

JS 44 (Rev. 06/17)

CIVIL COVER SHEET

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

I. (a) PLAINTIFFS
MT. HAWLEY INSURANCE COMPANY

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

(c) Attorneys *(Firm Name, Address, and Telephone Number)*
Steidley & Neal, PLLC, 2448 E. 81st St., Ste. 5300, Tulsa, Okla. 74137 918.664.4612

DEFENDANTS
KUSUM HOSPITALITY MANAGEMENT, INC.
d/b/a KUSUM MANAGEMENT COMPANY

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

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

Attorneys *(If Known)*

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

1 U.S. Government Plaintiff

2 U.S. Government Defendant

3 Federal Question *(U.S. Government Not a Party)*

4 Diversity *(Indicate Citizenship of Parties in Item III)*

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

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input checked="" type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input checked="" type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

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

Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input checked="" type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans <i>(Excludes Veterans)</i> <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/ Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/ Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/ Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
			IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

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

1 Original Proceeding

2 Removed from State Court

3 Remanded from Appellate Court

4 Reinstated or Reopened

5 Transferred from Another District *(specify)*

6 Multidistrict Litigation - Transfer

8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity)*:
28 USC section 1352; and 28 USC section 2201

Brief description of cause:
Declaratory Relief

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$ _____

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

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

JUDGE _____ DOCKET NUMBER _____

DATE August 13, 2020 SIGNATURE OF ATTORNEY OF RECORD s/ Gary C. Crapster

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

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

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

Date and Attorney Signature. Date and sign the civil cover sheet.

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

MT. HAWLEY INSURANCE COMPANY

Plaintiff,

v.

**KUSUM HOSPITALITY MANAGEMENT,
INC. d/b/a KUSUM MANAGEMENT
COMPANY**

Defendant.

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Case No. CIV-20-811-J

ORIGINAL COMPLAINT FOR DECLARATORY RELIEF

Mt. Hawley Insurance Company (“Mt. Hawley”) would respectfully show the Court the following:

I.
PARTIES

1. Plaintiff Mt. Hawley Insurance Company (“Mt. Hawley”) is a corporation organized under the laws of the State of Illinois, with its principal place of business in Peoria, Illinois, and is, therefore, a citizen of Illinois, as defined by 28 U.S.C. §1332. Thus, Mt. Hawley is a citizen of the State of Illinois, and is not a citizen of the State of Oklahoma.

2. Kusum Hospitality Management, Inc. (“the Insured”) is a corporation organized under the laws of the State of Oklahoma with its principal place of business in Oklahoma.

3. Thus, the Insured is a citizen of the State of Oklahoma and not a citizen of the State of Illinois. Service of process may be accomplished on the Insured by serving

this Complaint and Summons on its registered agent for service in the State of Oklahoma, Hasmukh K. Patel 300 Meline Drive, Edmond, OK 73034. The Insured is subject to this Court's personal jurisdiction pursuant to 28 U.S.C. § 1391(c)(2), in that it maintains a place of business and conducts regular business activities at seven (7) hotel locations within this Court's jurisdiction at the following addresses (the "Property"):

- a. 2715 W. Owen K. Garriott Road in Enid, OK 73703;
- b. 2740 NW 138th Street, Oklahoma City, OK 73134;
- c. 4200 W-140 Service Road, Oklahoma City, OK 73108
- d. 3840 E. 2nd Street, Edmond, OK 73034;
- e. 2300 Conference Center Drive, Norman, OK 73069;
- f. 1511 NW Expressway, Oklahoma City, OK 73118; and
- g. 1701 N. Moore Avenue, Moore, OK 73160.

II. **JURISDICTION AND VENUE**

4. The Court has jurisdiction over this lawsuit pursuant to 28 U.S.C. §1332(a)(1) because Mt. Hawley and the Insured are citizens of different states, and the amount in controversy exceeds \$75,000.00, excluding interest and costs.

5. The Court also has jurisdiction over this declaratory judgment action pursuant to Fed. R. Civ. P. 57 and 28 U.S.C. §2201. An actual and substantial controversy exists between the parties. By this action, Mt. Hawley seeks a declaration that an insurance policy issued to the Insured does not provide coverage for the insurance claim made by the Insured as described herein. This suit is necessary because the Insured has expressed disagreement

regarding Mt. Hawley's coverage position and has, in fact, already sued Mt. Hawley in this court in connection with this COVID-19 based claim involving the same Property and same Mt. Hawley policy.

6. Venue is proper in the Western District of Oklahoma pursuant to 28 U.S.C. §1391(b)(1) and (2).

III. **FACTUAL BACKGROUND**

7. Mt. Hawley issued Commercial Property Policy No. MCP0169828 to the Insured effective 12/15/2019 to 12/15/2020 (hereinafter the "Policy", a certified copy of which is attached hereto as **Exhibit 1**). The Policy provides potential coverage for direct physical loss of or damage to the Covered Locations—the Property—as well as business income and extra expense loss, civil authority, and extended business income, subject to all terms, conditions, limitations, and exclusions therein.

8. On May 19, 2020, the Insured presented a claim to Mt. Hawley under the Policy for business income loss, extra expense, interruption by civil authority, and extended business income interruption associated with the Coronavirus ("COVID-19") pandemic (the "Claim").

9. The Insured claimed a March 15, 2020 date of loss based upon a declaration pertaining to COVID-19 issued by Governor J. Kevin Stitt on that date. Neither that declaration, nor any other proclamation, order, or declaration issued by Governor Stitt or the State of Oklahoma did or has ever required the suspension or cessation of the Insured's

hotel operations or prevented access to the Property. *See* Executive Order 2020-07, a true and correct copy of which is attached hereto as **Exhibit 2**.

10. Indeed, on March 25, 2020, Governor Stitt issued Amended Executive Memorandum 2020-01, which provided that certain businesses that had been identified as critical infrastructure sectors could remain open during the COVID-19 pandemic. *See* Amended Executive Memorandum 2020-01a true and correct copy of which is attached hereto as **Exhibit 3**.

11. Hotels, such as the Insured's Property, were identified as critical infrastructure which were permitted to remain open. *See* **Exhibit 3**, pp. 1, 4.

12. Upon information and belief, the hotel location at 2300 Conference Center Drive, Norman, OK 73069 had yet to open by the claimed date of loss, or at the time any of the executive orders and memorandums discussed above and identified as **Exhibits 2** and **3** were issued.

13. Despite Mt. Hawley's request for any additional information the Insured would like Mt. Hawley to consider in connection with its claim, the Insured never submitted any documentation to Mt. Hawley substantiating any direct physical loss of or damage to Covered Property or any business income loss in connection with the Claim.

14. On June 23, 2020, Mt. Hawley denied the Claim.

IV. **THE POLICY**

15. The Claim was submitted under the Policy, which provides potential coverage for commercial property losses subject to all terms, conditions, limitations, and exclusions therein.

16. The Policy provides, in pertinent part, as follows:

BUSINESS INCOME (AND EXTRA EXPENSE) COVERAGE FORM

....

A. Coverage

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. . . .

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.

....

3. Covered Causes of Loss, Exclusions and Limitations

See applicable Causes of Loss Form as shown in the Declarations.

....

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.

....

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) 30 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.

*** **

F. Definitions

...

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 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".

...

6. "Suspension" means:

a. The slowdown or cessation of your business activities...

*** **

CAUSES OF LOSS - SPECIAL FORM

....

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;

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

....

b. Delay, loss of use or loss of market.

....

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.

....

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

*** **

ABSOLUTE POLLUTION EXCLUSION

This endorsement replaces any existing terms and/or exclusions regarding pollution liability within this policy.

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

A. Property damage arising out of the actual, alleged or threatened discharge, dispersal, release or escape of "pollutants," or contaminants;

1. At or from premises owned, leased, rented or occupied by you,

2. At or from any site or location used by or for you or others for the handling, storage, disposal, processing or treatment of waste,

3. Which are at any time transported, handled, stored, treated, disposed of or processed as waste by or for you or any person or organization for whom you may be legally responsible, or,

4. At or from any site or location on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations;

a. If the "pollutants" are brought on or to the site or location in connection with such operations, or

b. If the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize the "pollutants."

B. Any loss, damage, cost or expense arising out of any governmental direction or request that you test for, monitor, clean up, treat, remove, detoxify or neutralize "pollutants" or in any way respond to or assess the effects of "pollutants."

This includes loss or damage caused by or resulting from contributing to or made worse by actual, alleged or threatened release, discharge, escape or dispersal of contaminants and/or pollutants, all of which direct or indirect, proximate or remote, or in whole or in part, caused by, contributed to, or aggravated by any damage insured by the policy.

"Pollutants" means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. In addition to "pollutants" to be disposed of, waste also includes materials to be recycled, reconditioned or reclaimed. It also includes any material which after its release, dispersal or discharge, can cause or threaten damage to human health and/or human welfare, or causes or threatens damage, deteriorations, loss of value, marketability and/or loss of use, to insured property; including, but not limited to bacteria, fungi, virus, or hazardous substances as listed in the Federal Pollution Control Act, Clean Air Act, Resource Conservation and Recovery Act of 1976 and/or Toxic Substances Control Act or as designated by the U.S. Environmental Protection Agency.

*** **

V.
DECLARATORY JUDGMENT
Count I – COVID-19 Claim

17. Mt. Hawley incorporates by reference the allegations in the paragraphs stated above.

18. The circumstances of the Claim and the provisions of the Policy conclusively establish that there simply is no coverage under the Policy for the Claim because the Insured has not sustained direct physical loss of or damage to Covered Property from any Covered Cause of Loss.

19. The Business Income coverage provided by the Policy applies to the actual loss of Business Income sustained due to the necessary "suspension" of the Insured's "operations" during the "period of restoration." The "suspension" must be caused by direct physical loss of or damage to property at the described premises as a result of a Covered Cause of Loss. Here, there was no direct physical loss of or damage to property at the

premises and no “suspension” of the Insured’s “operations.” Accordingly, the Insured has not sustained direct physical loss of or damage to any property that would trigger its Business Income coverage.

20. The Civil Authority Coverage does not apply because access to the insureds premises was not prohibited by an order of a civil authority specifically prohibiting such access. In addition, the orders from civil authorities were not the direct result of physical loss or damage by a peril insured by the Policy to property away from the Insured’s premises and within one mile from same. Accordingly, there is no coverage for the COVID-19 Claim under the Civil Authority Coverage.

21. The Extended Business Income coverage provided by the Policy applies to the actual loss of Business Income sustained due to the necessary “suspension” of the Insured’s “operations” for a Business Income loss payable under the policy. The “suspension” must be caused by direct physical loss of or damage to property at the described premises as a result of a Covered Cause of Loss. Here, there was no direct physical loss of or damage to property at the premises and no “suspension” of the Insured’s “operations.” Furthermore, there is no underlying Business Income loss payable under the policy. Accordingly, the Insured has not sustained direct physical loss of or damage to any property that would trigger its Business Income coverage.

22. Additionally, the Policy specifically provides that Mt. Hawley will not pay for loss or damage caused directly or indirectly by the enforcement of any ordinance or law regulating the use of any property, and such loss or damage is excluded regardless of any

other cause or event that contributes concurrently or in any sequence to the loss. Accordingly, there is no coverage for the COVID-19 Claim under the Policy.

23. Additionally, the Policy specifically provides that Mt. Hawley will not pay for loss or damage caused by or resulting from any delay, loss of use and loss of market. Accordingly, there is no coverage for the COVID-19 Claim under the Policy.

24. Additionally, the Policy specifically provides that Mt. Hawley will not pay for loss or damage caused by the acts or decisions of any person, group, organization or governmental body. Accordingly, there is no coverage for the COVID-19 Claim under the Policy.

25. Additionally, the Absolute Pollution Exclusion Endorsement specifically excludes coverage for loss or damage caused directly or indirectly by the actual, alleged, or threatened discharge, dispersal, release or escape of pollutants or contaminants, including virus, and such loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss. Accordingly, coverage for the COVID-19 Claim is excluded under the Absolute Pollution Exclusion Endorsement.

26. Accordingly, Mt. Hawley requests that this Court declare the rights of the parties regarding the actual controversies existing between them as set forth herein and enter judgment finding and declaring that there is no coverage under the Policy for the Insured's COVID-19 Claim and that Mt. Hawley does not owe the Insured any sums under the Policy in connection with the COVID-19 Claim.

VI.
JURY DEMAND

27. Mt. Hawley hereby requests that to the extent this court finds that any fact issues exist, that such fact issues in this civil action be tried before a jury.

WHEREFORE, Plaintiff Mt. Hawley Insurance Company prays that this Court enter judgment finding and declaring: (1) that there is no coverage under the Policy for the Insured's COVID-19 Claim; (2) that Mt. Hawley Insurance Company does not owe the Insured any sums under the Policy in connection with the COVID-19 Claim; and (3) for such other and further relief as it deems just and fit under the circumstances.

Respectfully submitted,

/s/ Gary C. Crapster

GARY C. CRAPSTER, OBA #22452

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