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MANHATTAN PARTNERS, LLC, BH ZB, LLC,
ZINBURGER PARAMUS, LLC, ZIN CHERRY HILL,
LLC, ZIN WALT WHITMAN, LLC, ZIN
SOUTHPOINT, LLC, ZIN NANUET, LLC, ZIN
BARRACKS ROAD, LLC, ZIN SAWGRASS, LLC,
ZIN LENOX SQUARE, LLC, ZIN BOCA TOWN
CENTER, LLC, ZIN MORRIS PLAINS, LLC, ZIN
SPRINGFIELD VA, LLC, ZIN EDISON, LLC, ZIN
NEWPORT CENTRE, LLC, ZIN ARUNDEL, LLC,
ZIN BRIDGEWATER, LLC, ZIN MARLBORO, LLC,
BRIAD WENCO, LLC, BRIAD WENTWO, LLC,
BRIAD WENATE, LLC, BRIAD WENSWICK, LLC,
BRIAD WENCHEST, LLC, BRIAD LODGING
GROUP CENTRAL ISLIP, LLC, BRIAD LODGING
GROUP SOUTHINGTON, LLC, BRIAD LODGING
GROUP BRANCBURG II, LLC, BRIAD LODGING
GROUP DOVER II, LLC, BRIAD LODGING GROUP
HAMILTON, LLC, BRIAD LODGING GROUP
SOUTH BRUNSWICK, LLC, BRIAD LODGIING
GROUP, C12, LLC, BRIAD LODGING GROUP
BRANCBURG TPS, LLC, BRIAD LODGING
GROUP LAWRENCEVILLE, LLC, BRIAD
LODIGING GROUP BRIDGEWATER, LLC, BRIAD
LODGIING GROUP POUGHKEEPSIE, LLC., AND
THE BRIAD GROUP

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

Civil Action No.

Document Filed Electronically

COMPLAINT AND JURY DEMAND

Plaintiffs,

-against-

AMERICAN GUARANTY AND
LIABILTY INSURANCE COMPANY,

Defendant.

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PLAINTIFFS MANHATTAN PARTNERS, LLC, BH ZB, LLC, ZINBURGER PARAMUS, LLC, ZIN CHERRY HILL, LLC, ZIN WALT WHITMAN, LLC, ZIN SOUTHPOINT, LLC, ZIN NANUET, LLC, ZIN BARRACKS ROAD, LLC, ZIN SAWGRASS, LLC, ZIN LENOX SQUARE, LLC, ZIN BOCA TOWN CENTER, LLC, ZIN MORRIS PLAINS, LLC, ZIN SPRINGFIELD VA, LLC, ZIN EDISON, LLC, ZIN NEWPORT CENTRE, LLC, ZIN ARUNDEL, LLC, ZIN BRIDGEWATER, LLC, ZIN MARLBORO, LLC, BRIAD WENCO, LLC, BRIAD WENTWO, LLC, BRIAD WENATE, LLC, BRIAD WENSWICK, LLC, BRIAD WENCHEST, LLC, BRIAD LODGING GROUP CENTRAL ISLIP, LLC, BRIAD LODGING GROUP SOUTHINGTON, LLC, BRIAD LODGING GROUP BRANCHBURG II, LLC, BRIAD LODGING GROUP DOVER II, LLC, BRIAD LODGING GROUP HAMILTON, LLC, BRIAD LODGING GROUP SOUTH BRUNSWICK, LLC, BRIAD LODGING GROUP, C12, LLC, BRIAD LODGING GROUP BRANCHBURG TPS, LLC, BRIAD LODGING GROUP LAWRENCEVILLE, LLC, BRIAD LODGING GROUP BRIDGEWATER, LLC, BRIAD LODGING GROUP POUGHKEEPSIE, LLC, and THE BRIAD GROUP (“Plaintiffs” and or “Briad”), by their attorneys **BERMAN ROSENBACH LLC**, as for their Complaint herein alleges as follows:

IDENTIFICATION OF PARTIES

1. In accordance with Local Civil Rule 10.1, the addresses of the parties are as follows:
2. Plaintiff Manhattan Partners, LLC – 78 Okner Parkway, Livingston, New Jersey 07039.
3. Plaintiff BH ZB, LLC – 78 Okner Parkway, Livingston, New Jersey 07039.
4. Plaintiff Zinburger Paramus, LLC – 78 Okner Parkway, Livingston, New Jersey 07039.
5. Plaintiff Zin Cherry Hill, LLC – 78 Okner Parkway, Livingston, New Jersey 07039.

6. Plaintiff Zin Walt Whitman, LLC – 78 Okner Parkway, Livingston, New Jersey 07039.
7. Plaintiff Zin Southpoint, LLC – 78 Okner Parkway, Livingston, New Jersey 07039.
8. Plaintiff Zin Nanuet, LLC – 78 Okner Parkway, Livingston, New Jersey 07039.
9. Plaintiff Zin Barracks Road, LLC – 78 Okner Parkway, Livingston, New Jersey 07039.
10. Plaintiff Zin Sawgrass, LLC – 78 Okner Parkway, Livingston, New Jersey 07039.
11. Plaintiff Zin Lenox Square, LLC – 78 Okner Parkway, Livingston, New Jersey 07039.
12. Plaintiff Zin Boca Town Center, LLC – 78 Okner Parkway, Livingston, New Jersey 07039.
13. Plaintiff Zin Morris Plains, LLC – 78 Okner Parkway, Livingston, New Jersey 07039.
14. Plaintiff Zin Springfield VA, LLC – 78 Okner Parkway, Livingston, New Jersey 07039.
15. Plaintiff Zin Edison, LLC – 78 Okner Parkway, Livingston, New Jersey 07039.
16. Plaintiff Zin Newport Centre, LLC – 78 Okner Parkway, Livingston, New Jersey 07039.
17. Plaintiff Zin Arundel, LLC – 78 Okner Parkway, Livingston, New Jersey 07039..
18. Plaintiff Zin Bridgewater, LLC – 78 Okner Parkway, Livingston, New Jersey 07039.
19. Plaintiff Zin Marlboro, LLC – 78 Okner Parkway, Livingston, New Jersey 07039.
20. Plaintiff Briad Wenco LLC – 78 Okner Parkway, Livingston, New Jersey 07039.
21. Plaintiff Briad Wentwo LLC – 78 Okner Parkway, Livingston, New Jersey 07039.
22. Plaintiff Briad Wenate LLC – 78 Okner Parkway, Livingston, New Jersey 07039.
23. Plaintiff Briad Wenswick LLC – 78 Okner Parkway, Livingston, New Jersey 07039.
24. Plaintiff Briad Wenchest LLC – 78 Okner Parkway, Livingston, New Jersey 07039.
25. Plaintiff Briad Lodging Group Central Islip, LLC – 78 Okner Parkway, Livingston, New Jersey 07039.

26. Plaintiff Briad Lodging Group Southington, LLC – 78 Okner Parkway, Livingston, New Jersey 07039.
27. Plaintiff Briad Lodging Group Branchburg II, LLC – 78 Okner Parkway, Livingston, New Jersey 07039.
28. Plaintiff Briad Lodging Group Dover II, LLC – 78 Okner Parkway, Livingston, New Jersey 07039.
29. Plaintiff Briad Lodging Group Hamilton, LLC – 78 Okner Parkway, Livingston, New Jersey 07039..
30. Plaintiff Briad Lodging Group South Brunswick, LLC – 78 Okner Parkway, Livingston, New Jersey 07039.
31. Plaintiff Briad Lodging Group C12, LLC – 78 Okner Parkway, Livingston, New Jersey 07039.
32. Plaintiff Briad Lodging Group Branchburg TPS, LLC – 78 Okner Parkway, Livingston, New Jersey 07039.
33. Plaintiff Briad Lodging Group Lawrenceville, LLC – 78 Okner Parkway, Livingston, New Jersey 07039.
34. Plaintiff Briad Lodging Group Bridgewater, LLC – 78 Okner Parkway, Livingston, New Jersey 07039.
35. Plaintiff Briad Lodging Group Poughkeepsie, LLC – 78 Okner Parkway, Livingston, New Jersey 07039.
36. Plaintiff The Briad Group is a registered federal trademark and has no address but is used to provide branding for all or some of the plaintiffs identified above.

37. Defendant American Guaranty and Liability Insurance Company -- at 1299 Zurich Way, Schaumburg, IL 60196.

JURISDICTION AND VENUE

38. The Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. §1332, in that the Plaintiffs and Defendant are citizens of different states and the amount in controversy exceeds \$75,000.00, exclusive of interest and costs.

39. Venue is proper in this Court pursuant to 28 U.S.C. § 1391, in that a substantial part of the events or omissions giving rise to this action occurred in this judicial district. In addition, two of the Plaintiffs have their principal places of business in this judicial district and conduct business in this judicial district.

NATURE OF THE ACTION

40. PLAINTIFFS bring this action against Defendant AMERICAN GUARANTY AND LIABILITY INSURANCE COMPANY (hereinafter “Defendant” or “American”) for breach of contract and reformation of contract.

41. This action arises from the failure of Defendant to indemnify Plaintiffs pursuant to an all risk Commercial Business Policy of Insurance, policy number ERP0247816-01, issued by Defendant to Plaintiffs (“Subject Policy”).

42. On or about March 2020, while the Subject Policy of Insurance was in full force and effect, Plaintiffs suffered losses due to the Covid-19 outbreak and its effects, which subsequently resulted in various government orders effectively shutting down Plaintiffs’ various businesses.

43. Plaintiffs timely provided notice and subsequently submitted an insurance claim to the Defendant in connection with the damages suffered.
44. Notwithstanding the terms of the all-risk Subject Policy, Defendant has failed to indemnify Plaintiffs for their losses.
45. As a result of Defendant's failure to pay Plaintiffs' the damages they have suffered, Plaintiffs have commenced this action for breach of contract.
46. In addition to commencing this action for breach of contract, a review of the Subject Policy reveals that Defendant failed to issue this Policy to the appropriately named business entities and rather inadvertently issued it to an entity denominated as THE BRIAD GROUP. As a result, Plaintiffs also have interposed a claim sounding in reformation so as to conform the Subject Policy to reflect the intended proper entities who should have been named on the Subject Policy.

FACTS PERTINENT TO ALL COUNTS

47. At all relevant times herein, Plaintiffs had an insurable interest in the Subject Properties (set forth on Exhibit B attached hereto).
48. At all times hereinafter mentioned, Plaintiffs were involved in the businesses of hospitality and restaurant management.
49. With over 120 franchise locations in the United States under the brands T.G.I. Friday's, Wendy's, Marriott, and Hilton, Briad was one of America's fastest growing restaurant and hospitality companies, from its founding in 1987 until the business was catastrophically injured in 2020 by the Covid-19 pandemic .
50. Briad is best known for its three major divisions: quick-service, which operators Wendy's Old-Fashioned Hamburgers restaurants; casual dining, which owns Zinburger

Wine & Burger Bar restaurants on the East Coast; and lodging, which develops and operates hotels under the Marriott and Hilton brands.

51. Defendant is a subsidiary of Zurich American Insurance Company.

52. At all times hereinafter mentioned, Defendant was and is authorized by the New Jersey Department of Banking and Insurance to issue policies of insurance, including the policy at issue herein, in the State of New Jersey

THE NOVEL CORONAVIRUS AND ITS EFFECTS

53. It is beyond cavil that the world is currently experiencing a global pandemic from a disease caused by a novel coronavirus (specifically, SARS-COV-2) and commonly referred to as Covid-19.

54. From at least as early as December 2019, Covid-19 began spreading, first in China and then, because the disease is highly contagious, rapidly around the globe.

55. On January 30, 2020, the World Health Organization (WHO) declared the Covid-19 outbreak constituted a public health emergency of international concern.

56. Not only is SARS-COV-2 transmitted via human-to-human, but the WHO and scientific studies have confirmed that the virus can remain infectious on objects or surfaces.

57. By February 25, 2020, the Center for Disease Control (“CDC”) warned Americans that the world was on the brink of a global pandemic, effectively dismantling any notion that SARS-COV-2 would not affect the population of the United States.

58. From that point forward, COVID-19 and its damaging consequences received wide spread media attention.

59. As a result of this outbreak the Center for Disease Control began recommending that individuals stay at home and those who are not sick engage in preventive measures such as constant hand washing and the avoidance of activities that would bring them into close proximity of people or surfaces where the virus resides.
60. Given the nature of the Plaintiffs' various businesses, the spread of the Covid-19 virus led to physical loss and damage both within and within the vicinity of the various insured locations. This physical loss and damage directly led to Plaintiffs subsequent economic damages.
61. The physical loss and damage existed both on surfaces found within the insureds' and surrounding premises as well as in the breathable air circulating within the insureds' and surrounding premises.
62. Scientific studies suggest that the virus may remain active on surfaces for times varying from hours to days. Indeed, following an outbreak on a cruise ship, the CDC confirmed that the virus was still alive on surfaces within cabins on the ship up to seventeen days after the passengers departed the ship.¹
63. In addition, human beings spread Covid-19 through the simple act of breathing in air that contains viral droplets. The New York Times recently reported that "[a]n infected person talking for five minutes in a poorly ventilated space can also produce as many viral droplets as one infectious cough."²

¹ <https://www.cdc.gov/mmwr/volumes/69/wr/mm6912e3.htm>

² <https://www.nytimes.com/interactive/2020/04/14/science/coronavirus-transmission-cough-6-feet-arul.html>

64. Moreover, studies have verified that many individuals remain asymptomatic despite infection by Covid-19.³
65. Consequently, while it is possible to identify certain individuals who are suffering from obvious symptoms of the coronavirus, absent significant medical testing, it is impossible to distinguish between infected and non-infected members of the general public.
66. In addition to a decrease in revenue as a result of the desire of patrons to avoid contracting the virus while visiting Briad's commercial locations, civil authority orders began to be issued by various states and localities wherein Briad maintained their commercial establishments, all of which required those properties to either close their doors to the public or suspend their normal business operations. A non-exhaustive list of these orders is presented in Exhibit "A" hereto.
67. These orders were all predicated, in part, on the effect of the presence of Covid 19 within enclosed, highly trafficked locations.
68. For example, the following relevant orders were issued by authorities in localities where the Plaintiffs' operate their restaurants and hotels:

WHEREAS, on March 7, 2020, New York State Governor Andrew Cuomo declared a State disaster emergency for the entire State of New York to address the threat that COVID-19 poses to the health and welfare of New York residents and visitors; and

...

WHEREAS, 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; and

³ <https://www.usnews.com/news/health-news/articles/2020-05-28/studies-detail-rates-of-asymptomatic-cases-of-coronavirus> (observing that 42% of infected persons in Wuhan, China were asymptomatic).

NOW, THEREFORE, pursuant to the powers vested in me by the laws of the State of New York and the City of New York, including but not limited to the New York Executive Law, the New York City Charter and the Administrative Code of the City of New York, and the common law authority to protect the public in the event of an emergency:

...

Any large gathering or event for which attendance is anticipated to be in excess of fifty people, or in excess of any number established as the maximum number permitted by an order of the Governor issued pursuant to his powers under section 29-a of the Executive Law, is cancelled or postponed.

Each employer shall reduce the in-person workforce at any work locations by 50% no later than March 20, 2020 at 8:00 p.m., and shall further reduce its in-person workforce to the extent required by any order of the Governor issued pursuant to his powers under section 29-a of the Executive Law.

New York City Emergency Executive Order Nos. 100, 102

WHEREAS, on March 6, 2020, in response to the 2019 novel coronavirus disease, COVID-19, the Governor of Pennsylvania issued a Proclamation of Disaster Emergency; and

...

WHEREAS, on March 16, 2020, the Governor of Pennsylvania announced that the Commonwealth of Pennsylvania is imposing mitigation efforts to curtail the spread of COVID-19 uniformly across the Commonwealth, calling upon nonessential businesses (excluding business such as grocery stores and medical facilities) to close beginning at midnight Tuesday March 17, 2020; and

WHEREAS, COVID-19 is easily transmitted, especially in group settings, including by people with no symptoms or mild symptoms who may unknowingly spread the disease to others; and

WHEREAS, COVID-19 may remain viable for hours to days on surfaces made from a variety of materials located in businesses and other places, thus contaminating certain property and places; and

...

NOW, THEREFORE, James F. Kenney, Mayor of the City of Philadelphia, and Dr. Thomas A. Farley, Health Commissioner of the City of Philadelphia, pursuant to all authority granted under the Philadelphia Home Rule Charter, The Philadelphia Code and the Regulations of the Board of Health of the City of Philadelphia, hereby ORDER as follows:

Section 1. Prohibition on Operation of Non-Essential Businesses in Philadelphia

A. No person or entity shall operate a non-essential place of business.

Philadelphia Mayoral Order dated March 17, 2020

WHEREAS, through Executive Order No. 102 (2020), which I signed on February 3, 2020, I created the State’s Coronavirus Task Force, chaired by the Commissioner of the New Jersey Department of Health (“DOH”), in order to coordinate the State’s efforts to appropriately prepare for and respond to the public health hazard posed by Coronavirus disease 2019 (“COVID-19”); and

WHEREAS, in light of the dangers posed by COVID-19, I issued Executive Order No. 103 (2020) on March 9, 2020, the facts and circumstances of which are adopted by reference herein, which declared both a Public Health Emergency and State of Emergency; and

WHEREAS, to mitigate community spread of COVID-19, it is necessary to limit the unnecessary movement of individuals in and around their communities and person-to-person interactions in accordance with CDC and DOH guidance; and

.....

WHEREAS, the best way for New Jersey residents to keep themselves, their families, and their communities safe during the COVID-19 outbreak is to stay at home as much as possible; and

.....

NOW, THEREFORE, I, PHILIP D. MURPHY, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

2. All New Jersey residents shall remain home or at their place of residence unless they are 1) obtaining goods or services from essential retail businesses, as described in Paragraph 6; 2) obtaining takeout food or beverages from restaurants, other dining establishments, or food courts,

All restaurants, cafeterias, dining establishments, and food courts, with or without a liquor license, all bars, and all other holders of a liquor license with retail consumption privileges, are permitted to operate their normal business hours, but are limited to offering only food delivery and/or take-out services in accordance with their existing liquor licenses.

New Jersey Executive Orders No. 103, 104, and 107.

THE SUBJECT POLICY AND BRIAD'S CLAIM

69. The commencement of this lawsuit resulted from a breach of insurance contract arising from Defendant's failure to provide any payment to Plaintiffs for their losses resulting from the global pandemic commonly referred to as the coronavirus or Covid-19.
70. On or about May 1, 2019, for good and valuable consideration, Plaintiffs procured a policy of insurance from American the ("Subject Policy") bearing policy number ERP 0247816-01.
71. The Subject Policy provides coverage for, *inter alia*, physical loss or damage, as well as losses of income due to business interruption.
72. The Subject Policy bears effective dates from May 1, 2019 to May 1, 2020.
73. The Subject Policy was in full force and effect as of March 2020.
74. The Subject Policy provided coverage for **Time Element** losses, including but not limited to coverage for loss of business income.
75. The Subject Policy provides in relevant part:
- The Company will pay for the actual Time Element loss the Insured sustains, as provided in the Time Element Coverages, during the Period of Liability. The Time Element loss must result from the necessary Suspension of the Insured's business activities at an Insured Location. The Suspension must be due to direct physical loss of or damage to Property (of the type insurable under this Policy other than Finished Stock) caused by a Covered Cause of Loss at the Location.
76. Sections 7.56 and 7.56.01 of the Subject Policy defines **Suspension (Suspended)** as "the slowdown or cessation of the Insured's business activities."
77. The Subject Policy insures against **Time Element** losses resulting from:
- (a) Gross Earnings

Gross Earnings value that would have been earned during the Period of Liability, less charges and expenses that do not necessarily continue during the Period of Liability.

An interruption of business, whether total or partial, during the period of time when, in connection with or following a peril insured against, access to real or personal property is impaired by order or action of civil or military authority.

(b) Extended Period of Liability

Upon the termination of the coverage for Gross Earnings loss under this Policy will continue to pay the actual Gross Earnings loss sustained by the Insured until the earlier of:

The date the Insured could restore its business with due diligence, to the condition that would have existed had no direct physical loss or damage occurred to the Insured's Covered Property or the number of consecutive days as stated in the Declarations.

(c) Extra Expense

The Company will pay for the reasonable and necessary Extra Expenses incurred by the Insured, during the Period of Liability, to resume and continue as nearly as practicable the Insured's normal business activities that otherwise would be necessarily suspended, due to direct physical loss of or damage caused by a Covered Cause of Loss to Property of the type insurable under this policy at a Location.

(d) Leasehold Interest

The Company will pay for the actual Leasehold Interest loss incurred by the Insured (as lessee) resulting from direct physical loss of or damage caused by a Covered Cause of Loss to a building (or structure) which is leased and not owned by the Insured.

78. The Subject Policy includes **Special Coverages** including coverage for:

(e) Civil or Military Authority

The Company will pay for the actual Time Element loss sustained by the Insured, as provided by this Policy, resulting from the necessary Suspension of the Insured's business activities at an Insured Location if the Suspension

is caused by order of civil or military authority that prohibits access to the Location.

(f) Professional Fees

This Policy covers the actual costs incurred by the Insured, of reasonable fees paid to the Insured's accountants, architects, auditors, engineers, or other professionals and the cost of using the Insured's employees, for producing and certifying any details contained in the Insured's books or documents, or such other proofs, information or evidence required by the Company resulting from loss or damage payable under this Policy for which the Company has accepted liability.

79. No exclusions contained in the Subject Policy are applicable to the dispute set forth herein.
80. The Subject Policy provides coverage for multiple locations, including those locations identified in Exhibit "B", as attached hereto (the "Subject Properties").
81. As a result of the covered losses stemming from Covid-19 and its effects, Plaintiffs experienced a significant loss in revenue, amongst other losses.
82. Throughout the life of the Subject Policy, Plaintiffs continuously paid their premiums and as such expected Defendant to investigate and adjust their claims in good faith.
83. In contrast to Plaintiffs' expectations, on or around June 9, 2020, Defendant American by and issued a Denial letter, disclaiming coverage for the loss.
84. On or about June 23, 2020, Plaintiffs submitted a partial sworn statement in proof of loss ("Proof of Loss") in the amount of \$20,243,551.00 for the actual and projected damages suffered through July 31, 2020. The Proof of Loss represented damages sustained as a result of losses solely to the Wendy's and Zinburger franchises
85. On or about July 29, 2020 Plaintiffs supplemented their Proof of Loss documenting losses reflecting totaling \$40,798,390. The supplemental proof of loss reflected losses that arose from Briad's hotel closures, lost inventory, extra expenses, and professional

fees in addition to updating the losses suffered by the Wendy's and Zinburger franchise locations ("Supplemental Proof of Loss").

86. The Subject Properties, reflected in Exhibit "B," are insurable properties under the Subject Policy and suffered physical loss or damage as a result of the Covid-19 pandemic and its effect.
87. American failed to thoroughly investigate the claim to determine if coverage was available under the policy, despite a duty to do so.
88. An insurer cannot reasonably and in good faith deny payments to its insured without thoroughly investigating the foundation for a denial of payment in whole or in part.
89. American failed to make any request for information from the insured.
90. When determining the amount of coverage available, American failed to consider any information that was submitted with the insured's Proof of Loss or Supplemental Proof of loss.

AS AND FOR A FIRST CAUSE OF ACTION
(Breach of Contract)

91. The Plaintiffs repeat and re-allege paragraphs "1" through "88", with the same force and effect as if set forth at length herein.
92. The Subject Policy constituted a binding contract between Plaintiffs and American.
93. Plaintiffs complied with all of the obligations under the Subject Policy, including through timely notification of a loss and the filing of a Sworn Statement in Partial Proof of Loss.
94. To date, American has failed to compensate Plaintiffs for their losses with regards to the Sworn Statement in the Partial Proof of Loss submitted to American on or about June 23, 2020.

95. American's failure to compensate Plaintiffs for their loss constitutes a breach of the Subject Policy.

96. As a result of American's breach of the Subject Policy, Plaintiffs have suffered damages in the amount of \$40,798,390.00 together with such additional and subsequent damages as may be proven at trial.

AS AND FOR A SECOND CAUSE OF ACTION
(Reformation of Contract)

97. Plaintiffs repeat and re-allege paragraphs "1" through "94" with the same force and effect as if set forth at length herein.

98. Heretofore and prior to May 1, 2019, Defendant, for good and valuable consideration, made and issued to "The Briad Group" the Subject Policy. The Subject Policy provided coverage for physical loss and damage to, inter alia, the properties reflected in Exhibit "B."

99. The Subject Properties however are owned by plaintiffs MANHATTAN PARTNERS, LLC, BH ZB, LLC, ZINBURGER PARAMUS, LLC, ZIN CHERRY HILL, LLC, ZIN WALT WHITMAN, LLC, ZIN SOUTHPOINT, LLC, ZIN NANUET, LLC, ZIN BARRACKS ROAD, LLC, ZIN SAWGRASS, LLC, ZIN LENOX SQUARE, LLC, ZIN BOCA TOWN CENTER, LLC, ZIN MORRIS PLAINS, LLC, ZIN SPRINGFIELD VA, LLC, ZIN EDISON, LLC, ZIN NEWPORT CENTRE, LLC, ZIN ARUNDEL, LLC, ZIN BRIDGEWATER, LLC, ZIN MARLBORO, LLC, BRIAD WENCO, LLC, BRIAD WENTWO, LLC, BRIAD WENATE, LLC, BRIAD WENSWICK, LLC, BRIAD WENCHEST, LLC, , BRIAD LODGING GROUP CENTRAL ISLIP, LLC, BRIAD LODGING GROUP SOUTHLINGTON, LLC,

BRIAD LODGING GROUP BRANCHBURG II, LLC, BRIAD LODGING GROUP DOVER II, LLC, BRIAD LODGING GROUP HAMILTON, LLC, BRIAD LODGING GROUP SOUTH BRUNSWICK, LLC, BRIAD LODGING GROUP, C12, LLC, BRIAD LODGING GROUP BRANCHBURG TPS, LLC, BRIAD LODGING GROUP LAWRENCEVILLE, LLC, BRIAD LODGING GROUP BRIDGEWATER, LLC, and BRIAD LODGING GROUP POUGHKEEPSIE, LLC.

100. The misnaming of The Briad Group in the Subject Policy constitutes a scrivener's error in that Defendant intended to insure all of the properties listed in Exhibit "B" and would have issued the exact Subject Policy to Plaintiffs instead of The Briad Group if it had realized that the Plaintiffs were the owners of the Subject Properties.

101. Wherefore, Plaintiffs seek reformation of the Subject Policy to replace "The Briad Group" with "MANHATTAN PARTNERS, LLC, BH ZB, LLC, ZINBURGER PARAMUS, LLC, ZIN CHERRY HILL, LLC, ZIN WALT WHITMAN, LLC, ZIN SOUTHPOINT, LLC, ZIN NANUET, LLC, ZIN BARRACKS ROAD, LLC, ZIN SAWGRASS, LLC, ZIN LENOX SQUARE, LLC, ZIN BOCA TOWN CENTER, LLC, ZIN MORRIS PLAINS, LLC, ZIN SPRINGFIELD VA, LLC, ZIN EDISON, LLC, ZIN NEWPORT CENTRE, LLC, ZIN ARUNDEL, LLC, ZIN BRIDGEWATER, LLC, ZIN MARLBORO, LLC, BRIAD WENCO, LLC, BRIAD WENTWO, LLC, BRIAD WENATE, LLC, BRIAD WENSWICK, LLC, BRIAD WENCHEST, LLC, BRIAD LODGING GROUP CENTRAL ISLIP, LLC, BRIAD LODGING GROUP SOUTHTON, LLC, BRIAD LODGING GROUP BRANCHBURG II, LLC, BRIAD LODGING GROUP DOVER II, LLC, BRIAD LODGING GROUP HAMILTON, LLC, BRIAD LODGING GROUP SOUTH

BRUNSWICK, LLC, BRIAD LODGIING GROUP, C12, LLC, BRIAD LODGING GROUP BRANCHBURG TPS, LLC, BRIAD LODGING GROUP LAWRENCEVILLE, LLC, BRIAD LODIGING GROUP BRIDGEWATER, LLC, AND BRIAD LODGIING GROUP POUGHKEEPSIE, LLC” as named insureds.

WHEREFORE, Plaintiffs demand judgment against American as follows:

- (a) On the First Cause of Action, a money judgment against American in the amount of \$40,798,390.00 together with such additional and subsequent damages as may be proven at trial;
- (b) On the Second Cause of Action, for reformation of the Subject Policy to substitute “The Briad Group” with MANHATTAN PARTNERS, LLC, BH ZB, LLC, ZINBURGER PARAMUS, LLC, ZIN CHERRY HILL, LLC, ZIN WALT WHITMAN, LLC, ZIN SOUTHPOINT, LLC, ZIN NANUET, LLC, ZIN BARRACKS ROAD, LLC, ZIN SAWGRASS, LLC, ZIN LENOX SQUARE, LLC, ZIN BOCA TOWN CENTER, LLC, ZIN MORRIS PLAINS, LLC, ZIN SPRINGFIELD VA, LLC, ZIN EDISON, LLC, ZIN NEWPORT CENTRE, LLC, ZIN ARUNDEL, LLC, ZIN BRIDGEWATER, LLC, ZIN MARLBORO, LLC, BRIAD WENCO, LLC, BRIAD WENTWO, LLC, BRIAD WENATE, LLC, BRIAD WENSWICK, LLC, BRIAD WENCHEST, LLC, , BRIAD LODGING GROUP CENTRAL ISLIP, LLC, BRIAD LODGING GROUP SOUTHINGTON, LLC, BRIAD LODGING GROUP BRANCHBURG II, LLC, BRIAD LODGING GROUP DOVER II, LLC, BRIAD LODGING GROUP HAMILTON, LLC, BRIAD LODGING GROUP SOUTH BRUNSWICK, LLC, BRIAD LODGIING GROUP, C12, LLC, BRIAD LODGING GROUP BRANCHBURG TPS, LLC,

BRIAD LODGING GROUP LAWRENCEVILLE, LLC, BRIAD LODGING GROUP BRIDGEWATER, LLC, and BRIAD LODGING GROUP POUGHKEEPSIE, LLC.

- (c) Reasonable fees and costs of this action; and
- (d) For such other and further relief as to which this Court deems just and proper.

JURY DEMAND

Plaintiffs hereby demand trial by jury on all issues herein so triable.

LOCAL CIVIL RULE 11.2 CERTIFICATION

Plaintiffs, by and through their undersigned counsel, hereby certify that the matter in controversy is not the subject of any other action pending in any court, or of any pending arbitration or administrative proceeding.

LOCAL CIVIL RULE 201.1 CERTIFICATION

Plaintiffs, by and through their undersigned counsel, hereby certify that damages recoverable exceed the sum of \$150,000 exclusive of interest and costs and any claim for punitive damages.

CERTIFICATION PURSUANT TO 28 U.S.C. § 1746

I declare under the penalty of perjury under the laws of the United States of America that, to the best of my knowledge, the foregoing is true and correct.

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Attorneys for Plaintiffs

By: s/ Philip Rosenbach

October 12, 2020