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The Cordish Companies, Inc.

THE CORDISH COMPANIES, INC.,

Plaintiff,

v.

AFFILIATED FM INSURANCE COMPANY,

Defendant.

IN THE CIRCUIT COURT
FOR BALTIMORE CITY

Case No.: 24-cv-002452

COMPLAINT FOR:

1. DECLARATORY JUDGMENT

2. BREACH OF CONTRACT

DEMAND FOR JURY TRIAL

The Cordish Companies, Inc. ("Cordish") brings this action for declaratory judgment and damages for breach of contract against Defendant Affiliated FM Insurance Company ("FM"), demanding a trial by jury, and as its complaint alleges as follows:

ANDERSON KILL L.L.P.

Attorneys and Counselors at Law

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By USPS Priority Mail

July 7, 2020

Clerk of the Court, Circuit Court - Civil Division
Clarence M. Mitchell, Jr. Courthouse
111 North Calvert Street
Courthouse East, Room 462
Baltimore, MD 21202

Re: The Cordish Companies, Inc.. v. Affiliated FM Insurance Company,
New Filing – Civil Complaint


Dear Sir/Madam:

Enclosed for filing please find an original of a complaint with exhibits by Plaintiff The Cordish Companies, Inc., along with a duplicate copy of the same. Please docket the complaint and exhibits as a new civil case and stamp the duplicate copy as filed and return it to me. For your convenience, we have included a pre-addressed envelope with postage that you can use to send the stamped duplicate to me.

Also enclosed, is a signed Civil-Non-Domestic Case Information Report and a check in the amount of \$185.00 made out to the Clerk of the Court, for the filing and appearance fees.

Please call me at 202-416-6547 if you have any questions or concerns regarding this matter.

Very truly yours,



Daniel J. Healy

Enclosures

cc: Marshall Gilinsky, Anderson Kill, P.C. (By E-mail)

New York, NY ■ Los Angeles, CA ■ Stamford, CT ■ Washington, DC ■ Newark, NJ ■ Philadelphia, PA

2020 JUL -9 PM 4:00
CIVIL DIVISION

INTRODUCTION

1. Cordish brings this complaint to redress FM's wrongful denial of its claim for hundreds of millions of dollars in business interruption losses that are covered by the insurance policy Cordish purchased from FM.

2. Affiliates of Cordish have developed and operate numerous commercial real estate properties throughout the United States, including without limitation casinos, dining and entertainment venues, retail malls, hotels, meeting and conference venues, office and residential buildings, and other locations that host large numbers of people. These real estate assets have a particular focus on entertainment venues and other venues that attract and depend upon gatherings of large numbers of consumer visitors.

3. Unlike a retail store selling a product, or a traditional restaurant selling food and beverages, the sports and entertainment businesses primarily sell experiences that involve customers coming onto and moving about the premises and interacting with one another there. Indeed, these businesses successfully have obtained unique "arena" liquor licenses in many jurisdictions that allow guests to carry alcoholic beverages between and among different bar and restaurant concepts, creating a stadium-like experience and positioning the businesses as the primary sports-watching and entertainment gathering places in each of their cities.

4. To protect the investments made in all of these various properties, Cordish purchased from FM at significant expense an "all-risk" insurance policy that specifically covers 97 separately listed properties (the "Covered Properties"). Approximately 33 of the Covered Properties are in Maryland.

5. FM touts the insurance policy that it sold to Cordish as providing “broad coverage,” with policy limits of \$1,000,000,000 for the policy period from February 28, 2020 through February 28, 2021, as set forth in policy no. SS987, a copy of which is attached hereto as Ex. 1 (the “Policy”).

6. Further broadening the Policy’s “all-risk” coverage, Cordish purchased from FM broad business interruption coverage for lost gross earnings or gross profits, lost rental income, and extra expense.

7. Importantly, Cordish also purchased sixteen further extensions of its business interruption coverage, including the following three specific extensions germane to this matter:

- (a) “Attraction Property” coverage for business interruption losses resulting from physical loss or damage to property within a mile of a Covered Property, and certain delineated venues regardless of distance, that attract business to the Covered Properties;
- (b) “Civil Authority” coverage for business interruption losses when an order of civil authority prohibits access to a Covered Property, where that order is a direct result of physical damage of the type insured at a Covered Property or within five miles of it; and
- (c) “Supply Chain” coverage for business interruption losses resulting from physical loss or damage of the type insured to property at the premises of suppliers, customers or contract service providers, including losses resulting from situations where such suppliers or customers are affected by an order of civil authority as set forth in the Civil Authority coverage.

8. The broad and various extensions of coverage included in the Policy that Cordish purchased – for nearly \$2,000,000 in premiums – provide a menu of different coverages that independently insure against business interruption losses sustained at the Covered Properties.

9. SARS-CoV-2 (commonly known as the coronavirus) and COVID-19 (the communicable disease caused by SARS-CoV-2) cause physical loss or damage of the type insured under the Policy. Indeed, the Policy specifically provides coverage for losses associated with communicable disease, and affirmatively declares that such diseases constitute property damage in a provision specifically entitled “Communicable Disease – Property Damage.”

10. The damage from SARS-CoV-2 and COVID-19 has led hundreds of state and local governments to issue orders that have prohibited access by customers, patrons, suppliers, vendors and employees to the Covered Properties. Among the Covered Properties that have been worst hit is the Live! Casino in Hanover, Maryland, which typically has 18 million visitors annually and produces revenues in excess of \$50 million per month, but was completely closed by various orders of civil authority. The orders across the country have resulted in hundreds of millions of dollars in business interruption losses for Cordish, which are covered under the Civil Authority coverage in the Policy.

11. The damage from SARS-CoV-2 and COVID-19 includes damage at “Attraction Properties” that attract business to the Covered Properties – especially stadiums and similar venues that are the lifeblood of the sports and entertainment businesses among the Covered Properties like Texas Live!, Kansas City Live! and Ballpark Village – all of which are located in close proximity to, and depend upon a customer base attracted by, major sports venues.

12. The numerous orders of civil authority also have prohibited access to these stadiums, other “Attraction Properties” as well as the Covered Properties’ other suppliers, customers and contract service providers.

13. The damage to and closure of these stadiums and other properties have resulted in extensive business interruption losses that are covered under both the Attraction Property and Supply Chain coverages in the Policy.

14. The Covered Properties also include dozens of strip center retail businesses across the country that have suffered damage from SARS-CoV-2 and COVID-19 and have been impacted by the various orders of civil authority – all of which has resulted in further business interruption losses, including lost rent. The business interruption losses at these properties are covered under the Policy, including the Rental Income coverage.

15. The Attraction Property, Civil Authority, and Supply Chain coverage extensions and the Rental Income business interruption coverage each provide separate and independent bases by which the business interruption losses at the Covered Properties are covered under the Policy.

16. The extensions of the business interruption coverage in the Policy also include an Extended Period of Liability that affords coverage not just until the time that the damaged *property* is repaired, but extends the coverage further for the time required to restore the Covered Properties' *business* to the condition that the *business* would have been in had no loss occurred.

17. Accordingly, the Policy expressly provides coverage for Cordish from the onset of its business interruption losses following the damage caused by SARS-CoV-2 and COVID-19, including the losses resulting from orders of civil authority, and until such time that the Covered Properties are restored to their pre-loss condition.

18. The risks associated with viruses, communicable diseases, and pandemics have been known to the insurance industry for a century and have been evident to FM in recent decades through outbreaks and pandemics involving SARS, MERS, H1N1 and Zika.

19. Because these risks are well known, there are exclusions in common usage in the insurance industry that specifically reference losses caused by viruses, communicable diseases and pandemics. However, FM did not include any such exclusion in the Policy it sold to Cordish. To the contrary, it is otherwise stated in the Policy that losses from communicable disease are covered.

20. The terms of the Policy, coupled with the absence of any applicable exclusion (despite commonly used exclusions for losses caused by virus, communicable disease or pandemic), establish that the Policy provides insurance coverage for the business interruption losses at the Covered Properties.

21. FM's refusal to honor the promises it made in the Policy it sold to Cordish – for which Cordish paid FM nearly \$2,000,000 in premiums – has compelled Cordish to commence this lawsuit.

THE PARTIES

22. Cordish is a Maryland corporation with its principal place of business in Baltimore, Maryland.¹

23. Defendant FM is a Rhode Island corporation with a principal place of business in Johnston, Rhode Island and is licensed to do business in the State of Maryland.

¹ The Cordish Companies, Inc. is a trade name or holding company which owns no assets and operates no businesses. Cordish is the "First Named Insured" under the Policy, which provides that "[l]oss or damage will be adjusted with the First Named Insured and payable to or as the First Named Insured directs" Policy at 33 of 44.

JURISDICTION AND VENUE

24. This Court has personal jurisdiction over Defendant FM because FM regularly conducts business in Maryland, including, without limitation, by selling insurance policies to policyholders such as Cordish in Maryland and to insure properties in Maryland. Md. Code Ann., Cts. and Jud. Pro., § 6-103.

25. Venue is proper before this Court in accordance with Maryland Code Ann., Cts. and Jud. Pro., § 6-202. FM is a corporation with a principal place of business outside the State and Cordish is headquartered in Baltimore. FM regularly conducts business in Baltimore, several of the Covered Properties are located in Baltimore and FM contracted to perform contractual obligations in Baltimore. The alleged wrongs occurred, in part, in Baltimore.

FACTUAL BACKGROUND

A. SARS-CoV-2 and COVID-19 Have Caused Widespread Physical Loss and Damage Across the United States.

26. SARS-CoV-2 is a physical substance that causes physical loss or damage to property.

27. A virus or communicable disease might be very small and invisible to the naked eye, but are “physical” and certainly cause “physical loss or damage.”

28. In addition to being transmitted by interpersonal contact, SARS-CoV-2 physically rests and remains on surfaces of objects or materials, or “fomites,” for up to twenty-eight days. Human contact with such surfaces and fomites is known to transmit the disease-causing virus, making property impacted by SARS-CoV-2 dangerous and potentially fatal.

29. The World Health Organization explains that COVID-19 “spreads primarily from person to person through small droplets from the nose or mouth, which are expelled when a

person with COVID-19 coughs, sneezes, or speaks. . . . People can catch COVID-19 if they breathe in these droplets from a person infected with the virus. . . . These droplets can land on objects and surfaces around the person such as tables, doorknobs and handrails. People can become infected by touching these objects or surfaces, then touching their eyes, nose or mouth.”²

30. The *New England Journal of Medicine* reported a scientific study conducted by researchers from UCLA, Princeton University, the National Institute of Allergy and Infectious Diseases, and the Centers for Disease Control and Prevention that analyzed the aerosol and surface stability of SARS-CoV-2 and compared it with SARS-CoV-1, the most closely related human coronavirus. The study found that SARS-CoV-2 persisted on plastic and stainless steel surfaces for up to seventy-two hours in laboratory studies.³

31. Scientists also have studied the persistence of SARS-CoV-2 on surfaces in cruise ships with documented outbreaks of COVID-19. One such study, reported by the CDC on March 17, 2020, found that SARS-CoV-2 was “identified on a variety of surfaces in cabins of both symptomatic and asymptomatic infected passengers up to 17 days after cabins were vacated,” but before disinfection procedures had been conducted.⁴

32. There have been hundreds of thousands of confirmed cases of COVID-19 in proximity to the Covered Properties, and the number of cases and geographic presence of SARS-CoV-2 continues to grow and spread. Currently, the number of confirmed cases of COVID-19 nationwide is over 2,400,000 and growing. And as has been widely reported and acknowledged

² “How does COVID-19 spread?,” World Health Organization (last visited July 7, 2020), <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/question-and-answers-hub/q-a-detail/q-a-coronaviruses>

³ Neeltje van Doremalen, *et al.*, *Aerosol and Surface Stability of SARS-CoV-2 as Compared with SARS-CoV-1*, N. ENGL. J. MED. (March 17, 2020), available at <https://www.nejm.org/doi/full/10.1056/NEJMc2004973>.

⁴ Leah F. Moriarty, *et al.*, *Public Health Responses to COVID-19 Outbreaks on Cruise Ships — Worldwide, February–March 2020*, CDC Morbidity and Mortality Weekly Report (Mar. 27, 2020), available at <https://www.cdc.gov/mmwr/volumes/69/wr/mm6912e3.htm>.

by civil and government authorities, there are even larger numbers of infected people that are not counted as “confirmed” cases due, in part, to the at-times asymptomatic nature of some COVID-19 carriers and a lack of widespread testing.

33. Accordingly, the physical loss and damage to property from SARS-CoV-2 and COVID-19 is ubiquitous and widespread across the United States.

34. Businesses generally buy property and business interruption insurance to protect the ability to generate profits using their insured property. When property is impacted in a way that makes it incapable of producing profits, it does not matter whether it is from a fire, flood, toxic spills or fumes, or a virus – the loss or damage from any of these causes is the same.

35. When the SARS-CoV-2 impacts property, it renders the property dangerous and potentially fatal.

36. Property impacted by SARS-CoV-2 does not function for the purpose of generating business income. To the contrary, because contact with such property can kill a person, it undermines any productive business purpose.

37. Like the impact of a fire or a toxic spill, the impact of a potentially fatal virus or communicable disease constitutes physical loss or damage to property, in that property impacted by any of them is rendered equally incapable producing revenues or profits.

38. FM knows that viruses and communicable diseases result in physical loss or damage, and FM knew it when it sold the Policy to Cordish. Indeed, the Policy includes a specific provision entitled: “Communicable Disease – Property Damage”. See Policy at 7 of 44 (emphasis added).

39. Furthermore, the deductible provision that applies to the coverage for “Communicable Disease” states that it applies based on the “business interruption value that would have been earned had no loss occurred at the location where the physical damage happened” Policy Declarations at 7 of 15 (emphasis added).

40. Further still, the Policy includes coverage for “Data, Programs or Software” that covers “physical loss or damage” to data, programs or software, “including physical loss or damage” caused by malicious introduction of code (*i.e.*, computer viruses). Policy at 7 of 44. Further still, the Policy includes an additional coverage entitled “Off-Premises Data Services – Property Damage” that covers “physical loss or damage” to insured property where such “physical loss or damage” results from the interruption of off-premises data processing or transmission services (*e.g.*, cloud storage). Policy at 13 of 44.

41. Put simply, given that FM’s Policy clearly acknowledges that a computer virus can cause “physical loss or damage” via its impact on computer code, it is disingenuous in the extreme for FM to take the position that an organic, physical virus or communicable disease that turns property into a deadly hazard does not cause “physical loss or damage” as well.

B. Civil Authorities Nationwide Have Prohibited Access to Property Because of the Physical Damage Caused by SARS-CoV-2 and COVID-19.

42. Orders have been issued by states, counties, cities and other government bodies across the United States that have prohibited access to properties, including the Covered Properties, in part because of physical loss or damage from SARS-CoV-2 and COVID-19.

43. For example, Governor Larry Hogan declared a state of emergency and catastrophic health emergency in the State of Maryland on or about March 5, 2020. Ex. 2.

44. On March 15, 2020, in connection with Maryland's State of Emergency Order, Governor Hogan issued an Order closing all casinos, racetracks, and simulcast betting facilities in Maryland to the general public. This order specifically identified one of the Covered Properties, the Live! Casino in Hanover, Maryland, as a facility affected by the Order. Ex. 3.

45. On March 16, 2020, Governor Hogan issued Order No. 20-03-19-01, which closed bars, restaurants, theaters and malls, thereby restricting access to the Covered Properties in Maryland. Ex. 4

46. On March 23, 2020, Governor Hogan issued Order No. 20-03-23-01, which amended the March 16, 2020 Order to close all non-essential businesses. Ex. 5.

47. On March 30, 2020, Governor Hogan issued Order No. 20-03-30-01, which amended the March 23, 2020 Order to include a requirement that citizens stay at home except to perform certain limited functions. Ex. 6.

48. The March 30, 2020 Order was extended on May 6, 2020, under Order No. 20-05-06-01. Ex. 7.

49. The May 6, 2020 Order states, among other things, that "[a]ll persons living in the State of Maryland are hereby ordered, effective as of 8:00 p.m. on March 30, 2020, to stay in their homes or places of residences ("Homes") except . . . to conduct or participate in Essential Activities . . . or Permitted Outdoor Activities"

50. The May 6 Order goes on to ban "[s]ocial, community, spiritual, religious, recreational, leisure, and sporting gatherings and events of more than 10 people," and it orders the cancellation or postponement of all planned large gatherings.

51. The May 6 Order further specifically states that bars, restaurants, theatres, malls all are required to remain closed.

52. One way SARS-CoV-2 and COVID-19 spread is via surfaces on real and personal property.

53. Such damage to property, and the potential for people to come into contact with it, is a direct reason why state and local civil authorities have issued orders placing significant restrictions on individuals and businesses across the nation.

54. State, local, and municipal authorities throughout the country have specifically stated that such orders were issued in part because of the damage SARS-CoV-2 causes to property. Representative examples are attached as Exhibits 8-13 (emphasis added below). For example:

- On March 7, 2020, the Governor of New York issued Executive Order No. 202 based on his authority to act to “to protect state and local property, and to provide such other assistance as is necessary to protect public health, welfare, and safety.” Ex. 8;
- On March 16, 2020, the Mayor of New York City issued an emergency executive order closing non-essential businesses in the city and declaring, “this order is given because of the propensity of the virus to spread person to person and also because the virus physically is causing property loss and damage[.]” Ex. 9;
- On March 16, 2020, the Mayor of the City of New Orleans issued an emergency order suspending large gatherings and closing certain categories of businesses, stating “there is reason to believe that COVID-19 may be spread amongst the population by various means of exposure, including the propensity to spread person to person and the propensity to attach to surfaces for prolonged periods of time, thereby spreading from surface to person and causing property loss and damage in certain circumstances[.]” Ex. 10;

- On March 19, 2020, the Mayor of the City of Los Angeles issued a shutdown order, explaining “This Order is given because, among other reasons, the COVID-19 virus can spread easily from person to person and it is physically causing property loss or damage due to its tendency to attach to surfaces for prolonged periods of time.” Ex. 11;
- On April 1, 2020, in a supplement to a mayoral proclamation, the Mayor of the City of San Francisco extended coronavirus-related orders and stated, “This order and the previous orders issued during this emergency have all been issued because of the propensity of the virus to spread person to person and also because the virus physically is causing property loss or damage due to its proclivity to attach to surfaces for prolonged periods of time[.]” Ex. 12;
- On April 23, 2020, the Dallas County Judge issued an amended “Safer at Home Order” that states, “this Emergency Order is necessary because of the propensity of the virus to spread person to person and also because the virus is physically causing property damage due to its proclivity to attach to surfaces for prolonged periods of time[.]” Ex. 13.

55. The foregoing orders and other orders issued by states and local governments, including counties, cities and other entities across the nation (collectively the “Orders”) have prohibited access to the Covered Properties.

56. The Orders were issued as a direct result of physical loss or damage caused by SARS-CoV-2 and COVID-19, including to prevent people from coming into contact with dangerous property impacted by SARS-CoV-2 or COVID-19.

C. The FM Insurance Policy

57. FM sold Cordish an “all-risk” insurance policy covering the policy period from February 28, 2020 to February 28, 2021.

58. Cordish is the “First Named Insured” under the Policy, which provides that “[l]oss or damage will be adjusted with the First Named Insured and payable to or as the First Named Insured directs” Policy at 33 of 44.

59. The Policy expressly states that it provides “All Risk Coverage” for all risks except those expressly excluded:

ALL RISK COVERAGE

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

Policy at 1 of 44.

60. When FM sold the Policy to Cordish, FM also promised to cover business interruption losses.

61. The Business Interruption Coverage provisions in the Policy provide coverage, *inter alia*, as follows:

BUSINESS INTERRUPTION

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

A. LOSS INSURED

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

1. To property as described elsewhere in this Policy and not otherwise excluded by this Policy;

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B. BUSINESS INTERRUPTION COVERAGE

1. Gross Earnings

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

Gross Earnings means:

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

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

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

* * *

2. Gross Profits

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

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

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

3. Rental Income

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

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

All less charges and expenses that do not continue.

* * *

4. Extra Expense

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

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

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

Policy at 19-22 of 44.

62. The Policy's Business Interruption Coverage Extensions also include an Extended Period of Liability that affords coverage not just from the time of the damage until the time that the *property* is repaired, but extends the coverage further for the time required for Cordish to restore its *business* to the condition that the *business* would have been in had no loss occurred:

7. Extended Period of Liability

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

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

Policy at 26 of 44.

63. The purpose and nature of business interruption insurance is to protect policyholders like Cordish against losses arising from an inability to continue normal business operations due – as is the case here – to physical loss or damage sustained as a result of a peril insured against. In other words, the goal is to preserve the continuity of the policyholder's earnings.

64. The Business Interruption coverage in the Policy does not require Cordish or any of the Covered Properties to be entirely shut down. Coverage is provided for partial interruption of business at any Covered Property. Policy at 22 of 44.

65. The Policy includes several broad "Business Interruption Coverage Extensions," including, without limitation, Attraction Property, Civil Authority and Supply Chain coverage, each of which provide an independent basis for business interruption coverage. *See* Policy at 24-31 of 44.

66. The Policy provides Attraction Property coverage as follows:

1. Attraction Property

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

Policy at 24 of 44.

67. The Attraction Property coverage is subject to a sublimit of \$1,000,000,000. Policy Declarations at 4 of 15.

68. In addition, the Policy identifies certain specified attraction properties, regardless of their distance from a Covered Property:

Camden Yards, Baltimore, MD 21201
MT&T Bank Stadium (Ravens), Baltimore, MD 21230
Enterprise Center, St Louis, MO, 63103
SunTrust Park, Atlanta, GA, 30339
Little Caesars Arena, Detroit, MI, 48201
Busch Stadium, St Louis, MO 63102
Sprint Center, Kansas City, MO, 64106
America's Convention Center Complex, St Louis, MO, 68101
Churchill Downs, Louisville, KY 40206
University of Louisville, Louisville, KY 40292
Georgia International Convention Center, Atlanta, GA 30337

Ford Field, Detroit, MI 48226
Comerica Park (Detroit Tigers), Detroit, MI 48201
Town Point Park, Norfolk, VA 23510
AT&T Stadium, Arlington TX 76011
Globe Life Park (Rangers Stadium), Arlington, TX 76011
Arundel Mills Mall, Hanover, MD 21076
BWI Airport and Rail Station, Hanover MD

Policy Declarations at 10-11 of 15.

69. The Policy provides Civil Authority coverage as follows:

2. Civil or Military Authority

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

Policy at 24 of 44.

70. The Civil Authority coverage is subject to a sublimit of 60 days. Policy

Declarations at 4 of 15.

71. The Policy provides "Supply Chain" coverage as follows:

16. Supply Chain

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

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

*

*

*

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

a) Civil or Military Authority ...

Policy at 31 of 44.

72. The Supply Chain coverage is subject to a sublimit of \$10,000,000 per "occurrence." Policy Declarations at 2, 4 of 15.

73. The Policy defines "occurrence" to mean, in relevant part, "the sum total of all loss or damage of the type insured, including any insured Business Interruption loss, arising out of or caused by one discrete event of physical loss or damage" Policy at 43 of 44.

74. The Policy's business interruption coverage also includes Rental Income and Extra Expense coverage, as noted above. *See* Policy at 21-22 of 44.

75. The Policy's Rental Income coverage insures business interruption losses measured by the fair rental value of any portion of a property occupied by policyholder, income reasonably expected from the rentals of unoccupied or unrented portions of such property, and the rental income from the rented portions of such properties. Policy at 21 of 44.

76. There are other coverages and coverage extensions in the Policy that provide coverage for losses at the Covered Properties, including business interruption losses.

77. To date, Cordish has paid all premiums for the Policy and has satisfied all relevant and applicable obligations and conditions precedent to obtaining payments owed under the Policy, to the extent that such obligations and conditions have not been waived or abrogated by FM's conduct, omissions, actions or breaches.

D. The Policy Covers Business Interruption Losses at the Covered Properties

78. Viruses such as SARS-CoV-2 and communicable diseases such as COVID-19 are perils insured against under the Policy. The Policy provides “all-risk” coverage and there is no exclusion for the losses caused by the risks or perils of pandemic, virus or communicable disease.

79. FM did not exclude coverage for such perils when it sold Cordish the Policy, despite the common use of such exclusions in the insurance industry following the outbreaks of SARS, MERS, H1N1 and Zika. FM cannot add any such exclusion or exclusionary interpretation now that the Covered Properties have suffered losses from the outbreak of SARS-CoV-2 and COVID-19.

80. Far from excluding coverage for losses caused by virus, pandemic or communicable disease, the Policy actually includes coverage grants entitled “Communicable Disease – Property Damage” and “Communicable Disease – Business Interruption.”

81. The Attraction Property, Civil Authority, and Supply Chain business interruption coverage extensions, the Rental Income coverage, and other coverages in the Policy each independently provide Cordish with coverage for the business interruption losses sustained, and still being sustained, at the Covered Properties.

i. The Covered Properties Have Suffered Losses Covered Under the Attraction Property Coverage

82. The Covered Properties have suffered business interruption losses insured under the Policy’s Attraction Property coverage.

83. The Covered Properties have suffered business interruption losses directly resulting from physical loss or damage caused by SARS-CoV-2 and COVID-19 to real and

personal property that attracts business to Covered Properties and is within one mile of such Covered Properties.

84. The Covered Properties have suffered business interruption losses directly resulting from physical loss or damage caused by SARS-CoV-2 and COVID-19 to the specific Attraction Properties listed in the Declarations section of the Policy. Policy Declarations at 10-11 of 15.

85. For example, SARS-CoV-2 and COVID-19 caused physical loss or damage at stadiums and similar venues that attract business to the sports and entertainment businesses like Texas Live!, Kansas City Live! and Ballpark Village.

86. As another example, SARS-CoV-2 and COVID-19 caused physical loss or damage at the Arundel Mills Mall in Hanover, Maryland, which attracts business to the Live! Casino & Hotel adjacent to the Mall.

87. The Covered Properties have suffered business interruption losses directly resulting from such physical loss or damage.

ii. The Covered Properties Have Suffered Losses Covered Under the Civil Authority Coverage

88. The Covered Properties have suffered business interruption losses insured under the Policy's Civil Authority coverage.

89. The Covered Properties have suffered business interruption losses because, as a direct result of physical damage from SARS-CoV-2 and COVID-19 either at or within five miles of Covered Properties, the Orders have prohibited access to Covered Properties.

90. For example, the ability of customers and potential customers to access and patronize Covered Properties has been prohibited by Orders that required Covered Properties to close.

91. The Orders required all or part of the following Covered Properties to close:

| Name | Address | City | State |
|---|--|------------|-------|
| Live! Casino & Hotel | 7002 Arundel Mills Circle, Hanover, MD, 21076 | Hanover | MD |
| Texas Live! | 1650 E Randol Mill Road, Suite 100, 110, 120, 130, 140, 150 & 160, Arlington, TX, 76011 | Arlington | TX |
| Waterside District | 333 Waterside Drive, Norfolk, VA, 23510 | Norfolk | VA |
| Ballpark Village | 601, 655 Clark Ave and 329 South Broadway, Saint Louis, MO, 63102 | St Louis | MO |
| Fourth Street Live! | 411 and 446 South 4th Street, Louisville, KY, 40202 | Louisville | KY |
| Power Plant Live! AND Spark Baltimore | 34 Market Place, 2-10 Market Place, 600-616 Water Street, 4-8 and 20-32 Market Place, 3 South Frederick, Baltimore, MD, 21202 | Baltimore | MD |
| Pier IV | 621 East Pratt Street, Baltimore, MD, 21202 | Baltimore | MD |
| Power Plant | 601 E Pratt Street Pier 4, Baltimore, MD, 21202 | Baltimore | MD |
| Bayou Place | 500 Texas Street & 315 Capitol Street, Houston, TX, 77002 | Houston | TX |
| Big Elk Mall | 100, 106, 108, 133-101, 161-137 Big Elk Mall, Elkton, MD, 21921 | Elkton | MD |

| Name | Address | City | State |
|--|--|----------------|-------|
| Nylon Capital | 1004, 359-393, 900 West Stein Highway, 701-877 Sussex Avenue, 1000-1001 Atlanta Road, and 349-1085, 1087-1299 Tull Drive, Seaford, DE, 19973 | Seaford | DE |
| Bass Pro Outdoor World | 30 North Christopher Columbus Blvd., Atlantic City, NJ, 08401 | Atlantic City | NJ |
| Rehoboth Center | 18898-18914 Rehoboth Mall Blvd, Rehoboth Beach, DE, 19971 | Rehoboth Beach | DE |
| Power Plant Hampton Roads PBR - Hampton Roads | 1976 Power Plant Parkway, Hampton, VA, | Hampton | VA |
| Kent Landing | 110-200 Kent Landing, Stevensville, MD, 21666 | Stevensville | MD |
| North Carroll Plaza | 2320 - 2328 Hanover Pike, Hampstead, MD | Hampstead | MD |
| Northeast Plaza | 97, 108, 111, 116, 130, 510 North East Plaza, North East, MD, 21901 | North East | MD |
| Carroll Island Shopping Center | 115-168 Carroll Island Road, Middle River, MD, 21220 | Middle River | MD |
| Ballpark Village | 5 Cardinal Way, St. Louis, MO, 63102 | St. Louis | MO |
| Havre De Grace Plaza | 1000 - 1026 Pulaski Highway, Havre de Grace, MD, 21078 | Havre de Grace | MD |
| Riviera Plaza | 8471-83 Riviera Drive, Pasadena, MD, 21122 | Pasadena | MD |
| Joppatowne Plaza | 1002 Joppa Farm Rd, Joppa, MD, 21085-3604 | Joppa | MD |
| Sports & Social Club | 28 Henry Street, Detroit, MI, 48201 | Detroit | MI |
| Power Plant Hampton Roads | 1980 Power Plant Parkway, Hampton, VA, 23666 | Hampton | VA |

| Name | Address | City | State |
|---|---|-------------------|-------|
| Milford Landing | 941 North Dupont Boulevard, Milford, DE | Milford | DE |
| Ocean Landing | 11436 Samuel Bowen Boulevard, Berlin, MD, 21811 | Berlin | MD |
| Mike's Pizza Bar | 2515 Woodward Avenue, Detroit, MI, 48201 | Detroit | MI |
| Riverside on the James | 1001, 1101, 1201 Haxall Point, Richmond, VA, 23219 | Richmond | VA |
| Staples Building | 5835 York Road, Baltimore, MD, 21212 | Baltimore | MD |
| Walmart Building | 9750 Reisterstown Road, Owings Mills, MD, 21117 | Owings Mills | MD |
| Power Plant Hampton Roads | 2065 -2071 West Mercury Blvd., Hampton, VA, 23666 | Hampton | VA |
| Big Elk Mall | 259 South Bridge Street, Elkton, MD, 21921 | Elkton | MD |
| The Sports & Social Club | 427 South 4th Street, Louisville, KY, 40202 | Louisville | KY |
| Havre De Grace Plaza | 1008 Pulaski Highway, Havre de Grace, MD, 21078 | Havre de Grace | MD |
| Power Plant Hampton Roads Lowe's | 2002 Powhatan Parkway, Hampton, VA, 23666-3152 | Hampton | VA |
| Tengo Sed Cantina / Marquee / Kill Devil Club | 432 South 4th Street, Louisville, KY, 40202 | Louisville | KY |
| Birracibo | 445 South 4th Street, Louisville, KY, 40202 | Louisville | KY |
| Power Plant Hampton Roads | 1990 Powhatan Pkwy, Hampton, VA, 23666 | Hampton | VA |

| Name | Address | City | State |
|--------------------------------|---|---------------|-------|
| Guy Fieri's Smokehouse | 434 South 4th Street, Louisville, KY, 40202 | Louisville | KY |
| Tavern of Fourth | 427 B South Fourth Street, Louisville, KY, 40202 | Louisville | KY |
| Carroll Island Shopping Center | 112 Carroll Island Road, Middle River, MD, 21220 | Middle River | MD |
| Edgewater Village | 1875 Pulaski Highway, Edgewood, MD, 21040 | Edgewood | MD |
| Ocean Landing | 11416 Ocean Gateway, Berlin, MD, 21811 | Berlin | MD |
| Power Plant Hampton Roads BJ's | 2000 Powhatan Parkway, Hampton, VA, 23666 | Hampton | VA |
| Edgewater Village | 1919 Pulaski Highway, Edgewood, MD, 21040 | Edgewood | MD |
| Power Plant Hampton Roads | 1940 Power Plant Parkway, Hampton, VA, 23666 | Hampton | VA |
| Tollgate- Home Depot | Rtes 1 & 24 Tollgate Center, Bel Air, MD, 21014 | Bel Air | MD |
| Rainbow Square | 399 Rainbow Boulevard, Niagara Falls, NY, 14303 | Niagara Falls | NY |
| Riviera Plaza | 8483 Ft. Smallwood Rd., Pasadena, MD, 21122-2461 | Pasadena | MD |
| Carroll Island Shopping Center | 190 Carroll Island Rd Lot 24, Middle River, MD, 21220 | Middle River | MD |
| Edgewater Village | 1851 Pulaski Highway, Edgewood, MD, 21040 | Edgewood | MD |
| Carroll Island Shopping Center | 24 and 176 Carroll Island Road, Lot 22, Middle River, MD, 21220 | Middle River | MD |

| Name | Address | City | State |
|-----------------|--|------------|-------|
| 4th Street Live | 4th Street between W Liberty St and W Muhammad Ali Blvd, Louisville, KY, 40202 | Louisville | KY |

92. Such Orders were a direct result of physical damage from SARS-CoV-2 and COVID-19 either at or within five miles of Covered Properties.

93. As another example, the ability of customers and potential customers to access patronize Covered Properties has been prohibited by Orders that required them to shelter in place or prohibited them from going to non-essential businesses.

94. In this way, access to the following Covered Properties was prohibited under the Orders:

| Name | Address | City | State |
|----------------------|---|------------|-------|
| Live! Casino & Hotel | 7002 Arundel Mills Circle, Hanover, MD, 21076 | Hanover | MD |
| Texas Live! | 1650 E Randol Mill Road, Suite 100, 110, 120, 130, 140, 150 & 160, Arlington, TX, 76011 | Arlington | TX |
| PWC Pennant Building | 6 Cardinal Way, Saint Louis, MO, 63102-2802 | St. Louis | MO |
| Waterside District | 333 Waterside Drive, Norfolk, VA, 23510 | Norfolk | VA |
| Ballpark Village | 601, 655 Clark Ave and 329 South Broadway, Saint Louis, MO, 63102 | St Louis | MO |
| Fourth Street Live! | 411 and 446 South 4th Street, Louisville, KY, 40202 | Louisville | KY |

| Name | Address | City | State |
|---|--|---------------|-------|
| Power Plant Live! AND Spark Baltimore | 34 Market Place, 2-10 Market Place, 600-616 Water Street, 4-8 and 20-32 Market Place, 3 South Frederick, Baltimore, MD, 21202 | Baltimore | MD |
| Pier IV | 621 East Pratt Street, Baltimore, MD, 21202 | Baltimore | MD |
| Alamo Drafthouse Cinema | 1400 Main Street, Kansas City, MO, 64105 | Kansas City | MO |
| Power Plant | 601 E Pratt Street Pier 4, Baltimore, MD, 21202 | Baltimore | MD |
| Pier V Parking Garage | 711 East Pratt Street, Baltimore, MD, 21202 | Baltimore | MD |
| Bayou Place | 500 Texas Street & 315 Capitol Street, Houston, TX, 77002 | Houston | TX |
| Big Elk Mall | 100, 106, 108, 133-101, 161-137 Big Elk Mall, Elkton, MD, 21921 | Elkton | MD |
| Nylon Capital | 1004, 359-393, 900 West Stein Highway, 701-877 Sussex Avenue, 1000-1001 Atlanta Road, and 349-1085, 1087-1299 Tull Drive, Seaford, DE, 19973 | Seaford | DE |
| Kansas City Power and Light District | 1310-1382 Grand Boulevard; 100-170 East 14th Street; 1308-1374 Walnut Street; 101-181 East 13th Street, Kansas City, MO, 64105 | Kansas City | MO |
| Bass Pro Outdoor World | 30 North Christopher Columbus Blvd., Atlantic City, NJ, 08401 | Atlantic City | NJ |

| Name | Address | City | State |
|---|---|-------------------|-------|
| Rehoboth Center | 18898-18914 Rehoboth Mall Blvd, Rehoboth Beach, DE, 19971 | Rehoboth Beach | DE |
| Frederick Street Garage | 15 South Frederick Street, Baltimore, MD, 21202 | Baltimore | MD |
| Power Plant Hampton Roads PBR - Hampton Roads | 1976 Power Plant Parkway, Hampton, VA, | Hampton | VA |
| Kent Landing | 110-200 Kent Landing, Stevensville, MD, 21666 | Stevensville | MD |
| North Carroll Plaza | 2320 - 2328 Hanover Pike, Hampstead, MD | Hampstead | MD |
| The Indie at Midland Theatre | 1228 Main Street, Kansas City, MO, 64105 | Kansas City | MO |
| Northeast Plaza | 97, 108, 111, 116, 130, 510 North East Plaza, North East, MD, 21901 | North East | MD |
| Carroll Island Shopping Center | 115-168 Carroll Island Road, Middle River, MD, 21220 | Middle River | MD |
| Kansas City Power and Light District | 1303-1355 Baltimore Avenue and 42-84, 1323-1361, 1370-1396 Main Street, Kansas City, MO, 64105 | Kansas City | MO |
| Ballpark Village | 5 Cardinal Way, St. Louis, MO, 63102 | St. Louis | MO |
| Havre De Grace Plaza | 1000 - 1026 Pulaski Highway, Havre de Grace, MD, 21078 | Havre de Grace | MD |
| Riviera Plaza | 8471-83 Riviera Drive, Pasadena, MD, 21122 | Pasadena | MD |

| Name | Address | City | State |
|--------------------------------------|---|--------------|-------|
| Midland Apartments & Theatre | 1221 Baltimore Avenue, Kansas City, MO, 64105 | Kansas City | MO |
| Joppatowne Plaza | 1002 Joppa Farm Rd, Joppa, MD, 21085-3604 | Joppa | MD |
| Sports & Social Club | 28 Henry Street, Detroit, MI, 48201 | Detroit | MI |
| Kansas City Power and Light District | 101-354 East 14th Street, Kansas City, MO, 64106 | Kansas City | MO |
| Kansas City Power and Light District | 1350, 1360, 1370 Walnut Street, 1354 Main Street, and 14, 54, 74 East 14th Street, Kansas City, MO, 64105 | Kansas City | MO |
| Kansas City Power and Light District | 1350, 1360, 1370 Walnut Street, 1354 Main Street, and 14, 54, 74 East 14th Street, Kansas City, MO, 64105 | Kansas City | MO |
| Power Plant Hampton Roads | 1980 Power Plant Parkway, Hampton, VA, 23666 | Hampton | VA |
| Milford Landing | 941 North Dupont Boulevard, Milford, DE | Milford | DE |
| Ocean Landing | 11436 Samuel Bowen Boulevard, Berlin, MD, 21811 | Berlin | MD |
| Mike's Pizza Bar | 2515 Woodward Avenue, Detroit, MI, 48201 | Detroit | MI |
| Riverside on the James | 1001, 1101, 1201 Haxall Point, Richmond, VA, 23219 | Richmond | VA |
| Walmart Building | 9750 Reisterstown Road, Owings Mills, MD, 21117 | Owings Mills | MD |

| Name | Address | City | State |
|--|---|----------------|-------|
| Kansas City Power and Light District McFadden's Sports Saloon | 1330 Grand Boulevard, Kansas City, MO, 64106-2907 | Kansas City | MO |
| Kansas City Power and Light District No Other Pub | 1370 Grand Boulevard, Kansas City, MO, 64106-2907 | Kansas City | MO |
| Power Plant Hampton Roads | 2065 -2071 West Mercury Blvd., Hampton, VA, 23666 | Hampton | VA |
| Big Elk Mall | 259 South Bridge Street, Elkton, MD, 21921 | Elkton | MD |
| The Sports & Social Club | 427 South 4th Street, Louisville, KY, 40202 | Louisville | KY |
| Kansas City Power and Light District | 111 East 13th Street, Kansas City, MO, 64106-2923 | Kansas City | MO |
| Havre De Grace Plaza | 1008 Pulaski Highway, Havre de Grace, MD, 21078 | Havre de Grace | MD |
| Power Plant Hampton Roads Lowe's | 2002 Powhatan Parkway, Hampton, VA, 23666-3152 | Hampton | VA |
| Kansas City Power and Light District One Light Residential | 50-10 East 13th Street, 1201-1221 Main Street, 11-21 East 12th Street, Kansas City, MO, 64106 | Kansas City | MO |
| Tengo Sed Cantina / Marquee / Kill Devil Club | 432 South 4th Street, Louisville, KY, 40202 | Louisville | KY |
| Kansas City Power and Light District Guy's Dive | 1333 Walnut Street, Kansas City, MO, 64106 | Kansas City | MO |

| Name | Address | City | State |
|--|---|-------------|-------|
| Kansas City Power and Light District Shark Bar | 1340 Grand Boulevard, Kansas City, MO, 64106-2907 | Kansas City | MO |
| Kansas City Power and Light District Leinenkugel's Kansas City | 1323 Walnut Street, Kansas City, MO, 64106-2916 | Kansas City | MO |
| Kansas City Power and Light District The Gallery/Kill Devil Club | 61 & 31 East 14th Street, Kansas City, MO, 64106 | Kansas City | MO |
| Kansas City Power and Light District Pizza Bar | 1320 Grand Boulevard, Kansas City, MO, 64106-2907 | Kansas City | MO |
| Kansas City Power and Light District Living Room/Elements | Plaza between Main St and Walnut St & 13th St and 14th St / Plaza between Walnut St and Grand Blvd & 13th and 14th St, Kansas City, MO, 64105 | Kansas City | MO |
| Power Plant Hampton Roads | 1990 Powhatan Pkwy, Hampton, VA, 23666 | Hampton | VA |
| Guy Fieri's Smokehouse | 434 South 4th Street, Louisville, KY, 40202 | Louisville | KY |
| Tavern on Fourth | 427 B South Fourth Street, Louisville, KY, 40202 | Louisville | KY |
| Kansas City Power and Light District Mosaic Lounge | 1331 Walnut Street, Kansas City, MO, 64106-2916 | Kansas City | MO |
| Kansas City Power & Light District | 1228 Main Street, Kansas City, MO, 64105 | Kansas City | MO |

| Name | Address | City | State |
|--|--|---------------|-------|
| Carroll Island Shopping Center | 112 Carroll Island Road, Middle River, MD, 21220 | Middle River | MD |
| Edgewater Village | 1875 Pulaski Highway, Edgewood, MD, 21040 | Edgewood | MD |
| Ocean Landing | 11416 Ocean Gateway, Berlin, MD, 21811 | Berlin | MD |
| Kansas City Power & Light District Flying Saucer | 101 E. 13th Street, Kansas City, MO, 64106 | Kansas City | MO |
| Kansas City Power & Light District | 1323 Grand Boulevard, Kansas City, MO, 64106 | Kansas City | MO |
| Power Plant Hampton Roads BJ's | 2000 Powhatan Parkway, Hampton, VA, 23666 | Hampton | VA |
| Edgewater Village | 1919 Pulaski Highway, Edgewood, MD, 21040 | Edgewood | MD |
| Power Plant Hampton Roads | 1940 Power Plant Parkway, Hampton, VA, 23666 | Hampton | VA |
| Tollgate- Home Depot | Rtes 1 & 24 Tollgate Center, Bel Air, MD, 21014 | Bel Air | MD |
| Kansas City Power & Light District The Pool at One Light / Bottle Rocket | 50 E 13th Street, Kansas City, MO, 64106 | Kansas City | MO |
| Rainbow Square | 399 Rainbow Boulevard, Niagara Falls, NY, 14303 | Niagara Falls | NY |
| Riviera Plaza | 8483 Ft. Smallwood Rd., Pasadena, MD, 21122-2461 | Pasadena | MD |

| Name | Address | City | State |
|---|--|--------------|-------|
| Carroll Island Shopping Center | 190 Carroll Island Rd Lot 24, Middle River, MD, 21220 | Middle River | MD |
| Edgewater Village | 1851 Pulaski Highway, Edgewood, MD, 21040 | Edgewood | MD |
| Kansas City Power & Light District Garment District | 1350 Main Street, Kansas City, MO, 64106 | Kansas City | MO |
| Carroll Island Shopping Center | 24 and 176 Carroll Island Road, Lot 22, Middle River, MD, 21220 | Middle River | MD |
| 4th Street Live | 4th Street between W Liberty St and W Muhammad Ali Blvd, Louisville, KY, 40202 | Louisville | KY |
| Kansas City Power and Light District PBR Big Sky | 111 E 13th Street, Kansas City, MO, 64106 | Kansas City | MO |
| Joppatowne Plaza | 1000 and 1006-1016 Joppa Farm Rd., Joppa, MD, 21085 | Joppa | MD |

95. Such Orders were a direct result of physical damage from SARS-CoV-2 and COVID-19 either at or within five miles of Covered Properties.

96. The Covered Properties have incurred business interruption losses because the Orders prohibited access to the Covered Properties.

iii. The Covered Properties Have Suffered Losses Covered Under the Supply Chain Coverage

97. The Covered Properties have suffered business interruption losses insured under the Policy's Supply Chain coverage.

98. There has been physical loss or damage of the type insured to property of the type insured at or within five miles of the premises of suppliers, contract service providers and/or customers.

99. The Covered Properties have suffered business interruption losses because access to the property of suppliers, contract service providers and/or customers was prohibited by the Orders as a direct result of physical damage from SARS-CoV-2 and COVID-19 either at or within five miles of such suppliers, service providers or customers.

100. For example, the stadiums and related sports franchises associated with the sports and entertainment businesses like Texas Live!, Kansas City Live! and Ballpark Village are critical suppliers and contract service providers for those Cordish Properties.

101. The Covered Properties have contracts with the owners of many of those venues and franchises. For example, there are Covered Properties adjacent to the stadiums for the Major League Baseball franchises for the St. Louis Cardinals, Texas Rangers and Atlanta Braves, and there are leases and contracts by which the franchises provide the Covered Properties with an array of services, such as property leases, parking, and sponsorship, marketing, media and advertising services.

102. In addition, such venues and franchises are the most indispensable suppliers to the sports and entertainment businesses, in that they supply the vast majority of the customers to those businesses.

103. These venues and franchises are a critical part of the supply chain for the sports and entertainment businesses like Texas Live!, Kansas City Live! and Ballpark Village, as

illustrated by the fact that revenues at such Covered Properties typically are 15-20 times greater on home game days than on non home game days.

104. The Orders required such suppliers' and contract service providers' properties to close, which resulted in significant business interruption losses at the Covered Properties that are covered under the Supply Chain coverage.

105. The Covered Properties also have suffered business interruption losses because the ability of suppliers, contract service providers and/or customers to access the Covered Properties was prohibited by the Orders as a direct result of physical damage from SARS-CoV-2 and COVID-19 either at or within five miles of such suppliers, service providers or customers.

106. The business interruption losses covered under the Supply Chain coverage arise out of or were caused by many discrete events of physical loss or damage that affected many different cities and counties all across the country and resulted in hundreds of orders of civil authority issued by state and local governments all across the country.

iv. The Covered Properties Have Suffered Losses Covered Under the Rental Income Coverage

107. The Covered Properties have suffered business interruption losses insured under the Policy's Rental Income coverage.

108. Upon information and belief, there has been direct physical loss or damage at all of the Covered Properties caused by SARS-CoV-2 or COVID-19.

109. The Covered Properties have suffered business interruption losses as a result of the damage at nearly all of the Covered Properties and those losses are insured under the Policy and recoverable under the Rental Income coverage.

110. The Covered Properties have suffered business interruption losses recoverable under the Rental Income coverage based on the loss of rental income due to physical loss or damage caused by SARS-CoV-2 and COVID-19 to Covered Properties that are rented to tenants.

111. The Covered Properties have suffered business interruption losses recoverable under the Rental Income coverage based on the fair rental value of those portions of the Covered Properties that are occupied by policyholders and due to physical loss or damage caused by SARS-CoV-2 and COVID-19.

E. FM's Wrongful Denial of Cordish's Claim for Insurance Coverage

112. Cordish provided timely notice to FM that it was presenting a claim for coverage of its business interruption losses under the Policy.

113. By letter dated April 22, 2020, Cordish provided additional information regarding the Covered Properties and the loss, based on the facts known at the time.

114. By letter dated May 6, 2020, FM denied coverage, including under the Attraction Property, Civil Authority and Supply Chain Business Interruption Coverage Extensions in the Policy, even though FM acknowledged that "COVID-19 meets the Policy's definition of a 'communicable disease.'" Ex. 14.

115. In denying coverage, FM contended that an exclusion in the Policy for "contamination, and any cost due to contamination" bars coverage for losses claimed under the Business Interruption Extensions of Coverage.

116. In a letter dated May 15, 2020, Cordish advised FM that the "contamination" exclusion did not apply because: (1) the exclusions section of the Policy expressly states that the exclusions only apply "unless otherwise stated" in the Policy, and the Policy clearly covers

losses from communicable disease; and (2) the “Group III” exclusions where FM placed the “contamination” exclusion expressly do not exclude losses “caused by or resulting from” contamination, as would have been the case if FM had placed the exclusion in “Group I”, and the “Group III” exclusions only apply to specified conditions of property (e.g., “contamination,” “shrinkage” or “changes in color”) located at the Covered Properties, but not to losses resulting from “contamination” away from the Covered Properties. Ex. 15.

117. In a letter dated June 1, 2020, FM responded to Cordish’s May 15, 2020 letter and had absolutely no response to the first point in Cordish’s May 15, 2020 letter – that the exclusions only apply “unless otherwise stated” – and even acknowledged *again* that the Policy *does* cover loss from communicable disease. Ex. 16.

118. FM’s June 1, 2020 letter also admitted the second point made in Cordish’s May 15, 2020 letter – that the exclusion applies to “contamination” at the Covered Properties as opposed to away from the Covered Properties, stating: “the presence of COVID-19 at an insured location is excluded.” Ex. 16, at p. 2 (emphasis added).

119. The “contamination” exclusion does not bar coverage for the Covered Properties under the Business Interruption Extensions of Coverage for losses caused by or resulting from SARS-CoV-2, COVID-19 or any communicable disease.

120. The “contamination” exclusion relied upon by FM does not apply, *inter alia*, because coverage for direct physical loss or damage from the perils of SARS-CoV-2, COVID-19, or any communicable disease is otherwise stated in the Policy.

121. The “contamination” exclusion also does not apply because Cordish is not seeking coverage for “cost due to contamination.” To the contrary, the Covered Properties have

suffered, continue to suffer, and seek coverage for, “Business Interruption Coverage loss” covered under the Business Interruption Coverage Extensions and other provisions in the Policy.

122. In denying coverage under the Business Interruption Coverage Extensions, FM contended that SARS-CoV-2 and COVID-19 do not cause “physical loss or damage of the type insured.”

123. FM’s assertion that SARS-CoV-2 and COVID-19 do not cause “physical loss or damage of the type insured” is inconsistent with the terms of the Policy itself – which expressly provides coverage, *inter alia*, for “Communicable Disease – Property Damage.”

124. Furthermore, given that FM’s Policy acknowledges that a computer virus can cause “physical loss or damage” via its impact on computer code, it is disingenuous in the extreme for FM to take the position that an organic, physical virus or communicable disease that turns property into a deadly hazard does not cause “physical loss or damage” as well.

125. Upon information and belief, FM is taking coverage positions contrary to its own understanding of the nature of the loss and damage at issue based on FM’s coordination with other insurance companies, insurance industry trade organizations, insurance industry claims adjusters and other intermediaries and agents.

126. Upon information and belief, FM is coordinating its coverage position to align with other insurance companies and insurance industry trade organizations, rather than based on the terms of the Policy it sold to Cordish and FM’s own understanding of the loss and damage at issue, as well as the coverage for such loss or damage under first party property insurance policies.

FIRST CAUSE OF ACTION

(Declaratory Judgment)

127. Cordish repeats and re-alleges the allegations set forth in paragraphs 1 through 126 as though fully set forth herein.

128. The Policy constitutes a valid contract of insurance between Cordish and FM.

129. Defendant FM sold the Policy to Cordish.

130. Cordish paid all insurance premiums due under the Policy.

131. Cordish has complied with all conditions and satisfied all obligations, to the extent that they have not been waived or abrogated by FM's conduct, omissions, actions or breaches.

132. Cordish is entitled to the coverage benefits of the Policy.

133. The Policy was in effect during time that the damage, Orders and business interruption losses at issue occurred.

134. The Covered Properties have suffered business interruption losses, including in the form of loss of earnings, profits and rental income and by incurring extra expense, all of which are expressly covered in the Policy

135. The Covered Properties have suffered business interruption losses that are covered under the terms of the Policy, including, *inter alia* the: (a) Attraction Property Coverage; (b) Civil Authority Coverage; and (c) Supply Chain Coverage.

136. There is no exclusion, condition, definition or other provision in the Policy that excludes or eliminates coverage for the losses at the Covered Properties.

137. Despite the fact that the Policy covers Cordish's Claim, Defendant FM wrongfully has denied coverage for the Claim and refused honor its contractual obligation to indemnify Cordish for its covered losses.

138. An actual and justiciable controversy has arisen between Cordish and Defendant FM as to FM's obligation to indemnify Cordish for the actual losses sustained at the Covered Properties and covered under the Policy.

139. By reason of the foregoing, an actual, substantial and justiciable controversy exists between Cordish and Defendant FM regarding the covered business interruption losses, and a judicial declaration is necessary and appropriate so that the parties may ascertain their respective rights and duties.

140. Cordish seeks a judicial declaration by the Court, pursuant to Maryland Code Ann., Cts. and Jud. Pro., § 3-409, that Defendant has a duty to indemnify Cordish under the Policy for the business interruption losses at the Covered Properties.

SECOND CAUSE OF ACTION
(Breach of Contract)

141. Cordish repeats and re-alleges the allegations set forth in paragraphs 1 through 140 as if fully set forth herein.

142. The Policy constitutes a valid contract of insurance coverage between Cordish and Defendants.

143. Defendant FM sold the Policy to Cordish.

144. Cordish paid all insurance premiums due under the Policy.

145. Cordish has complied with all conditions and satisfied all obligations to the extent that they have not been waived or abrogated by Defendant FM's conduct, omissions or actions.

146. Cordish is entitled to the coverage benefits of the Policy.

147. The Policy was in effect during time that the damage, Orders and business interruption losses at issue occurred.

148. The Covered Properties have suffered business interruption losses, including in the form of loss of earnings, profits and rental income and by incurring extra expense, all of which is are expressly covered in the Policy

149. The Covered Properties have suffered business interruption losses that are covered under the terms of the Policy, including, *inter alia* the: (a) Attraction Property coverage; (b) Civil Authority coverage; and (c) Supply Chain coverage.

150. There is no exclusion, condition, definition or other provision in the Policy that excludes coverage for the losses at the Covered Properties.

151. Under the Policy, FM is obligated to indemnify Cordish and pay for the losses sought in the Claim.

152. Defendant FM has breached its contractual obligations under the Policy by wrongfully failing and refusing to cover the losses at the Covered Properties.

153. As a direct and proximate result of Defendant FM's breach of its obligations under the Policy, the Covered Properties have sustained and continue to sustain substantial damages in an amount to be determined at trial.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiff Cordish prays for judgment as follows:

- A. Enter declaratory judgment on Count I in favor of Cordish and against Defendant FM as to the Policy language, including a declaration that Defendant FM has a duty to cover the losses at the Covered Properties; and
- B. Enter judgment on Count II in favor of Cordish and against Defendant FM in an amount to be determined at trial for general and special damages, including without limitation economic and consequential damages, compensatory damages, punitive damages, and pre- and post-judgment interest;
- C. Enter judgment on all Counts awarding Cordish fees and costs, including attorneys' fees, and
- D. Enter such other relief as this Court may deem appropriate.

Dated: July 7, 2020

ANDERSON KILL L.L.P.

By: 

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