause of loss" or building glass breakage.

- e. Explosion of steam boilers, steam pipes, steam engines or steam turbines owned or leased by you, or operated under your control. But if explosion of steam boilers, steam pipes, steam engines or steam turbines results in fire or combustion explosion, we will pay for the loss or damage caused by that fire or combustion explosion. We will also pay for loss or damage caused by or resulting from the explosion of gases or fuel within the furnace of any fired vessel or within the flues or passages through which the gases of combustion pass.
- f. Continuous or repeated seepage or leakage of water, or the presence or condensation of humidity, moisture or vapor, that occurs over a period of 14 days or more.
- g. Water, other liquids, powder or molten material that leaks or flows from plumbing, heating, air conditioning or other equipment (except fire protective systems) caused by or resulting from freezing, unless:
 - (1) You do your best to maintain heat in the building or structure; or
 - (2) You drain the equipment and shut off the supply if the heat is not maintained.
- h. Dishonest or criminal act by you, any of your partners, members, officers, managers, employees (including leased employees), directors, trustees, authorized representatives or anyone to whom you entrust the property for any purpose:
 - (1) Acting alone or in collusion with others; or
 - (2) Whether or not occurring during the hours of employment.

This exclusion does not apply to acts of destruction by your employees (including leased employees); but theft by employees (including leased employees) is not covered.
- i. Voluntary parting with any property by you or anyone else to whom you have entrusted the property if induced to do so by any fraudulent scheme, trick, device or false pretense.
- j. Rain, snow, ice or sleet to personal property in the open.

k. Collapse, including any of the following conditions of property or any part of the property:

- (1) An abrupt falling down or caving in;
- (2) Loss of structural integrity, including separation of parts of the property or property in danger of falling down or caving in; or
- (3) Any cracking, bulging, sagging, bending, leaning, settling, shrinkage or expansion as such condition relates to (1) or (2) above.

But if collapse results in a Covered Cause of Loss at the described premises, we will pay for the loss or damage caused by that Covered Cause of Loss.

This exclusion, **k.**, does not apply:

- (a) To the extent that coverage is provided under the Additional Coverage – Collapse; or
- (b) To collapse caused by one or more of the following:
 - (i) The "specified causes of loss";
 - (ii) Breakage of building glass;
 - (iii) Weight of rain that collects on a roof; or
 - (iv) Weight of people or personal property.

l. Discharge, dispersal, seepage, migration, release or escape of "pollutants" unless the discharge, dispersal, seepage, migration, release or escape is itself caused by any of the "specified causes of loss". But if the discharge, dispersal, seepage, migration, release or escape of "pollutants" results in a "specified cause of loss", we will pay for the loss or damage caused by that "specified cause of loss".

This exclusion, **l.**, does not apply to damage to glass caused by chemicals applied to the glass.

m. Neglect of an insured to use all reasonable means to save and preserve property from further damage at and after the time of loss.

3. We will not pay for loss or damage caused by or resulting from any of the following, **3.a.** through **3.c.** But if an excluded cause of loss that is listed in **3.a.** through **3.c.** results in a Covered Cause of Loss, we will pay for the loss or damage caused by that Covered Cause of Loss.

a. Weather conditions. But this exclusion only applies if weather conditions contribute in any way with a cause or event excluded in Paragraph **1.** above to produce the loss or damage.

b. Acts or decisions, including the failure to act or decide, of any person, group, organization or governmental body.

c. Faulty, inadequate or defective:

- (1) Planning, zoning, development, surveying, siting;
- (2) Design, specifications, workmanship, repair, construction, renovation, remodeling, grading, compaction;
- (3) Materials used in repair, construction, renovation or remodeling; or
- (4) Maintenance;

of part or all of any property on or off the described premises.

4. Special Exclusions

The following provisions apply only to the specified Coverage Forms.

a. Business Income (And Extra Expense) Coverage Form, Business Income (Without Extra Expense) Coverage Form, Or Extra Expense Coverage Form

We will not pay for:

- (1) Any loss caused by or resulting from:
 - (a) Damage or destruction of "finished stock"; or
 - (b) The time required to reproduce "finished stock".

This exclusion does not apply to Extra Expense.

(2) Any loss caused by or resulting from direct physical loss or damage to radio or television antennas (including satellite dishes) and their lead-in wiring, masts or towers.

(3) Any increase of loss caused by or resulting from:

- (a) Delay in rebuilding, repairing or replacing the property or resuming "operations", due to interference at the location of the rebuilding, repair or replacement by strikers or other persons; or

(b) Suspension, lapse or cancellation of any license, lease or contract. But if the suspension, lapse or cancellation is directly caused by the "suspension" of "operations", we will cover such loss that affects your Business Income during the "period of restoration" and any extension of the "period of restoration" in accordance with the terms of the Extended Business Income Additional Coverage and the Extended Period Of Indemnity Optional Coverage or any variation of these.

(4) Any Extra Expense caused by or resulting from suspension, lapse or cancellation of any license, lease or contract beyond the "period of restoration".

(5) Any other consequential loss.

b. Leasehold Interest Coverage Form

(1) Paragraph **B.1.a.**, Ordinance Or Law, does not apply to insurance under this Coverage Form.

(2) We will not pay for any loss caused by:

- (a) Your cancelling the lease;
- (b) The suspension, lapse or cancellation of any license; or
- (c) Any other consequential loss.

c. Legal Liability Coverage Form

(1) The following exclusions do not apply to insurance under this Coverage Form:

- (a) Paragraph **B.1.a.**, Ordinance Or Law;
- (b) Paragraph **B.1.c.**, Governmental Action;
- (c) Paragraph **B.1.d.**, Nuclear Hazard;
- (d) Paragraph **B.1.e.**, Utility Services; and
- (e) Paragraph **B.1.f.**, War And Military Action.

(2) The following additional exclusions apply to insurance under this Coverage Form:

(a) Contractual Liability

We will not defend any claim or "suit", or pay damages that you are legally liable to pay, solely by reason of your assumption of liability in a contract or agreement. But this exclusion does not apply to a written lease agreement in which you have assumed liability for building damage resulting from an actual or attempted burglary or robbery, provided that:

- (i) Your assumption of liability was executed prior to the accident; and
- (ii) The building is Covered Property under this Coverage Form.

(b) Nuclear Hazard

We will not defend any claim or "suit", or pay any damages, loss, expense or obligation, resulting from nuclear reaction or radiation, or radioactive contamination, however caused.

5. Additional Exclusion

The following provisions apply only to the specified property.

LOSS OR DAMAGE TO PRODUCTS

We will not pay for loss or damage to any merchandise, goods or other product caused by or resulting from error or omission by any person or entity (including those having possession under an arrangement where work or a portion of the work is outsourced) in any stage of the development, production or use of the product, including planning, testing, processing, packaging, installation, maintenance or repair. This exclusion applies to any effect that compromises the form, substance or quality of the product. But if such error or omission results in a Covered Cause of Loss, we will pay for the loss or damage caused by that Covered Cause of Loss.

C. Limitations

The following limitations apply to all policy forms and endorsements, unless otherwise stated.

1. We will not pay for loss of or damage to property, as described and limited in this section. In addition, we will not pay for any loss that is a consequence of loss or damage as described and limited in this section.
 - a. Steam boilers, steam pipes, steam engines or steam turbines caused by or resulting from any condition or event inside such equipment. But we will pay for loss of or damage to such equipment caused by or resulting from an explosion of gases or fuel within the furnace of any fired vessel or within the flues or passages through which the gases of combustion pass.
 - b. Hot water boilers or other water heating equipment caused by or resulting from any condition or event inside such boilers or equipment, other than an explosion.
 - c. The interior of any building or structure, or to personal property in the building or structure, caused by or resulting from rain, snow, sleet, ice, sand or dust, whether driven by wind or not, unless:
 - (1) The building or structure first sustains damage by a Covered Cause of Loss to its roof or walls through which the rain, snow, sleet, ice, sand or dust enters; or
 - (2) The loss or damage is caused by or results from thawing of snow, sleet or ice on the building or structure.
 - d. Building materials and supplies not attached as part of the building or structure, caused by or resulting from theft.

However, this limitation does not apply to:

 - (1) Building materials and supplies held for sale by you, unless they are insured under the Builders Risk Coverage Form; or
 - (2) Business Income Coverage or Extra Expense Coverage.
 - e. Property that is missing, where the only evidence of the loss or damage is a shortage disclosed on taking inventory, or other instances where there is no physical evidence to show what happened to the property.
 - f. Property that has been transferred to a person or to a place outside the described premises on the basis of unauthorized instructions.
2. We will not pay for loss of or damage to the following types of property unless caused by the "specified causes of loss" or building glass breakage:
 - a. Animals, and then only if they are killed or their destruction is made necessary.
 - b. Fragile articles such as statuary, marbles, chinaware and porcelains, if broken. This restriction does not apply to:
 - (1) Glass; or
 - (2) Containers of property held for sale.
 - c. Builders' machinery, tools and equipment owned by you or entrusted to you, provided such property is Covered Property.

However, this limitation does not apply:

 - (1) If the property is located on or within 100 feet of the described premises, unless the premises is insured under the Builders Risk Coverage Form; or
 - (2) To Business Income Coverage or to Extra Expense Coverage.
3. The special limit shown for each category, **a.** through **d.**, is the total limit for loss of or damage to all property in that category. The special limit applies to any one occurrence of theft, regardless of the types or number of articles that are lost or damaged in that occurrence. The special limits are:
 - a. \$2,500 for furs, fur garments and garments trimmed with fur.
 - b. \$2,500 for jewelry, watches, watch movements, jewels, pearls, precious and semi-precious stones, bullion, gold, silver, platinum and other precious alloys or metals. This limit does not apply to jewelry and watches worth \$100 or less per item.
 - c. \$2,500 for patterns, dies, molds and forms.
 - d. \$250 for stamps, tickets, including lottery tickets held for sale, and letters of credit.

These special limits are part of, not in addition to, the Limit of Insurance applicable to the Covered Property.

This limitation, **C.3.**, does not apply to Business Income Coverage or to Extra Expense Coverage.

4. We will not pay the cost to repair any defect to a system or appliance from which water, other liquid, powder or molten material escapes. But we will pay the cost to repair or replace damaged parts of fire-extinguishing equipment if the damage:

- a. Results in discharge of any substance from an automatic fire protection system; or
- b. Is directly caused by freezing.

However, this limitation does not apply to Business Income Coverage or to Extra Expense Coverage.

D. Additional Coverage – Collapse

The coverage provided under this Additional Coverage – Collapse applies only to an abrupt collapse as described and limited in **D.1.** through **D.7.**

1. For the purpose of this Additional Coverage – Collapse, abrupt collapse means an abrupt falling down or caving in of a building or any part of a building with the result that the building or part of the building cannot be occupied for its intended purpose.

2. We will pay for direct physical loss or damage to Covered Property, caused by abrupt collapse of a building or any part of a building that is insured under this Coverage Form or that contains Covered Property insured under this Coverage Form, if such collapse is caused by one or more of the following:

- a. Building decay that is hidden from view, unless the presence of such decay is known to an insured prior to collapse;
- b. Insect or vermin damage that is hidden from view, unless the presence of such damage is known to an insured prior to collapse;
- c. Use of defective material or methods in construction, remodeling or renovation if the abrupt collapse occurs during the course of the construction, remodeling or renovation.
- d. Use of defective material or methods in construction, remodeling or renovation if the abrupt collapse occurs after the construction, remodeling or renovation is complete, but only if the collapse is caused in part by:
 - (1) A cause of loss listed in **2.a.** or **2.b.**;
 - (2) One or more of the "specified causes of loss";
 - (3) Breakage of building glass;
 - (4) Weight of people or personal property; or
 - (5) Weight of rain that collects on a roof.

3. This **Additional Coverage – Collapse** does **not** apply to:

- a. A building or any part of a building that is in danger of falling down or caving in;
- b. A part of a building that is standing, even if it has separated from another part of the building; or
- c. A building that is standing or any part of a building that is standing, even if it shows evidence of cracking, bulging, sagging, bending, leaning, settling, shrinkage or expansion.

4. With respect to the following property:

- a. Outdoor radio or television antennas (including satellite dishes) and their lead-in wiring, masts or towers;
- b. Awnings, gutters and downspouts;
- c. Yard fixtures;
- d. Outdoor swimming pools;
- e. Fences;
- f. Piers, wharves and docks;
- g. Beach or diving platforms or appurtenances;
- h. Retaining walls; and
- i. Walks, roadways and other paved surfaces;

if an abrupt collapse is caused by a cause of loss listed in **2.a.** through **2.d.**, we will pay for loss or damage to that property only if:

- (1) Such loss or damage is a direct result of the abrupt collapse of a building insured under this Coverage Form; and
- (2) The property is Covered Property under this Coverage Form.

5. If personal property abruptly falls down or caves in and such collapse is **not** the result of abrupt collapse of a building, we will pay for loss or damage to Covered Property caused by such collapse of personal property only if:

- a. The collapse of personal property was caused by a cause of loss listed in **2.a.** through **2.d.**;
- b. The personal property which collapses is inside a building; and
- c. The property which collapses is not of a kind listed in **4.**, regardless of whether that kind of property is considered to be personal property or real property.

The coverage stated in this Paragraph **5.** does not apply to personal property if marring and/or scratching is the only damage to that personal property caused by the collapse.

6. This Additional Coverage – Collapse does not apply to personal property that has not abruptly fallen down or caved in, even if the personal property shows evidence of cracking, bulging, sagging, bending, leaning, settling, shrinkage or expansion.
7. This Additional Coverage – Collapse will not increase the Limits of Insurance provided in this Coverage Part.
8. The term Covered Cause of Loss includes the Additional Coverage – Collapse as described and limited in **D.1.** through **D.7.**

E. Additional Coverage – Limited Coverage For "Fungus", Wet Rot, Dry Rot And Bacteria

1. The coverage described in **E.2.** and **E.6.** only applies when the "fungus", wet or dry rot or bacteria is the result of one or more of the following causes that occurs during the policy period and only if all reasonable means were used to save and preserve the property from further damage at the time of and after that occurrence.
 - a. A "specified cause of loss" other than fire or lightning; or
 - b. Flood, if the Flood Coverage Endorsement applies to the affected premises.
2. We will pay for loss or damage by "fungus", wet or dry rot or bacteria. As used in this Limited Coverage, the term loss or damage means:
 - a. Direct physical loss or damage to Covered Property caused by "fungus", wet or dry rot or bacteria, including the cost of removal of the "fungus", wet or dry rot or bacteria;
 - b. The cost to tear out and replace any part of the building or other property as needed to gain access to the "fungus", wet or dry rot or bacteria; and
 - c. The cost of testing performed after removal, repair, replacement or restoration of the damaged property is completed, provided there is a reason to believe that "fungus", wet or dry rot or bacteria are present.

3. The coverage described under **E.2.** of this Limited Coverage is limited to \$15,000. Regardless of the number of claims, this limit is the most we will pay for the total of all loss or damage arising out of all occurrences of "specified causes of loss" (other than fire or lightning) and Flood which take place in a 12-month period (starting with the beginning of the present annual policy period). With respect to a particular occurrence of loss which results in "fungus", wet or dry rot or bacteria, we will not pay more than a total of \$15,000 even if the "fungus", wet or dry rot or bacteria continues to be present or active, or recurs, in a later policy period.

4. The coverage provided under this Limited Coverage does not increase the applicable Limit of Insurance on any Covered Property. If a particular occurrence results in loss or damage by "fungus", wet or dry rot or bacteria, and other loss or damage, we will not pay more, for the total of all loss or damage, than the applicable Limit of Insurance on the affected Covered Property.

If there is covered loss or damage to Covered Property, not caused by "fungus", wet or dry rot or bacteria, loss payment will not be limited by the terms of this Limited Coverage, except to the extent that "fungus", wet or dry rot or bacteria causes an increase in the loss. Any such increase in the loss will be subject to the terms of this Limited Coverage.

5. The terms of this Limited Coverage do not increase or reduce the coverage provided under Paragraph **F.2.** (Water Damage, Other Liquids, Powder Or Molten Material Damage) of this Causes Of Loss Form or under the Additional Coverage – Collapse.
6. The following, **6.a.** or **6.b.**, applies only if Business Income and/or Extra Expense Coverage applies to the described premises and only if the "suspension" of "operations" satisfies all terms and conditions of the applicable Business Income and/or Extra Expense Coverage Form.

- a. If the loss which resulted in "fungus", wet or dry rot or bacteria does not in itself necessitate a "suspension" of "operations", but such "suspension" is necessary due to loss or damage to property caused by "fungus", wet or dry rot or bacteria, then our payment under Business Income and/or Extra Expense is limited to the amount of loss and/or expense sustained in a period of not more than 30 days. The days need not be consecutive.
- b. If a covered "suspension" of "operations" was caused by loss or damage other than "fungus", wet or dry rot or bacteria but remediation of "fungus", wet or dry rot or bacteria prolongs the "period of restoration", we will pay for loss and/or expense sustained during the delay (regardless of when such a delay occurs during the "period of restoration"), but such coverage is limited to 30 days. The days need not be consecutive.

F. Additional Coverage Extensions

1. Property In Transit

This Extension applies only to your personal property to which this form applies.

- a. You may extend the insurance provided by this Coverage Part to apply to your personal property (other than property in the care, custody or control of your salespersons) in transit more than 100 feet from the described premises. Property must be in or on a motor vehicle you own, lease or operate while between points in the coverage territory.
- b. Loss or damage must be caused by or result from one of the following causes of loss:
 - (1) Fire, lightning, explosion, windstorm or hail, riot or civil commotion, or vandalism.
 - (2) Vehicle collision, upset or overturn. Collision means accidental contact of your vehicle with another vehicle or object. It does not mean your vehicle's contact with the roadbed.
 - (3) Theft of an entire bale, case or package by forced entry into a securely locked body or compartment of the vehicle. There must be visible marks of the forced entry.
- c. The most we will pay for loss or damage under this Extension is \$5,000.

This Coverage Extension is additional insurance. The Additional Condition, Coinsurance, does not apply to this Extension.

2. Water Damage, Other Liquids, Powder Or Molten Material Damage

If loss or damage caused by or resulting from covered water or other liquid, powder or molten material damage loss occurs, we will also pay the cost to tear out and replace any part of the building or structure to repair damage to the system or appliance from which the water or other substance escapes. This Coverage Extension does not increase the Limit of Insurance.

3. Glass

- a. We will pay for expenses incurred to put up temporary plates or board up openings if repair or replacement of damaged glass is delayed.
- b. We will pay for expenses incurred to remove or replace obstructions when repairing or replacing glass that is part of a building. This does not include removing or replacing window displays.

This Coverage Extension, **F.3.**, does not increase the Limit of Insurance.

G. Definitions

- 1. "Fungus" means any type or form of fungus, including mold or mildew, and any mycotoxins, spores, scents or by-products produced or released by fungi.
- 2. "Specified causes of loss" means the following: fire; lightning; explosion; windstorm or hail; smoke; aircraft or vehicles; riot or civil commotion; vandalism; leakage from fire-extinguishing equipment; sinkhole collapse; volcanic action; falling objects; weight of snow, ice or sleet; water damage.
 - a. Sinkhole collapse means the sudden sinking or collapse of land into underground empty spaces created by the action of water on limestone or dolomite. This cause of loss does not include:
 - (1) The cost of filling sinkholes; or
 - (2) Sinking or collapse of land into man-made underground cavities.

- b. Falling objects does not include loss or damage to:
 - (1) Personal property in the open; or
 - (2) The interior of a building or structure, or property inside a building or structure, unless the roof or an outside wall of the building or structure is first damaged by a falling object.
- c. Water damage means accidental discharge or leakage of water or steam as the direct result of the breaking apart or cracking of a plumbing, heating, air conditioning or other system or appliance (other than a sump system including its related equipment and parts), that is located on the described premises and contains water or steam.

POLICY NUMBER: RSK003959

COMMERCIAL PROPERTY
CP 10 33 10 12

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

THEFT EXCLUSION

This endorsement modifies insurance provided under the following:

CAUSES OF LOSS – SPECIAL FORM

SCHEDULE

Premises Number	Building Number
1	1

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

With respect to the location(s) indicated in the Schedule, the following is added to the **Exclusions** section:

We will not pay for loss or damage caused by or resulting from theft.

But we will pay for:

1. Loss or damage that occurs due to looting at the time and place of a riot or civil commotion;
or

2. Building damage caused by the breaking in or exiting of burglars.

And if theft results in a Covered Cause of Loss, we will pay for the loss or damage caused by that Covered Cause of Loss.

POLICY NUMBER: RSK003959

COMMERCIAL PROPERTY
CP 10 54 06 95

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

WINDSTORM OR HAIL EXCLUSION

This endorsement modifies insurance provided under the following:

CAUSES OF LOSS – BASIC FORM
CAUSES OF LOSS – BROAD FORM
CAUSES OF LOSS – SPECIAL FORM
STANDARD PROPERTY POLICY

A. The following is added to the EXCLUSIONS section and is therefore **not** a Covered Cause of Loss:

WINDSTORM OR HAIL

We will not pay for loss or damage:

1. Caused directly or indirectly by Windstorm or Hail, regardless of any other cause or event that contributes concurrently or in any sequence to the loss or damage; or
2. Caused by rain, snow, sand or dust, whether driven by wind or not, if that loss or damage would not have occurred but for the Windstorm or Hail.

But if Windstorm or Hail results in a cause of loss other than rain, snow, sand or dust, and that resulting cause of loss is a Covered Cause of Loss, we will pay for the loss or damage caused by such Covered Cause of Loss. For example, if the Windstorm or Hail damages a heating system and fire results, the loss or damage attributable to the fire is covered subject to any other applicable policy provisions.

B. Under ADDITIONAL COVERAGE – COLLAPSE, in the Causes of Loss – Broad Form, Windstorm or Hail is deleted from paragraph **a.(1)**.

C. In the Causes of Loss – Special Form, Windstorm or Hail is deleted from the "specified causes of loss".

D. Under ADDITIONAL COVERAGE EXTENSIONS – PROPERTY IN TRANSIT, in the Causes of Loss – Special Form, Windstorm or Hail is deleted from paragraph **b.(1)**.

COMMON POLICY CONDITIONS

All Coverage Parts included in this policy are subject to the following conditions.

A. Cancellation

1. The first Named Insured shown in the Declarations may cancel this policy by mailing or delivering to us advance written notice of cancellation.
2. We may cancel this policy by mailing or delivering to the first Named Insured written notice of cancellation at least:
 - a. 10 days before the effective date of cancellation if we cancel for nonpayment of premium; or
 - b. 30 days before the effective date of cancellation if we cancel for any other reason.
3. We will mail or deliver our notice to the first Named Insured's last mailing address known to us.
4. Notice of cancellation will state the effective date of cancellation. The policy period will end on that date.
5. If this policy is cancelled, we will send the first Named Insured any premium refund due. If we cancel, the refund will be pro rata. If the first Named Insured cancels, the refund may be less than pro rata. The cancellation will be effective even if we have not made or offered a refund.
6. If notice is mailed, proof of mailing will be sufficient proof of notice.

B. Changes

This policy contains all the agreements between you and us concerning the insurance afforded. The first Named Insured shown in the Declarations is authorized to make changes in the terms of this policy with our consent. This policy's terms can be amended or waived only by endorsement issued by us and made a part of this policy.

C. Examination Of Your Books And Records

We may examine and audit your books and records as they relate to this policy at any time during the policy period and up to three years afterward.

D. Inspections And Surveys

1. We have the right to:
 - a. Make inspections and surveys at any time;

- b. Give you reports on the conditions we find; and
- c. Recommend changes.

2. We are not obligated to make any inspections, surveys, reports or recommendations and any such actions we do undertake relate only to insurability and the premiums to be charged. We do not make safety inspections. We do not undertake to perform the duty of any person or organization to provide for the health or safety of workers or the public. And we do not warrant that conditions:
 - a. Are safe or healthful; or
 - b. Comply with laws, regulations, codes or standards.

3. Paragraphs 1. and 2. of this condition apply not only to us, but also to any rating, advisory, rate service or similar organization which makes insurance inspections, surveys, reports or recommendations.

4. Paragraph 2. of this condition does not apply to any inspections, surveys, reports or recommendations we may make relative to certification, under state or municipal statutes, ordinances or regulations, of boilers, pressure vessels or elevators.

E. Premiums

The first Named Insured shown in the Declarations:

1. Is responsible for the payment of all premiums; and
2. Will be the payee for any return premiums we pay.

F. Transfer Of Your Rights And Duties Under This Policy

Your rights and duties under this policy may not be transferred without our written consent except in the case of death of an individual named insured.

If you die, your rights and duties will be transferred to your legal representative but only while acting within the scope of duties as your legal representative. Until your legal representative is appointed, anyone having proper temporary custody of your property will have your rights and duties but only with respect to that property.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

FLORIDA CHANGES – CANCELLATION AND NONRENEWAL

This endorsement modifies insurance provided under the following:

CAPITAL ASSETS PROGRAM (OUTPUT POLICY) COVERAGE PART
COMMERCIAL INLAND MARINE COVERAGE PART
COMMERCIAL PROPERTY COVERAGE PART
CRIME AND FIDELITY COVERAGE PART
EQUIPMENT BREAKDOWN COVERAGE PART
FARM COVERAGE PART
STANDARD PROPERTY POLICY

A. Paragraph **2.** of the **Cancellation** Common Policy Condition is replaced by the following:

2. Cancellation For Policies In Effect 90 Days Or Less

a. If this policy has been in effect for 90 days or less, we may cancel this policy by mailing or delivering to the first Named Insured written notice of cancellation, accompanied by the specific reasons for cancellation, at least:

(1) 10 days before the effective date of cancellation if we cancel for nonpayment of premium; or

(2) 20 days before the effective date of cancellation if we cancel for any other reason, except we may cancel immediately if there has been:

(a) A material misstatement or misrepresentation; or

(b) A failure to comply with underwriting requirements established by the insurer.

b. We may not cancel:

(1) On the basis of property insurance claims that are the result of an act of God, unless we can demonstrate, by claims frequency or otherwise, that you have failed to take action reasonably necessary as requested by us to prevent recurrence of damage to the insured property; or

(2) Solely on the basis of a single property insurance claim which is the result of water damage, unless we can demonstrate that you have failed to take action reasonably requested by us to prevent a future similar occurrence of damage to the insured property.

B. Paragraph **5.** of the **Cancellation** Common Policy Condition is replaced by the following:

5. If this policy is cancelled, we will send the first Named Insured any premium refund due. If we cancel, the refund will be pro rata. If the first Named Insured cancels, the refund may be less than pro rata. If the return premium is not refunded with the notice of cancellation or when this policy is returned to us, we will mail the refund within 15 working days after the date cancellation takes effect, unless this is an audit policy.

If this is an audit policy, then, subject to your full cooperation with us or our agent in securing the necessary data for audit, we will return any premium refund due within 90 days of the date cancellation takes effect. If our audit is not completed within this time limitation, then we shall accept your own audit, and any premium refund due shall be mailed within 10 working days of receipt of your audit.

The cancellation will be effective even if we have not made or offered a refund.

C. The following is added to the **Cancellation** Common Policy Condition:

7. Cancellation For Policies In Effect For More Than 90 Days

a. If this policy has been in effect for more than 90 days, we may cancel this policy only for one or more of the following reasons:

- (1) Nonpayment of premium;
- (2) The policy was obtained by a material misstatement;
- (3) In the event of failure to comply, within 90 days after the effective date of coverage, with underwriting requirements established by us before the effective date of coverage;
- (4) There has been a substantial change in the risk covered by the policy;
- (5) The cancellation is for all insureds under such policies for a given class of insureds;
- (6) On the basis of property insurance claims that are the result of an act of God, if we can demonstrate, by claims frequency or otherwise, that you have failed to take action reasonably necessary as requested by us to prevent recurrence of damage to the insured property;
- (7) On the basis of a single property insurance claim which is the result of water damage, if we can demonstrate that you have failed to take action reasonably requested by us to prevent a future similar occurrence of damage to the insured property; or
- (8) The cancellation of some or all of our policies is necessary to protect the best interests of the public or policyholders and such cancellation is approved by the Florida Office of Insurance Regulation.

b. If we cancel this policy for any of these reasons, we will mail or deliver to the first Named Insured written notice of cancellation, accompanied by the specific reasons for cancellation, at least:

- (1) 10 days before the effective date of cancellation if cancellation is for nonpayment of premium;

(2) 45 days before the effective date of cancellation if:

(a) Cancellation is for one or more of the reasons stated in Paragraphs **7.a.(2)** through **7.a.(7)** above, and this policy does not cover a residential structure or its contents; or

(b) Cancellation is based on the reason stated in Paragraph **7.a.(8)** above;

(3) 120 days before the effective date of cancellation if:

(a) Cancellation is for one or more of the reasons stated in Paragraphs **7.a.(2)** through **7.a.(7)** above; and

(b) This policy covers a residential structure or its contents.

c. If this policy has been in effect for more than 90 days and covers a residential structure or its contents, we may not cancel this policy based on credit information available in public records.

D. The following is added:

Nonrenewal

1. If we decide not to renew this policy, we will mail or deliver to the first Named Insured written notice of nonrenewal, accompanied by the specific reason for nonrenewal, at least:

a. 45 days prior to the expiration of the policy if this policy does not cover a residential structure or its contents, or if nonrenewal is for the reason stated in Paragraph **D.5.**; or

b. 120 days prior to the expiration of the policy if this policy covers a residential structure or its contents.

2. Any notice of nonrenewal will be mailed or delivered to the first Named Insured at the last mailing address known to us. If notice is mailed, proof of mailing will be sufficient proof of notice.

3. We may not refuse to renew this policy:

a. On the basis of property insurance claims that are the result of an act of God, unless we can demonstrate, by claims frequency or otherwise, that you have failed to take action reasonably necessary as requested by us to prevent recurrence of damage to the insured property;

b. On the basis of filing of claims for sinkhole loss. However, we may refuse to renew this policy if:

- (1) The total of such property insurance claim payments for this policy equals or exceeds the policy limits in effect on the date of loss for property damage to the covered building; or
- (2) You have failed to repair the structure in accordance with the engineering recommendations upon which any loss payment or policy proceeds were based; or

c. Solely on the basis of a single property insurance claim which is the result of water damage, unless we can demonstrate that you have failed to take action reasonably requested by us to prevent a future similar occurrence of damage to the insured property.

4. Notwithstanding the provisions of Paragraph **D.3.**, we may refuse to renew this policy if this policy includes Sinkhole Loss coverage. If we nonrenew this policy for purposes of removing Sinkhole Loss coverage, pursuant to section 627.706, Florida Statutes, we will offer you a policy that includes catastrophic ground cover collapse coverage.

5. Notwithstanding the provisions of Paragraph **D.3.**, we may refuse to renew this policy if nonrenewal of some or all of our policies is necessary to protect the best interests of the public or policyholders and such nonrenewal is approved by the Florida Office of Insurance Regulation.

E. Limitations On Cancellation And Nonrenewal In The Event Of Hurricane Or Wind Loss – Residential Property

1. The following provisions apply to a policy covering a residential structure or its contents, if such property has sustained damage as a result of a hurricane or windstorm that is the subject of a declaration of emergency by the Governor and filing of an order by the Commissioner of Insurance Regulation:

a. Except as provided in Paragraph **E.1.b.**, we may not cancel or nonrenew the policy until at least 90 days after repairs to the residential structure or its contents have been substantially completed so that it is restored to the extent that it is insurable by another insurer writing policies in Florida. If we elect to not renew the policy, we will provide at least 100 days' notice that we intend to nonrenew 90 days after the substantial completion of repairs.

b. We may cancel or nonrenew the policy prior to restoration of the structure or its contents for any of the following reasons:

- (1) Nonpayment of premium;
- (2) Material misstatement or fraud related to the claim;
- (3) We determine that you have unreasonably caused a delay in the repair of the structure; or
- (4) We have paid the policy limits.

If we cancel or nonrenew for nonpayment of premium, we will give you 10 days' notice. If we cancel or nonrenew for a reason listed in Paragraph **b.(2)**, **b.(3)** or **b.(4)**, we will give you 45 days' notice.

2. With respect to a policy covering a residential structure or its contents, any cancellation or nonrenewal that would otherwise take effect during the duration of a hurricane will not take effect until the end of the duration of such hurricane, unless a replacement policy has been obtained and is in effect for a claim occurring during the duration of the hurricane. We may collect premium for the period of time for which the policy period is extended.

3. With respect to Paragraph **E.2.**, a hurricane is a storm system that has been declared to be a hurricane by the National Hurricane Center of the National Weather Service (hereafter referred to as NHC). The hurricane occurrence begins at the time a hurricane watch or hurricane warning is issued for any part of Florida by the NHC and ends 72 hours after the termination of the last hurricane watch or hurricane warning issued for any part of Florida by the NHC.

IL 09 35 07 02

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.
EXCLUSION OF CERTAIN COMPUTER-RELATED LOSSES**

This endorsement modifies insurance provided under the following:

COMMERCIAL INLAND MARINE COVERAGE PART
COMMERCIAL PROPERTY COVERAGE PART
CRIME AND FIDELITY COVERAGE PART
STANDARD PROPERTY POLICY

- A.** We will not pay for loss ("loss") or damage caused directly or indirectly by the following. Such loss ("loss") or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss ("loss") or damage.
- 1.** The failure, malfunction or inadequacy of:
 - a.** Any of the following, whether belonging to any insured or to others:
 - (1)** Computer hardware, including microprocessors;
 - (2)** Computer application software;
 - (3)** Computer operating systems and related software;
 - (4)** Computer networks;
 - (5)** Microprocessors (computer chips) not part of any computer system; or
 - (6)** Any other computerized or electronic equipment or components; or
 - b.** Any other products, and any services, data or functions that directly or indirectly use or rely upon, in any manner, any of the items listed in Paragraph **A.1.a.** of this endorsement;
due to the inability to correctly recognize, process, distinguish, interpret or accept one or more dates or times. An example is the inability of computer software to recognize the year 2000.
 - 2.** Any advice, consultation, design, evaluation, inspection, installation, maintenance, repair, replacement or supervision provided or done by you or for you to determine, rectify or test for, any potential or actual problems described in Paragraph **A.1.** of this endorsement.
- B.** If an excluded Cause of Loss as described in Paragraph **A.** of this endorsement results:
- 1.** In a Covered Cause of Loss under the Crime and Fidelity Coverage Part, the Commercial Inland Marine Coverage Part or the Standard Property Policy; or
 - 2.** Under the Commercial Property Coverage Part:
 - a.** In a "Specified Cause of Loss", or in elevator collision resulting from mechanical breakdown, under the Causes of Loss – Special Form; or
 - b.** In a Covered Cause of Loss under the Causes Of Loss – Basic Form or the Causes Of Loss – Broad Form;we will pay only for the loss ("loss") or damage caused by such "Specified Cause of Loss", elevator collision, or Covered Cause of Loss.
- C.** We will not pay for repair, replacement or modification of any items in Paragraphs **A.1.a.** and **A.1.b.** of this endorsement to correct any deficiencies or change any features.

Sanction Limitation and Exclusion Clause

No (re)insurer shall be deemed to provide cover and no (re)insurer shall be liable to pay any claim or provide any benefit hereunder to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose that (re)insurer to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union, United Kingdom or United States of America.

LMA3100
15 August 2010

MICROORGANISM EXCLUSION (ABSOLUTE)

This Policy does not insure any loss, damage, claim, cost, expense or other sum directly or indirectly arising out of or relating to:

mold, mildew, fungus, spores or other microorganism of any type, nature, or description, including but not limited to any substance whose presence poses an actual or potential threat to human health.

This Exclusion applies regardless whether there is (i) any physical loss or damage to insured property; (ii) any insured peril or cause, whether or not contributing concurrently or in any sequence; (iii) any loss of use, occupancy, or functionality; or (iv) any action required, including but not limited to repair, replacement, removal, cleanup, abatement, disposal, relocation, or steps taken to address medical or legal concerns.

This Exclusion replaces and supersedes any provision in the Policy that provides insurance, in whole or in part, for these matters.

14/09/2005

LMA5018

Form approved by Lloyd's Market Association

ASBESTOS ENDORSEMENT

- A. This Policy only insures asbestos physically incorporated in an insured building or structure, and then only that part of the asbestos which has been physically damaged during the period of insurance by one of these Listed Perils:

fire; explosion; lightning; windstorm; hail; direct impact of vehicle, aircraft or vessel; riot or civil commotion, vandalism or malicious mischief, or accidental discharge of fire protective equipment.

This coverage is subject to each of the following specific limitations:

1. The said building or structure must be insured under this Policy for damage by that Listed Peril.
2. The Listed Peril must be the immediate, sole cause of the damage of the asbestos.
3. The Assured must report to Underwriters the existence and cost of the damage as soon as practicable after the Listed Peril first damaged the asbestos. However, this Policy does not insure any such damage first reported to the Underwriters more than 12 (twelve) months after the expiration, or termination, of the period of insurance.
4. Insurance under this Policy in respect of asbestos shall not include any sum relating to:
 - (i) any faults in the design, manufacture or installation of the asbestos;
 - (ii) asbestos not physically damaged by the Listed Peril including any governmental or regulatory authority direction or request of whatsoever nature relating to undamaged asbestos.

- B. Except as set forth in the foregoing Section A, this Policy does not insure asbestos or any sum relating thereto.

14/09/2005

LMA5019

Form approved by Lloyd's Market Association

SERVICE OF SUIT CLAUSE (U.S.A.)

This Service of Suit Clause will not be read to conflict with or override the obligations of the parties to arbitrate their disputes as provided for in any Arbitration provision within this Policy. This Clause is intended as an aid to compelling arbitration or enforcing such arbitration or arbitral award, not as an alternative to such Arbitration provision for resolving disputes arising out of this contract of insurance (or reinsurance).

It is agreed that in the event of the failure of the Underwriters hereon to pay any amount claimed to be due hereunder, the Underwriters hereon, at the request of the Insured (or Reinsured), will submit to the jurisdiction of a Court of competent jurisdiction within the United States. Nothing in this Clause constitutes or should be understood to constitute a waiver of Underwriters' rights to commence an action in any Court of competent jurisdiction in the United States, to remove an action to a United States District Court, or to seek a transfer of a case to another Court as permitted by the laws of the United States or of any State in the United States.

It is further agreed that service of process in such suit may be made upon:

Mendes & Mount, 750 Seventh Avenue, New York, New York 10019-6829, U.S.A.

and that in any suit instituted against any one of them upon this contract, Underwriters will abide by the final decision of such Court or of any Appellate Court in the event of an appeal.

The above-named are authorized and directed to accept service of process on behalf of Underwriters in any such suit and/or upon the request of the Insured (or Reinsured) to give a written undertaking to the Insured (or Reinsured) that they will enter a general appearance upon Underwriters' behalf in the event such a suit shall be instituted.

Further, pursuant to any statute of any state, territory or district of the United States which makes provision therefore, Underwriters hereon hereby designate the Superintendent, Commissioner or Director of Insurance or other officer specified for that purpose in the statute, or his successor or successors in office, as their true and lawful attorney upon whom may be served any lawful process in any action, suit or proceeding instituted by or on behalf of the Insured (or Reinsured) or any beneficiary hereunder arising out of this contract of insurance (or reinsurance), and hereby designate the above-named as the person to whom the said officer is authorized to mail such process or a true copy thereof.

14/09/2005

LMA5020

Form approved by Lloyd's Market Association

APPLICABLE LAW (U.S.A.)

This Insurance shall be subject to the applicable state law to be determined by the court of competent jurisdiction as determined by the provisions of the Service of Suit Clause (U.S.A.)

14/09/2005

LMA5021

Form approved by Lloyd's Market Association

Fraudulent Claim Clause

If the (re)insured shall make any claim knowing the same to be false or fraudulent, as regards amount or otherwise, this contract shall become void and all claim hereunder shall be forfeited.

LMA5062

04/06/2006

Form approved by Lloyd's Market Association

**U.S. Terrorism Risk Insurance Act of 2002 as amended
Not Purchased Clause**

This Clause is issued in accordance with the terms and conditions of the "U.S. Terrorism Risk Insurance Act of 2002" as amended as summarized in the disclosure notice.

It is hereby noted that the Underwriters have made available coverage for "insured losses" directly resulting from an "act of terrorism" as defined in the "U.S. Terrorism Risk Insurance Act of 2002", as amended ("TRIA") and the Insured has declined or not confirmed to purchase this coverage.

This Insurance therefore affords no coverage for losses directly resulting from any "act of terrorism" as defined in TRIA except to the extent, if any, otherwise provided by this policy. All other terms, conditions, insured coverage and exclusions of this Insurance including applicable limits and deductibles remain unchanged and apply in full force and effect to the coverage provided by this Insurance.

LMA5092

21/12/2007

Form approved by Lloyd's Market Association

FLORIDA SURPLUS LINES NOTICE (GUARANTY ACT)

THIS INSURANCE IS ISSUED PURSUANT TO THE FLORIDA SURPLUS LINES LAW. PERSONS INSURED BY SURPLUS LINES CARRIERS DO NOT HAVE THE PROTECTION OF THE FLORIDA INSURANCE GUARANTY ACT TO THE EXTENT OF ANY RIGHT OF RECOVERY FOR THE OBLIGATION OF AN INSOLVENT UNLICENSED INSURER.

LMA9037
01 September 2013

FLORIDA SURPLUS LINES NOTICE (RATES AND FORMS)

SURPLUS LINES INSURERS' POLICY RATES AND FORMS ARE NOT APPROVED BY ANY FLORIDA REGULATORY AGENCY.

LMA9038
01 November 2013

**FLORIDA SURPLUS LINES NOTICE (PERSONAL LINES
RESIDENTIAL PROPERTY CO-PAY PROVISION)**

**THIS POLICY CONTAINS A CO-PAY PROVISION THAT MAY RESULT IN
HIGH OUT-OF-POCKET EXPENSES TO YOU.**

LMA9040
01 September 2013

SEVERAL LIABILITY NOTICE

The subscribing insurers' obligations under contracts of insurance to which they subscribe are several and not joint and are limited solely to the extent of their individual subscriptions. The subscribing insurers are not responsible for the subscription of any co-subscribing insurer who for any reason does not satisfy all or part of its obligations.

08/94
LSW1001 (Insurance)

LSW1135b
LLOYD'S PRIVACY POLICY STATEMENT

UNDERWRITERS AT LLOYD'S, LONDON

The Certain Underwriters at Lloyd's, London want you to know how we protect the confidentiality of your non-public personal information. We want you to know how and why we use and disclose the information that we have about you. The following describes our policies and practices for securing the privacy of our current and former customers.

INFORMATION WE COLLECT

The non-public personal information that we collect about you includes, but is not limited to:

- Information contained in applications or other forms that you submit to us, such as name, address, and social security number
- Information about your transactions with our affiliates or other third-parties, such as balances and payment history
- Information we receive from a consumer-reporting agency, such as credit-worthiness or credit history

INFORMATION WE DISCLOSE

We disclose the information that we have when it is necessary to provide our products and services. We may also disclose information when the law requires or permits us to do so.

CONFIDENTIALITY AND SECURITY

Only our employees and others who need the information to service your account have access to your personal information. We have measures in place to secure our paper files and computer systems.

RIGHT TO ACCESS OR CORRECT YOUR PERSONAL INFORMATION

You have a right to request access to or correction of your personal information that is in our possession.

CONTACTING US

If you have any questions about this privacy notice or would like to learn more about how we protect your privacy, please contact the agent or broker who handled this insurance. We can provide a more detailed statement of our privacy practices upon request

MINIMUM EARNED PREMIUM CLAUSE

In the event of cancellation of this Policy by the Assured, a minimum earned premium of 25% as of inception shall become earned; any conditions of the Policy to the contrary notwithstanding.

In the event of cancellation by the Underwriters for non-payment by the Assured, the minimum premium shall be due and payable; provided however, such non-payment cancellation shall be rescinded if the Assured remits the full premium within 10 days of receiving notice of it.

In the event of any other cancellation by the Underwriters, the earned premium shall be computed pro rata, not subject to the minimum premium.

AIF 2336 (01/98)
02/98
LSW699

U.S.A.

**RADIOACTIVE CONTAMINATION EXCLUSION CLAUSE-
PHYSICAL DAMAGE-DIRECT**

This policy does not cover any loss or damage arising directly or indirectly from nuclear reaction nuclear radiation or radioactive contamination however such nuclear reaction nuclear radiation or radioactive contamination may have been caused * NEVERTHELESS if Fire is an insured peril and a Fire arises directly or indirectly from nuclear reaction nuclear radiation or radioactive contamination any loss or damage arising directly from that Fire shall (subject to the provisions of this policy) be covered EXCLUDING however all loss or damage caused by nuclear reaction nuclear radiation or radioactive contamination arising directly or indirectly from that Fire.

*NOTE.-If Fire is not an insured peril under this policy the words "NEVERTHELESS" to the end of the clause do not apply and should be disregarded.

7/5/59

N.M.A. 1191

U.S.A.

NUCLEAR INCIDENT EXCLUSION CLAUSE-LIABILITY-DIRECT (BROAD)

(Approval by Lloyd's Underwriters' Non-Marine Association)

For attachment to insurances for the following classification in the U.S.A., its Territories and Possessions,

Puerto Rico and the Canal Zone:-

Owners, Landlords and Tenants Liability, Contractual Liability, Elevator Liability, Owners or Contractors (including railroad) Protective Liability, Manufacturers and Contractors Liability, Product Liability, Professional and Malpractice Liability, Storekeepers Liability, Garage Liability, Automobile Liability (including Massachusetts Motor Vehicle or Garage Liability),

not being insurances of the classifications to which the Nuclear Incident Exclusion Clause-Liability-Direct (Limited) applies.

This policy* does not apply:-

- I. Under any Liability Coverage, to injury, sickness, disease, death or destruction
 - (a) with respect to which an insured under the policy is also an insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters or Nuclear Insurance Association of Canada, or would be an insured under any such policy but for its termination upon exhaustion of its limit of liability; or
 - (b) resulting from the hazardous properties of nuclear material and with respect to which (1) any person or organisation is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or (2) the insured is, or had this policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organisation.
- II. Under any Medical Payments Coverage, or under any Supplementary Payments Provision relating to immediate medical or surgical relief, to expenses incurred with respect to bodily injury, sickness, disease or death resulting from the hazardous properties of nuclear material and arising out of the operation of a nuclear facility by any person or organisation.
- III. Under any Liability Coverage, to injury, sickness, disease, death or destruction resulting from the hazardous properties of nuclear material, if
 - (a) the nuclear material (1) is at any nuclear facility owned by, or operated by or on behalf of, an insured or (2) has been discharged or dispersed therefrom;
 - (b) the nuclear material is contained in spent fuel or waste at any time possessed, handled, used, processed, stored, transported or disposed of by or on behalf of an insured; or
 - (c) the injury, sickness, disease, death or destruction arises out of the furnishing by an insured of services, materials, parts or

equipment in connection with the planning, construction, maintenance, operation or use of any nuclear facility, but if such facility is located within the United States of America, its territories or possessions or Canada, this exclusion (c) applies only to injury to or destruction of property at such nuclear facility.

IV. As used in the endorsement:

"hazardous properties" include radioactive, toxic or explosive properties; "nuclear material" means source material, special nuclear material or byproduct material; "source material", "special nuclear material", and "byproduct material" have the meanings given them in the Atomic Energy Act 1954 or in any law amendatory thereof; "spent fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a nuclear reactor; "waste" means any waste material (1) containing by product material and (2) resulting from the operation by any person or organisation of any nuclear facility included within the definition of nuclear facility under paragraph (a) or (b) thereof; "nuclear facility" means

- (a) any nuclear reactor,
- (b) any equipment or device designed or used for (1) separating the isotopes of uranium or plutonium, (2) processing or utilizing spent fuel, or (3) handling, processing or packaging waste,
- (c) any equipment or device used for the processing, fabricating or alloying of special nuclear material if at any time the total amount of such material in the custody of the insured at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235,
- (d) any structure, basin, excavation, premises or place prepared or used for the storage or disposal of waste,

any includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations; "nuclear reactor" means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material.

With respect to injury to or destruction of property, the word "injury" or "destruction" includes all forms of radioactive contamination of property.

It is understood and agreed that, except as specifically provided in the foregoing to the contrary, this clause

is subject to the terms, exclusions, conditions and limitations of the Policy to which it is attached.

*NOTE:- As respects policies which afford liability coverage's and other forms of coverage in addition, the words underlined should be amended to designate the liability coverage to which this clause is to apply.

17/3/60
N.M.A 1256

USA/CANADA

CANCELLATION CLAUSE

NOTWITHSTANDING anything contained in this Insurance to the contrary this Insurance may be cancelled by the Assured at any time by written notice or by surrender of this contract of insurance. This Insurance may also be cancelled by or on behalf of the Underwriters by delivering to the Assured or by mailing to the Assured, by registered, certified or other first class mail, at the Assured's address as shown in this Insurance, written notice stating when, not less than **Thirty (30) days** thereafter, the cancellation shall be effective. The mailing of such notice as aforesaid shall be sufficient proof of notice and this Insurance shall terminate at the date and hour specified in such notice.

If this Insurance shall be cancelled by the Assured the Underwriters shall retain the customary short rate proportion of the premium hereon, except that if this Insurance is on an adjustable basis the Underwriters shall receive the earned premium hereon or the customary short rate proportion of any minimum premium stipulated herein whichever is the greater.

If this Insurance shall be cancelled by or on behalf of the Underwriters the Underwriters shall retain the pro rata proportion of the premium hereon, except that if this Insurance is on an adjustable basis the Underwriters shall receive the earned premium hereon or the pro rata proportion of any minimum premium stipulated herein whichever is the greater.

Payment or tender of any unearned premium by the Underwriters shall not be a condition precedent to the effectiveness of Cancellation but such payment shall be made as soon as practicable.

If the period of limitation relating to the giving of notice is prohibited or made void by any law controlling the construction thereof, such period shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.

20/4/61
N.M.A. 1331

USA & CANADA

LAND, WATER AND AIR EXCLUSION

Notwithstanding any provision to the contrary within the Policy of which this Endorsement forms part (or within any other Endorsement which forms part of this Policy), this Policy does not insure land (including but not limited to land on which the insured property is located), water or air, howsoever and wherever occurring, or any interest or right therein.

SEEPAGE AND/OR POLLUTION AND/OR CONTAMINATION EXCLUSION

Notwithstanding any provision to the contrary within the Policy of which this Endorsement forms part (or within any other Endorsement which forms part of this Policy), this Policy does not insure:

- a) any loss, damage, cost or expense, or
- b) any increase in insured loss, damage, cost or expense, or
- c) any loss, damage, cost, expense, fine or penalty, which is incurred, sustained or imposed by order, direction, instruction or request of, or by any agreement with, any court, government agency or any public, civil or military authority, or threat thereof, (and whether or not as a result of public or private litigation),

which arises from any kind of seepage or any kind of pollution and/or contamination, or threat thereof, whether or not caused by or resulting from a peril insured, or from steps or measures taken in connection with the avoidance, prevention, abatement, mitigation, remediation, clean-up or removal of such seepage or pollution and/or contamination or threat thereof.

The term 'any kind of seepage or any kind of pollution and/or contamination' as used in this Endorsement includes (but is not limited to):

- a) seepage of, or pollution and/or contamination by, anything, including but not limited to, any material designated as a 'hazardous substance' by the United States Environmental Protection Agency or as a 'hazardous material' by the United States Department of Transportation, or defined as a 'toxic substance' by the Canadian Environmental Protection Act for the purposes of Part II of that Act, or any substance designated or defined as toxic, dangerous, hazardous or deleterious to persons or the environment under any other Federal, State, Provincial, Municipal or other law, ordinance or regulation; and
- b) the presence, existence, or release of anything which endangers or threatens to endanger the health, safety or welfare of persons or the environment.

DEBRIS REMOVAL ENDORSEMENT

THIS ENDORSEMENT CONTAINS PROVISIONS WHICH MAY LIMIT OR PREVENT RECOVERY UNDER THIS POLICY FOR LOSS WHERE COSTS OR EXPENSES FOR DEBRIS REMOVAL ARE INCURRED.

Nothing contained in this Endorsement shall override any Seepage and/or Pollution and/or Contamination Exclusion or any Radioactive Contamination Exclusion or any other Exclusion applicable to this Policy.

Any provision within this Policy (or within any other Endorsement which forms part of this Policy) which insures debris removal is cancelled and replaced by the following:

- 1) In the event of direct physical damage to or destruction of property, for which Underwriters hereon agree to pay, or which but for the application of a deductible or underlying amount they would agree to pay (hereinafter referred to as 'Damage or Destruction'), this Policy also insures, within the sum insured, subject to the limitations and method of calculation below, and to all the other terms and conditions of the Policy, costs or expenses;
 - (a) which are reasonably and necessarily incurred by the Assured in the removal, from the premises of the Assured at which the Damage or Destruction occurred, of debris which results from the Damage or Destruction; and
 - (b) of which the Assured becomes aware and advises the amount thereof to Underwriters hereon within one year of the commencement of such Damage or Destruction.

- 2) In calculating the amount, if any, payable under this Policy for loss where costs or expenses for removal of debris are incurred by the Assured (subject to the limitations in paragraph 1 above):
 - (a) the maximum amount of such costs or expenses that can be included in the method of calculation set out in (b) below shall be the greater of USD 25,000 (twenty-five thousand dollars) or 10% (ten percent) of the amount of the Damage or Destruction from which such costs or expenses result; and
 - (b) the amount of such costs or expenses as limited in (a) above shall be added to:
 - (i) the amount of the Damage or Destruction; and
 - (ii) all other amounts of loss, which arise as a result of the same occurrence, and for which Underwriters hereon also agree to pay, or which but for the application of a deductible or underlying amount they would agree to pay; and

the resulting sum shall be the amount to which any deductible or underlying amount to which this Policy is subject and the limit (or applicable sub-limit) of this Policy, shall be applied.

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ELECTRONIC DATE RECOGNITION EXCLUSION (EDRE)

This policy does not cover any loss, damage, cost, claim or expense, whether preventative, remedial or otherwise, directly or indirectly arising out of or relating to:

- a) the calculation, comparison, differentiation, sequencing or processing of data involving the date change to the year 2000, or any other date change, including leap year calculations, by any computer system, hardware, programme or software and/or any microchip, integrated circuit or similar device in computer equipment or non-computer equipment, whether the property of the insured or not; or
- b) any change, alteration, or modification involving the date change to the year 2000, or any other date change, including leap year calculations, to any such computer system, hardware, programme or software and/or any microchip, integrated circuit or similar device in computer equipment or non-computer equipment, whether the property of the insured or not.

This clause applies regardless of any other cause or event that contributes concurrently or in any sequence to the loss, damage, cost, claim or expense.

EDRE NMA 2802 (17/12/1997)
Form approved by Lloyd's Underwriters' Non-Marine Association
Limited

ELECTRONIC DATA ENDORSEMENT B

1. Electronic Data Exclusion

Notwithstanding any provision to the contrary within the Policy or any endorsement thereto, it is understood and agreed as follows:

- (a) This Policy does not insure loss, damage, destruction, distortion, erasure, corruption or alteration of ELECTRONIC DATA from any cause whatsoever (including but not limited to COMPUTER VIRUS) or loss of use, reduction in functionality, cost, expense of whatsoever nature resulting therefrom, regardless of any other cause or event contributing concurrently or in any other sequence to the loss.

ELECTRONIC DATA means facts, concepts and information converted to a form useable for communications, interpretation or processing by electronic and electromechanical data processing or electronically controlled equipment and includes programmes, software and other coded instructions for the processing and manipulation of data or the direction and manipulation of such equipment.

COMPUTER VIRUS means a set of corrupting, harmful or otherwise unauthorised instructions or code including a set of maliciously introduced unauthorised instructions or code, programmatic or otherwise, that propagate themselves through a computer system or network of whatsoever nature. COMPUTER VIRUS includes but is not limited to 'Trojan Horses', 'worms' and 'time or logic bombs'.

- (b) However, in the event that a peril listed below results from any of the matters described in paragraph (a) above, this Policy, subject to all its terms, conditions and exclusions, will cover physical damage occurring during the Policy period to property insured by this Policy directly caused by such listed peril.

Listed Perils

Fire
Explosion

2 Electronic Data Processing Media Valuation

notwithstanding any provision to the contrary within the Policy or any endorsement thereto, it is understood and agreed as follows

Should electronic data processing media insured by this Policy suffer physical loss or damage insured by this Policy, then the basis of valuation shall be the cost of the blank media plus the costs of copying the ELECTRONIC DATA from back-up or from originals of a previous generation. These costs will not include research and engineering nor any costs of recreating, gathering or assembling such ELECTRONIC DATA. If the media is not repaired, replaced or restored the basis of valuation shall be the cost of the blank media. However this Policy does not insure any amount pertaining to the value of such ELECTRONIC DATA to the Assured or any other party, even if such ELECTRONIC DATA cannot be recreated, gathered or assembled

NMA2915 25/01/01

TERRORISM EXCLUSION ENDORSEMENT

Notwithstanding any provision to the contrary within this insurance or any endorsement thereto it is agreed that this insurance excludes loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any act of terrorism regardless of any other cause or event contributing concurrently or in any other sequence to the loss.

For the purpose of this endorsement an act of terrorism means an act, including but not limited to the use of force or violence and/or the threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s), committed for political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public, or any section of the public, in fear.

This endorsement also excludes loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to any act of terrorism.

If the Underwriters allege that by reason of this exclusion, any loss, damage, cost or expense is not covered by this insurance the burden of proving the contrary shall be upon the Assured.

In the event any portion of this endorsement is found to be invalid or unenforceable, the remainder shall remain in full force and effect.

08/10/01
NMA2920

Biological or Chemical Materials Exclusion

It is agreed that this Insurance excludes loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with the actual or threatened malicious use of pathogenic or poisonous biological or chemical materials regardless of any other cause or event contributing concurrently or in any other sequence thereto.

NMA 2962

06/02/03

Form approved by Lloyd's Market Association [Non-Marine]

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WAR AND CIVIL WAR EXCLUSION CLAUSE

(Approved by Lloyd's Underwriters' Non-Marine Association)

Notwithstanding anything to the contrary contained herein this Policy does not cover Loss or damage directly or indirectly occasioned by, happening through or in consequence of war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation or nationalisation or requisition or destruction of or damage to property by or under the order of any government or public or local authority.

1/1/38
NMA 464

**THIS ENDORSEMENT CHANGES THE POLICY
PLEASE READ IT CAREFULLY**

This Endorsement must be attached to the policy.

HURRICANE or TROPICAL STORM DORIAN EXCLUSION

It is hereby noted and agreed that this policy does not cover loss caused by, resulting from, contributed to by or aggravated by, resulting directly or indirectly from the above Named Storm.

Such loss is excluded regardless of any other cause or event contributing concurrently or in any sequence to the loss.

All other Terms, Clauses and Conditions remain unaltered.



Schedule of Lloyd's Underwriters is as follows:

Property %	General Liability %	Flood %	Contract #	Syndicate #	Syndicate %
83.00%			B08313019002019R S	AFB 2623	5.74%
				AFB 623	1.26%
				APL 1969	14.00%
				ARG 2121	9.00%
				BRT 2987	5.50%
				BRT 2988	2.00%
				HIS 33	10.00%
				KLN 510	22.50%
				MMX 2010	4.50%
				MSP 318	1.00%
				NVA 2007	13.50%
				TRV 5000	5.00%
				XLC 2003	6.00%
17.00%			B08313040002018R S	HIS 33	100.00%
100.00%					

Policy # RSK003959
Insured ATMA Beauty, Inc
Effective 12/19/2019



Schedule of Lloyd's Underwriters is as follows:

Property %	General Liability %	Flood %	Contract #	Syndicate #	Syndicate %
83.00%			B08313019002019R S	AFB 2623	5.74%
				AFB 623	1.26%
				APL 1969	14.00%
				ARG 2121	9.00%
				BRT 2987	5.50%
				BRT 2988	2.00%
				HIS 33	10.00%
				KLN 510	22.50%
				MMX 2010	4.50%
				MSP 318	1.00%
				NVA 2007	13.50%
				TRV 5000	5.00%
				XLC 2003	6.00%
17.00%			B08313040002018R S	HIS 33	100.00%
100.00%					

Policy # RSK003959
Insured ATMA Beauty, Inc
Effective 12/19/2019

EXHIBIT B



OP ID: JL

PROPERTY LOSS NOTICE

DATE (MM/DD/YYYY)
04/02/2020

AGENCY Gulfstream Insurance Group Inc P.O. Box 8908 Fort Lauderdale, FL 33310-8908	INSURED LOCATION CODE	DATE OF LOSS AND TIME 03/20/20	AM PM
	PROPERTY / HOME POLICY		
CONTACT NAME: Bob Roberts, Jr. PHONE (A/C, No, Ext): 954-561-2220 FAX (A/C, No): 954-566-0673 E-MAIL ADDRESS: CODE: SUBCODE:	CARRIER Lloyds of London	NAIC CODE	
	POLICY NUMBER RSK003959	FLOOD POLICY	
AGENCY CUSTOMER ID: ATMAB-1	CARRIER	NAIC CODE	
	POLICY NUMBER	WIND POLICY	
	CARRIER	NAIC CODE	
	POLICY NUMBER		

INSURED

NAME OF INSURED (First, Middle, Last) ATMA Beauty, Inc.			INSURED'S MAILING ADDRESS Ana Lessa 1874 West Avenue Miami Beach, FL 33139		
DATE OF BIRTH	FEIN (if applicable)	MARITAL STATUS / CIVIL UNION (if applicable)	PRIMARY E-MAIL ADDRESS:		
PRIMARY PHONE # <input type="checkbox"/> HOME <input type="checkbox"/> BUS <input checked="" type="checkbox"/> CELL 305-842-0364	SECONDARY PHONE # <input type="checkbox"/> HOME <input checked="" type="checkbox"/> BUS <input type="checkbox"/> CELL 786-216-7510		SECONDARY E-MAIL ADDRESS:		
NAME OF SPOUSE (First, Middle, Last) (if applicable)			SPOUSE'S MAILING ADDRESS (if applicable)		
DATE OF BIRTH	FEIN (if applicable)	MARITAL STATUS / CIVIL UNION (if applicable)	PRIMARY E-MAIL ADDRESS:		
PRIMARY PHONE # <input type="checkbox"/> HOME <input type="checkbox"/> BUS <input type="checkbox"/> CELL	SECONDARY PHONE # <input type="checkbox"/> HOME <input type="checkbox"/> BUS <input type="checkbox"/> CELL		SECONDARY E-MAIL ADDRESS:		

CONTACT

 CONTACT INSURED

NAME OF CONTACT (First, Middle, Last) ATMA Beauty, Inc.			CONTACT'S MAILING ADDRESS Ana Lessa 1874 West Avenue Miami Beach, FL 33139		
PRIMARY PHONE # <input type="checkbox"/> HOME <input type="checkbox"/> BUS <input checked="" type="checkbox"/> CELL 305-842-0364	SECONDARY PHONE # <input type="checkbox"/> HOME <input checked="" type="checkbox"/> BUS <input type="checkbox"/> CELL 786-216-7510		PRIMARY E-MAIL ADDRESS:		
WHEN TO CONTACT			SECONDARY E-MAIL ADDRESS:		

LOSS

LOCATION OF LOSS PREM#: 1 BLDG#: 1 STREET: 1874 West Avenue	POLICE OR FIRE DEPARTMENT CONTACTED
CITY, STATE, ZIP: Miami Beach, FL 33139	REPORT NUMBER
COUNTRY: US	
DESCRIBE LOCATION OF LOSS IF NOT AT SPECIFIC STREET ADDRESS:	
KIND OF LOSS	PROBABLE AMOUNT ENTIRE LOSS
FIRE <input type="checkbox"/> LIGHTNING <input type="checkbox"/> FLOOD <input type="checkbox"/> THEFT <input type="checkbox"/> HAIL <input type="checkbox"/> WIND <input type="checkbox"/>	
DESCRIPTION OF LOSS & DAMAGE (ACORD 101, Additional Remarks Schedule, may be attached if more space is required) Business Interruption for loss of revenue for the period that insd remains closed at determined by authorities. Two months of revenue lost \$486,000 due to CoranaVirus-19	
REPORTED BY Ana Lessa Owner	REPORTED TO Judi Lockard, AM Gulfstream ins. Grp

REMARKS (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

January Revenus \$217,689.57
February Revenues \$243,401.92

APPLICABLE IN ALABAMA

Any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit or who knowingly presents false information in an application for insurance is guilty of a crime and may be subject to restitution fines or confinement in prison, or any combination thereof.

Exhibit C

k5e2Soch

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 SOCIAL LIFE MAGAZINE, INC.,

4 Plaintiff,

New York, N.Y.

5 v.

20 Civ. 3311(VEC)

6 SENTINEL INSURANCE COMPANY
7 LIMITED,

8 Defendant.

-----x
9 Teleconference
Order to Show Cause

10 May 14, 2020
11 10:00 a.m.

12 Before:

13 HON. VALERIE E. CAPRONI,

14 District Judge

15
16 APPEARANCES

17
18 GABRIEL J. FISCHBARG
19 Attorney for Plaintiff

20 STEPTOE & JOHNSON, LLP
21 Attorneys for Defendant
22 BY: CHARLES A. MICHAEL
23 SARAH D. GORDON
24
25

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1 THE COURT: Good morning, everybody.

2 Do I have a court reporter on the line?

3 THE COURT REPORTER: Good morning, your Honor.

4 Kristen Carannante.

5 THE COURT: Good morning.

6 Okay. Do I have Mr. Fischbarg for the plaintiff?

7 MR. FISCHBARG: Yes, Judge. Hi.

8 THE COURT: Mr. Fischbarg, is anyone else on the line
9 for the plaintiff?

10 MR. FISCHBARG: Yes. The plaintiff is on a separate
11 phone available if you need evidence or --

12 THE COURT: The principal of Social Life?

13 MR. FISCHBARG: Yes. He is in my office, you know,
14 more than six feet away, and --

15 THE COURT: Okay.

16 And who do I have for the defendant?

17 MR. MICHAEL: Good morning, your Honor. This is
18 Charles Michael, from Steptoe & Johnson, for the defendant.
19 With me is my partner Sarah Gordon, who was just admitted *pro*
20 *hac vice*, and who will be doing the presentation today.

21 THE COURT: Terrific.

22 All right --

23 MS. GORDON: Good morning, your Honor.

24 THE COURT: Good morning.

25 Only people who are speaking need to note their

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1 appearances, and I have got those, Mr. Fischbarg and
2 Ms. Gordon. Everybody else, please mute your telephone.

3 Also, if you hear that sound that sounds like someone
4 has dropped off the line once we get started, I need you to
5 stop talking so that I can make sure that I have still got the
6 court reporter and your adversary on the line.

7 So, Mr. Fischbarg, this is your motion, so you get to
8 go first.

9 MR. FISCHBARG: Yes. So I submitted a reply
10 memorandum, you know, in the afternoon yesterday. I was just
11 wondering if --

12 THE COURT: Yes. I saw that. Thank you.

13 MR. FISCHBARG: Okay, so you were also able to read
14 it, I suppose?

15 THE COURT: Yes, yes.

16 MR. FISCHBARG: Okay.

17 So I guess the only other thing I want to add that's
18 not in the papers, and then I don't know if your Honor has any
19 issues that you want to talk about, is I mentioned that Liberty
20 Mutual had this exclusion for viruses and it is also evident
21 that other insurance companies have the same exclusion,
22 including Travelers Insurance Company, and they filed the --
23 they actually filed a federal lawsuit for declaratory judgment
24 in California, Docket No. 20 Civ. 3619, to preempt such claims,
25 I guess to enforce their exclusion for viruses. So to the

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1 extent that the defendant is claiming some kind of overreach by
2 the plaintiff here, I don't think it is proper. There are
3 several insurance companies who are capable of putting in a
4 virus exclusion in their policies, and in this case there is
5 none. So --

6 THE COURT: Let me ask you something. First off, I
7 want to start with basics. Do you agree that New York law
8 applies?

9 MR. FISCHBARG: Yes.

10 THE COURT: All right. So the -- is it the *Roundabout*
11 *Theatre* case?

12 MS. GORDON: Yes, your Honor.

13 THE COURT: First Department case?

14 MS. GORDON: Yes, your Honor. This is Ms. Gordon on
15 behalf of Sentinel.

16 THE COURT: Thank you.

17 Mr. Fischbarg, it would seem to me that the *Roundabout*
18 case is a real problem for your position.

19 Would you like to explain to me why it doesn't
20 preclude your claim?

21 MR. FISCHBARG: Yes. That case applies to off-site
22 property damage rendering the premises at issue inaccessible.
23 So in this case, you don't have off-site property damage. You
24 have on-site property damage.

25 THE COURT: What is the damage? There is no damage to

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1 your property.

2 MR. FISCHBARG: Well, the virus exists everywhere.

3 THE COURT: It damages lungs. It doesn't damage
4 printing presses.

5 MR. FISCHBARG: Right. Well, that's a different
6 issue, whether or not -- that's a different issue than the
7 *Roundabout* case that had to do with accessibility. Now we are
8 jumping to the topic of whether a virus can cause physical
9 damage to a printing press, as your Honor mentioned. So that's
10 a separate issue, and there are a lot of cases that we have
11 cited where this type of material, a virus, does cause physical
12 damage.

13 THE COURT: What's your best case? What do you think
14 is your best case under New York law?

15 MR. FISCHBARG: Well, the problem is, under New York
16 law, there isn't much law. The New Jersey federal court, in
17 *TRAVCO*, citing other cases, including from other circuits,
18 where physical damage had a broader interpretation that
19 includes loss of use and not just, you know, something where
20 you take a hammer and break an item.

21 THE COURT: With loss of use, I mean, loss of use from
22 things like mold is different from you not being able to,
23 quote, use your premises because there is a virus that is
24 running amuck in the community.

25 MR. FISCHBARG: Okay. I would disagree with that. I

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1 would say virus and mold are equivalent. They are both
2 physical items which, if they land on a surface or are on a
3 surface, just like spores that are also listed in the policy,
4 mold is also listed in the policy. I would say that the virus,
5 mold spores --

6 THE COURT: Hang on --

7 MR. FISCHBARG: -- anything --

8 THE COURT: A second.

9 Do I still have the court reporter?

10 THE COURT REPORTER: Yes, your Honor.

11 THE COURT: Do I have I still have, Ms. Gordon?

12 MS. GORDON: Yes, your Honor.

13 THE COURT: All right. Go ahead.

14 MR. FISCHBARG: Mold spores, bacteria, virus, all
15 those are physical items which damage whatever they are on,
16 whatever they land on. And in this case, the virus, when it
17 lands on something and you touch it, you could die from it.
18 So --

19 THE COURT: That damages you. It doesn't damage the
20 property.

21 MR. FISCHBARG: But you are not able to use the
22 property because it damages you. So it's a corollary. In
23 other words, this policy, by the way, mentions the word "virus"
24 and "bacteria" in it in two places.

25 THE COURT: Where does it mention it?

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1 MR. FISCHBARG: It mentions it in the PDF as well as
2 Exhibit 9, page 36 and 37, which is page 7 of 25 of the special
3 property coverage form under additional coverages, section
4 5(j), where the insured would cover certain law enforcement
5 orders requiring you to -- requiring remediation. But it
6 contains an exclusion for bacteria and viruses, and it uses the
7 word "bacteria" and it uses the word "virus."

8 So what this is really referring to is the *Legionella*
9 bacteria, which is causes Legionnaires' disease typically.
10 That's the bacteria. Virus is obviously something else. So
11 this is obviously referring to when there is a Legionnaires'
12 outbreak in a building, which could happen in New York pretty
13 often, every few years, and then the building gets shut down
14 and they have to do remediation. Either they -- at least as a
15 bacteria, *Legionella* bacteria only occurs in water or pipes or
16 in mist. So the building is shut down, and then you might have
17 to -- and now there is a new code where the buildings have to
18 test their cooling systems for *Legionella* bacteria. So that's
19 an example where a bacteria causes property loss, or loss of
20 use, or damage, physical damage to property. And I would say
21 the virus is equivalent to that bacteria. So --

22 THE COURT: But it's not. This is different. The
23 virus is not specifically in your property that is causing
24 damage. It is everywhere. The Legionnaire example is very
25 different. Because it's not like Legionnaire is running

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1 rampant throughout the city, and therefore your office building
2 can get closed. It is that the Legionnaire bacteria is in that
3 building causing --

4 MR. FISCHBARG: Yes.

5 THE COURT: -- that building to be shut down.

6 MR. FISCHBARG: Yes. Yes.

7 So this virus is everywhere, including this office in
8 particular, this office. In other words, they just did a
9 random survey of people going into a grocery store in New York,
10 and 20 percent tested positive. So, Judge, that's just a
11 one-sample test. So if the infection rate in New York City is
12 20 percent, then the virus is literally everywhere. So if
13 it --

14 THE COURT: That's what --

15 MR. FISCHBARG: -- is --

16 THE COURT: That is what has caused the damage is that
17 the governor has said you need to stay home. It is not that
18 there is any particular damage to your specific property.

19 MR. FISCHBARG: Well, okay, that's --

20 THE COURT: You may not even have the virus in your
21 property.

22 MR. FISCHBARG: Well, okay, that's -- I would
23 disagree. The virus not just causes -- it lands on equipment,
24 it lands everywhere. That's why all of these -- all of the
25 health guidelines from the World Health Organization and

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1 elsewhere talk about wearing gloves, talk about wiping things
2 down, because it lands on surfaces. It doesn't just get
3 transmitted through the air. Another way of getting it is
4 through contact --

5 THE COURT: Right, but what --

6 MR. FISCHBARG: -- when it touches your --

7 THE COURT: What evidence do you have that your
8 premises are infected with the COVID bug.

9 MR. FISCHBARG: Well, the plaintiff is here. He got
10 COVID. So that's evidence there.

11 THE COURT: Well, it's not evidence that he got it in
12 his office.

13 MR. FISCHBARG: Yes, but, okay, it's not -- we're
14 not -- I don't know what burden of proof we are looking at,
15 whether it is beyond a reasonable doubt --

16 THE COURT: No, it's --

17 MR. FISCHBARG: -- or more likely than not, more
18 likely than not, he can testify where he was and more likely
19 than not he either got it from his office or he got it from his
20 home. So that's a different burden of proof. If you are
21 looking for some kind of burden of proof to show that he got it
22 from his office, I mean, that's an evidentiary question, and we
23 can get an epidemiologist to testify and get an expert to
24 testify on that, which I understand is going to happen in the
25 other lawsuits that have been filed across the country

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1 regarding --

2 THE COURT: Okay.

3 MR. FISCHBARG: -- this issue.

4 THE COURT: Okay.

5 MR. FISCHBARG: So . . .

6 THE COURT: Anything further, Mr. Fischbarg?

7 MR. FISCHBARG: No, I guess that's all for now. Thank
8 you.

9 THE COURT: Okay. Thanks.

10 Ms. Gordon.

11 MS. GORDON: Thank you, your Honor. This is Sarah
12 Gordon on behalf of Sentinel, and we agree with your Honor's
13 thoughts here.

14 The property policy has two distinct requirements
15 here. There has to be direct physical loss or physical damage
16 to the property and the cause of the business interruption
17 damages they are seeking has to be direct physical loss or
18 damage, and the cause here is not physical damage.

19 We think, you know, as your Honor rightly pointed out,
20 *Roundabout* controls. It is under New York law. It's a First
21 Department case from 2002. There are no subsequent decisions
22 that have disagreed or overturned it here in New York; and, if
23 anything, it has been confirmed by this . . .

24 THE COURT: Hang on. Did I lose my court reporter?

25 THE COURT REPORTER: No, Judge. I'm here.

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1 THE COURT: Did I lose Mr. Fischbarg?

2 MR. FISCHBARG: No, I'm here.

3 THE COURT: Okay.

4 MS. GORDON: This court, your Honor, in *Newman Myers*,
5 adopted the exact same rationale for a law firm that was trying
6 to assert damages where there were no -- business interruption
7 damages, where there was no physical harm to the property.
8 And, you know --

9 THE COURT: Let me interrupt you for a second.

10 So Judge Engelmayer in *Newman* went out of his way to
11 talk about a case where there was a bunch of -- there was a
12 rock slide which didn't actually hit the house or the premises,
13 and yet they got coverage and coverage for the invasion of
14 fumes.

15 MS. GORDON: Yes, your Honor.

16 So for most of the cases, there are a number of them,
17 there is -- what has happened is something physically has
18 happened to the property that prevents people from being on the
19 property. So, for example, in *Gregory Packaging*, in New
20 Jersey, there was ammonia leaked out and they couldn't be on
21 the property, so something physically happened. You couldn't
22 necessarily see it or touch it, but there were fumes and it was
23 unsafe to be there. The same thing with *Motorists*, where there
24 was *E. coli* in the well. You couldn't be in that house because
25 you were exposed to other things that had the *E. coli*.

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1 The property has to be entirely unusable or
2 uninhabitable for physical loss or damage to constitute a loss
3 of use. We don't think that's the law in New York in any
4 circumstance, but even in those other cases, there is nothing
5 equivalent here. Mr. Fischbarg's client can go to his
6 premises. There is no ammonia or mold or anything in the air
7 that's not going to allow him on to the property. In fact, the
8 governor's orders explicitly allow him to go to the property
9 and get his mail or do routine business functions. The only
10 rule is that he has to stay six feet apart from other people.
11 So those cases are entirely distinguishable.

12 And when a business, a property is allowed to remain
13 open or people can still occupy the premises, there is no
14 direct physical loss or damage. That was the case -- that's
15 what the court said in *Port Authority*, that's what happened in
16 *Mama Jo's*, where the restaurant was allowed to be open. The
17 cases where there is direct physical loss or damage, you
18 literally cannot be on the premises because there is something
19 there that is making it uninhabitable, and here that just isn't
20 true.

21 THE COURT: Okay. Mr. Fischbarg I will give you the
22 last word.

23 MR. FISCHBARG: All right. So I would disagree that
24 he is allowed to go to the premises. In fact, the opposite is
25 true. The executive order 202.8 says it requires 100 percent

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1 reduction. So he can't go there, and he is not allowed to go
2 there, and that is a separate claim. It is the civil authority
3 claim besides the breach of contract claim.

4 THE COURT: Doesn't the executive order say -- I'm
5 sorry, which executive order are you talking about?

6 MR. FISCHBARG: It is . . .

7 It is Exhibit 3 of the declaration, and then on page
8 2, "Each employer shall reduce the in-person workforce at any
9 work locations by 100 percent no later than March 22 at 8p.m."
10 And then it says --

11 THE COURT: Right, but that doesn't mean the boss
12 can't go to the work location.

13 MR. FISCHBARG: I would say he is -- he is an employee
14 and he can't go. I think it does. In my building here in New
15 York, there is nobody here. I'm the only one. There is no
16 bosses in any of the offices.

17 THE COURT: There is nothing about the governor's
18 order that prohibits a small businessperson or a big
19 businessperson from going into their office to pick up mail, to
20 water the plants, to do anything like --

21 MR. FISCHBARG: Your Honor --

22 THE COURT: -- that, including employees that are
23 working.

24 MR. FISCHBARG: Sorry.

25 MS. GORDON: Your Honor, this is Sarah Gordon. Oh, go

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1 ahead, Mr. Fischbarg.

2 MR. FISCHBARG: Okay.

3 Again, I would disagree. I think the order is pretty
4 clear that 100 percent means that you are not supposed to go to
5 work, and that's what people have been doing in New York. They
6 are not going into the office. And to the extent they are
7 getting mail, I mean, there is work-arounds where the workers
8 in the building have been leaving it downstairs for people to
9 pick up, but the way it's been implemented is that 100 percent
10 means no one is going to any office.

11 THE COURT: You are in your office.

12 MR. FISCHBARG: Yeah, I'm not -- I'm considered, by
13 the way -- lawyers are considered essential, and if you are a
14 sole practitioner, you are considered essential. So I have the
15 exclusion, and that's why I am here, but otherwise I wouldn't
16 be here. So . . .

17 MS. GORDON: Your Honor, if I may? We submitted with
18 Mr. Michael's affidavit, Exhibit D, a printout from the Empire
19 State Development website. And on question 13, it addresses
20 exactly this issue. It says, "What if my business is not
21 essential but a person must pick up mail or perform a similar
22 routine function each day?" And the answer provided by the
23 Empire State is, "A single person attending a nonessential
24 closed business temporarily to perform a specific task is
25 permitted so long as they will not be in contact with other

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1 people."

2 THE COURT: I thought I had read that somewhere.

3 MS. GORDON: Yes. It is in Mr. Michael's declaration,
4 and I think it's ECF 18-4, page 304.

5 THE COURT: Okay.

6 MR. FISCHBARG: Right, but I think the executive order
7 supersedes that is what I would argue.

8 THE COURT: Okay.

9 Mr. Fischbarg, you have got to demonstrate a
10 probability of success on the merits. I feel bad for your
11 client. I feel bad for every small business that is having
12 difficulties during this period of time. But New York law is
13 clear that this kind of business interruption needs some damage
14 to the property to prohibit you from going. You get an A for
15 effort, you get a gold star for creativity, but this is just
16 not what's covered under these insurance policies.

17 So I will have a more complete order later, but your
18 motion for preliminary injunction is going to be denied.

19 Anything further for the plaintiff?

20 MR. FISCHBARG: I guess just a housekeeping thing. We
21 filed an amended complaint. Are we going to deem it served or
22 does it have to be re-served?

23 THE COURT: Has the defendant -- does the defendant
24 want to be reserved or will you take the amended complaint?

25 MR. MICHAEL: Your Honor, this is Charles Michael.

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1 We have entered a notice of appearance, and so I think
2 once they filed it on ECF, that service, we are happy to
3 consider it served. That's fine. And he does have one
4 amendment as of right.

5 THE COURT: Correct.

6 MR. MICHAEL: That was within his right to file it.

7 THE COURT: Does defendant plan to move or answer?

8 MR. MICHAEL: Probably to move. We would have to
9 discuss it with our client, but I believe so.

10 THE COURT: Okay. What are the parties' position on
11 discovery while the motion to dismiss is pending?

12 MR. FISCHBARG: Well, I would say there are two
13 motions filed -- there is one in the Eastern District of
14 Pennsylvania and one in, I think, the Northern District of
15 Illinois -- for an MDL, multi-district litigation, involving a
16 lot of lawsuits combining, so I think this might be happening
17 in each state until that motion is decided, and I think the
18 briefing schedule is in June --

19 MS. GORDON: We -- your Honor --

20 MR. FISCHBARG: -- so I think --

21 MS. GORDON: Sorry, Mr. Fischbarg.

22 MR. FISCHBARG: So I would say that this case might be
23 transferred to the multi-district panel at some point.

24 THE COURT: Okay. So, Mr. Fischbarg, what I am
25 hearing you say is that you are perfectly happy to have the

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1 defendants not move until we find out whether or not your case
2 is going to get scooped up into the MDL?

3 MR. FISCHBARG: Yes, correct.

4 THE COURT: All right. I presume that the defendants
5 are perfectly happy to do nothing until you hear back from the
6 MDL.

7 MS. GORDON: Your Honor, I need to consult with my
8 client on that. I'm not sure that that's true. We don't think
9 these cases are appropriate for consolidation in the MDL for
10 many of the reasons which were evident today, given the
11 different states' conclusions on these laws. So I need to
12 consult with my client on the motion practice. We may intend
13 to want to move in any event.

14 THE COURT: Okay. Well, you could move, but if there
15 is a likely -- if there is some likelihood that they are going
16 to get scooped into the MDL, I'm not likely to decide it until
17 that decision is made. So it is entirely -- I guess from my
18 perspective I don't really care, but from your client's
19 perspective, they may be making a motion to dismiss that's
20 unnecessary. If you are right, and you may well be right, that
21 they are not going to MDL these kinds of cases, then all that's
22 happening is this is just being delayed into the summer for you
23 to incur fees making a motion to dismiss.

24 So why don't you talk to your client, figure out what
25 you want to do. One way or the other, it does not seem to me

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1 to make sense to proceed with discovery in this matter,
2 certainly under the circumstances that everyone is in, and
3 particularly the plaintiff is in, strapped for revenue, until
4 we figure out whether a lawsuit is going to go forward.

5 So talk to your client, figure out whether -- the
6 defendant should talk to Sentinel. Figure out whether you are
7 happy staying this case pending a decision on the MDL or not,
8 and just write me a letter and let me know.

9 MS. GORDON: Yes, your Honor. Thank you.

10 MR. MICHAEL: Your Honor --

11 THE COURT: Anything further from the plaintiff?

12 MR. MICHAEL: Just one housekeeping matter. This is
13 Charles Michael, again, for the defendant.

14 THE COURT: Okay.

15 MR. MICHAEL: I just wondered if there was any special
16 procedures for ordering the transcript or if we go just through
17 the normal Southern District website? I didn't know, under the
18 COVID circumstances, if there is something different we should
19 do.

20 THE COURT: I don't think there is anything different,
21 but we have got the court reporter on.

22 So, Madam Court Reporter, is there anything different
23 they need to do?

24 THE COURT REPORTER: At the end of this proceeding, I
25 am going to email the parties with their instructions.

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THE COURT: Okay.

MR. MICHAEL: Terrific. Thank you so much.

THE COURT: Anything further from the plaintiff,
Mr. Fischbarg?

MR. FISCHBARG: No. Thank you, Judge.

THE COURT: Anything further from the insurance
company? Ms. Gordon?

MS. GORDON: No. Thank you, your Honor.

THE COURT: All right. Thank you, all.

MR. FISCHBARG: Okay. Bye, Judge.

MR. MICHAEL: Thank you, your Honor.

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EXHIBIT D

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STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF INGHAM

GAVRILIDES MANAGEMENT COMPANY,
Plaintiff,

vs.

File No. 20-258-CB

MICHIGAN INSURANCE COMPANY,
Defendant.

DEFENDANTS MOTION FOR SUMMARY DISPOSITION
BEFORE THE HONORABLE JOYCE DRAGANCHUK, CIRCUIT COURT JUDGE
LANSING, MICHIGAN - WEDNESDAY, JULY 01, 2020

APPEARANCES:

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WITNESSES

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None .

EXHIBITS

None admitted.

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Lansing, Michigan

Wednesday, July 01, 2020

2:58:57 PM

THE COURT: This is, pardon me if I massacre this, Gavri--, Gavrilides Management Company, et al versus Michigan Insurance Company, docket number 20-258-CB. And this is the time set for Defendant Michigan Insurance Company's Motion for Summary Disposition. And just for the record, could I have your appearances, please?

MR. HEOS: Yes, your Honor. Matthew Heos and Nick Gavrilides is here in the courtroom also with me. He is the owner of the immediate plaintiff company's.

MR EMRICH: Henry Emrich on behalf of Michigan Insurance Company, your Honor and my assistant Cheney Ward.

THE COURT: Okay, thank you. And your motion, Mr. Emrich, if you wish to go ahead.

MR. EMRICH: Thank you, your Honor. I am going to assume that the Court has read all of the pleadings in this case, so I'll try not to belabor some of the points. I think the, the key fact that we need to focus on is that as we've argued is that there's no question here but the policies that insure Mr. Gavrilides properties against, against direct physical loss or damage to the property and contrary, any claim with the policy benefits in question

1 this business income coverage is illusory, the policy in
2 question here clearly provides that for the business
3 coverage, the business income coverage to apply and, and
4 most of the other primary coverages under their policy,
5 there must be a direct physical loss of or damage to the
6 insured property in order for it to apply.

7 And I think it's important as we'll discuss
8 later in our argument depending on what Mr. Heos has to
9 say, why this is important, we must focus on the fact that
10 there must be direct physical loss or damage to the
11 insured property and not direct physical loss of use of or
12 damage to the property as has been suggested by Mr.
13 Gavrilides and his attorney in order for the coverage at
14 issue to apply.

15 While I acknowledge, your Honor, that this is a
16 somewhat unique, extraordinary if you will, matter to be
17 filing at this point in the proceedings as our initial
18 pleading; I think it's important to understand that when
19 we look at Mr. Gavrilides complaint, it does not contain
20 one single allegation that this insured property has in
21 any way been damaged or lost. To the contrary, the
22 allegations in the complaint affirmatively allege that the
23 plaintiff business interruption claim is based on the
24 "Stay at Home" orders of Governor Whitmer. There is no
25 allegation of any kind that the property in question has

1 in any way been damaged, lost or anything of the sort.

2 Given that this motion has been brought under
3 2.116(c)(10), plaintiff must produce some evidence to
4 contradict the uncontroverted facts that have been alleged
5 not only in the complaint, but in the affidavit submitted
6 Mr. Gavrilides and in any of the other materials that Mr.
7 Heos has attached to his response as, as indicated, most
8 importantly, the affidavit of Mr. Gavrilides that
9 reiterates the admissions in the complaint that there has
10 not been any loss of or damage to either of the properties
11 for which they seek coverage.

12 The insureds property today exists in the very
13 same condition as it existed the day prior to the
14 effective date of the "Stay at Home" order. They have not
15 been lost, they have not been damaged, they have not
16 required any repairs because of any damage to those
17 properties. The business operation, its, its operation as
18 a restaurant today is, is the same as the day prior to the
19 effective date of the order, albeit with some modifi-
20 cations that had been required to avoid grouping and to
21 maintain social distancing in, in a sense improvements to
22 the real estate. Not repairs, you know, and, and it's
23 been maintained as a take-out, take-out operation at least
24 until recently when they resumed the dining operation.
25 There has been no loss of or damage to either building

1 that has prevented the plaintiff from operating as a
2 restaurant or entering it for that matter if--, as they
3 have. If plaintiffs wanted to sell either building today,
4 they could do so. And while plaintiffs have provided some
5 speculative evidence about the decreased value of that
6 property, although, as I read Mr.--, as I read the
7 materials that Mr. Heos kindly attached to his response,
8 the fact of the matter is it pointed out in that article
9 was that while they operation of a commercial property may
10 get harder, it's not impossible to operate it in the
11 future under our new normal.

12 Because plaintiffs complaint, the affidavit, the
13 other information that has been provided to your Honor
14 provides no evidence of any damage to that property.
15 Plaintiffs could never prove that either property suffered
16 any direct physical loss from the imposition of Governor
17 Whitmer's emergency order. And thus, could never recover
18 business interruption coverage under this policy based on
19 the facts that have been presented to the Court. The same
20 holds true under the business cover, income coverage, if a
21 civil authority prevents or prohibits access to either
22 property because of direct physical damage to an adjacent
23 or nearby property for the very same reason. There has
24 been no direct physical loss or damage to any adjacent
25 property that has been alleged, that has been provided to

1 the Court in Mr. Heos response. And frankly, when you look
2 at the order that they have, that is at issue in this
3 case, there's nothing there that prevents access to Mr.
4 Gavrilides properties whatsoever.

5 In summary, your Honor, there are no facts
6 alleged in the complaint or in any of the materials that
7 I've looked at, including Mr. Gavrilides affidavit, that
8 shows there has been direct physical loss of or damage to
9 the insured property. And for those reasons, your Honor,
10 we believe that our motion--, for those reasons alone, we
11 believe our motion for summary disposition should be
12 granted.

13 I'd just like to make a couple of additional
14 points before I shut up. I really believe summary
15 disposition is warranted on this basis alone and I would
16 turn the Court to the case that we've discussed in our, in
17 our brief, your Honor, that's referred to Universal
18 Insurance Production versus Chubb. And that's the decision
19 of the Eastern District of Michigan involving a claim that
20 involved insured property. It was damaged by a pervasive
21 odor that developed in the property as a result of mold
22 that grew in the property because of some water seepage.
23 And why that case is important is because it discusses the
24 Michigan Rules of Contract Interpretation, that still
25 apply today, policy language is clear and unambiguous on

1 its face, which we believe is clearly the case here that
2 states that the words and the terms of the policy should
3 be enforced utilizing plain and commonly understood
4 meanings.

5 And when I said earlier that that's important
6 when we talk about what direct physical loss of or damage
7 to property means, it means we look at those words. We
8 don't add words such as loss of use, that Mr. Heos and Mr.
9 Gavrilides have added in order to understand what we're
10 talking about here. We look at the language in the policy.
11 Every case that Mr. Heos produced your Honor, says the
12 very same thing. In Univer--, Universal, like here, the
13 policy was an 'all-risk' policy that required, like here,
14 direct physical loss or damage to the insured property in
15 order to trigger coverage unless that coverage was
16 excluded.

17 As Universal pointed out, applying a dictionary
18 meaning of direct and physical as meaning something
19 immediate or proximate as a premise to something that is
20 distant or incidental and physical meaning something that
21 has a material existence meant in the context of a loss
22 involving a contaminant that, unlike here, per the uncon-
23 troverted allegations of the complaint and other evidence
24 produced by plaintiff in response to this motion. That in
25 order for direct physical loss of the property in this

1 context, the contaminant must actually alter the structure
2 integrity of the property in order to trigger coverage
3 under language that is at issue in this case. And it
4 didn't happen in Universal, as the Court denied coverage
5 there, granted affirmed summary disposition. And
6 importantly your Honor, it hasn't even been alleged in
7 this case. Regardless of any authority to the contrary,
8 anywhere else in the country, this remains the law in our
9 courts when interpreting policy terms at issue. There is a
10 requirement that there be direct physical loss of or
11 damage to property. And the allegations produced here in
12 the complaint and the evidence that's been attached have
13 specifically acknowledged no such contamination and no
14 such damage to the property as a result of that contami-
15 nation.

16 As in Universal, your Honor, the mere presence
17 of odor or even mold was not any evidence of structural or
18 tangible damage to the insured property. And as such, no
19 direct physical loss or damage to the property had-, was
20 occurred. Here, your Honor, we have the very same thing
21 except that we have not even had any allegations of any
22 damage to the property caused by this unfortunate, this
23 horrible virus.

24 Finally, and although we do not believe the
25 Court even has to get to this point, even if we assume for

1 purposes of this motion that contamination occurred on
2 each premises and that somehow effected the structural
3 integrity of either building, again, neither scenario is
4 alleged. And even if it were, we do not believe under the
5 circumstances and the science that exists that it would
6 necessarily constitute direct physical loss over damage to
7 the property. The buyer's exclusion of the policy, which
8 clearly and unequivocally states that it applies to all
9 coverages and endorsement and that the company will not
10 pay for loss or damages caused by or resulting from any
11 virus, bacteria or other microorganism that induces or is,
12 is capable of inducing physical distress, illness or
13 disease. And Lord knows, that that has certainly been the
14 case with what's happened with Covid-19 throughout our
15 country.

16 Clearly, your Honor, that exclusion, again, I
17 don't believe you even have to get there, but that
18 exclusion would clearly exclude any claim here even if
19 plaintiff's could prove direct physical loss of or damage
20 to the insured property or any nearby property that
21 resulted in a civil authority issuing an order prohibiting
22 access to the property. As of eight days ago, your Honor,
23 they have only been few jurisdictions in this country,
24 Florida and Pennsylvania, that have discussed and applied
25 this, a similar exclusion as at issue in this case and in

1 every one of those cases, the Court has enforced that
2 exclusion as written because it's clear and unambiguous.
3 Again, your Honor, for all the reasons that we've set
4 forth here today and the brief that we filed and our
5 reply, we request that the Court grant our Motion for
6 Summary Disposition at this time. Thank you.

7 THE COURT: Thank you. Mr. Heos?

8 MR. HEOS: Thank you, your Honor and may it
9 please the Court. And obviously Mr. Emrich and I have a
10 different interpretation of direct physical loss of or
11 damage to covered properties because here the loss comes
12 from the issue of the executive order restricting use of
13 property. Physically you cannot use for, for dine-in
14 services any of the interior of the building for a period
15 of time. And a complete prohibition isn't contemplated by
16 the language of the contract, I think a limited
17 restriction also falls within the coverage. And I think
18 that if you're gonna accept the defendants argument you
19 would have to limit the meaning to destruction of the
20 physical building itself, but we know that the coverage
21 extends to non-destructive loss, civil authority being
22 one.

23 I put in example in the brief subterranean
24 pollution, you can look at asbestos or a computer virus is
25 something that would occur that there would be no physical

1 destruction to the property itself. The fact of the matter
2 is that Mr. Gavrilides can't use the covered properties
3 because of or he's lost rather the use of those properties
4 because of the order and it looks like that will continue
5 in some form for a while. So, I think that counsel is
6 wrong in trying to limit the scope even with the case law
7 he cited, most of which is persuasive and not binding.
8 That's number one, Judge.

9 And as for the virus exclusion itself, the only
10 case law we have relates to person to person transmission
11 of a virus at the covered property. And I think that fits
12 more with what's going on. We see in the news that Harpers
13 in East Lansing and even the Hotcat in Kalamazoo is making
14 headlines of people contracting Covid there. But, the
15 impetus of the order was to protect public health and
16 welfare, which is the governor's duty. It's not caused by
17 a virus. It would be the same order as with the damn in
18 Midland being issued to protect public health and welfare.
19 It wasn't caused by a flood. It was caused by the
20 Governor's duty to act and protect the people she's
21 charged with protecting and I think that's what happening.

22 Or it's distinguishable from the case and I
23 think it's Bowler, the case cited regarding the virus. And
24 I think that if you go further in accepting defendant's
25 position, then we get into the illusory promise of well if

1 the government issues an order, we're not gonna cover it
2 because any decision of a government body or group of
3 people is excluded. And so then, you get into the circle
4 in the contract where if you're going to buy into counsels
5 logic, it would make that provision illusory. And for
6 those reasons, I think that the motion should actually
7 roll back on the defendants because the language to
8 support the claim, to the extent that the Court thinks
9 there's a deficiency in my pleading and is gonna grant
10 defendants motion, I'd like Leave to Amend the Complaint.
11 But, I don't think that's the case here. And with that,
12 I'll leave it, if the Court would like to ask any
13 questions, I'm happy to take them.

14 THE COURT: I don't have any. Thank you. I'll
15 give Mr. Emrich rebuttal time.

16 MR. EMRICH: Thank you, your Honor. Your Honor,
17 what I would say is that when we talk about these cases
18 that Mr. Heos has mentioned that might provide coverage in
19 certain situations, I read those cases a little while ago
20 and I'm kind of tired reading some of these cases about
21 insurance coverage. But, the point in every one of those
22 cases is that the condition she referred to actually
23 caused damage to the property.

24 In this case, there has not been any such
25 damage. And if we look at what the coverage for business

1 loss or business--, the business income loss that they're
2 seeking says, it says that if the business, the coverage
3 would apply if the business operation is suspended
4 provided the suspension must be caused by the direct
5 physical loss of or damage to property. In this case, that
6 hasn't occurred. Nothing prevents Mr. Gavrilides from
7 using that property. It has been used as such. The fact
8 that there may be other coverages that may provide some
9 limited coverage, they're against what Mr. Heos is arguing
10 because clearly, if those coverages were covered under
11 this language, then why have a special coverage that
12 provides certain conditions for its application.

13 The point is, in each of those civil authority
14 cases that he talked about, the property actually
15 sustained damage. Here it didn't sustain damage. As to his
16 claim in this case, that he wants an opportunity to amend
17 his complaint if the Court feels compelled to grant my
18 motion, what is that going to accomplish? He's already
19 alleged in his complaint and his client has already signed
20 an affidavit where he no doubt put his hand up and swore
21 to the contents of that affidavit in which he said there
22 has been no damage to that property.

23 We don't create coverage by-, because somebody
24 thinks they ought to have coverage. But, that, that, that
25 whole line of cases Roy versus Continental Insurance and

1 some of the other cases in our, in our brief that we
2 cited, clearly supports the notion that the reasonable
3 expectation concept doesn't apply in Michigan. It just
4 doesn't cut it. There is no coverage here, your Honor.
5 That exclusion is clear. If the Court feels that there may
6 be or that there may be a situation that would give rise
7 to, but again, you have to come forward at the time that
8 you, that you respond to this motion with some evidence
9 that suggests that. That hasn't happened here. I mean even
10 when you look at the response that he's filed, he talks
11 about scenario's that have absolutely no bearing to this
12 case.

13 And you know, I'll just make one last point,
14 your Honor, you know, when I was a young Prosecutor, I had
15 the benefit of being able to argue a number of cases to
16 juries that required me to prove the defendant's guilt
17 beyond a reasonable doubt. And in those cases, I was
18 trained to listen closely to the defendant's argument and
19 had been the case where the facts were particularly
20 egregious, a defense attorney would often not even talk
21 about those facts and talk about the law. And he talked
22 about how that law was somehow created this reasonable
23 doubt in hopes of creating some confusion on the part of
24 one juror who might then find in his clients favor because
25 reasonable doubt existed. And, and in those cases, I would

1 make sure that when I got up in rebuttal, just as I have
2 been given the opportunity to here, I would point that out
3 to the jury and indicate to them that there's a reason for
4 that. And that's because they didn't want you to talk
5 about the facts that clearly supported conviction.

6 On the other hand, if it was a case where the
7 law, you know, or the facts may have been murky, but the
8 law was clear, the defense attorney would only focus on,
9 you know, on those facts and not talk about the law. And
10 again, I point that out to the jury there. But, in this
11 case, you know, and there were cases back then to, like
12 our case here that were neither supported by the facts or
13 the law. Which I believe is clearly the case in this case.
14 And the defense attorney would get up and argue something
15 that to the jury that had absolutely nothing to do with
16 the case in hopes of confusing them. Just like Mr. Heos
17 has suggested by talking about these asbestos cases or
18 some of these other cases that have nothing to do with
19 this.

20 Well in this case, when you look at his
21 responsive pleading, he talks about an accident situation
22 that has absolutely no application here. Nothing to do
23 with this case. While in his argument, he starts out
24 talking about a discussion of the virus of racism and as
25 there, as there, we would point out, if we were in front

1 of a jury, just like I'd point out to them and I'm
2 pointing out to you, it hasn't got anything to do with
3 this case. Your Honor, the reason for that and the reason
4 for the topic of that is that he knows that neither the
5 facts or the law support his claim and nothing he could
6 file as an amendment would change that.

7 He is hoping to somehow create this little bit
8 of possibility, some scintilla that some evidence is gonna
9 pop up that shows that the property has been damaged in
10 hopes that he could trigger coverage. And as this Court
11 knows under the cases we've discussed in our brief, that
12 is not sufficient to deny summary disposition in a case
13 that clearly warrants it even at this early stage.

14 Thank you your Honor for your patience. Thank
15 you Mr. Heos, we've never met. I've heard a lot of good
16 things about you. Mr. Gavrilides, nice to have met you,
17 very sorry for the situation you're in. It's just crazy
18 all the way around. And just like having to argue this
19 case on TV is really just disconcerting for me. But, in
20 any event, thank you your Honor for your patience.

21 THE COURT: Thank you. You're on Youtube not TV.
22 But--

23 MR. EMRICH: I meant screen. Yeah, whatever.

24 THE COURT: Right.

25 MR. EMRICH: The screen.

1 THE COURT: I, I did read the briefs. I studied
2 them very carefully and I've listened to the argument of
3 counsel today. And taking all the-, that together I, I
4 note that the plaintiff speaks of and focuses on arguments
5 about access to the property, use of the property and
6 definitions of loss and damage. But, the first inquiry has
7 to start with a full look, not just isolating some words
8 or phrases from the policy. But, a full look at the
9 coverage that's provided under the policy.

10 Coverage is provided for actual loss of business
11 income sustained during a suspension of operations. The
12 policy goes on to provide the 'suspension must be caused
13 by direct physical loss of or damage to property.' And it
14 also provides 'the loss or damage must be caused by or
15 result from a covered cause of loss. The causes of loss
16 special form provides that a covered cause of loss means
17 risks of direct physical loss.'

18 So, whether we're talking about the cause for
19 the suspension of the business or the cause for the loss
20 or the damage, it is clear from the policy coverage
21 provision only direct physical loss is covered. Under
22 their common meanings and under federal case law as well,
23 that the plaintiff has cited that interprets this standard
24 form of insurance, direct physical loss of or damage to
25 the property has to be something with material existence.

1 Something that is tangible. Something according to the one
2 case that the plaintiff has cited from the Eastern
3 District, that alters the physical integrity of the
4 property. The complaint here does not allege any physical
5 loss of or damage to the property. The complaint alleges a
6 loss of business due to executive orders shutting down the
7 restaurants for dining, for dining in the restaurant due
8 to the Covid-19 threat.

9 But, the complaint also states that a no time
10 has Covid-19 entered the Soup Spoon or the Bistro through
11 any employee or customer and in fact, states that it has
12 never been present in either location. So, there simply
13 are no allegations of direct physical loss of or damage to
14 either property. The plaintiff seems to make in the
15 briefing, at least, two arguments about the language in
16 the coverage provision and what it means.

17 The first argument is that the plaintiff says
18 coverage applies to "direct physical loss or damage to
19 property." Even if that were the wording of the coverage
20 provision, it wouldn't save the plaintiff from the
21 requirement that the loss or damage must be physical and
22 the analysis could end right there. But, I have to go on
23 to say that this is not even the wording of the coverage
24 provision. Coverage according to the policy applies to a
25 suspension caused by "direct physical loss of or damage to

1 property." So, I'm not going to get into a detailed
2 analysis of the rules of grammar. But, common rules of
3 grammar would apply to make that phrase a short-cut way of
4 saying "direct physical loss of property or direct
5 physical damage to property." So, again, the plaintiff
6 just can't avoid the requirement that there has to be
7 something that physically alters the integrity of the
8 property. There has to be some tangible, i.e., physical
9 damage to the property.

10 Then the plaintiff in the briefing, at least,
11 seems to make a second argument that and this is not 100%
12 clear, but, it seems like the plaintiff is saying that the
13 physical requirement is met because people were physically
14 restricted from dine-in services. But, that argument is
15 just simply nonsense. And it comes nowhere close to
16 meeting the requirement that there's some, there has to be
17 some physical alteration to or physical damage or tangible
18 damage to the integrity of the building.

19 So, the next argument that the plaintiff makes
20 is that the virus and bacteria exclusion is vague and
21 can't apply here. The plaintiff has not adequately
22 explained how the term virus is vague. And in fact,
23 supplies a completely workable, understandable, usable
24 definition of the word virus. The argument in this regard
25 really seems to be more that the virus exclusion doesn't

1 apply. And it goes something like this as far as I can
2 tell, first, a virus can't cause physical loss or damage
3 to property because virus' harm people, not property.
4 Second, the damage caused here was really caused by
5 actions of the civil authority to protect public health.
6 And then third, therefore, coverage for acts of any
7 person, group, organization or governmental body applies.
8 But, that argument bring us right back to the direct
9 physical loss or damage requirement. Again, going back to
10 the cause of loss special form B, as in boy, exclusions
11 provides that acts of government are only covered when
12 they result in a covered cause of loss. A covered cause
13 of loss, again, is direct physical loss. So, even if the
14 virus exclusion did not apply, which the plaintiff has not
15 supported that it doesn't apply, I only argue that it's
16 vague, which I reject. But, even if it did not apply, it
17 could only be coverage for governmental actions that
18 resulted in direct physical loss or damage.

19 And then, finally, the plaintiff argues that the
20 policy has a contradiction in it that renders it illusory.
21 So, the plaintiff says that the policy extends coverage
22 for governmental acts. But, then, it takes it away in the
23 causes of loss special form. But, that's simply not true.
24 Coverage is provided for actual loss of business income
25 sustained during the suspension of operations. However,

1 according to the coverage provision, the suspension must
2 be caused by direct physical loss of or damage to
3 property. And governmental acts are likewise covered if
4 it results in a covered cause of loss, which is again, a
5 direct physical loss. There is no granting of coverage
6 and then excluding the same coverage in the policy. As a
7 matter of fact, the policy is consistent throughout and
8 consistent with federal law cited by the plaintiff. It
9 requires physical loss or damage.

10 There is a virus exclusion even if plaintiff was
11 alleging, was alleging, even if there were allegations in
12 the complaint alleging actual physical loss or damage,
13 which the complaint does not do. But, there is a virus
14 exclusion that would also apply. And governmental action
15 that results in direct physical loss is covered. But
16 again, there is no direct physical loss alleged here.

17 Now, I have to address a little bit this, that
18 it was brought as a (c)(10) motion. The actually the
19 defendant hasn't provided any support by way of factual
20 support, depositions, affidavits, et cetera, for a (c)(10)
21 motion. So, if the defendant doesn't do that, then the
22 plaintiff has no burden under Maiden versus Rosewood. So,
23 there's no shifting burden until the moving party first
24 does it. But, I don't think it properly is labeled a
25 (c)(10) motion. I think it's a (c)(8) motion. Because this

1 is the motion that can be decided as a matter of law. Take
2 all the allegations in the complaint as true and examine
3 nothing more than the contract upon which the complaint is
4 based, the policy of insurance and as a matter of law, the
5 plaintiffs complaint cannot be sustained. And although the
6 plaintiff has requested a chance to amend without any
7 indication of how they would do that, there actually is no
8 factual development that could change the fact that the
9 complaint is complaining about the loss of access or use
10 of the premises due to executive orders and the Covid-19
11 virus crisis. So, there's no factual development that
12 could possibly change that or amendment to the complaint
13 that could possibly change that those things do not
14 constitute the direct physical damage or injury that's
15 required under the policy as I've outlined.

16 So, for those reasons, I am granting the
17 Defendant's Motion for Summary Disposition. I'm doing it
18 under MCR 2.116 (c)(8). And Mr.—

19 MR. EMRICH: Thank you, your Honor.

20 THE COURT: Mr. Emrich, will you submit an order?

21 MR. EMRICH: Certainly will, your Honor.

22 THE COURT: Okay.

23 MR. EMRICH: Thank you.

24 THE COURT: Thank you.

25 MR. HEOS: Thank you very much.

EXHIBIT E

STATE OF FLORIDA
OFFICE OF THE GOVERNOR
EXECUTIVE ORDER NUMBER 20-51

(Establishes COVID-19 Response Protocol and Directs Public Health Emergency)

WHEREAS, Coronavirus Disease 2019 (COVID-19) is a severe acute respiratory illness that can spread among humans through respiratory transmission and presents with symptoms similar to those of influenza; and

WHEREAS, in late 2019, a new and significant outbreak of COVID-19 emerged in China; and

WHEREAS, the World Health Organization declared COVID-19 a Public Health Emergency of International Concern; and

WHEREAS, in response to the recent COVID-19 outbreak in China, Iran, Italy and South Korea, the Centers for Disease Control and Prevention ("CDC") has deemed it necessary to prohibit or restrict non-essential travel to or from those countries; and

WHEREAS, in response to the recent COVID-19 outbreak in Japan, the CDC has advised older travelers and those with chronic medical conditions to avoid nonessential travel and all travelers to exercise enhanced precautions; and

WHEREAS, the CDC currently recommends community preparedness and everyday prevention measures be taken by all individuals and families in the United States, including voluntary home isolation when individuals are sick with respiratory symptoms, covering coughs and sneezes with a tissue and disposal of the tissue immediately thereafter, washing hands often with soap and water for at least 20 seconds, use of alcohol-based hand sanitizers with 60%-95%

alcohol if soap and water are not readily available and routinely cleaning frequently touched surfaces and objects to increase community resilience and readiness for responding to an outbreak; and

WHEREAS, two individuals in the State of Florida tested presumptively positive for COVID-19, including a resident of Manatee County and a resident of Hillsborough County; and

WHEREAS, the CDC currently recommends mitigation measures in communities with COVID-19 cases, including staying at home when sick, keeping away from others who are sick and staying at home when a household member is sick with respiratory disease symptoms or if instructed to do so by public health officials or a health care provider; and

WHEREAS, it is necessary and appropriate to take action to ensure that COVID-19 remains controlled and that residents and visitors in Florida remain safe and secure;

NOW, THEREFORE, I, RON DESANTIS, as Governor of Florida, by virtue of the authority vested in me by Article IV, Section 1(a) of the Florida Constitution, and all other applicable laws, promulgate the following Executive Order to take immediate effect:

Section 1. Because of the foregoing conditions, I direct the State Health Officer and Surgeon General, Dr. Scott Rivkees, to declare a public health emergency in the State of Florida, pursuant to his authority in section 381.00315, Florida Statutes. The State Health Officer is authorized and directed to use his judgment as to the duration of this public health emergency.

Section 2. In accordance with section 381.0011(7), Florida Statutes, I direct the State Health Officer to take any action necessary to protect the public health.

I direct the State Health Officer to follow the guidelines established by the CDC in establishing protocols to control the spread of COVID-19 and educate the public on prevention.

Section 4. In accordance with section 381.0011 (7), Florida Statutes, I designate the Florida Department of Health as the lead state agency to coordinate emergency response activities among the various state agencies and local governments. The State Health Officer, or his designee, shall advise the Executive Office of the Governor on the implementation of these emergency response activities.

Section 5. All actions taken by the State Health Officer with respect to this emergency before the issuance of this Executive Order are ratified.

Section 6. The Florida Department of Health will actively monitor, at a minimum, all persons meeting the definition of a Person Under Investigation ("PUI") as defined by the CDC for COVID-19 for a period of at least 14 days or until the PUI tests negative for COVID-19. Active monitoring by the Florida Department of Health will include at least the following:

- A. Risk assessment within 24 hours of learning an individual meets the criteria for a PUI.
- B. Twice-daily temperature checks.

Section 7. The Florida Department of Health, pursuant to its authority in section 381.00315, Florida Statutes, will ensure that all individuals meeting the CDC's definition of a PUI are isolated or quarantined for a period of 14 days or until the person tests negative for COVID-19.

Section 8. I hereby direct the Florida Department of Health to make its own determinations as to quarantine, isolation and other necessary public health interventions as permitted under Florida law.

Section 9. I direct all agencies under the direction of the Governor to fully cooperate with the Florida Department of Health, and any representative thereof in furtherance of this Order.

Agencies not under the direction of the Governor are requested to provide such assistance as is required.



IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Florida to be affixed, at Tallahassee, this 1st day of March, 2020.



RON DESANTIS, GOVERNOR

ATTEST:



SECRETARY OF STATE

FILED
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TALLAHASSEE, FLORIDA

EXHIBIT F

STATE OF FLORIDA

OFFICE OF THE GOVERNOR

EXECUTIVE ORDER NUMBER 20-52

(Emergency Management - COVID-19 Public Health Emergency)

WHEREAS, Novel Coronavirus Disease 2019 (COVID-19) is a severe acute respiratory illness that can spread among humans through respiratory transmission and presents with symptoms similar to those of influenza; and

WHEREAS, in late 2019, a new and significant outbreak of COVID-19 emerged in China; and

WHEREAS, the World Health Organization previously declared COVID-19 a Public Health Emergency of International Concern; and

WHEREAS, in response to the recent COVID-19 outbreak in China, Iran, Italy, Japan and South Korea, the Centers for Disease Control and Prevention (“CDC”) has deemed it necessary to prohibit or restrict non-essential travel to or from those countries; and

WHEREAS, on March 1, 2020, I issued Executive Order number 20-51 directing the Florida Department of Health to issue a Public Health Emergency; and

WHEREAS, on March 1, 2020, the State Surgeon General and State Health Officer declared a Public Health Emergency exists in the State of Florida as a result of COVID-19; and

WHEREAS, on March 7, 2020, I directed the Director of the Division of Emergency Management to activate the State Emergency Operations Center to Level 2 to provide coordination and response to the COVID-19 emergency; and

WHEREAS, as of March 9, 2020, eight counties in Florida have positive cases for COVID-19, and COVID-19 poses a risk to the entire state of Florida; and

WHEREAS, the CDC currently recommends community preparedness and everyday prevention measures be taken by all individuals and families in the United States, including voluntary home isolation when individuals are sick with respiratory symptoms, covering coughs and sneezes with a tissue and disposal of the tissue immediately thereafter, washing hands often with soap and water for at least 20 seconds, using of alcohol-based hand sanitizers with 60%-95% alcohol if soap and water are not readily available and routinely cleaning frequently touched surfaces and objects to increase community resilience and readiness for responding to an outbreak; and

WHEREAS, the CDC currently recommends mitigation measures for communities experiencing an outbreak including staying at home when sick, keeping away from others who are sick, limiting face-to-face contact with others as much as possible, consulting with your healthcare provider if individuals or members of a household are at high risk for COVID-19 complications, wearing a facemask if advised to do so by a healthcare provider or by a public health official, staying home when a household member is sick with respiratory disease symptoms if instructed to do so by public health officials or a health care provider; and

WHEREAS, as Governor, I am responsible for meeting the dangers presented to this state and its people by this emergency.

NOW, THEREFORE, I, RON DESANTIS, as Governor of Florida, by virtue of the authority vested in me by Article IV, Section (1)(a) of the Florida Constitution, Chapter 252, Florida Statutes, and all other applicable laws, promulgate the following Executive Order to take immediate effect:

Section 1. Because of the foregoing conditions, I declare a state of emergency exists in the State of Florida.

Section 2. I designate the Director of the Division of Emergency Management (“Director”) as the State Coordinating Officer for the duration of this emergency and direct him to execute the State’s Comprehensive Emergency Management Plan and other response, recovery, and mitigation plans necessary to cope with the emergency. Additionally, I designate the State Health Officer and Surgeon General as a Deputy State Coordinating Officer and State Incident Commander.

Pursuant to section 252.36(1)(a), Florida Statutes, I delegate to the State Coordinating Officer the authority to exercise those powers delineated in sections 252.36(5)-(10), Florida Statutes, which he shall exercise as needed to meet this emergency, subject to the limitations of section 252.33, Florida Statutes. In exercising the powers delegated by this Order, the State Coordinating Officer shall confer with the Governor to the fullest extent practicable. The State Coordinating Officer shall also have the authority to:

A. Seek direct assistance and enter into agreements with any and all agencies of the United States Government as may be needed to meet the emergency.

B. Designate additional Deputy State Coordinating Officers, as necessary.

C. Suspend the effect of any statute, rule, or order that would in any way prevent, hinder, or delay any mitigation, response, or recovery action necessary to cope with this emergency.

D. Enter orders as may be needed to implement any of the foregoing powers; however, the requirements of sections 252.46 and 120.54(4), Florida Statutes, do not apply to any such orders issued by the State Coordinating Officer; however, no such order shall remain in effect beyond the expiration of this Executive Order, to include any extension.

Section 3. I order the Adjutant General to activate the Florida National Guard, as needed, to deal with this emergency.

Section 4. I find that the special duties and responsibilities resting upon some State, regional, and local agencies and other governmental bodies in responding to the emergency may require them to suspend the application of the statutes, rules, ordinances, and orders they administer. Therefore, I issue the following authorizations:

A. Pursuant to section 252.36(1)(a), Florida Statutes, the Executive Office of the Governor may suspend all statutes and rules affecting budgeting to the extent necessary to provide budget authority for state agencies to cope with this emergency. The requirements of sections 252.46 and 120.54(4), Florida Statutes, do not apply to any such suspension issued by the Executive Office of the Governor; however, no such suspension shall remain in effect beyond the expiration of this Executive Order, to include any extension.

B. Each State agency may suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business or the orders or rules of that agency, if strict compliance with the provisions of any such statute, order, or rule would in any way prevent, hinder, or delay necessary action in coping with the emergency. This includes, but is not limited to, the authority to suspend any and all statutes, rules, ordinances, or orders which affect leasing, printing, purchasing, travel, and the condition of employment and the compensation of employees. For the purposes of this Executive Order, “necessary action in coping with the emergency” means any emergency mitigation, response, or recovery action: (1) prescribed in the State Comprehensive Emergency Management Plan (“CEMP”); or (2) ordered by the State Coordinating Officer. The requirements of sections 252.46 and 120.54, Florida Statutes, shall not apply to any such suspension issued by a State agency; however, no such suspension shall remain in effect beyond the expiration of this Executive Order, to include any extensions.

C. In accordance with section 465.0275, Florida Statutes, pharmacists may dispense up to a 30-day emergency prescription refill of maintenance medication to persons who reside in an area or county covered under this Executive Order and to emergency personnel who have been activated by their state and local agency but who do not reside in an area or county covered by this Executive Order.

D. In accordance with section 252.38, Florida Statutes, each political subdivision within the State of Florida may waive the procedures and formalities otherwise required of the political subdivision by law pertaining to:

1) Performance of public work and taking whatever prudent action is necessary to ensure the health, safety, and welfare of the community;

2) Entering into contracts; however, political subdivisions are cautioned against entering into time and materials contracts without ceiling as defined by 2 CFR 200.318(j) or cost plus percentage contracts as defined by 2 CFR 200.323(d);

3) Incurring obligations;

4) Employment of permanent and temporary workers;

5) Utilization of volunteer workers;

6) Rental of equipment;

7) Acquisition and distribution, with or without compensation, of supplies, materials, and facilities; and,

8) Appropriation and expenditure of public funds.

E. All State agencies responsible for the use of State buildings and facilities may close such buildings and facilities in those portions of the State affected by this emergency, to the extent necessary to meet this emergency. I direct each State agency to report the closure of any State

building or facility to the Secretary of the Department of Management Services. Under the authority contained in section 252.36, Florida Statutes, I direct each County to report the closure of any building or facility operated or maintained by the County or any political subdivision therein to the Secretary of the Department of Management Services. Furthermore, I direct the Secretary of the Department of Management Services to:

- 1) Maintain an accurate and up-to-date list of all such closures; and,
- 2) Provide that list daily to the State Coordinating Officer.

Section 5. I find that the demands placed upon the funds appropriated to the agencies of the State of Florida and to local agencies are unreasonably great and the funds currently available may be inadequate to pay the costs of coping with this emergency. In accordance with section 252.37(2), Florida Statutes, I direct that sufficient funds be made available, as needed, by transferring and expending moneys appropriated for other purposes, moneys from unappropriated surplus funds, or from the Budget Stabilization Fund.

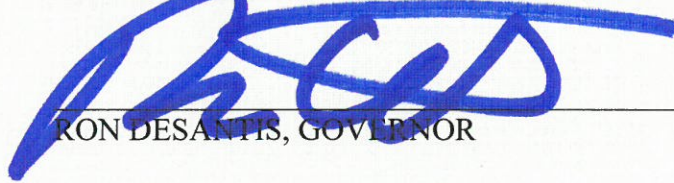
Section 6. All State agencies entering emergency final orders or other final actions in response to this emergency shall advise the State Coordinating Officer contemporaneously or as soon as practicable.

Section 7. Medical professionals and workers, social workers, and counselors with good and valid professional licenses issued by states other than the State of Florida may render such services in Florida during this emergency for persons affected by this emergency with the condition that such services be rendered to such persons free of charge, and with the further condition that such services be rendered under the auspices of the American Red Cross or the Florida Department of Health.

Section 8. All activities taken by the Director of the Division of Emergency Management and the State Health Officer and Surgeon General with respect to this emergency before the issuance of this Executive Order are ratified. This Executive Order shall expire sixty days from this date unless extended.



IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Florida to be affixed, at Tallahassee, this 9th day of March, 2020.



RON DESANTIS, GOVERNOR

ATTEST:



SECRETARY OF STATE

DEPARTMENT OF STATE
TALLAHASSEE, FLORIDA
2020 MAR -9 PM 5:52
FILED

EXHIBIT G

CITY OF MIAMI BEACH

DECLARATION OF A STATE OF EMERGENCY

WHEREAS, the Coronavirus Disease 2019 ("COVID-19") is a severe and acute respiratory illness that can spread amongst persons by respiratory transmission and presents with symptoms similar to those of influenza; and

WHEREAS, in late 2019, a new and significant outbreak of COVID-19 emerged in China; and

WHEREAS, shortly after the initial COVID-19 outbreak, the Center for Disease Control and Prevention ("CDC") deemed it necessary to prohibit or restrict any non-essential travel to or from various countries (including China, Iran, Italy and South Korea), and advised older travelers and those with chronic medical conditions to avoid nonessential travel to Japan. Moreover, the CDC issued an advisory that all travelers exercise enhanced precautions when travelling; and

WHEREAS, equally important, the World Health Organization ("WHO") has declared COVID-19 to be a Public Health Emergency of International Concern and, on Wednesday, March 11, 2020, the WHO declared the rapidly spreading COVID-19 disease a worldwide pandemic, which will likely spread to all countries around the World; and

WHEREAS, Florida Governor Ron Desantis ("Governor Desantis") issued an Executive Order on March 1, 2020 directing the Surgeon General of the State of Florida to issue a public health emergency and, in response to the pandemic outbreak of COVID-19, Governor Desantis declared a State of Emergency on March 9, 2020 based upon its impact to the State of Florida (See Florida's State of Emergency, attached and incorporated as Exhibit "A" hereto); and

WHEREAS, Florida state health officials confirmed three (3) new cases of COVID-19 in Florida on March 11, 2020, including the first confirmed case in Miami-Dade County, a 56-year-old man who tested positive and had traveled recently; and

WHEREAS, the total number of known COVID-19 cases in Florida cases currently stands at twenty-six (26), of which twenty-three (23) such persons are Florida residents; and

Declaration of a State of Emergency
March 12, 2020
Page 2 of 4

WHEREAS, in direct response to the first confirmed case of COVID-19 in Miami-Dade County on March 11, 2020, Miami-Dade County Mayor Carlos Gimenez ("Mayor Gimenez") declared a State of Emergency for Miami-Dade County, and, subsequently suspended the operation of the Miami-Dade County Youth Fair, the Miami Open tennis tournament, the MIA 5K run, and all major events at the American Airlines Arena; and

WHEREAS, COVID-19 has impacted one-hundred fourteen (114) countries around the globe, and these countries have reported that 118,000 individuals have contracted COVID-19, with nearly 4,300 people having died from this disease; and

WHEREAS, in the United States alone, over one-thousand (1,000) cases of COVID-19 have been diagnosed, and twenty-nine (29) people have died from the disease and, President Donald J. Trump signed a Presidential Proclamation on March 11, 2020, suspending the entry of most foreign nationals who have been in certain European countries at any point during the fourteen (14) days prior to their scheduled arrival to the United States. These countries, known as the Schengen Area, include: Austria, Belgium, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, and Switzerland.¹

NOW, THEREFORE, I, JIMMY L. MORALES, as City Manager for the City of Miami Beach, Florida, pursuant to the authority vested in me under Section 26-31 of the City of Miami Beach Code of Laws and Ordinances (the "City Code"), have determined that there is reason to believe that there exists a clear and present danger of a riot or other general public disorder, widespread disobedience of the law, and substantial injury to persons or to property, all of which constitute an imminent threat to public peace or order, and to the general welfare of the City of Miami Beach, based upon the COVID-19 pandemic.

Accordingly, it is necessary and appropriate to take action to ensure that COVID-19 remains controlled, and that residents and visitors in the City of Miami Beach remain safe and secure.

The CDC has recommended mitigation measures in communities with COVID-19 cases, which include staying at home when sick, keeping away from others who are sick, and staying at home when a household member is sick with respiratory disease symptoms, or if instructed to do so by public health officials or a health care provider.

Moving forward during this time, the City will continue to monitor what the World

¹ However, such restriction does not apply certain groups of persons who are identified in the Proclamation.

Declaration of a State of Emergency

March 12, 2020

Page 3 of 4

Health Organization has determined to be a global pandemic, and the City will constantly evaluate planned mass gatherings as the situation continues to develop and evolve.

In order to ensure that COVID-19 remains controlled and to protect the public health, safety and welfare of the residents and visitors of the City of Miami Beach, this immediate action is **NECESSARY**.

AS SUCH, I HEREBY declare a State of Emergency throughout the territorial jurisdiction of the City of Miami Beach, and will be ORDERING and PROMULGATING the following emergency measures, which will be reasonably and necessarily implemented in response to this State of Emergency:


1. The establishment of curfews, including but not limited to the prohibition of or restrictions on pedestrian and vehicular movement, standing and parking, except for the provision of designated essential services such as fire, police and hospital services, including the transportation of patients thereto, utility emergency repairs, and emergency calls by physicians.
2. The prohibition of the sale or distribution of any alcoholic beverage, with or without the payment or a consideration therefore.
3. The prohibition of the possession on any person in a public place of any portable container containing any alcoholic beverage.
4. The closing of places of public assemblage with designated exceptions.
5. The prohibition of the sale or other transfer of possession, with or without consideration, of gasoline or any other flammable or combustible liquid altogether or except by delivery into a tank properly affixed to an operable motor-driven vehicle, bike, scooter, boat or airplane and necessary for the propulsion thereof.
6. The prohibition of the possession in a public place of any portable container containing gasoline or any other flammable or combustible liquid.

THE EMERGENCY MEASURES THAT WILL BE REASONABLY ORDERED AND PROMULGATED HEREIN WILL BE EFFECTIVE IMMEDIATELY, AND SHALL BE EFFECTIVE FOR A PERIOD OF 72 CONSECUTIVE HOURS OF THE DECLARED STATE OF EMERGENCY THROUGHOUT THE CITY OF MIAMI BEACH, UNLESS EXTENDED BY THE MIAMI BEACH CITY COMMISSION BY DULY ENACTED RESOLUTION IN REGULAR OR SPECIAL SESSION.

Declaration of a State of Emergency
March 12, 2020
Page 4 of 4

Any violation of these emergency measures shall subject the individual to arrest and criminal prosecution pursuant to Section 26-36 and Section 1-14 of the City Code.

CITY OF MIAMI BEACH, FLORIDA


Jimmy L. Morales, City Manager

Date: 3/11 - 2020

Time: -----"J : Y , p i : t : -----

ATTEST:



Rafael E. Granado, City Clerk



STATE OF FLORIDA
COUNTY OF MIAMI-DADE

I, RAFAEL E. GRANADO, City Clerk of the City of Miami Beach, Florida, do hereby certify that the above and foregoing is a true and correct copy of the original thereof on file in this office.

WITNESS my hand and seal of said City this 12, day of March, 2020


Rafael E. Granado
City Clerk of the City of Miami Beach, Florida



STATE OF FLORIDA

OFFICE OF THE GOVERNOR

EXECUTIVE ORDER NUMBER 20-52

(Emergency Management - COVID-19 Public Health Emergency)

WHEREAS, Novel Coronavirus Disease 2019 (COVID-19) is a severe acute respiratory illness that can spread among humans through respiratory transmission and presents with symptoms similar to those of influenza; and

WHEREAS, in late 2019, a new and significant outbreak of COVID-19 emerged in China; and

WHEREAS, the World Health Organization previously declared COVID-19 a Public Health Emergency of International Concern; and

WHEREAS, in response to the recent COVID-19 outbreak in China, Iran, Italy, Japan and South Korea, the Centers for Disease Control and Prevention ("CDC") has deemed it necessary to prohibit or restrict non-essential travel to or from those countries; and

WHEREAS, on March 1, 2020, I issued Executive Order number 20-51 directing the Florida Department of Health to issue a Public Health Emergency; and

WHEREAS, on March 1, 2020, the State Surgeon General and State Health Officer declared a Public Health Emergency exists in the State of Florida as a result of COVID-19; and

WHEREAS, on March 7, 2020, I directed the Director of the Division of Emergency Management to activate the State Emergency Operations Center to Level 2 to provide coordination and response to the COVID-19 emergency; and

WHEREAS, as of March 9, 2020, eight counties in Florida have positive cases for COVID-19, and COVID-19 poses a risk to the entire state of Florida; and

WHEREAS, the CDC currently recommends community preparedness and everyday prevention measures be taken by all individuals and families in the United States, including voluntary home isolation when individuals are sick with respiratory symptoms, covering coughs and sneezes with a tissue and disposal of the tissue immediately thereafter, washing hands often with soap and water for at least 20 seconds, using of alcohol-based hand sanitizers with 60%-95% alcohol if soap and water are not readily available and routinely cleaning frequently touched surfaces and objects to increase community resilience and readiness for responding to an outbreak; and

WHEREAS, the CDC currently recommends mitigation measures for communities experiencing an outbreak including staying at home when sick, keeping away from others who are sick, limiting face-to-face contact with others as much as possible, consulting with your healthcare provider if individuals or members of a household are at high risk for COVID-19 complications, wearing a facemask if advised to do so by a healthcare provider or by a public health official, staying home when a household member is sick with respiratory disease symptoms if instructed to do so by public health officials or a health care provider; and

WHEREAS, as Governor, I am responsible for meeting the dangers presented to this state and its people by this emergency.

NOW, THEREFORE, I, RON DESANTIS, as Governor of Florida, by virtue of the authority vested in me by Article IV, Section (1)(a) of the Florida Constitution, Chapter 252, Florida Statutes, and all other applicable laws, promulgate the following Executive Order to take immediate effect:

Section 1. Because of the foregoing conditions, I declare a state of emergency exists in the State of Florida.

Section 2. I designate the Director of the Division of Emergency Management (“Director”) as the State Coordinating Officer for the duration of this emergency and direct him to execute the State’s Comprehensive Emergency Management Plan and other response, recovery, and mitigation plans necessary to cope with the emergency. Additionally, I designate the State Health Officer and Surgeon General as a Deputy State Coordinating Officer and State Incident Commander.

Pursuant to section 252.36(1)(a), Florida Statutes, I delegate to the State Coordinating Officer the authority to exercise those powers delineated in sections 252.36(5)-(10), Florida Statutes, which he shall exercise as needed to meet this emergency, subject to the limitations of section 252.33, Florida Statutes. In exercising the powers delegated by this Order, the State Coordinating Officer shall confer with the Governor to the fullest extent practicable. The State Coordinating Officer shall also have the authority to:

A. Seek direct assistance and enter into agreements with any and all agencies of the United States Government as may be needed to meet the emergency.

B. Designate additional Deputy State Coordinating Officers, as necessary.

C. Suspend the effect of any statute, rule, or order that would in any way prevent, hinder, or delay any mitigation, response, or recovery action necessary to cope with this emergency.

D. Enter orders as may be needed to implement any of the foregoing powers; however, the requirements of sections 252.46 and 120.54(4), Florida Statutes, do not apply to any such orders issued by the State Coordinating Officer; however, no such order shall remain in effect beyond the expiration of this Executive Order, to include any extension.

Section 3. I order the Adjutant General to activate the Florida National Guard, as needed, to deal with this emergency.

Section 4. I find that the special duties and responsibilities resting upon some State, regional, and local agencies and other governmental bodies in responding to the emergency may require them to suspend the application of the statutes, rules, ordinances, and orders they administer. Therefore, I issue the following authorizations:

A. Pursuant to section 252.36(1)(a), Florida Statutes, the Executive Office of the Governor may suspend all statutes and rules affecting budgeting to the extent necessary to provide budget authority for state agencies to cope with this emergency. The requirements of sections 252.46 and 120.54(4), Florida Statutes, do not apply to any such suspension issued by the Executive Office of the Governor; however, no such suspension shall remain in effect beyond the expiration of this Executive Order, to include any extension.

B. Each State agency may suspend the provisions of any regulatory statute prescribing the procedures for conduct of state business or the orders or rules of that agency, if strict compliance with the provisions of any such statute, order, or rule would in any way prevent, hinder, or delay necessary action in coping with the emergency. This includes, but is not limited to, the authority to suspend any and all statutes, rules, ordinances, or orders which affect leasing, printing, purchasing, travel, and the condition of employment and the compensation of employees. For the purposes of this Executive Order, “necessary action in coping with the emergency” means any emergency mitigation, response, or recovery action: (1) prescribed in the State Comprehensive Emergency Management Plan (“CEMP”); or (2) ordered by the State Coordinating Officer. The requirements of sections 252.46 and 120.54, Florida Statutes, shall not apply to any such suspension issued by a State agency; however, no such suspension shall remain in effect beyond the expiration of this Executive Order, to include any extensions.

C. In accordance with section 465.0275, Florida Statutes, pharmacists may dispense up to a 30-day emergency prescription refill of maintenance medication to persons who reside in an area or county covered under this Executive Order and to emergency personnel who have been activated by their state and local agency but who do not reside in an area or county covered by this Executive Order.

D. In accordance with section 252.38, Florida Statutes, each political subdivision within the State of Florida may waive the procedures and formalities otherwise required of the political subdivision by law pertaining to:

1) Performance of public work and taking whatever prudent action is necessary to ensure the health, safety, and welfare of the community;

2) Entering into contracts; however, political subdivisions are cautioned against entering into time and materials contracts without ceiling as defined by 2 CFR 200.318(j) or cost plus percentage contracts as defined by 2 CFR 200.323(d);

3) Incurring obligations;

4) Employment of permanent and temporary workers;

5) Utilization of volunteer workers;

6) Rental of equipment;

7) Acquisition and distribution, with or without compensation, of supplies, materials, and facilities; and,

8) Appropriation and expenditure of public funds.

E. All State agencies responsible for the use of State buildings and facilities may close such buildings and facilities in those portions of the State affected by this emergency, to the extent necessary to meet this emergency. I direct each State agency to report the closure of any State

building or facility to the Secretary of the Department of Management Services. Under the authority contained in section 252.36, Florida Statutes, I direct each County to report the closure of any building or facility operated or maintained by the County or any political subdivision therein to the Secretary of the Department of Management Services. Furthermore, I direct the Secretary of the Department of Management Services to:

- 1) Maintain an accurate and up-to-date list of all such closures; and,
- 2) Provide that list daily to the State Coordinating Officer.

Section 5. I find that the demands placed upon the funds appropriated to the agencies of the State of Florida and to local agencies are unreasonably great and the funds currently available may be inadequate to pay the costs of coping with this emergency. In accordance with section 252.37(2), Florida Statutes, I direct that sufficient funds be made available, as needed, by transferring and expending moneys appropriated for other purposes, moneys from unappropriated surplus funds, or from the Budget Stabilization Fund.

Section 6. All State agencies entering emergency final orders or other final actions in response to this emergency shall advise the State Coordinating Officer contemporaneously or as soon as practicable.

Section 7. Medical professionals and workers, social workers, and counselors with good and valid professional licenses issued by states other than the State of Florida may render such services in Florida during this emergency for persons affected by this emergency with the condition that such services be rendered to such persons free of charge, and with the further condition that such services be rendered under the auspices of the American Red Cross or the Florida Department of Health.

Section 8. All activities taken by the Director of the Division of Emergency Management and the State Health Officer and Surgeon General with respect to this emergency before the issuance of this Executive Order are ratified. This Executive Order shall expire sixty days from this date unless extended.



IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Florida to be affixed, at Tallahassee, this 9th day of March, 2020.


RON DESANTIS, GOVERNOR

ATTEST:


SECRETARY OF STATE

2020 MAR -9 PM 5:52

EXHIBIT H

ADDITIONAL EMERGENCY MEASURES TO BE IMPLEMENTED BY CITY OF MIAMI BEACH

EFFECTIVE MARCH 16, 2020, AT 12:01 A.M.

As City Manager for the City of Miami Beach, Florida, and pursuant to the authority vested in me under Section 26-31 of the City of Miami Beach Code of Laws and Ordinances (the "City Code"), as well as that certain City of Miami Beach Declaration of State of Emergency, dated March 12, 2020, and effective through March 19, 2020, I hereby **ORDER** and **PROMULGATE** the following additional emergency measures, which will be reasonably and necessarily implemented in response to this State of Emergency:

- All public beaches from 5th Street through and including 15th Street will be **CLOSED**.
- Lummus Park will be **CLOSED**.
- All non-essential businesses within the territorial limits of the City of Miami Beach shall be required to **CLOSE** by no later than 10:00 p.m. on March 16, 2020 (including weeknights and weekends). **The term "non-essential businesses" shall EXCLUDE the following: pharmacies, grocery stores, convenience stores, private offices, banks, hotels, hospitals, medical service providers, medical supply stores, hardware stores, gasoline service stations, and automotive supply/repair centers.**
- A curfew is hereby established within the boundaries of the MXE district (bounded by 5th Street on the South, 16th Street on the North, Washington Avenue on the West, and Ocean Drive on the East). The curfew will be in effect daily from 11:00 p.m. to 5:00 a.m. and shall include but not be limited to the prohibition on pedestrian and vehicular movement, standing and parking, except for the provision of designated essential services such as fire, police and hospital services, including the transportation of patients thereto, utility emergency repairs, and emergency calls by physicians.
- All City-owned parking garages and City-owned surface parking lots shall be **CLOSED** to the general public (**except for permit and access card holders**).

The additional emergency measures that have been ordered and promulgated above shall be effective commencing at 12:01 a.m. on March 16, 2020, and shall be effective through 11:59 p.m. on March 19, 2020, unless extended by the Miami Beach City Commission by duly enacted Resolution in regular or special session.

Additional Emergency Measures
March 15, 2020
Page 2 of 2

Any violation of these emergency measure(s) shall subject the individual, operator, business entity, or organization to arrest and criminal prosecution pursuant to Section 26-36 and Section 1-14 of the City Code.

CITY OF MIAMI BEACH, FLORIDA



Jimmy L. Morales, City Manager

Date: 3/15/2020

Time: 2:43 p.m.

ATTEST:



Rafael E. Granado, City Clerk



EXHIBIT I

**EMERGENCY MEASURES
TO BE IMPLEMENTED BY CITY OF MIAMI BEACH
(Revised on March 17, 2020, at 1:45 P.M.)**

EFFECTIVE MARCH 18, 2020, AT 12:01 A.M.

As City Manager for the City of Miami Beach, Florida, and pursuant to the authority vested in me under Section 26-31 of the City of Miami Beach Code of Laws and Ordinances (the "City Code"), as well as that certain City of Miami Beach Declaration of State of Emergency, dated March 12, 2020, and effective through March 19, 2020, I hereby **ORDER** and **PROMULGATE** the following additional emergency measures, which will be reasonably and necessarily implemented in response to this State of Emergency:

PARKS AND BEACHES

- All public beaches (including public beachfront concessions) from 5th Street through and including 15th Street, will be **CLOSED**.
- Food and beverage service on the beaches by concessionaires, including public beach concessions and hotel beach concessions, shall be **PROHIBITED**.
- Lummus Park will be **CLOSED**.
- All public gatherings of ten (10) or more persons on the City's beaches shall be **PROHIBITED**.
- All City Parks and Recreation buildings and indoor facilities will be **CLOSED**. Parks and Recreation locations will remain open as outdoor-only facilities during regular hours.
- All City Parks and Recreation programs, games, practices, field trips, and events will be **CANCELED**.

SIDEWALK CAFES

- All sidewalk cafes will be **CLOSED**.

PARKING

- All City-owned parking garages and City-owned surface parking lots shall be **CLOSED** to the general public (**except for permit and access card holders**).

CURFEW

- A curfew is hereby established within the boundaries of the MXE district (bounded by 5th Street on the South, 16th Street on the North, Washington Avenue on the West, and Ocean Drive on the East). The curfew will be in effect daily from 12:00 a.m. (midnight) to 5:00 a.m., and shall include but not be limited to the prohibition on

pedestrian and vehicular movement, standing and parking, except for the provision of designated essential services such as fire, police and hospital services, including the transportation of patients thereto, utility emergency repairs, emergency calls by physicians, and food delivery services (subject to the limitations below).

EMERGENCY MEASURES FOR NON-ESSENTIAL BUSINESSES

- Non-essential businesses shall be subject to the restrictions below. The term “non-essential businesses” shall include all businesses operating within the territorial limits of the City of Miami Beach, **EXCEPT** the following: pharmacies, grocery stores, convenience stores, private offices, banks, hotel operations, hospitals (and ancillary establishments located within hospitals), City’s U.S. Coast Guard facilities, medical service providers, medical supply stores, hardware stores, gasoline service stations, and automotive supply/repair centers.
- Any restaurants, nightclubs, dance halls, halls for hire, or similar businesses ***that are located within a hotel*** shall also be considered a “non-essential business” subject to the restrictions below.
- **Temporary Closure of Non-Essential Businesses**

The following non-essential businesses shall be **CLOSED** to the public until further notice:

- All movie theaters, bowling alleys, arcades and live performance venues.
- All gymnasiums and fitness centers, **EXCEPT** for gymnasiums or fitness centers which are located within hotels, fire stations, police stations, or residential multi-family buildings.
- **Restaurants, Bars, Nightclubs, Dance Halls and Halls for Hire**
All restaurants (including restaurants operating within hotels or servicing beach/pool concession areas within hotels), bars, nightclubs, dance halls, halls for hire (including banquet halls, ballrooms, or similar establishments operating within hotels), private clubs and similar businesses shall be required to **CLOSE for on-premises service of customers** until further notice. However, such establishments may operate their kitchens for the purpose of providing **delivery services, drive-through, pick-up or take-out services only**, from 5:00 a.m. until midnight each day.
- **Hours of operation for all other non-essential businesses**
All other non-essential businesses shall be required to **CLOSE** by no later than 10:00 p.m. each day (including weeknights and weekends), and shall not reopen until 5:00 a.m. the next morning.

Additional Emergency Measures

March 17, 2020

Page 3 of 3

THE EMERGENCY MEASURES THAT HAVE BEEN ORDERED AND PROMULGATED ABOVE SHALL BE EFFECTIVE COMMENCING AT 12:01 A.M. ON MARCH 18, 2020, AND SHALL BE EFFECTIVE THROUGH 11:59 P.M. ON MARCH 19, 2020, UNLESS EXTENDED BY THE MIAMI BEACH CITY COMMISSION BY DULY ENACTED RESOLUTION IN REGULAR OR SPECIAL SESSION.

Any violation of these emergency measure(s) shall subject the individual, operator, business entity, or organization to arrest and criminal prosecution pursuant to Section 26-36 and Section 1-14 of the City Code.

The Emergency Measures set forth herein supersede and replace all prior City of Miami Beach Emergency Measures ordered and promulgated since March 12, 2020.

CITY OF MIAMI BEACH, FLORIDA


Jimmy L. Morales, City Manager

Date: 3/17/2020

Time: 1:45 p.m.

ATTEST:


MARCH 17, 2020
Rafael E. Granado, City Clerk



STATE OF FLORIDA
COUNTY OF MIAMI-DADE

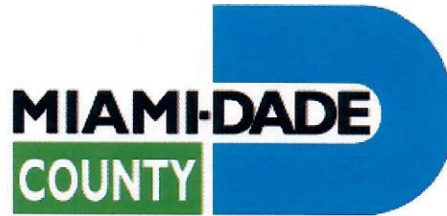
I, **RAFAEL E. GRANADO**, City Clerk of the City of Miami Beach, Florida, do hereby certify that the above and foregoing is a true and correct copy of the original thereof on file in this office.

WITNESS my hand and seal of said City this 17 day of MARCH, 2020.


Rafael E. Granado
City Clerk of the City of Miami Beach, Florida



EXHIBIT J



MIAMI-DADE COUNTY EMERGENCY ORDER 07-20

WHEREAS, Section 252.38(3)(a), Florida Statutes, gives political subdivisions the authority to declare and enact a State of Local Emergency for a period of up to seven days, thereby waiving the procedures and formalities otherwise required of the political subdivision by law; and

WHEREAS, on March 1, 2020, the Governor of Florida issued Executive Order Number 20-51, directing the State Health Officer and Surgeon General to declare a Public Health Emergency due to the discovery of COVID-19/novel Coronavirus in Florida; and

WHEREAS, on March 9, 2020, the Governor of Florida issued Executive Order Number 20-52, declaring a State of Emergency for the state of Florida related to COVID-19/novel Coronavirus; and

WHEREAS, on March 12, 2020, the County Mayor declared a State of Emergency for all of Miami-Dade County; and

WHEREAS, COVID-19/novel Coronavirus poses a health risk to Miami-Dade County residents, particularly elderly residents and those who are immunosuppressed or otherwise have high-risk medical conditions; and

WHEREAS, minimization of contact is necessary to avoid risk of COVID-19 infection for the residents of the County; and

WHEREAS, the Centers for Disease Control (CDC) has issued guidance entitled "15 Days to Slow the Spread," encouraging social distancing and maintaining a 6 foot separation between residents to slow the spread of infection and that events with more than ten attendees either be cancelled or held virtually; and

WHEREAS, the CDC guidelines are based upon the amount of community spread within a community and become more stringent where there is minimal to moderate or substantial community spread; and

WHEREAS, section 8B-7(2)(f) of the Code authorizes the County Mayor to order the closure of any commercial establishment; and

Miami-Dade County Declaration of Local State of Emergency

WHEREAS, sections 8B-7(2)(e) and (o) of the Code authorize the County Mayor to limit the movement of persons inside Miami-Dade County in order to safeguard life and health,

THEREFORE, as County Mayor of Miami-Dade County, I hereby order:

1. All non-essential retail and commercial establishments are ordered closed.
2. Essential retail and commercial businesses, which may remain open, are:
 - a. Healthcare providers, including, but not limited to, hospitals, doctors' and dentists' offices, urgent care centers, clinics, rehabilitation facilities, physical therapists, mental health professionals, psychiatrists, therapists, and pharmacies;
 - b. Grocery stores, farmers' markets, farm and produce stands, supermarkets, food banks, convenience stores, and other establishments engaged in the retail sale of canned food, dry goods, fresh fruits and vegetables, pet supply, fresh meats, fish, and poultry, and any other household consumer products (such as cleaning and personal care products). This authorization includes stores that sell groceries and also sell other non-grocery products, and products necessary to maintaining the safety, sanitation, and essential operations of residences;
 - c. Food cultivation, including farming, livestock, and fishing;
 - d. Businesses that provide food, shelter, social services, and other necessities of life for economically disadvantaged or otherwise needy individuals;
 - e. Newspapers, television, radio, and other media services;
 - f. Gas stations and auto-supply, auto-repair, and related facilities;
 - g. Banks and related financial institutions;
 - h. Hardware stores;
 - i. Contractors and other tradesmen, appliance repair personnel, exterminators, and other service providers who provide services that are necessary to maintaining the safety, sanitation, and essential operation of residences and other structures;
 - j. Businesses providing mailing and shipping services, including post office boxes;
 - k. Private colleges, trade schools, and technical colleges, but only as needed to facilitate online or distance learning;
 - l. Laundromats, dry cleaners, and laundry service providers;
 - m. Restaurants and other facilities that prepare and serve food, but subject to the limitations and requirements of Emergency Order 3-20. Schools and other entities that typically

Miami-Dade County Declaration of Local State of Emergency

provide free food services to students or members of the public may continue to do so on the condition that the food is provided to students or members of the public on a pick-up and takeaway basis only. Schools and other entities that provide food services under this exemption shall not permit the food to be eaten at the site where it is provided, or at any other gathering site;

- n. Businesses that supply office products needed for people to work from home;
- o. Businesses that supply other essential businesses with the support or supplies necessary to operate, and which do not interact with the general public;
- p. Businesses that ship or deliver groceries, food, goods, or services directly to residences;
- q. Airlines, taxis, and other private transportation providers providing transportation services via automobile, truck, bus, or train;
- r. Home-based care for seniors, adults, or children;
- s. Assisted living facilities, nursing homes, and adult day care centers, and senior residential facilities;
- t. Professional services, such as legal or accounting services, when necessary to assist in compliance with legally mandated activities;
- u. Landscape and pool care businesses, including residential landscape and pool care services;
- v. Childcare facilities providing services that enable employees exempted in this Order to work as permitted. To the extent possible, childcare facilities should operate under the following mandatory conditions:
 - 1. Childcare must be carried out in stable groups of 10 or fewer (inclusive of childcare providers for the group).
 - 2. Children and child care providers shall not change from one group to another.
 - 3. If more than one group of children is cared for at one facility, each group shall be in a separate room. Groups shall not mix or interact with each other.
- w. Businesses operating at any airport, seaport, or other government facility, including parks and government offices;
- x. Pet supply stores;
- y. Logistics providers, including warehouses, trucking, consolidators, fumigators, and handlers;
- z. Telecommunications providers, including sales of computer or telecommunications devices and the provision of home telecommunications;

Miami-Dade County Declaration of Local State of Emergency

- aa. Provision of propane or natural gas;
- bb. Office space and administrative support necessary to perform any of the above-listed activities;
- cc. Open construction sites, irrespective of the type of building;
- dd. Architectural, engineering, or land surveying services;
- ee. Factories, manufacturing facilities, bottling plants, or other industrial uses;
- ff. Waste management services, including collection and disposal of waste; and
- gg. Any business that is interacting with customers solely through electronic or telephonic means, and delivering products via mailing, shipping, or delivery services

3. This order does not affect or limit the operations of Miami-Dade County, any public utility, any municipality, the Miami-Dade County School District, or any State or Federal office or facility, except that such entities shall abide by the restrictions of any County, Municipal, State or Federal emergency order, as applicable.

4. This order does not limit the number of persons who may be physically present performing services at any location where an essential business is being conducted except as expressly set forth herein or otherwise governed by any State or Federal order or regulation. Employers and employees are urged, but are not required, to practice social distancing, such as keeping six feet between persons and limiting group size to less than ten people.

5. This order does not limit the number of persons who may be physically present at any religious service. Persons attending religious services are urged, but are not required, to practice social distancing, such as keeping six feet between persons and limiting group size to less than ten people.

6. The County Mayor may amend the provisions of paragraph 2, 3, and 4 by written notice to the County Clerk.

7. The provisions of this order shall serve as minimum standards. Municipalities may impose more stringent standards within their jurisdictions.

8. This order shall expire upon the expiration of the existing Miami-Dade County State of Local Emergency, except that if such State of Local Emergency is extended, this order shall also be deemed to extend for the duration of such extension. This order may be cancelled earlier by action of the County Mayor.

9. This order shall be effective as of 9:00 p.m., March 19, 2020.

Miami-Dade County Declaration of Local State of Emergency

9. This order shall be effective as of 9:00 p.m., March 19, 2020.

10. This order shall be provided to all appropriate media consistent with the requirements of section 8B-7(2)(n) of the Code of Miami-Dade County.

Enacted:

Signed: _____



COUNTY MAYOR

Date: 3/19/2020

Time: 00:30

Witness: _____

Cancelled:

Signed: _____

COUNTY MAYOR

Date: _____

Time: ____:____

Witness: _____

EXHIBIT K

STATE OF FLORIDA

OFFICE OF THE GOVERNOR EXECUTIVE ORDER NUMBER 20-89

(Emergency Management – COVID-19 – Miami-Dade County, Broward County, Palm Beach County, Monroe County Public Access Restrictions)

WHEREAS, on March 1, 2020, I issued Executive Order 20-51 directing the Florida Department of Health to issue a Public Health Emergency; and

WHEREAS, on March 1, 2020, the State Surgeon General and State Health Officer declared a Public Health Emergency exists in the State of Florida as a result of COVID-19; and

WHEREAS, on March 9, 2020, I issued Executive Order 20-52 declaring a state of emergency for the entire State of Florida as a result of COVID-19; and

WHEREAS, on March 16, 2020, President Donald J. Trump and the Centers for Disease Control and Prevention (“CDC”) issued the “15 Days to Slow the Spread” guidance advising individuals to adopt far-reaching social distancing measures, such as avoiding gatherings of more than 10 people, and in states with evidence of community spread, recommending restrictions to certain establishments conducive to mass gatherings and congregations; and

WHEREAS, on March 29, 2020, the President extended such guidance to be in effect until April 30, 2020; and

WHEREAS, Miami-Dade County, Broward County, and Palm Beach County have already implemented orders restricting certain public access to non-essential retail and commercial establishments; and

WHEREAS, over sixty (60) percent of Florida’s identified COVID-19 cases are in these neighboring southern counties, which make up a large percentage of Florida’s population; and

WHEREAS, my Administration has consulted with the authorities from Miami-Dade County, Broward County, Palm Beach County and Monroe County who seek to harmonize restricted public access mandates in order to establish uniformity and consistency throughout their counties of close proximity; and

WHEREAS, it is necessary and appropriate to take action to ensure that COVID-19 remains controlled, and that residents and visitors in Florida remain safe and secure.

NOW, THEREFORE, I, RON DESANTIS, as Governor of Florida, by virtue of the authority vested in me by Article IV, Section (1)(a) of the Florida Constitution, Chapter 252, Florida Statutes, and all other applicable laws, promulgate the following Executive Order to take immediate effect:

Section 1. I hereby order Miami-Dade County, Broward County, Palm Beach County and Monroe County to restrict public access to businesses and facilities deemed non-essential pursuant to the guidelines established by Miami-Dade County pursuant to its March 19, 2020 Emergency Order 07-20, and as modified by subsequent amendments and orders prior to the date of this order.

Section 2. At their discretion, such county administrators may determine additional “essential” retail and commercial establishments—or other institutions providing essential services—that shall not be subject to complete closure. No county or local authority may restrict or prohibit any “essential” service from performing a function allowed under this order.

Section 3. Essential service establishments not subject to closure shall continue to determine, adopt and maintain reasonable measures to ensure sanitation and cleanliness of premises and items that may come into contact with employees and the public, and such establishments shall take reasonable action to ensure that people adhere to the CDC’s social distancing guidelines.

Section 4. The above-named counties shall not institute curfews pertaining to transit to or from the essential service establishments.

Section 5. This order shall remain in effect until April 15, 2020 unless renewed or otherwise modified by subsequent order.



IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Florida to be affixed, at Tallahassee, this 30th day of March, 2020.

A blue ink signature of Ron DeSantis is written over a horizontal line.

RON DESANTIS, GOVERNOR

ATTEST:

A cursive signature of Laurel M. Lee is written over a horizontal line.

SECRETARY OF STATE

FILED
2020 MAR 30 PM 5:26
TALLAHASSEE, FLORIDA



MIAMI-DADE COUNTY EMERGENCY ORDER 07-20

WHEREAS, Section 252.38(3)(a), Florida Statutes, gives political subdivisions the authority to declare and enact a State of Local Emergency for a period of up to seven days, thereby waiving the procedures and formalities otherwise required of the political subdivision by law; and

WHEREAS, on March 1, 2020, the Governor of Florida issued Executive Order Number 20-51, directing the State Health Officer and Surgeon General to declare a Public Health Emergency due to the discovery of COVID-19/novel Coronavirus in Florida; and

WHEREAS, on March 9, 2020, the Governor of Florida issued Executive Order Number 20-52, declaring a State of Emergency for the state of Florida related to COVID-19/novel Coronavirus; and

WHEREAS, on March 12, 2020, the County Mayor declared a State of Emergency for all of Miami-Dade County; and

WHEREAS, COVID-19/novel Coronavirus poses a health risk to Miami-Dade County residents, particularly elderly residents and those who are immunosuppressed or otherwise have high-risk medical conditions; and

WHEREAS, minimization of contact is necessary to avoid risk of COVID-19 infection for the residents of the County; and

WHEREAS, the Centers for Disease Control (CDC) has issued guidance entitled "15 Days to Slow the Spread," encouraging social distancing and maintaining a 6 foot separation between residents to slow the spread of infection and that events with more than ten attendees either be cancelled or held virtually; and

WHEREAS, the CDC guidelines are based upon the amount of community spread within a community and become more stringent where there is minimal to moderate or substantial community spread; and

WHEREAS, section 8B-7(2)(f) of the Code authorizes the County Mayor to order the closure of any commercial establishment; and

Miami-Dade County Declaration of Local State of Emergency

WHEREAS, sections 8B-7(2)(e) and (o) of the Code authorize the County Mayor to limit the movement of persons inside Miami-Dade County in order to safeguard life and health,

THEREFORE, as County Mayor of Miami-Dade County, I hereby order:

1. All non-essential retail and commercial establishments are ordered closed.
2. Essential retail and commercial businesses, which may remain open, are:
 - a. Healthcare providers, including, but not limited to, hospitals, doctors' and dentists' offices, urgent care centers, clinics, rehabilitation facilities, physical therapists, mental health professionals, psychiatrists, therapists, and pharmacies;
 - b. Grocery stores, farmers' markets, farm and produce stands, supermarkets, food banks, convenience stores, and other establishments engaged in the retail sale of canned food, dry goods, fresh fruits and vegetables, pet supply, fresh meats, fish, and poultry, and any other household consumer products (such as cleaning and personal care products). This authorization includes stores that sell groceries and also sell other non-grocery products, and products necessary to maintaining the safety, sanitation, and essential operations of residences;
 - c. Food cultivation, including farming, livestock, and fishing;
 - d. Businesses that provide food, shelter, social services, and other necessities of life for economically disadvantaged or otherwise needy individuals;
 - e. Newspapers, television, radio, and other media services;
 - f. Gas stations and auto-supply, auto-repair, and related facilities;
 - g. Banks and related financial institutions;
 - h. Hardware stores;
 - i. Contractors and other tradesmen, appliance repair personnel, exterminators, and other service providers who provide services that are necessary to maintaining the safety, sanitation, and essential operation of residences and other structures;
 - j. Businesses providing mailing and shipping services, including post office boxes;
 - k. Private colleges, trade schools, and technical colleges, but only as needed to facilitate online or distance learning;
 - l. Laundromats, dry cleaners, and laundry service providers;
 - m. Restaurants and other facilities that prepare and serve food, but subject to the limitations and requirements of Emergency Order 3-20. Schools and other entities that typically

Miami-Dade County Declaration of Local State of Emergency

provide free food services to students or members of the public may continue to do so on the condition that the food is provided to students or members of the public on a pick-up and takeaway basis only. Schools and other entities that provide food services under this exemption shall not permit the food to be eaten at the site where it is provided, or at any other gathering site;

- n. Businesses that supply office products needed for people to work from home;
- o. Businesses that supply other essential businesses with the support or supplies necessary to operate, and which do not interact with the general public;
- p. Businesses that ship or deliver groceries, food, goods, or services directly to residences;
- q. Airlines, taxis, and other private transportation providers providing transportation services via automobile, truck, bus, or train;
- r. Home-based care for seniors, adults, or children;
- s. Assisted living facilities, nursing homes, and adult day care centers, and senior residential facilities;
- t. Professional services, such as legal or accounting services, when necessary to assist in compliance with legally mandated activities;
- u. Landscape and pool care businesses, including residential landscape and pool care services;
- v. Childcare facilities providing services that enable employees exempted in this Order to work as permitted. To the extent possible, childcare facilities should operate under the following mandatory conditions:
 - 1. Childcare must be carried out in stable groups of 10 or fewer (inclusive of childcare providers for the group).
 - 2. Children and child care providers shall not change from one group to another.
 - 3. If more than one group of children is cared for at one facility, each group shall be in a separate room. Groups shall not mix or interact with each other.
- w. Businesses operating at any airport, seaport, or other government facility, including parks and government offices;
- x. Pet supply stores;
- y. Logistics providers, including warehouses, trucking, consolidators, fumigators, and handlers;
- z. Telecommunications providers, including sales of computer or telecommunications devices and the provision of home telecommunications;

Miami-Dade County Declaration of Local State of Emergency

- aa. Provision of propane or natural gas;
 - bb. Office space and administrative support necessary to perform any of the above-listed activities;
 - cc. Open construction sites, irrespective of the type of building;
 - dd. Architectural, engineering, or land surveying services;
 - ee. Factories, manufacturing facilities, bottling plants, or other industrial uses;
 - ff. Waste management services, including collection and disposal of waste; and
 - gg. Any business that is interacting with customers solely through electronic or telephonic means, and delivering products via mailing, shipping, or delivery services
3. This order does not affect or limit the operations of Miami-Dade County, any public utility, any municipality, the Miami-Dade County School District, or any State or Federal office or facility, except that such entities shall abide by the restrictions of any County, Municipal, State or Federal emergency order, as applicable.
4. This order does not limit the number of persons who may be physically present performing services at any location where an essential business is being conducted except as expressly set forth herein or otherwise governed by any State or Federal order or regulation. Employers and employees are urged, but are not required, to practice social distancing, such as keeping six feet between persons and limiting group size to less than ten people.
5. This order does not limit the number of persons who may be physically present at any religious service. Persons attending religious services are urged, but are not required, to practice social distancing, such as keeping six feet between persons and limiting group size to less than ten people.
6. The County Mayor may amend the provisions of paragraph 2, 3, and 4 by written notice to the County Clerk.
7. The provisions of this order shall serve as minimum standards. Municipalities may impose more stringent standards within their jurisdictions.
8. This order shall expire upon the expiration of the existing Miami-Dade County State of Local Emergency, except that if such State of Local Emergency is extended, this order shall also be deemed to extend for the duration of such extension. This order may be cancelled earlier by action of the County Mayor.
9. This order shall be effective as of 9:00 p.m., March 19, 2020.

Miami-Dade County Declaration of Local State of Emergency

9. This order shall be effective as of 9:00 p.m., March 19, 2020.

10. This order shall be provided to all appropriate media consistent with the requirements of section 8B-7(2)(n) of the Code of Miami-Dade County.

Enacted:

Signed: _____


COUNTY MAYOR

Date: 3/19/2020

Time: 08:30

Witness: _____

Cancelled:

Signed: _____

COUNTY MAYOR

Date: _____

Time: __:__

Witness: _____



AMENDMENT NO. 1 TO MIAMI-DADE COUNTY EMERGENCY ORDER 07-20

WHEREAS, on March 19, 2020, the County Mayor issued Emergency Order 07-20; and

WHEREAS, Emergency Order 07-20 directed the closure of all non-essential retail and commercial establishments and included a list of essential businesses that may still operate; and

WHEREAS, Emergency Order 07-20 provided for amendment by filing written notice with the clerk; and

WHEREAS, hotels, motels, other commercial lodging establishments, and temporary vacation rentals provide essential business services during emergencies; and

WHEREAS, marinas and boat launches, docking, fueling, marine supply and other marina services provide essential business services during emergencies, including access to living space, repair services, and other vital needs; and

WHEREAS, additional retail and commercial establishments listed below provide essential business services during emergencies,

THEREFORE, as County Mayor of Miami-Dade County, I hereby order:

1. Paragraph 2 of Emergency Order 07-20 is hereby amended and restated to clarify that additional following essential businesses may remain open:

2. Essential retail and commercial businesses, which may remain open, are:

* * *

f. Gas stations>>; new and used automobile dealerships;<< and auto-supply, auto-repair, and related facilities>>, provided however that such businesses should ensure that customers practice the social distancing as advised by the CDC<<;

* * *

k. Private colleges, trade schools, and technical colleges, but only as needed to facilitate online or distance learning >>and university, college, or technical college residence halls, to the extent needed to accommodate students who cannot return to their homes<<;

Miami-Dade County Declaration of Local State of Emergency

* * *

ff. Waste management services, including collection and disposal of waste; ~~[[and]]~~

gg. Any business that is interacting with customers solely through electronic or telephonic means, and delivering products via mailing, shipping, or delivery services>>:<<

>>hh. Private and municipal marinas and boat launches, docking, fueling, marine supply and other marina services;

ii. Hotels, motels, other commercial lodging establishments and temporary vacation rentals. Notwithstanding the foregoing, restaurants, bars, and fitness center restrictions within these establishments remain as stated in Emergency Order 03-20;


jj. Veterinarians and pet boarding facilities; and

kk. Mortuaries, funeral homes, and cemeteries.<<

2. The balance of Emergency Order 07-20 remains in full force and effect and is subject to further amendment as set forth in Emergency Order 07-20.

Enacted:

Signed: _____


COUNTY MAYOR
Date: 3/19/2020
Witness: _____

Time: 8:45 PM

Cancelled:

Signed: _____

COUNTY MAYOR

Date: _____

Time: ____:____

Witness: _____



AMENDMENT NO. 2 TO MIAMI-DADE COUNTY EMERGENCY ORDER 07-20

WHEREAS, on March 19, 2020, the County Mayor issued Emergency Order 07-20; and

WHEREAS, Emergency Order 07-20 directed the closure of all non-essential retail and commercial establishments and included a list of essential businesses that may still operate; and

WHEREAS, Emergency Order 07-20 provided for amendment by filing written notice with the clerk; and

WHEREAS, Governor DeSantis issued Executive Order 20-71 which promulgated standards for the sale of alcohol; and

WHEREAS, additional retail and commercial establishments listed below provide essential business services during emergencies,

THEREFORE, as County Mayor of Miami-Dade County, I hereby order:

1. Paragraph 2 of Emergency Order 07-20 is hereby amended and restated to clarify that additional following essential businesses may remain open:

2. Essential retail and commercial businesses, which may remain open, are:

* * *

hh. Private and municipal marinas and boat launches, docking, fueling, marine supply and other marina services;

ii. Hotels, motels, other commercial lodging establishments and temporary vacation rentals. Notwithstanding the foregoing, restaurants, bars, and fitness center restrictions within these establishments remain as stated in Emergency Order 03-20;

jj. Veterinarians and pet boarding facilities; and

kk. Mortuaries, funeral homes, and cemeteries.

>>ll. The sale of alcoholic beverages is authorized consistent with Executive Order 20-71.

mm. Firearm and ammunition supply stores.

Miami-Dade County Declaration of Local State of Emergency

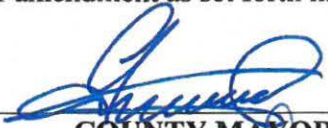
2

nn. Businesses providing services to any local, state, or Federal government, including municipalities, pursuant to a contract with such government.<<

2. The balance of Emergency Order 07-20 remains in full force and effect and is subject to further amendment as set forth in Emergency Order 07-20.

Enacted:

Signed: _____



COUNTY MAYOR

Date: 3/21/2020

Time: 09:15

Witness: _____



Cancelled:

Signed: _____

COUNTY MAYOR

Date: _____

Time: ____:____

Witness: _____



AMENDMENT NO. 3 TO MIAMI-DADE COUNTY EMERGENCY ORDER 07-20

WHEREAS, on March 19, 2020, the County Mayor issued Emergency Order 07-20; and

WHEREAS, Emergency Order 07-20 directed the closure of all non-essential retail and commercial establishments and included a list of essential businesses that may still operate; and

WHEREAS, Emergency Order 07-20 provided for amendment by filing written notice with the clerk; and

WHEREAS, Amendment No. 1 to Emergency Order 07-20 stated that marinas and boat launches, docking, fueling, marine supply and other marina services provide essential business services; and

WHEREAS, large numbers of boaters congregated without observing social distancing and promoted large parties, the occurrence of which would have increased the risk of spreading COVID-19 throughout the community; and

WHEREAS, as a result it is necessary to further limit the use of marinas and boat launches, docking, fueling, marine supply and other marina services; and

WHEREAS, Emergency Order 06-20 as amended from time to time contains detailed information on the use of marinas, boat launches, docking, fueling, marine supply and other marina services for the duration of the state of emergency,

THEREFORE, as County Mayor of Miami-Dade County, I hereby order:

1. Paragraph 2 of Emergency Order 07-20 as amended is hereby amended and restated to clarify that additional following essential businesses may remain open:

2. Essential retail and commercial businesses, which may remain open, are:

* * *

~~[[hh. Private and municipal marinas and boat launches, docking, fueling, marine supply and other marina services]]~~

>>hh. Marinas, boat launches, docking, fueling, marine supply and other marina services only as set forth in Emergency Order 06-20 as amended from time to time.<<

Miami-Dade County Declaration of Local State of Emergency

* * *

2. The balance of Emergency Order 07-20 as amended remains in full force and effect and is subject to further amendment as set forth in Emergency Order 07-20.

Enacted:

Signed: _____



COUNTY MAYOR

Date: 3/23/2020

Time: 12:20

Witness: Jeanette Vazquez

Cancelled:

Signed: _____

COUNTY MAYOR

Date: _____

Time: ____:____

Witness: _____

EXHIBIT L

CITY OF MIAMI BEACH
“SAFER AT HOME” EMERGENCY ORDER
(Revised on April 23, 2020)

EFFECTIVE April 24, 2020, AT 12:00 A.M.

WHEREAS, on March 20, 2020, I, as City Manager of the City of Miami Beach, promulgated an Emergency Order which, among other requirements, temporarily closed certain City facilities and businesses located in the City, and imposed emergency measures, including a general curfew throughout the City, effective 12:00 a.m. on March 24, 2020; and

WHEREAS, Miami-Dade County has issued various Emergency Orders temporarily closing public and private facilities, including the temporary closure of all non-essential retail and commercial establishments within Miami-Dade County, and identifying essential retail and commercial businesses which may remain open, subject to any further restrictions as may be ordered by municipalities within their jurisdictions; and

WHEREAS, City Code Section 26-33(a)(1) authorizes the City Manager, pursuant to a lawfully declared state of emergency, to establish “curfews, including but not limited to the prohibition of or restrictions on pedestrian and vehicular movement, standing and parking, except for the provision of designated essential services such as fire, police and hospital services, including the transportation of patients thereto, utility emergency repairs, and emergency calls by physicians”; and

WHEREAS, numerous counties, municipalities, and at least 43 states have adopted versions of “stay at home” or “safer at home” orders designed to protect the health and well-being of residents, to create social distancing and minimize contact in an effort to limit community spread of COVID-19/novel coronavirus.

NOW THEREFORE, as City Manager for the City of Miami Beach, Florida, and pursuant to the authority vested in me under Section 26-31 of the City of Miami Beach Code of Laws and Ordinances (the “City Code”), as well as that certain City of Miami Beach Declaration of State of Emergency, dated March 12, 2020, as extended through April 30, 2020, and in addition to the Emergency Measures I have previously ordered and promulgated, I hereby **ORDER** and **PROMULGATE** the following additional emergency measures, effective **April 24, 2020 at 12:00 a.m.** (the “Order”):

1. Subject only to the exceptions outlined in Paragraph 4 below, **all persons living within the City of Miami Beach are hereby ordered to remain in their homes.**

2. All public and private gatherings of any number of people occurring outside a residence are prohibited, except as to those exempted activities described in this Paragraph and Paragraph 4. This provision does not apply to gatherings within a single household or living unit.

3. All travel, including, without limitation, travel on foot, bicycle, scooter, motorcycle, automobile, or use of public transit is prohibited, subject to the exceptions set forth in Paragraph 4.

4. **Exceptions.** Notwithstanding the "Safer at Home" directive herein, all residents and visitors in the City may lawfully engage in the following activities:

(a) **Essential Retail and Commercial Activities.** Residents and visitors may engage in essential retail and commercial activities, including, without limitation, travel to or from essential retail and commercial businesses, as defined in Miami-Dade County Emergency Order 07-20 (a copy of which is attached hereto), as may be further amended by Miami-Dade County and/or further amended by the City's Emergency Orders. These essential retail and commercial activities include grocery stores; convenience stores; food distribution centers; restaurants (for take-out and delivery only, and subject to social distance separation of at least 6 feet between patrons); hospitals, pharmacies, and health care providers (including doctor's offices, rehab centers and urgent care centers); gas stations and auto-repair facilities; banks; hardware stores; businesses that provide postal/shipping services and other office products; laundry service providers; childcare facilities providing services to groups of 10 or fewer (subject to limitations in County Emergency Orders); certain professional services; home-based care for seniors, adults or children; pet supply stores, veterinarian and pet boarding facilities; and offices in support of essential retail and commercial activities.

(b) **Outdoor Recreational Activities.** Residents and visitors may engage in outdoor activity and recreation in areas not otherwise closed to the public pursuant to Miami-Dade County Emergency Orders (including, without limitation, Miami-Dade County Emergency Order 15-20) or the City's Emergency Orders, provided that the individuals maintain a distance of at least six (6) feet between each other, including, without limitation, walking, hiking, running, or cycling.

(c) **Personal Support Activities.** Residents and visitors may travel to and from their homes to care for or support a friend, family member, or pet in another household.

(d) **Work in Support of Essential Activities.** Residents and visitors in the City may continue to perform work in support of essential activities (e.g., to perform work providing essential products and services or to otherwise carry out activities specifically permitted in this Order or any Order of a City, County, State or Federal governmental

entity). Travel to or from essential retail and commercial businesses shall be permitted, including personnel providing essential services to residents within their homes, such as repair services, appliance repair, sanitation and extermination, landscaping and pool services, home care, or other essential services (as provided in Miami-Dade County Emergency Orders, as amended), provided persons engaging in these essential activities shall maintain reasonable social distancing practices.

(e) **Government Employees and Emergency Personnel**. All first responders, gang and crisis intervention workers, public health workers, emergency management personnel, emergency dispatchers, law enforcement personnel and related contractors, persons working for emergency services providers, and government employees performing work in the course and scope of their employment are categorically exempt from this Order.

(f) **Child Custody/“Time-sharing” Arrangements**. This Emergency Order shall not be construed to prohibit, interfere with, or otherwise limit any child custody order, agreement, or other “time-sharing” arrangement pertaining to the care of any children or other dependents whose parent(s) or guardian(s) live in different households. Nothing herein shall restrict the transportation of children or other dependent pursuant to any such child custody order, agreement, or other “timesharing” arrangement.

(g) **Observance of Social Distancing Practices**. As to all activities permitted under this Order, residents and visitors shall adhere to social distancing practices, such as maintaining a distance of at least six (6) feet away from others, washing hands with soap and water for at least twenty seconds or using hand sanitizer, covering coughs or sneezes (into the sleeve or elbow, not hands), regularly cleaning high-touch surfaces, not shaking hands, and any social distancing requirements set forth in any City, County, State, or Federal order. Residents and visitors are strongly encouraged to limit all of their travel, except as absolutely necessary. Persons at high risk of severe illness from COVID-19 and people who are sick are strongly encouraged to stay in their residence to the extent possible, except as necessary to seek medical care.

5. Nothing herein shall limit or apply to any essential retail, commercial, governmental, or other operation or activity permitted under any Miami-Dade County Emergency Order or City of Miami Beach Emergency Order.

6. This Order is in addition to, and supplements, the City's Emergency Orders. All requirements of City Emergency Orders, Miami-Dade County Emergency Orders, and State of Florida Executive Orders shall be strictly adhered to at all times.

THE EMERGENCY MEASURES THAT HAVE BEEN ORDERED AND PROMULGATED ABOVE SHALL BE EFFECTIVE COMMENCING AT 12:00 A.M. ON APRIL 24, 2020, AND SHALL BE EFFECTIVE THROUGH 11:59 P.M. ON APRIL 30, 2020, UNLESS EXTENDED BY THE MIAMI BEACH CITY COMMISSION BY DULY ENACTED RESOLUTION IN REGULAR OR SPECIAL SESSION, OR BY THE CITY MANAGER PURSUANT TO CITY RESOLUTION NO. 2020-31245.

Any violation of these emergency measure(s) shall subject the individual, operator, business entity, or organization to arrest and criminal prosecution pursuant to Section 26-36 and Section 1-14 of the City Code.

CITY OF MIAMI BEACH, FLORIDA




Jimmy L. Morales, City Manager

Date: April 23, 2020

Time: 1:55 p.m.

ATTEST:

 4/23/2020
Rafael E. Granado, City Clerk



STATE OF FLORIDA
COUNTY OF MIAMI-DADE

I, RAFAEL E. GRANADO, City Clerk of the City of Miami Beach, Florida, do hereby certify that the above and foregoing is a true and correct copy of the original thereof on file in this office.

WITNESS my hand and seal of said City this 23 day of April, 2020.



Rafael E. Granado
City Clerk of the City of Miami Beach, Florida



Exhibit M



Understanding
MICROBES
in Sickness and in Health



U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
National Institutes of Health

National Institute of Allergy and Infectious Diseases

Front cover photo: *Bordetella pertussis* bacteria

Understanding
MICROBES
in Sickness and in Health

U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
National Institutes of Health



National Institute of Allergy and Infectious Diseases

NIH Publication No. 06-4914
January 2006
www.niaid.nih.gov

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What Are Microbes?

Microbes are tiny **organisms**—too tiny to see without a microscope, yet they are abundant on Earth. They live everywhere—in air, soil, rock, and water. Some live happily in searing heat, while others thrive in freezing cold. Some microbes need oxygen to live, but others do not. These **microscopic** organisms are found in plants and animals as well as in the human body.

Some microbes cause **disease** in humans, plants, and animals. Others are essential for a healthy life, and we could not exist without them. Indeed, the relationship between microbes and humans is delicate and complex. In this booklet, we will learn that some microbes keep us healthy while others can make us sick.

Most microbes belong to one of four major groups: bacteria, viruses, fungi, or protozoa. A common word for microbes that cause disease is “germs.” Some people refer to disease-causing microbes as “bugs.” “I’ve got the flu bug,” for example, is a phrase you may hear during the wintertime to describe an influenza virus **infection**.



Note: Words in bold are defined in the glossary at the end of this booklet.

Since the 19th century, we have known microbes cause **infectious diseases**. Near the end of the 20th century, researchers began to learn that microbes also contribute to many chronic diseases and conditions. Mounting scientific evidence strongly links microbes to some forms of cancer, coronary artery disease, diabetes, multiple sclerosis, and chronic lung diseases.

BACTERIA

Microbes belonging to the bacteria group are made up of only one **cell**. Under a microscope, bacteria look like balls, rods, or spirals. Bacteria are so small that a line of 1,000 could fit across the eraser of a pencil. Life in any form on Earth could not exist without these tiny cells.

Scientists have discovered fossilized remains of bacteria that date back more than 3.5 billion years, placing them among the oldest living things on Earth. Bacteria can inhabit a variety of environments, including extremely hot and cold areas.

- Psychrophiles, or cold-loving bacteria, can live in the subfreezing temperature of the Arctic.
- Thermophiles are heat-loving bacteria that can live in extreme heat, such as in the hot springs in Yellowstone National Park.
- Extreme thermophiles, or hyperthermophiles, thrive at 235 degrees Fahrenheit near volcanic vents on the ocean floor.



Streptococci Bacteria

Many bacteria prefer the milder temperature of the healthy human body.

Like humans, some bacteria (aerobic bacteria) need oxygen to survive. Others (anaerobic bacteria), however, do not. Amazingly, some can adapt to new environments by learning to survive with or without oxygen.

Like all living cells, each bacterium requires food for energy and building materials. There are countless numbers of bacteria on Earth—most are harmless and many are even beneficial to humans. In fact, less than 1 percent of bacteria cause diseases in humans. For example, harmless anaerobic bacteria, such as *Lactobacilli acidophilus*, live in our intestines, where they help to digest food, destroy disease-causing microbes, fight cancer cells, and give the body needed vitamins. Healthy food products, such as yogurt, sauerkraut, and cheese, are made using bacteria.

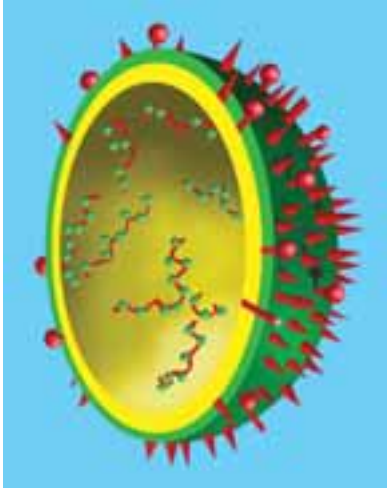
Some bacteria produce poisons called **toxins**, which also can make us sick.

ARE TOXINS ALWAYS HARMFUL?

Certain bacteria give off toxins that can seriously affect your health. Botulism, a severe form of food poisoning, affects the nerves and is caused by toxins from *Clostridium botulinum* bacteria. Under certain circumstances, however, bacterial toxins can be helpful. Several **vaccines** that protect us from getting sick are made from bacterial toxins. One type of pertussis vaccine, which protects infants and children from whooping cough, contains toxins from *Bordetella pertussis* bacteria. This vaccine is safe and effective and causes fewer reactions than other types of pertussis vaccine.

VIRUSES

Viruses are among the smallest microbes, much smaller even than bacteria. Viruses are not cells. They consist of one or more **molecules** of **DNA** or **RNA**, which contain



Influenza Virus

the virus's **genes** surrounded by a protein coat. Viruses can be rod-shaped, sphere-shaped, or multisided. Some viruses look like tadpoles.

Unlike most bacteria, most viruses do cause **disease** because they invade living, normal cells, such as those in your body. They then multiply and produce other viruses like themselves. Each virus is very particular about which cell it attacks.

Various human viruses specifically attack particular cells in your body's organs, systems, or **tissues**, such as the liver, respiratory system, or blood.

Although types of viruses behave differently, most survive by taking over the machinery that makes a cell work. Briefly, when a piece of a virus, called a virion, comes in contact with a cell it likes, it may attach to special landing sites on the surface of that cell. From there, the virus may inject molecules into the cell, or the cell may swallow the virion. Once inside the cell, viral molecules such as DNA or RNA direct the cell to make new virus offspring. That's how a virus infects a cell.

Viruses can even "infect" bacteria. These viruses, called bacteriophages, may help researchers develop alternatives to **antibiotic** medicines for preventing and treating bacterial infections.

Many viral infections do not result in disease. For example, by the time most people in the United States become adults, they have been infected by cytomegalovirus (CMV). Most of these people, however, do not develop CMV-disease symptoms.

Other viral infections can result in deadly diseases such as AIDS (acquired immunodeficiency syndrome) or Ebola hemorrhagic fever.

FUNGI

A fungus is actually a primitive plant. Fungi can be found in air, in soil, on plants, and in water. Thousands, perhaps millions, of different types of fungi exist on Earth. The most familiar ones to us are mushrooms, yeast, mold, and mildew. Some live in the human body, usually without causing illness. Fungal diseases are called mycoses.



Penicillin Mold Fungus

Mycoses can affect your skin, nails, body hair, internal organs such as your lungs, and body systems such as your nervous system.

Aspergillus fumigatus, for example, can cause aspergillosis, a fungal infection in your respiratory system.

Some fungi have made our lives easier. Penicillin and other antibiotics, which kill harmful bacteria in our bodies, are made from fungi. Other fungi, such as certain yeasts, also can be helpful. For example, when a warm liquid, such as water, and a food source are added to certain yeasts, the fungus ferments. The process of fermentation is essential for making healthy foods like some breads and cheeses.

PROTOZOA

Protozoa are a group of microscopic one-celled animals. Protozoa can be **parasites** or predators. In humans, protozoa usually cause disease.

MICROBES IN THE HEALTHY HUMAN BODY*

<i>Microbes found in</i>	
Ear (outer)	<i>Aspergillus</i> (fungus)
Skin	<i>Candida</i> (fungus)
Small intestine	<i>Clostridium</i>
Intestines	<i>Escherichia coli</i>
Vagina	<i>Gardnerella vaginalis</i>
Stomach	<i>Lactobacillus</i>
Urethra	<i>Mycobacterium</i>
Nose	<i>Staphylococcus aureus</i>
Mouth	<i>Streptococcus salivarius</i>
Large intestine	<i>Trichomonas hominis</i> (protozoa)

**A selection of usually harmless microbes, some of which help keep our bodies functioning normally. If their numbers become unbalanced, however, these microbes may make us sick. All are bacteria, unless otherwise noted.*

Some protozoa, like plankton, live in water environments and serve as food for marine animals, such as some kinds of whales. Protozoa also can be found on land in decaying matter and in soil, but they must have a moist environment to survive. Termites wouldn't be able to do such a good job of digesting wood without these **microorganisms** in their guts.



Malaria Parasite

Malaria is caused by a protozoan parasite. Another protozoan parasite, *Toxoplasma gondii*, causes toxoplasmosis in humans. This is an especially troublesome infection in pregnant women because of its effects on the fetus, and in people with **HIV** infection or other immune deficiency disorder.

Microbes Have Bothered Us for Millennia

Microbes have probably always caused infections and diseases in humans. Since ancient times, historians have documented some of those diseases. Present-day archeologists and microbiologists (scientists who study microbes) are discovering evidence of infectious disease in prehistoric human skeletons.

In a fascinating find in the late 20th century, researchers uncovered evidence that prehistoric humans were troubled by microbial parasites and used natural remedies against them. Along with the frozen mummy of the “Ice Man,” who was found in the mountains of northern Italy and lived between 3300 and 3100 B.C., scientists found a type of tree fungus containing oils that are toxic to intestinal

parasites. Later, in the laboratory, researchers found the eggs of a microscopic parasitic intestinal roundworm, *Trichuria trichiura* (whipworm), in his intestines.

Smallpox, which is caused by a variola virus, was described in ancient Egyptian and Chinese writings. According to some researchers, over the centuries smallpox was responsible for more



Black Death Plagued Medieval Europe

deaths than all other infectious diseases combined. It killed millions of people over thousands of years before being eradicated late in the 20th century by worldwide vaccination. The last case of naturally occurring smallpox was recorded in 1977.

The protozoan parasite *Plasmodium* causes malaria, a tropical disease that usually is transmitted to humans during the bite of the *Anopheles* mosquito. In ancient times, this disease was mentioned in Egyptian writings, called hieroglyphics, and was described in detail by the Greek physician Hippocrates. Malaria ravaged invaders from the Roman Empire. Though rare in the United States, malaria remains a serious public health threat worldwide.

Evidence on a 1300 B.C. Egyptian stone engraving shows that poliomyelitis (polio) also has been around since ancient times. In the 1990s, public health officials launched a massive international vaccination campaign to eradicate the polio virus, which causes paralysis and can be deadly.

SOME OTHER SIGNIFICANT SCIENTIFIC EVENTS AND ADVANCES

Approximately 300 B.C.	1675	1796	1848
Aristotle, Greek philosopher and scientist, studied and wrote about living organisms.	Antony van Leeuwenhoek discovered bacteria.	Edward Jenner laid the foundation for developing vaccines.	Ignác Fülöp Semmelweis discovered that simple handwashing could prevent passage of infection from one patient to another.

In the 14th century, a bacterium that modern scientists identified as *Yersinia pestis* caused the bubonic plague, or Black Death. Bubonic plague entered Europe and Africa through infected rodents and fleas that accompanied travelers along trade routes from Mongolia. The plague **epidemic** spread through Europe, Africa, and the Middle East, killing about 20 million people in Europe alone. Plague is spread to humans through the bites of fleas, which pick up the bacteria while sucking blood from rodents, especially rats. In the United States, health care providers report cases of plague even today, most of which are found in the Southwest.

Viruses caused two major **pandemics** during the 20th century. From 1918 to 1919, the influenza virus ravaged worldwide populations. Estimates of the number of people killed during the so-called “Spanish flu” pandemic range from 20 million to 40 million. HIV, which was identified in 1984, killed an estimated 3.1 million people worldwide in 2005 alone.

1857

Louis Pasteur introduced the germ theory of disease.

1867

Joseph Lister showed evidence that microbes caused disease and pioneered the use of antiseptics during surgery to kill germs.

1876

Robert Koch, by studying anthrax, showed the role of bacteria in disease.

1928

Alexander Fleming was credited with discovering penicillin.

Micrones Can Make Us Sick

According to health care experts, infectious diseases caused by microbes are responsible for more deaths worldwide than any other single cause. They estimate the annual cost of medical care for treating infectious diseases in the United States alone is about \$120 billion.

The science of microbiology explores how microbes work and how to control them. It seeks ways to use that knowledge to prevent and treat the diseases microbes cause. The 20th century saw an extraordinary increase in our knowledge about microbes. Microbiologists and other researchers had many successes in learning how microbes cause certain infectious diseases and how to combat those microbes.

Unfortunately, microbes are much better at adapting to new environments than are people. Having existed on Earth for billions of years, microbes are constantly challenging human newcomers with ingenious new survival tactics.

- Many microbes are developing new properties to resist drug treatments that once effectively destroyed them. Drug resistance has become a serious problem worldwide.
- Changes in the environment have put certain human populations in contact with newly identified microbes that cause diseases we have never seen before, or that previously occurred only in isolated populations.
- Newly emerging diseases are a growing global health concern. Since 1976, scientists have identified approximately 30 new **pathogens**.

COMMON DISEASES AND INFECTIONS AND THEIR MICROBIAL CAUSES

	Bacteria	Fungus	Protozoa	Virus
Athlete's foot		▲		
Chickenpox				▲
Common cold				▲
Diarrheal disease	▲		▲	▲
Flu				▲
Genital herpes				▲
Malaria			▲	
Meningitis	▲			▲
Pneumonia	▲	▲		▲
Sinusitis	▲	▲		
Skin diseases	▲	▲	▲	▲
Strep throat	▲			
Tuberculosis	▲			
Urinary tract infection	▲			
Vaginal infections	▲	▲		
Viral hepatitis				▲

Microbes Can Infect Us

Below are some of the many different ways you can get infected by germs.

SOME MICROBES CAN TRAVEL THROUGH THE AIR



You can transmit microbes to another person through the air by coughing or sneezing. These are common ways to get viruses that cause colds or flu, or the bacteria that cause tuberculosis (TB).

Interestingly, international airplane travel can expose you to germs not common in your own country.

CLOSE CONTACT CAN PASS GERMS TO ANOTHER PERSON

Scientists have identified more than 500 types of bacteria that live in our mouths. Some keep the oral environment healthy, while others cause problems like gum disease. One way you can transmit oral bacteria is by kissing.

Microbes such as HIV, herpes simplex virus, and gonorrhea bacteria are examples of germs that can be transmitted directly during sexual intercourse.

YOU CAN PICK UP AND SPREAD GERMS BY TOUCHING INFECTIOUS MATERIAL

A common way for some microbes to enter the body, especially when caring for young children, is through unintentionally passing feces from hand to mouth or the mouths of young children. Infant diarrhea is often spread in this way. Day care workers, for example, can pass diarrhea-causing **rotavirus** or *Giardia lamblia* (protozoa) from one baby to the next between diaper changes and other childcare practices.

It also is possible to pick up cold viruses from shaking someone's hand or from touching contaminated surfaces, such as a handrail or telephone.

A HEALTHY PERSON CAN CARRY GERMS AND PASS THEM ONTO OTHERS

The story of "Typhoid Mary" is a famous example from medical history about how a person can pass germs on to others, yet not be affected by those germs. The germs in this case were *Salmonella typhi* bacteria, which cause typhoid fever and are usually spread through food or water.

In the early 20th century, Mary Mallon, an Irish immigrant, worked as a cook for several New York City families. More than half of the first family she worked for came down with typhoid fever. Through a clever deduction, a researcher determined that the disease was caused by the family cook. He concluded that although Mary had no symptoms of the disease, she probably had had a mild typhoid infection sometime in the past. Though not sick, she still carried the *Salmonella* bacteria and was able to spread them to others through the food she prepared.

GERMS FROM YOUR HOUSEHOLD PET CAN MAKE YOU SICK

You can catch a variety of germs from animals, especially household pets. The rabies virus, which can infect cats and dogs, is one of the most serious and deadly of these microbes. Fortunately, rabies vaccine prevents animals

from getting rabies.

Vaccines protect people from accidentally getting the virus from an animal. They also prevent people who already have been exposed to the virus, such as through an animal bite, from getting sick.

Dog and cat saliva can contain any of more than 100 different germs that can make you sick. *Pasteurella* bacteria, the most common, can be transmitted through bites that break the skin causing serious, and sometimes fatal, diseases such as blood infections and meningitis. Meningitis is the inflammation of the lining of the brain and spinal cord.

Warm-blooded animals are not the only ones that can cause you harm. Pet reptiles such as turtles, snakes, and iguanas can give *Salmonella* bacteria to their unsuspecting owners.

SELECTED DISEASES WE CAN GET DIRECTLY OR INDIRECTLY FROM ANIMALS

Anthrax

Bovine spongiform encephalopathy (BSE, also called mad cow disease)

Brucellosis

Cat scratch disease

Cryptosporidiosis

Flu (Influenza)

Giardiasis

Hantavirus pulmonary syndrome

Histoplasmosis

Hookworm

Listeriosis

Rabies

Ringworm

Salmonellosis

SARS (severe acquired respiratory syndrome)

Toxoplasmosis

Tularemia

YOU CAN GET MICROBES FROM TINY CRITTERS

Mosquitoes may be the most common insect carriers, also called vectors, of pathogens. *Anopheles* mosquitoes can pick up *Plasmodium*, which causes malaria, from the blood of an infected person and transmit the protozoan to an uninfected person.

Fleas that pick up *Yersinia pestis* bacteria from rodents can then transmit plague to humans.

Ticks, which are more closely related to crabs than to insects, are another common vector. The tiny deer tick can infect humans with *Borrelia burgdorferi*, the bacterium that causes Lyme disease, which the tick picks up from mice.

MOSQUITO

Malaria • Dengue Fever
West Nile Virus • Viral Encephalitis



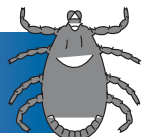
FLEA

Plague



TICK

Babesiosis • Ehrlichiosis • Lyme Disease • Relapsing Fever
Colorado Tick Fever • Rocky Mountain Spotted Fever



SOME MICROBES IN FOOD OR WATER COULD MAKE YOU SICK

Every year, millions of people worldwide become ill from eating contaminated foods. Although many cases of foodborne illness or “food poisoning” are not reported, the Centers for Disease Control and Prevention (CDC) estimates there are 76 million cases of such illnesses in the United States each year. In addition, CDC estimates 325,000 hospitalizations and 5,000 deaths are related to foodborne diseases each year. Microbes can cause these illnesses, some of which can be fatal if not treated properly.

Poor manufacturing processes or poor food preparation can allow microbes to grow in food and subsequently infect you. *Escherichia coli* (*E. coli*) bacteria sometimes persist in food products such as undercooked hamburger



meat and unpasteurized fruit juice. These bacteria can have deadly consequences in vulnerable people, especially children and the elderly.

Cryptosporidia are bacteria found in human and animal feces. These bacteria can get into lake, river, and ocean water from sewage spills, animal waste, and water runoff. Millions can be released from infectious fecal matter. People who drink, swim in, or play in infected water can get sick.

People, including babies, with diarrhea caused by *Cryptosporidia* or other diarrhea-causing microbes such as *Giardia* and *Salmonella*, can infect others while using swimming pools, waterparks, hot tubs, and spas.

TRANSPLANTED ANIMAL ORGANS MAY HARBOR GERMS

Researchers are investigating the possibility of transplanting animal organs, such as pig hearts, into people. They, however, must guard against the risk that those organs also may transmit microbes that were harmless to the animal into humans, where they may cause disease.

Some People Are Immune to Certain Diseases

We become immune to germs through natural and artificial means. As long ago as the 5th century B.C., Greek doctors noticed that people who had recovered from the plague would never get it again—they seemed to have become immune or resistant to the germ. You can become immune, or develop **immunity**, to a microbe in several



We become immune to germs through natural and artificial means. Before birth, we received natural immunity from our mothers. Once we are exposed to a germ, we get natural immunity from special cells in our immune systems programmed to fight off that pathogen if it invades our bodies again. Artificial immunity can come from vaccines.

ways. The first time **T cells** and **B cells** in your **immune system** meet up with an **antigen**, such as a virus or bacterium, they prepare the immune system to destroy the antigen. Because the immune system often can remember its enemies, those cells become active if they meet that particular antigen again. This is called naturally acquired immunity.

Another example of naturally acquired immunity occurs when a pregnant woman passes **antibodies** to her unborn baby. Babies are born with weak **immune responses**, but they are protected from some diseases for their first few months of life by antibodies received from their mothers before birth. Babies who are nursed also receive antibodies from breast milk that help protect their digestive tracts.

Artificial immunity can come from vaccines. **Immunization** with vaccines is a safe way to get protection from germs. Some vaccines contain microorganisms or parts of microorganisms that have been weakened or killed. If you get this type of vaccine, those microorganisms (or their parts) will start your body's immune response, which will demolish the foreign invader but not make you sick. This is a type of artificially acquired immunity.

Immunity can be strong or weak and short- or long-lived, depending on the type of antigen, the amount of antigen, and the route by which it enters your body. When faced with the same antigen, some people's immune system will respond forcefully, others feebly, and some not at all.

The genes you inherit also can influence your likelihood of getting a disease. In simple terms, the genes you get from your parents can influence how your body reacts to certain microbes.

Microbes Cause Different Kinds of Infections

Some disease-causing microbes can make you very sick quickly and then not bother you again. Some can last for a long time and continue to damage tissues. Others can last forever, but you won't feel sick anymore, or you will feel sick only once in a while. Most infections caused by microbes fall into three major groups.

- Acute infections
- Chronic infections
- Latent infections

ACUTE INFECTIONS

Acute infections are usually severe and last a short time. They can make you feel very uncomfortable, with signs and symptoms such as tiredness, achiness, coughing, and sneezing. The common cold is such an infection. The signs and symptoms of a cold can last for 2 to 24 days (but usually a week), though it may seem like a lot longer. Once your body's immune system has successfully fought off one of the many different types of rhinoviruses or other viruses that may have caused your cold, the cold doesn't come back. If you get another cold, it's probably because you have been infected with other cold-causing viruses.

CHRONIC INFECTIONS

Chronic infections usually develop from acute infections and can last for days to months to a lifetime. Sometimes people are unaware they are infected but still may be able to transmit the germ to others. For example, hepatitis C, which affects the liver, is a chronic viral infection. In fact, most people who have been infected with the hepatitis C virus don't know it until they have a blood test that shows antibodies to the virus. Recovery from this infection is rare—about 85 percent of infected persons become chronic carriers of the virus. In addition, serious signs of liver damage, like cirrhosis or cancer, may not appear until as long as 20 years after the infection began.

THE DIFFERENCE BETWEEN INFECTION AND DISEASE

A *disease* occurs when cells or molecules in your body stop working properly, causing symptoms of illness. Many things can cause a disease, including altered genes, chemicals, aging, and infections. An *infection* occurs when a microbe—such as a virus, bacterium, fungus, or parasite—enters your body and begins to reproduce. The invading microbe can directly damage cells, or the immune system can cause symptoms, such as fever, as it tries to rid your body of the invader. Some infections do not cause disease because the microbe is quickly killed or it remains dormant.

LATENT INFECTIONS

Latent infections are “hidden” or “silent” and may or may not cause symptoms again after the first acute episode. Some infectious microbes, usually viruses, can “wake up”—become active again but not always causing symptoms—off and on for months or years. When these microbes are active in your body, you can transmit them to other people. Herpes simplex viruses, which cause genital herpes and cold sores, can remain latent in nerve cells for short or long periods of time, or forever.

Chickenpox is another example of a latent infection. Before the chickenpox vaccine became available in the 1990s, most children in the United States got chickenpox. After the first acute episode, usually when children are very young, the *Varicella zoster* virus goes into hiding in the body. In many people, it emerges many years later when they are older adults and causes a painful disease of the nerves called herpes zoster, or shingles.

Researchers are studying what turns these microbial antics off and on and are looking for ways to finally stop the process.

You Can Prevent Catching or Passing on Germs

HANDWASHING

Handwashing is one of the simplest, easiest, and most effective ways to prevent getting or passing on many germs. Amazingly, it is also one of the most overlooked. Health care experts recommend scrubbing your hands vigorously for at least 15 seconds with soap and water, about as long as it takes to recite the English alphabet. This will wash away cold viruses and staph and strep bacteria as well as many other disease-causing microbes.



It is especially important to wash your hands

- Before preparing or eating food
- After coughing or sneezing
- After using the bathroom
- After changing a diaper

Health care providers should be especially conscientious about washing their hands before and after examining any patient. Workers in child care and elder care settings, too, should be vigilant about handwashing around those in their care.

MEDICINES

There are medicines on the market that help prevent people from getting infected by germs. For example, you can prevent getting the flu (influenza) by taking an antiviral medicine. Vaccines, however, are the best defense against influenza viruses.

Under specific circumstances, health care providers may prescribe antibiotics to protect people from getting certain bacteria such as *Mycobacterium tuberculosis*, which causes TB. Health care experts usually advise people traveling to areas where malaria is present to take antiparasitic medicines to prevent possible infection.

VACCINES

In 1796, Edward Jenner laid the foundation for modern vaccines by discovering one of the basic principles of immunization. He had used a relatively harmless microbe, cowpox virus, to bring about an immune response that would help protect people from getting infected by the related but deadly smallpox virus.

Dr. Jenner's discovery helped researchers find ways to ease human disease suffering worldwide. By the beginning of the 20th century, doctors were immunizing patients with vaccines for diphtheria, typhoid fever, and smallpox.

Today, safe and effective vaccines prevent childhood diseases, including measles, whooping cough, chickenpox, and the form of meningitis caused by *Haemophilus influenzae* type B (Hib) virus.

Vaccines, however, are not only useful for young children. Adolescents and adults should get vaccinated regularly for tetanus and diphtheria. A vaccine to prevent meningococcal

SOME VACCINE-PREVENTABLE INFECTIOUS DISEASES

Bacterial meningitis

Chickenpox

Cholera

Diphtheria

Haemophilus influenzae type B

Hepatitis A

Hepatitis B

Flu (Influenza)

Measles

Mumps

Pertussis (Whooping cough)

Pneumococcal pneumonia

Polio

Rabies

Rubella

Tetanus (Lock jaw)

Yellow fever

meningitis is now available and recommended for all adolescents. In addition, adults who never had diseases such as measles or chickenpox during childhood or who never received vaccines to prevent them should consider being immunized. Childhood diseases can be far more serious in adults.

More people travel all over the world today. So, finding out which immunizations are recommended for travel to your destination(s) is even more important than ever. Vaccines also can prevent yellow fever, polio, typhoid fever, hepatitis A, cholera, rabies, and other bacterial and viral diseases that are more prevalent abroad than in the United States.

In the fall of the year, many adults and children may benefit from getting the flu vaccine. Your health care provider also may recommend immunizations for pneumococcal pneumonia and hepatitis B if you are at risk of getting these diseases.

When You Should Go to the Doctor

YOU SHOULD CALL A HEALTH CARE PROVIDER IMMEDIATELY IF...

- You have been bitten by an animal
- You are having difficulty breathing
- You have a cough that has lasted for more than a week
- You have a fever higher than 100 degrees Fahrenheit
- You have episodes of rapid heartbeat
- You have a rash (especially if you have a fever at the same time)
- You have swelling
- You suddenly start having difficulty with seeing (blurry vision, for example)
- You have been vomiting

Generally, you should consult your health care provider if you have or think you may have an infectious disease. These trained professionals can determine whether you have been infected, determine the seriousness of your infection, and give you the best advice for treating or preventing disease. Sometimes, however, a visit to the doctor may not be necessary.

Some infectious diseases, such as the common cold, usually do not require a visit to your doctor. They often last a short time and are not life-threatening, or there is no specific treatment. We've all heard the advice to rest and drink plenty of liquids to treat colds. Unless there are complications, most victims of colds find that their immune systems successfully fight off the viral culprits. In fact, the coughing and sneezing that make you feel miserable are part of your immune system's way of fighting off the culprits.

If, however, you have other conditions in which your immune system doesn't function properly, you should be in contact with your health care provider whenever you suspect you have any infectious disease, even the common cold. Such conditions can include asthma and immune deficiency diseases like HIV infection and AIDS.

In addition, some common, usually mild infectious diseases, such as chickenpox or flu, can cause serious harm in very young children and the elderly.

Infectious Diseases Are Diagnosed in Many Ways

Sometimes your health care provider can diagnose an infectious disease by listening to your medical history and doing a physical exam. For example, listening to you describe what happened and any symptoms you have noticed plays an important part in helping your doctor find out what's wrong.

Blood and urine tests are other ways to diagnose an infection. A laboratory expert can sometimes see the offending microbe in a sample of blood or urine viewed under a microscope. One or both of these tests may be the only way to determine what caused the infection, or they may be used to confirm a diagnosis that was made based on taking a medical history and doing a physical exam.



In another type of test, your health care provider will take a sample of blood or other body fluid, such as vaginal secretion, and then put it into a special container called a Petri dish to see if any microbe “grows.” This test is called a culture. Certain bacteria, such as chlamydia and strep, and viruses, such as herpes simplex, usually can be identified using this method.

Xrays, scans, and biopsies (taking a tiny sample of tissue from the infected area and inspecting it under a microscope) are among other tools the doctor can use to make an accurate diagnosis.

All of the above procedures are relatively safe, and some can be done in your doctor’s office or a clinic. Others pose a higher risk to you because they involve procedures that go inside your body. One such invasive procedure is taking a biopsy from an internal organ. For example, one way a doctor can diagnose *Pneumocystis carinii* pneumonia, a lung disease caused by a fungus, is by doing a biopsy on lung tissue and then examining the sample under a microscope.

Infectious Diseases Are Treated in Many Ways

How an infectious disease is treated depends on the microbe that caused it and sometimes on the age and medical condition of the person affected. Certain diseases are not treated at all, but are allowed to run their course, with the immune system doing its job alone. Some diseases, such as the common cold, are treated only to relieve the symptoms. Others, such as strep throat, are treated to destroy the offending microbe as well as to relieve symptoms.

BY YOUR IMMUNE SYSTEM

Your immune system has an arsenal of ways to fight off invading microbes. Most begin with B and T cells and antibodies whose sole purpose is to keep your body healthy. Some of these cells sacrifice their lives to rid you of disease and restore your body to a healthy state. Some microbes normally present in your body also help destroy microbial invaders. For example, normal bacteria, such as lactobacillus in your digestive system, help destroy disease-causing microbes.

Other important ways your body reacts to an infection include fever and coughing and sneezing.

Fever

Fever is one of your body's special ways of fighting an infectious disease. Many microbes are very sensitive to temperature changes and cannot survive in temperatures higher than normal body heat, which is usually around 98.6 degrees Fahrenheit. Your body uses fever to destroy flu viruses, for example.

Coughing and sneezing

Another tool in your immune system's reaction to invading infection-causing microbes is mucus production. Coughing and sneezing help mucus move those germs out of your body efficiently and quickly.

Other methods your body may use to fight off an infectious disease include

■ **Inflammation**

- Vomiting
- Diarrhea
- Fatigue
- Cramping

BY YOUR HEALTH CARE PROVIDER

For bacteria

The last century saw an explosion in our knowledge about how microbes work and in our methods of treating infectious diseases. For example, the discovery of antibiotics to treat and cure many bacterial diseases was a major breakthrough in medical history. Doctors, however, sometimes prescribe antibiotics unnecessarily for a variety of reasons, including pressure from patients with viral

infections. Patients may insist on being prescribed an antibiotic without knowing that it won't work on viruses. Colds and flu are two notable viral infections for which some doctors send their patients to the drugstore with a prescription for an antibiotic.

Because antibiotics have been overprescribed or inappropriately prescribed for many years, bacteria have become resistant to the killing effects of these drugs. This resistance, called antibiotic or drug resistance, has become a very serious problem, especially in hospital settings.

Bacteria that are not killed by the antibiotic become strong enough to resist the same medicine the next time it is given. Because bacteria multiply so rapidly, changed or mutated bacteria that resist antibiotics will quickly outnumber those that can be destroyed by those same drugs.

For viruses

Viral diseases can be very difficult to treat because viruses live inside your body's cells where they are protected from medicines in the bloodstream. Researchers developed the first antiviral drug in the late 20th century. The drug, acyclovir, was first approved by the Food and Drug Administration to treat herpes simplex virus infections. Only a few other antiviral medicines are available to prevent and treat viral infections and diseases.

Health care providers treat HIV infection with a group of powerful medicines that can keep the virus in check. Known as highly active antiretroviral therapy, or HAART, this treatment has improved the lives of many suffering from this deadly infection.

Viral diseases should *never* be treated with antibiotics. Sometimes a person with a viral disease will develop a bacterial disease as a complication of the initial viral disease. For example, children with chickenpox often scratch the skin lesions (sores) caused by the viral infection. Bacteria such as staph can enter those lesions and cause a bacterial infection. The doctor may then prescribe an antibiotic to destroy the bacteria. The antibiotic, however, will not work on the chickenpox virus. It will work only against staph.

Although safe and effective treatments and cures for most viral diseases have eluded researchers, there are safe vaccines to protect you from viral infections and diseases.

For fungi

Medicines applied directly to the infected area are available by prescription and over the counter for treating skin and nail fungal infections. Unfortunately, many people have had limited success with them. During the 1990s, oral prescription medicines became available for treating fungal infections of the skin and nails.

For many years, very powerful oral antifungal medicines were used only to treat systemic (within the body) fungal infections, such as histoplasmosis. Doctors usually prescribe oral antifungal medications cautiously because all of them, even the milder medicines for skin and nail fungi, can have very serious side effects.

For protozoa

Diseases caused by protozoan parasites are among the leading causes of death and disease in tropical and subtropical regions of the world. Developing countries within these areas contain three-quarters of the world's population, and their people suffer the most from these diseases. Controlling parasitic diseases is a problem because there are no vaccines for any of them.

In many cases, controlling the insects that transmit these diseases is difficult because of pesticide resistance, concerns regarding environmental damage, and lack of adequate public health systems to apply existing insect-control methods. Thus, disease control relies heavily on the availability of medicines. Health care providers usually use antiparasitic medicines to treat protozoal infections. Unfortunately, there are very few medicines that fight protozoa, and some of those are either harmful to humans or are becoming ineffective.

The fight against the protozoan *Plasmodium falciparum*, the cause of the most deadly form of malaria, is a good example. This protozoan has become resistant to most of the medicines currently available to destroy it. A major focus of malaria research is on developing a vaccine to prevent people from getting the disease. In the meantime, many worldwide programs hope to eventually control malaria by keeping people from contact with infected mosquitoes or preventing infection if contact can't be avoided.

“New” and “Old” Microbes Emerge on the Scene

By the mid-20th century, some scientists thought that medicine had conquered infectious diseases. With the arrival of antibiotics and modern vaccines, as well as improved sanitation and hygiene, many diseases that formerly posed an urgent threat to public health were brought under control or largely eliminated.

The emergence of new microbes and the re-emergence of old microbes has continued, however, as it has throughout history. Several pressures are contributing to the emergence of new diseases such as

- Rapidly changing human demographics
- Rapid global travel
- Changes in land use patterns
- Ecological, environmental, and technological changes

Even public health practices such as widespread antibiotic use are contributing to this emergence. These pressures are both shaping the evolution of microbes and bringing people into closer and more frequent contact with microbes.

Unsanitary conditions in animal agriculture and increasing commerce in exotic animals (for food and as pets) have also contributed to the rise in opportunity for animal microbes to jump from animals to humans. From time to time, with the right combination of selective

pressures, a formerly harmless human or animal microbe can evolve into a pathogen that can cause a major outbreak of human disease. At times, changes in societal and environmental factors can also lead to re-emergence of diseases that were previously under control.

EMERGING MICROBES

Scientists usually define newly emerging microbes as those that have only recently appeared in a population or have existed but are rapidly increasing in incidence or geographic range. Recent examples of the infectious diseases they cause include West Nile virus (WNV) infection, SARS (severe acute respiratory syndrome), and avian influenza (bird flu).

West Nile virus infection

In the early summer of 1999, a mysterious cluster of encephalitis (inflammation of the brain) cases and related deaths appeared in New York City, raising the concern of public health officials. Within a short time, researchers identified the cause of the outbreak as WNV, which is common in Africa, West Asia, and the Middle East, but never before seen in North America.

Symptoms of WNV infection are usually mild and include fever, headache, body aches, skin rash, and swollen lymph glands. If WNV enters the brain, however, it can cause life-threatening encephalitis or meningitis. These more severe complications of the disease most often affect the elderly or people with weakened immune systems.

WNV is transmitted to humans by mosquitoes, which pick up the virus from infected birds. Although health experts don't know the route by which WNV entered the United States, they think the virus may have been introduced by one of three possible ways

- An infected bird imported into the country
- An infected mosquito that stowed away on a shipment or transport vehicle entering the country
- An infected person returning from a country where the virus is common

Since WNV first appeared in the United States, there have been annual outbreaks of the disease and it has spread across the country. Experts believe WNV has now become established as a seasonal epidemic in North America that flares up in the summer and continues into the fall.

SARS

In 2002, a deadly new human pneumonia emerged in southeastern China and caused an epidemic that spread across many Asian countries and even across the ocean to Canada and the United States in 2003. The new disease was named severe acute respiratory syndrome, or SARS. A global research effort resulted in rapidly identifying the virus that caused SARS—part of the human coronavirus family. Prior to the emergence of SARS, coronaviruses were best known for their role in causing up to 30 percent of common colds in humans and for causing a host of other diseases that affect birds and mammals. The SARS virus is thought to be a rare recombination between avian and mammalian coronaviruses that may have made the jump to humans through animals sold in Asian food markets.

Avian Influenza

Since 2003, yet another new microbe has emerged as a threat to human health: the H5N1 avian influenza virus. Although avian influenza usually infects only birds, there have been numerous instances of transmission of these viruses to humans, resulting in severe disease or death in those affected.

At the moment, this avian influenza virus is not easily transmitted from human to human. If the virus was to acquire the ability to spread from one human to another, however, it could result in a flu pandemic that would cause widespread illness, death, and social disruption. For this reason, the public health community continues surveillance of avian influenza and has made flu preparedness and prevention an urgent public health priority.

RE-EMERGING MICROBES

The reappearance of microbes that had been successfully conquered or controlled by medicines and vaccines is distressing to the scientific and medical communities, as well as to the public. One major cause of disease re-emergence is that microbes responsible for causing these diseases are becoming resistant to the drugs used to treat them. Also, the decrease in vaccine use for vaccine-preventable diseases is contributing to re-emergence of previously controlled diseases. Some examples of re-emerging infectious diseases that are of significant public health concern are TB, malaria, and polio.

TB

According to the World Health Organization (WHO), nearly 2 billion people, one-third of the world's population, are infected with *Mycobacterium tuberculosis*, the bacterium that causes TB. This includes between 10 and 15 million people in the United States.

TB is the world's leading cause of death from a single infectious organism, killing 2 million people each year. Failure to stop the spread of TB can be attributed to several factors, including

- The co-epidemic with HIV/AIDS which has led to more and more TB cases developing in people with weakened immune systems
- The failure of infected people to complete the entire drug treatment needed to eliminate the disease (this treatment may take up to 9 months to complete)
- The emergence of multidrug-resistant TB (MDR-TB), which does not respond to available treatments

SOME NEWLY EMERGING/ EMERGED PATHOGENS

Ebola virus

H5N1 avian influenza virus

Nipah virus

Marburg virus

SARS virus

West Nile virus

In 2003 alone, more than 300,000 new cases of MDR-TB were registered by WHO. In a recent study, researchers detected strains of *M. tuberculosis* that were resistant to multiple drugs in 74 of 77 geographic regions surveyed worldwide. As a result of these many

factors, a disease that was once considered “old” and curable is making a strong comeback in resource-poor countries and is also re-emerging in the United States.

Malaria

Malaria, the most deadly of all tropical parasitic diseases, has been resurging dramatically in recent years. Increasing resistance of *Plasmodium* protozoa (one of the microbes that causes malaria) to inexpensive and effective medicines presents problems for treating active infections. WHO estimates between 300 million and 500 million new cases of malaria occur worldwide each year, causing more than 1 million deaths annually. In the United States, approximately 1,300 cases are reported annually. Most of the U.S. cases occur in people who had been infected while traveling abroad. Other cases occur in people bitten by infected mosquitoes in the United States.

Polio

Polio is another disease that had come close to eradication (elimination), due to the widespread use of polio vaccines. Recently, however, polio has been re-emerging. According to the Global Polio Eradication Initiative, global polio eradication efforts have resulted in a reduction from 350,000 cases in 1988 to 1,111 cases worldwide by August 2005. Six countries, however, continue to see new polio cases (Nigeria, India, Pakistan, Afghanistan, Niger, and Egypt). In addition, poliovirus has been spreading to previously polio-free countries. Since mid-2003, eighteen previously polio-free countries have been re-infected. There are ongoing efforts to increase vaccine coverage in these areas.

Research

The National Institute of Allergy and Infectious Diseases (NIAID), part of the National Institutes of Health (NIH), is the Federal government's lead agency for conducting and funding research on many infectious diseases, including their causes, diagnoses, treatments, and prevention methods. Biomedical research supported by NIAID provides the tools necessary to develop diagnostic tests, new and improved treatments, vaccines, and other means to combat the microbial threats of today and tomorrow.

NIAID research activities include

- Projects to sequence the whole or partial **genomes** of a variety of pathogenic microbes. These projects should help scientists understand how the organisms cause disease and identify new drugs and vaccines.
- A broad malaria research program. This program is conducted by scientists at institutions throughout the United States and in several countries where malaria is endemic, and by scientists working in NIAID laboratories. NIAID and other parts of NIH also participate in the Multilateral Initiative on Malaria, a global group that boosts international collaboration among malaria scientists and identifies resources to enhance malaria research.
- Research on the basic biology of influenza viruses and on efforts to find more effective vaccines and treatments for influenza.

- Clinical trials involving several experimental HIV vaccines. NIAID scientists and grantees have conducted trials on more than 52 vaccine candidates since 1987. In 1999, NIAID began the first HIV vaccine trial in Africa, an important step for developing global vaccines. Trials are underway in countries on five continents, reflecting the global nature of this disease. The HIV Vaccine Trials Network, supported by NIAID, is a network of domestic and international clinical research institutions that conducts all phases of vaccine clinical trials.
- Three research groups to learn more about emerging viruses. By learning how these viruses work, researchers hope to develop better ways to diagnose and treat the diseases they cause.
- Research on the pathogenesis of bacterial and viral sexually transmitted infections and prevention strategies to control these infections.

Institute researchers work closely with other agencies, institutions, and scientists from across the United States and around the world to achieve the common goal of controlling and eliminating infectious diseases. Information on current NIAID research activities is available at the Institute Web site www.niaid.nih.gov.

Glossary

antibiotics—medicines that damage or kill bacteria and are used to treat some bacterial diseases.

antibodies—molecules (also called immunoglobulins) produced by a B cell in response to an antigen. When an antibody attaches to an antigen, it destroys the antigen.

antigen—a substance or molecule that is recognized by the immune system. The molecule can come from foreign materials such as bacteria or viruses.

B cells—small white blood cells crucial to the immune defenses. Also known as B lymphocytes, they come from bone marrow and develop into blood cells called plasma cells, which are the source of antibodies.

cell—the smallest unit of life; the basic living unit that makes up tissues.

disease—a state in which a function or part of the body is no longer in a healthy condition.

DNA (deoxyribonucleic acid)—a complex molecule found in the cell nucleus that contains an organism's genetic information.

epidemic—a disease outbreak that affects many people in a region at the same time.

genes—units of genetic material (DNA) that carry the directions a cell uses to perform a specific function.

genomes—all of an organism's genetic material. A genome is organized into specific functional units called genes.

HIV (human immunodeficiency virus)—the virus that causes AIDS.

immune response—reaction of the immune system to foreign invaders such as microbes.

immune system—a complex network of specialized cells, tissues, and organs that defends the body against attacks by disease-causing microbes.

immunity—protection from germs.

immunization—vaccination or other process that induces protection (immunity) against infection or disease caused by a microbe.

infection—a state in which disease-causing microbes have invaded or multiplied in body tissues.

infectious diseases—diseases caused by microbes that can be passed to or among humans by several methods.

inflammation—an immune system process that stops the progression of disease-causing microbes, often seen at the site of an injury like a cut. Signs include redness, swelling, pain, and heat.

microorganisms—microscopic organisms, including bacteria, viruses, fungi, plants, and animals.

microscopic—too small to be seen with the naked eye.

molecules—the smallest physical units of a chemical substance that still keep the chemical properties of that substance; molecules are the building blocks of a cell. Some examples are proteins, fats, carbohydrates, and nucleic acids.

organisms—individual living things.

pandemics—diseases that affect many people in different regions around the world.

parasites—plants or animals that live, grow, and feed on or within another living organism.

pathogens—disease-causing organisms.

protein—a chain of small chemical compounds called amino acids.

RNA (ribonucleic acid)—a complex molecule found in the cell cytoplasm and nucleus. One function of RNA is to direct the building of proteins.

rotavirus—a group of viruses that can cause digestive problems and diarrhea in young children.

T cells—small white blood cells (also known as T lymphocytes) that direct or directly participate in immune defenses.

tissues—groups of similar cells joined to perform the same function.

toxins—agents produced by plants and bacteria, normally very damaging to human cells.

vaccines—substances that contain parts of antigens from an infectious organism. By stimulating an immune response (but not disease), they protect the body against subsequent infection by that organism.

More Information

You can get more in-depth information on microbes and infectious diseases from a local library or a health care provider. Other sources of information include the following.

National Institute of Allergy and Infectious Diseases

National Institutes of Health

6610 Rockledge Drive, MSC 6612

Bethesda, MD 20892-6612

301-496-5717

www.niaid.nih.gov

NIAID conducts and supports research on infectious, immunologic, and allergic diseases. The Web site has information on many of these diseases as well as links to other sources of information.

National Institutes of Health

Bethesda, MD 20892

www.nih.gov

NIH is the U.S. Government agency that, through its institutes and centers, conducts and supports a broad range of biomedical research. The Web site contains information on the causes, symptoms, prevention, and treatment of many diseases and conditions that affect the human body.

MedlinePlus

National Library of Medicine

8600 Rockville Pike

Bethesda, MD 20894

1-888-FIND-NLM (1-888-346-3656) or 301-594-5983

www.medlineplus.gov

NLM is the largest medical library in the world. The MedlinePlus Web site has information about hundreds of diseases, conditions, and wellness issues. It also has information about clinical research studies that are being conducted on certain diseases and conditions.

Centers for Disease Control and Prevention

1600 Clifton Road
Atlanta, GA 30333
1-800-311-3435 or 404-639-3534
www.cdc.gov

Among its other duties, CDC is the U.S. Government agency charged with tracking outbreaks of infectious disease in the United States and sometimes other countries. The agency also searches for disease causes and issues guidelines for preventing and treating many of them. CDC has material on many infectious diseases as well as travel-related information such as the shots required for visiting foreign countries.

National Immunization Program Centers for Disease Control and Prevention

1600 Clifton Road
Atlanta, GA 30333
1-800-232-2522
www.cdc.gov/nip

CDC is the main U.S. Government agency that develops policy and recommendations for immunizations. NIP has the most recent information on immunizations including the diseases that can be prevented by vaccines, the benefits of immunization, and the risks of immunization versus the risk of getting a disease.

Food and Drug Administration

5600 Fishers Lane
Rockville, MD 20857-0001
1-888-INFO-FDA (1-888-463-6332)
www.fda.gov

FDA is the U.S. Government consumer protection and regulatory agency for food and drugs. This agency has information about the safety of food, medical products, medicines, and cosmetics.

U.S. Department of Agriculture

Agricultural Research Service

5601 Sunnyside Avenue
Beltsville, MD 20705-5134
www.ars.usda.gov

ARS is the principal research agency of USDA. ARS works to expand the nation's scientific knowledge across a broad range of areas, such as food safety, that affect people every day. Although the Web site primarily offers technical information for scientists, it also has materials specifically for the general public.

World Health Organization

Avenue Appia 20
1211 Geneva 27
Switzerland
(00 41 22) 791 21 11
www.who.int

WHO, part of the United Nations, is devoted to improving the health of people around the world. This international organization has health and disease surveillance information in English, French, Spanish, Russian, Chinese, and Arabic.

NOTES



U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
National Institutes of Health

National Institute of Allergy and Infectious Diseases

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