

pay more than a total of this annual limit even if the "fungus", wet rot or dry rot continues to be present or active, or recurs, in a later policy period.

- (c) The coverage provided under this Limited "Fungus", Wet Rot and Dry Rot Coverage – Direct Damage does not increase the applicable Limit of Insurance on any Covered Property. If a particular occurrence results in loss or damage by "fungus", wet rot or dry rot, and other loss or damage, the Company will not pay more for the total of all loss or damage than the applicable Limit of Insurance on the Covered Property.
  - (d) If there is covered loss or damage to Covered Property that is not caused by "fungus", wet rot or dry rot, loss payment will not be limited by the terms of this Limited "Fungus", Wet Rot and Dry Rot Coverage – Direct Damage, except to the extent that "fungus", wet rot or dry rot causes an increase in the loss. Any such increase in the loss will be subject to the terms of this Limited "Fungus", Wet Rot and Dry Rot Coverage – Direct Damage.
- (3) Limited "Fungus", Wet Rot and Dry Rot Coverage – Business Income, Rental Value and Extra Expense

The following Limited "Fungus", Wet Rot and Dry Rot Coverage provisions for Business Income, Rental Value and Extra Expense apply only if Business Income, Rental Value and/or Extra Expense coverage applies to the Insured's premises and only if the suspension of "operations" satisfies all of the terms of the applicable Business Income, Rental Value and/or Extra Expense coverage:

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

The coverage provided under this Limited "Fungus", Wet Rot and Dry Rot Coverage – Business Income, Rental Value and Extra Expense is included in, and does not increase the applicable Business Income, Rental Value and/or Extra Expense Limit of Insurance.

- (4) The terms of this Limited "Fungus", Wet Rot and Dry Rot Coverage do not increase or reduce the coverage provided under the Water Damage, Other Liquids, Powder or Molten Damage coverage in Section B.2.i. of the Property Coverage Form or the coverage provided for collapse of buildings or structures under the Collapse of Buildings exclusion in Section D.1.j. of the Property Coverage Form.
2. The exclusions contained in Section D.2. are amended as follows:
- a. Under exclusion D.2. c.(2), the reference to fungus, the reference to wet or dry rot and the reference to mold are deleted.
  - b. Exclusion D.2.i. is replaced by the following:  
The Company will not pay for loss or damage caused by or resulting from:
    - (1) Continuous or repeated seepage, leakage or flow of water; or
    - (2) The presence or condensation of humidity, moisture or vapor;that occurs over a period of 14 days or more.

- B. The following is added to the LIMITATIONS contained in Section E. of the Property Coverage Form. This limitation applies to all Coverage Forms and endorsements in this policy that are subject to the limitations contained in the Property Coverage Form:

The Company will not pay for loss of or damage to, or any loss that is a consequence of loss or damage to the interior of any building or structure, or to personal property in the building or structure, caused by or resulting from rain, snow, sleet, ice, sand or dust, whether driven by wind or not, unless:

- a. The building or structure first sustains damage by a Covered Cause of Loss to its roof or walls through which the rain, snow, sleet, ice, sand or dust enters; or
- b. The loss or damage is caused by or results from thawing of snow, sleet or ice on the building or structure.

Any portion of a building or structure that is within the exterior-facing surface material of a building or structure shall constitute the interior of that building or structure.

- C. The DEFINITIONS contained in Section G. of the Property Coverage Form are amended as follows. These definition changes apply wherever such defined terms are used in the policy.

1. The definition of "Specified Cause of Loss" is deleted and replaced by the following:

"Specified Cause of Loss" means any of the following: Fire; lightning; explosion; windstorm or hail; smoke; aircraft or vehicles; riot or civil commotion; vandalism; leakage from fire extinguishing equipment; "sinkhole collapse"; volcanic action; falling objects as limited below; weight of snow, ice or sleet; or water damage as defined below; all only as otherwise insured against in this policy.

- a. Falling objects does not include loss or damage to:

- (1) Personal property in the open; or
- (2) The interior of a building or structure, or property inside a building or structure, unless the roof or an outside wall of the building or structure is first damaged by a falling object. Any portion of a building or structure that is within the exterior-facing surface material of a building or structure shall constitute the interior of that building or structure.

- b. Water damage means accidental discharge or leakage of water or steam as the direct result of the breaking apart or cracking of any part of a system or appliance (other than a sump system including its related equipment and parts) containing water or steam.

"Specified Cause of Loss" also means any cause of loss that is specifically added to the "specified causes of loss" by endorsement, but only to the extent such cause of loss is insured against under this policy.

2. The following definition is added:

"Fungus" means any type or form of fungus, including but not limited to mold or mildew, and any mycotoxins, spores, scents or byproducts produced or released by fungi.

- D. Under:

1. The Ordinance or Law coverage in Section B.2.f. of the Property Coverage Form;
2. The Ordinance or Law – Increased "Period of Restoration" Additional Coverage Extension in Section B.4. of the Business Income Coverage Form Including Extra Expense and the Business Income Coverage Form Excluding Extra Expense;
3. The Ordinance or Law – Increased "Period of Restoration" Additional Coverage Extension in Section B.3. of the Extra Expense Coverage Form; and
4. Any other Ordinance or Law or Ordinance or Law – Increased "Period of Restoration" coverage provided under this policy;



the following exclusion is added:

This coverage does not apply to:

- a. Loss caused by or resulting from the enforcement of any ordinance or law which requires the demolition, repair, replacement, reconstruction, remodeling or remediation of property due to the presence, growth, proliferation, spread or any activity of "fungus", wet rot or dry rot; or
- b. Costs associated with the enforcement of any ordinance or law which requires any insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "fungus", wet rot or dry rot.

**EXCLUSION OF NUCLEAR HAZARD, WAR, MILITARY ACTION, ELECTRONIC VANDALISM AND PATHOGENIC OR POISONOUS BIOLOGICAL OR CHEMICAL MATERIALS**

This endorsement modifies the insurance provided under this policy.

- A. The Nuclear Hazard Exclusion is replaced by the following Exclusion. With respect to any form, endorsement or coverage to which the Nuclear Hazard Exclusion does not apply, that Exclusion is hereby added as follows.

**NUCLEAR HAZARD**

1. The Company will not pay for loss or damage caused directly or indirectly by nuclear reaction or radiation, or radioactive contamination, however caused. Such loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss.
2. With respect only to direct physical loss or damage to Covered Property occurring within the states of:

Arizona, California, Connecticut, Georgia, Hawaii, Idaho, Illinois, Iowa, Louisiana, Maine, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Oklahoma, Oregon, Pennsylvania, Rhode Island, Virginia, Washington, West Virginia, Wisconsin

the following exception to this Nuclear Hazard Exclusion applies:

If nuclear reaction or radiation, or radioactive contamination, results in fire, the Company will pay for the loss or damage caused by that fire. However, this exception for fire applies only to direct loss or damage by fire to Covered Property. This fire exception does not apply to any other insurance provided under this policy including, but not limited to, any insurance provided under this policy for Business Income, Rental Value, Extra Expense, Leasehold Interest or Legal Liability coverage.

In the event of loss or damage under this exception for fire, the value of the lost or damaged Covered Property will be determined at actual cash value at the time of loss, without allowance for any increased cost attributable to enforcement of any ordinance or law regulating the construction, use or repair of the property. Any Ordinance or Law coverage provided under this policy does not apply to loss or damage under this exception for fire.

3. With respect to any activity that comes within the terms of the War and Military Action Exclusion and involves nuclear reaction or radiation, or radioactive contamination, the War and Military Action Exclusion supersedes this Nuclear Hazard Exclusion.
- B. The War and Military Action Exclusion is replaced by the following Exclusion. With respect to any form, endorsement or coverage to which the War and Military Action Exclusion does not apply, that Exclusion is hereby added as follows.

**WAR AND MILITARY ACTION**

1. The Company will not pay for loss or damage caused directly or indirectly by 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. Hostile or warlike action in time of peace or war, including action in hindering, combating or defending against an actual, impending or expected attack:
    - (1) By any government or sovereign power (de jure or de facto), or by any authority maintaining or using military, naval or air forces;
    - (2) By military, naval or air forces; or
    - (3) By an agent of any such government, power, authority or forces.



- b. Insurrection, rebellion, revolution, civil war, usurped power, or action taken by governmental authority in hindering, combating or defending against such an occurrence.

Any discharge, explosion or use of any weapon of war employing nuclear fission or fusion will be conclusively presumed to be such a hostile or warlike action by such a government, power, authority or forces.

- 2. With respect to any action that comes within the terms of this exclusion and:
  - a. Involves nuclear reaction or radiation, or radioactive contamination, this War and Military Action Exclusion supersedes the Nuclear Hazard Exclusion.
  - b. Involves a discharge, dispersal, seepage, migration, release, escape or application of any pathogenic or poisonous biological or chemical materials that comes within the terms of the Pathogenic or Poisonous Biological or Chemical Materials Exclusion, this War And Military Action Exclusion supersedes the Pathogenic or Poisonous Biological or Chemical Materials Exclusion.
  - c. Involves Electronic Vandalism as defined in the Electronic Vandalism Exclusion, this War and Military Action Exclusion supercedes the Electronic Vandalism Exclusion.

- C. The Computer Virus Exclusion is replaced by the following Exclusion:

**ELECTRONIC VANDALISM**

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

This exclusion will not apply in the event Electronic Vandalism results in a "specified cause of loss", but the Company will be liable only for loss or damage by the resulting "specified cause of loss".
- 2. Electronic Vandalism means:
  - a. Willful or malicious destruction of computer programs, content, instructions or other electronic or digital data stored within computer systems.
  - b. Unauthorized computer code or programming that:
    - (1) Deletes, distorts, corrupts or manipulates computer programs, content, instructions or other electronic or digital data, or otherwise results in damage to computers or computer systems or networks to which it is introduced;
    - (2) Replicates itself, impairing the performance of computers or computer systems or networks; or
    - (3) Gains remote control access to data and programming within computers or computer systems or networks to which it is introduced, for uses other than those intended for authorized users of the computers or computer systems or networks.
- 3. With respect to any activity that comes within the terms of the War and Military Action Exclusion and involves Electronic Vandalism, the War and Military Action Exclusion supersedes this Electronic Vandalism Exclusion.

- D. The following exclusion is added:

**PATHOGENIC OR POISONOUS BIOLOGICAL OR CHEMICAL MATERIALS**

- 1. The Company will not pay for loss or damage caused directly or indirectly by the discharge, dispersal, seepage, migration, release, escape or application of any pathogenic or poisonous biological or chemical materials. Such loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss.

2. With respect only to direct physical loss or damage to Covered Property occurring within the states of:

Arizona, California, Connecticut, Georgia, Hawaii, Idaho, Illinois, Iowa, Louisiana, Maine, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Oklahoma, Oregon, Pennsylvania, Rhode Island, Virginia, Washington, West Virginia, Wisconsin

the following exception to this Pathogenic or Poisonous Biological or Chemical Materials Exclusion applies:

If the discharge, dispersal, seepage, migration, release, escape or application of any pathogenic or poisonous biological or chemical materials results in fire, the Company will pay for the loss or damage caused by that fire. However, this exception for fire applies only to direct loss or damage by fire to Covered Property. This fire exception does not apply to any other insurance provided under this policy including, but not limited to, any insurance provided under this policy for Business Income, Rental Value, Extra Expense, Leasehold Interest or Legal Liability coverage.

In the event of loss or damage under this exception for fire, the value of the lost or damaged Covered Property will be determined at actual cash value at the time of loss, without allowance for any increased cost attributable to enforcement of any ordinance or law regulating the construction, use or repair of the property. Any Ordinance or Law coverage provided under this policy does not apply to loss or damage under this exception for fire.

3. This exclusion does not apply when both 3.a. and 3.b. below apply:
- a. The pathogenic or poisonous biological or chemical materials are normally kept at or brought onto:
    - (1) The Insured's premises, with the Insured's consent, for use in the Insured's business operations at the Insured's premises; or
    - (2) Any premises, other than the Insured's premises, by others for use in conducting their valid business operations at such premises;and
  - b. The discharge, dispersal, seepage, migration, release, escape or application of the pathogenic or poisonous biological or chemical materials is accidental and is not the result of a willful or malicious act against any persons, organizations or property of any nature;
- but all other exclusions continue to apply.
4. With respect to any action that comes within the terms of the War And Military Action Exclusion and involves a discharge, dispersal, seepage, migration, release, escape or application of any pathogenic or poisonous biological or chemical materials that comes within the terms of this Pathogenic or Poisonous Biological or Chemical Materials Exclusion, the War and Military Action Exclusion supersedes this Pathogenic or Poisonous Biological or Chemical Materials Exclusion.



## EXCLUSION OF LOSS DUE TO VIRUS OR BACTERIA

This endorsement modifies the insurance provided under this policy

- A. The exclusion set forth in Paragraph B. below applies to all coverage under all forms and endorsements that comprise this policy, including but not limited to forms or endorsements that cover property damage to buildings or personal property and forms or endorsements that cover business income, extra expense, rental value or action of civil authority.
- B. The Company will not pay for loss or damage caused by or resulting from any virus, bacterium or other microorganism that induces or is capable of inducing physical distress, illness or disease.
- C. With respect to any loss or damage subject to the exclusion in Paragraph B. above, such exclusion supersedes any exclusion relating to "pollutants".
- D. The terms of the exclusion in Paragraph B. above, or the inapplicability of this exclusion to a particular loss, do not serve to create coverage for any loss that would otherwise be excluded under this policy.

## **CONTRACTORS EQUIPMENT**

This endorsement modifies insurance provided under the Property Coverage Form.

The following coverage is added:

### **Contractors Equipment**

- A. The Company will pay for direct physical loss or damage by a Covered Cause of Loss to Contractors Equipment, as described in B. below, that is:
1. The Insured's property or property of others in the care, custody or control of the Insured; and
  2. Described in the most recent Schedule of Contractors Equipment or other documentation on file with the Company;

while the property is at the insured premises or away from the insured premises, or in the due course of transit, within the Policy Territory.

- B. As used in this endorsement, Contractors Equipment means mobile machinery and equipment that is:
1. Used by the Insured for the purpose for which it was designed and manufactured; and
  2. Used in the Insured's business.

- C. The Company will also provide each of the following Additional Coverage Extensions for which a Limit of Insurance is shown in the Supplemental Coverage Declarations:

#### **1. Newly Acquired Contractors Equipment**

The insurance provided for Contractors Equipment is extended to apply to direct physical loss or damage by a Covered Cause of Loss to newly acquired Contractors Equipment. This coverage will end when one of the following first occurs:

- a. This policy is canceled or expires;
- b. 60 days expire from the date of such acquisition;
- c. The property is reported to the Company; or
- d. The property is more specifically insured elsewhere.

The Company will charge the Insured an additional premium for Contractors Equipment values reported from the date that the Insured acquires the property.

The most the Company will pay for loss or damage in any one occurrence under this coverage is the Limit of Insurance specified for Newly Acquired Contractors Equipment shown in the Supplemental Coverage Declarations.

#### **2. Equipment Rental Expense**

- a. In the event of covered loss or damage to Contractors Equipment by a Covered Cause of Loss, the Company will pay any necessary and reasonable expenses incurred by the Insured for the rental of temporary substitute Contractors Equipment to continue, as nearly as practicable, the Insured's operations on work in progress or under contract.
- b. Payment under this coverage is limited to such expenses incurred during the period of time that:
  - (1) Begins one working day after the date the direct physical loss or damage is reported to the Company, meaning a period of twenty four consecutive hours of a normally scheduled workday beginning at midnight on the date the loss is reported to the Company; and
  - (2) Ends on the earlier of the following dates:



- (a) The date the damaged Contractors Equipment should be repaired or replaced with reasonable speed and similar quality; or
- (b) The date the need for the substitute equipment ceases to exist.

The expiration date of this policy will not cut short the Rental Expense.

- c. This coverage does not apply to:
  - (1) Any expense if the Insured has suitable substitute equipment available to continue operations;
  - (2) Any expense for the rental of equipment not of the same type or not to be used for the same purpose as the equipment for which it is substituted; or
  - (3) Any loss of market, loss of income or any other consequential loss.
- d. The most the Company will pay for loss or damage in any one occurrence under this coverage is the Limit of Insurance specified for Equipment Rental Expense shown in the Supplemental Coverage Declarations.

D. The following changes apply to Section B. 1. of the Property Coverage Form:

- 1. Items B.1. b., Business Personal Property, and B. 1. j., Covered Property at Undescribed Premises, do not include Contractors Equipment.
- 2. Item B.1.g., Newly Constructed or Acquired Property, does not apply to newly acquired Contractors Equipment.
- 3. The provisions of item B.1.k., Covered Property in Transit, apply to the insurance provided under this endorsement for Contractors Equipment in the due course of transit. But the most the Company will pay for loss or damage to such property is subject to the Limits of Insurance described in Section G. of this endorsement.

E. All of the Property and Costs Not Covered in Section C. of the Property Coverage Form apply to the insurance provided under this endorsement, except:

- 1. Item C. 7. is replaced by the following:

Vehicles or self-propelled machines that are licensed for road use.
- 2. The following items are added as property not covered:
  - a. Any Contractors Equipment while leased, rented or loaned to others;
  - b. Any Contractors Equipment while underground or underwater;
  - c. Any Contractors Equipment while waterborne, except while in the due course of transit;
  - d. Tires unless the loss or damage to the tires is coincident with other covered loss or damage to the Contractors Equipment; or
  - e. "Electronic data processing equipment" unless the "electronic data processing equipment" is an integral part of the Contractors Equipment.

F. With respect only to the insurance provided under this endorsement, the following exclusion is added to the exclusions in Section D. of the Property Coverage Form:

The Company will not pay for loss or damage caused by or resulting from:

- 1. The weight of a load exceeding, at the time of loss, the maximum lifting or operating capacity established by the manufacturer for the property; or
- 2. Work upon or service of the Contractors Equipment, but if loss or damage by fire or explosion results, the Company will pay for loss or damage to the Contractors Equipment caused by the resulting fire or explosion.

G. The most the Company will pay in any one occurrence under this endorsement for loss or damage to Contractors Equipment, other than newly acquired Contractors Equipment, is the applicable Limit of Insurance specified for Contractors Equipment shown in the Supplemental Coverage Declarations. The Limits of Insurance that apply to the Newly Acquired Contractors Equipment and Equipment Rental Expense Additional Coverage Extensions apply in addition to the Contractors Equipment Limit(s) of Insurance.

H. The valuation provisions of this policy are amended by the following:

In the event of a covered loss or damage, the Company will determine the value of Contractors Equipment at Actual Cash Value, meaning the cost to repair, rebuild or replace the lost or damaged property, at the time and place of the loss, with other property of comparable size, material and quality, less allowance for physical deterioration, depreciation, obsolescence and depletion.



## **EXPEDITING EXPENSES – BOILER & MACHINERY**

This endorsement modifies insurance provided under the Property Coverage Form.

The following coverage is added under Section B. 2., Covered Costs and Expenses:

### **Expediting Expenses**

In the event of direct physical loss or damage to Covered Property caused by or resulting from an Accident to a Covered Object to which the Boiler and Machinery insurance provided under this policy applies, the Company will pay for the reasonable additional expenses incurred by the Insured to make temporary repairs to, or expedite the permanent repair or replacement of, the Covered Property.

Expediting expenses include overtime wages and the extra cost of express or other rapid means of transportation.

The most the Company will pay under this coverage for all Expediting Expenses arising out of any one occurrence is the Limit of Insurance specified for Expediting Expenses, Boiler & Machinery only, shown in the Supplemental Coverage Declarations.

## UTILITY SERVICES—DIRECT DAMAGE

This endorsement modifies insurance provided under the Property Coverage Form. But this endorsement does not apply to, or amend any limits that otherwise apply for, loss or damage to Accounts Receivable records or to Valuable Papers and Records caused by the interruption, failure or fluctuation of power or utility service.

A. The Company will pay for loss or damage to Covered Property at the Insured's premises caused by the interruption, failure or fluctuation of service to the Insured's premises. The interruption, failure or fluctuation must result from direct physical loss or damage by a Covered Cause of Loss to Utility Supply Services Property, as defined in B. and C. below, not at the Insured's premises.

B. As used in this endorsement, Utility Supply Services Property means:

1. **Water Supply Services Property**, meaning the following types of property supplying water to the Insured's premises:
  - a. Water treatment plants;
  - b. Water tanks;
  - c. Water mains; and
  - d. Pumping stations.
2. **Communication Supply Services Property**, meaning property supplying communication services, including telephone, radio, microwave or television services, to the Insured's premises, such as:
  - a. Communication transmission lines (including optic fiber transmission lines), other than overhead transmission lines;
  - b. Coaxial cables; and
  - c. Microwave radio relays except satellites.
3. **Power Supply Services Property**, meaning the following types of property supplying electricity, steam or gas to the Insured's premises:
  - a. Utility generating plants;
  - b. Switching stations;
  - c. Substations, pumping stations;
  - d. Transformers;
  - e. Transmission lines, other than overhead transmission lines; and
  - f. Tanks.

C. When:

1. Overhead Transmission Lines are indicated as included in the Supplemental Coverage Declarations; or
2. An Overhead Transmission Lines Limit of Insurance is specified in the Supplemental Coverage Declarations;

Utility Supply Services Property also includes **Overhead Transmission Lines**, meaning overhead power transmission lines supplying electricity, steam or gas to the Insured's premises and overhead communication lines supplying communication services to the Insured's premises.

- D. All of the exclusions that apply to the Property Coverage Form apply to this coverage except exclusion D.1.i., Off Premises Utility Services. In addition, the Company will not pay for any loss or damage under this coverage if the loss or damage to the Utility Supply Services Property results from any deliberate act or acts by the supplying utility to shed load or to maintain system integrity.
- E. The most the Company will pay for loss or damage under this coverage is the Limit of Insurance specified for Utility Services - Direct Damage shown in the Supplemental Coverage Declarations. But the Company will not pay more for loss or damage to any Covered Property than the Limit of Insurance that applies to that Covered Property.



If a separate Overhead Transmission Lines Limit of Insurance is specified for this coverage in the Supplemental Coverage Declarations, the Overhead Transmission Lines Limit of Insurance is part of, and not in addition to the Utility Services – Direct Damage Limit of Insurance shown in the Supplemental Coverage Declarations.

## PRESERVATION AND PROTECTION OF PROPERTY

This endorsement modifies the insurance provided under Property Coverage Form.

1. The Preservation of Property coverage in Section B.2.g. is replaced by the following:

**g. Preservation of Property**

- (1) If it becomes necessary to temporarily move Covered Property from insured premises to preserve it from the threat of imminent loss or damage by a Covered Cause of Loss, the Company will pay for any direct physical loss or damage to Covered Property while it is being moved from an insured premises, while temporarily stored at another location or while it is being moved back to an insured premises.
- (2) This Coverage will apply only if the loss or damage occurs within 90 days after the property is first moved and will cease when the policy is amended to provide insurance at the new location, the property is returned to the existing location, or this policy is cancelled or expires, whichever occurs first.
- (3) Payment under this Coverage is included in, and does not increase, the applicable Covered Property Limit of Insurance.

2. The Protection of Property coverage in Section B.2.h. is replaced by the following:

**h. Protection of Property**

- (1) If it becomes necessary to temporarily move Covered Property from insured premises to preserve it from the threat of imminent loss or damage by a Covered Cause of Loss the Company will pay for the necessary and reasonable expenses actually incurred by the Insured to remove the Covered Property from the insured premises and to move the Covered Property back to the insured premises within a reasonable time after the threat of imminent loss or damage to the property by the Covered Cause of Loss passes.
- (2) The Company will also pay for other necessary and reasonable expenses actually incurred by the Insured to temporarily safeguard Covered Property against the threat of imminent direct physical loss or damage by any of the "specified causes of loss".
- (3) The most the Company will pay under this Coverage for the sum of all expenses incurred due to the threat of loss or damage from any one occurrence is \$250,000, subject to the following:
  - (a) This Limit of Insurance is an additional amount of insurance that is not subject to, and does not reduce, the Covered Property Limits of Insurance. Under Section O. LIMITS OF INSURANCE in the General Conditions, Protection of Property is deleted from the list of Covered Costs and Expenses that will not increase the applicable Covered Property Limit(s) of Insurance. But if this policy is subject to a Policy Limit, the Limit of Insurance applicable to this Coverage is included in, and does not increase, the Policy Limit shown in the Supplemental Coverage Declarations.
  - (b) When Earth Movement, Earthquake, Earthquake Sprinkler Leakage, Volcanic Eruption, Landslide or Mine Subsidence is a "specified cause of loss" under this policy, the Company's payment for the sum of all expenses incurred due to the threat of loss or damage from all threatened occurrences of all such "specified causes of loss" in any one policy year will not exceed \$250,000. This Limit of Insurance is not subject to, and does not reduce, the Limits of Insurance that apply to such "specified causes of loss".
  - (c) When Flood is a "specified cause of loss" under this policy, the Company's payment for the sum of all expenses incurred due to the threat of loss or damage from all threatened occurrences of such "specified cause of loss" in any one policy year will not exceed \$250,000. This Limit of Insurance is not subject to, and does not reduce, the Limit of Insurance that applies to such "specified cause of loss".
  - (d) If the threat of imminent direct physical loss or damage to Covered Property from the same occurrence spans over multiple policy years, only the limit that applies in the policy



year in which the expenses are first incurred by the Insured will apply to the insurance provided for expenses incurred due to the threat of loss or damage from that occurrence.

- (4) This Coverage is subject to the deductible that applies to loss or damage to the Covered Property by the Covered Cause of Loss against which the property is being safeguarded.

## UTILITY SERVICES—TIME ELEMENT

This endorsement modifies insurance provided under the Business Income Coverage Forms and the Extra Expense Coverage Form.

- A. The coverage provided for loss of Business Income, Rental Value and/or Extra Expense is extended to apply to such loss and/or expense at the Insured's premises caused by the interruption, failure or fluctuation of service to the Insured's premises. The interruption, failure or fluctuation must result from direct physical loss or damage by a Covered Cause of Loss to Utility Supply Services Property, as defined in B. and C. below, that is located away from the Insured's premises or outside of a building at the Insured's premises.
- B. As used in this endorsement, Utility Supply Services Property means:
1. **Water Supply Services Property**, meaning the following types of property supplying water to the Insured's premises:
    - a. Water treatment plants;
    - b. Water tanks;
    - c. Water mains; and
    - d. Pumping stations.
  2. **Communication Supply Services Property**, meaning property supplying communication services, including telephone, radio, microwave or television services, to the Insured's premises, such as:
    - a. Communication transmission lines (including optic fiber transmission lines), other than overhead transmission lines;
    - b. Coaxial cables; and
    - c. Microwave radio relays except satellites.
  3. **Power Supply Services Property**, meaning the following types of property supplying electricity, steam or gas to the Insured's premises:
    - a. Utility generating plants;
    - b. Switching stations;
    - c. Substations, pumping stations;
    - d. Transformers;
    - e. Transmission lines, other than overhead transmission lines; and
    - f. Tanks.
- C. When:
1. Overhead Transmission Lines are indicated as included in the Supplemental Coverage Declarations; or
  2. An Overhead Transmission Lines Limit of Insurance is specified in the Supplemental Coverage Declarations;
- Utility Supply Services Property also includes **Overhead Transmission Lines**, meaning overhead power transmission lines supplying electricity, steam or gas to the Insured's premises and overhead communication lines supplying communication services to the Insured's premises.
- D. All of the exclusions that apply to the Coverage Form(s) modified by this endorsement apply to this coverage except exclusion C.1.b., Off Premises Utility Services. In addition, the Company will not pay for any loss or expense under this coverage if the loss or damage to the Utility Supply Services Property results from any deliberate act or acts by the supplying utility to shed load or to maintain system integrity.
- E. The most the Company will pay for loss or expense under this coverage is the Limit of Insurance specified for Utility Services – Time Element shown in the Supplemental Coverage Declarations. This Limit of Insurance is part of and does not increase the Business Income and/or Extra Expense Limit(s) of Insurance provided under this policy.
- If a separate Overhead Transmission Lines Limit of Insurance is specified for this coverage in the Supplemental Coverage Declarations, the Overhead Transmission Lines Limit of Insurance is part of, and not in addition to the Utility Services – Time Element Limit of Insurance shown in the Supplemental Coverage Declarations.



- F. When a number of hours is shown in the deductible item in the Supplemental Coverage Declarations for Utility Services – Time Element, the Company will pay under this coverage only for loss of Business Income or Rental Value the Insured sustains after that number of hours immediately following the direct physical loss or damage to the Utility Supply Services Property. This deductible does not apply to Extra Expense.

## GENERAL CONDITIONS

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

### A. ABANDONMENT

There can be no abandonment of any property to the Company.

### B. APPLICATION OF DEDUCTIBLES

1. Any deductibles that apply are specified in the Supplemental Coverage Declarations or in the forms or endorsements attached to this policy.

Unless otherwise specified in the Supplemental Coverage Declarations, or by endorsement, when a deductible is specified as applying separately "at each affected location, in any one occurrence", or at a specific location in any one occurrence, each of the following will be considered a "location":

- a. A single address that is not part of a complex described in b. below, regardless of the number of buildings at that address; or
- b. A multiple building complex, such as an apartment complex, office building complex or industrial park, with multiple addresses, provided:
  - (1) All addresses within the complex are under the same ownership or management; and
  - (2) The complex is known by a single name; and
  - (3) All addresses within the complex are insured premises under this policy; and
  - (4) The addresses are adjacent to one another, or separated only by a street.

2. Dollar Deductibles

When the deductible that applies is specified as a dollar amount, the Company will not pay for loss or damage to which the deductible applies until the amount of loss or damage exceeds the specified deductible amount. The Company will then pay the amount of the loss or damage in excess of the specified deductible, up to the applicable Limit of Insurance.

3. Percentage Deductibles

- a. Percentage deductibles may be written as a percentage of total values or as a percentage per unit of insurance.

- b. Total Values Percentage Deductibles

When the deductible that applies is specified as a percentage of total values, the deductible will be equal to the percentage of the total values specified in the most recent Statement of Values on file with the Company for buildings, structures, personal property and rental values to which the deductible applies.

- c. Per Unit of Insurance Percentage Deductibles

When the deductible that applies is specified as a percentage per unit of insurance, the deductible will be equal to the percentage of value(s) calculated for, and applied separately to, each of the following units of insurance:

- (1) Each building or structure sustaining loss or damage;
- (2) Personal property within each building or structure if that personal property sustains loss or damage;
- (3) Personal property in the open if personal property in the open sustains loss or damage;
- (4) Business Income values impacted by the direct loss or damage to property, when the percentage deductible is indicated as applying to Business Income; and
- (5) Rental values impacted by the direct loss or damage to property, when the percentage deductible is indicated as applying to Rental Value.



The values to be used when calculating the deductible for (1), (2), (3), (4) and (5) above are either those as specified for each unit of insurance shown in the most recent Statement of Values on file with the Company or, if not so specified, or if the damaged property is a building in the course of construction or renovation, the values will be determined at the time of loss. When Business Income values or rental values are determined at the time of loss, the values will be calculated for the 12 months following the inception date of the policy term in which the loss occurs.

- d. When both a percentage deductible and a dollar deductible are specified together as applicable to a coverage or exposure, whether specified as applying in any one occurrence or specified as applying at each affected location in any one occurrence, the percentage deductible will be calculated and applied as described in b. and c. above, but the dollar deductible is the minimum amount the Company will deduct in any one occurrence, or at each affected location in any one occurrence, as specified, for all loss or damage to which the deductible is stated to apply.
  - e. When a maximum dollar deductible is also specified as applicable, the specified maximum deductible is the most the Company will deduct in any one occurrence for all loss or damage to which the deductible is stated to apply.
4. Hour Deductibles

If the deductible for Business Income or any other time element coverage is specified in hours, the Company will not be liable for any loss incurred during the specified number of hours immediately following the start of the "period of restoration" or other applicable period during which incurred loss would otherwise be covered. The Company will then pay the amount of loss incurred for the remainder of the "period of restoration" or other applicable period during which incurred loss is covered, up to the Limit of Insurance.

5. Two or More Deductibles in Any One Occurrence

If any causes of loss, coverages or types of property insured against under this policy are subject to separate deductibles and two or more of those causes of loss, coverages and/or types of property are involved in any one loss occurrence, each cause of loss, coverage and type of property loss will be adjusted separately. But the total of the deductible amounts applied will not exceed the highest deductible amount applied in that occurrence for any one involved cause of loss, coverage or type of property.

This provision does not apply to:

- a. Earth Movement, Earthquake, Earthquake Sprinkler Leakage, Flood, Windstorm or Hurricane deductibles; or
  - b. Any hour deductible.
6. Application of Earth Movement, Earthquake, Earthquake Sprinkler Leakage, Flood, Sewer Back-Up and Boiler and Machinery Deductibles

Any deductible shown on the Supplemental Coverage Declarations for a cause of loss listed below applies only with respect to loss or damage to which the corresponding cause of loss endorsement applies:

- a. Earth Movement;
- b. Earthquake;
- c. Earthquake Sprinkler Leakage;
- d. Flood;
- e. Sewer Back-Up; or
- f. Boiler and Machinery.

These deductibles do not apply to any loss or damage by these causes of loss that is covered in the absence of such endorsements, such as fire or explosion that results from an earth movement.

7. Any Other Covered Loss Deductible

Unless otherwise specifically stated in this policy, the deductible shown in the Supplemental Coverage Declarations for "any other covered loss" applies to all causes of loss, coverages and types of property

insured against under this policy for which no deductible is specifically shown in the Supplemental Coverage Declarations or in the forms or endorsements attached to this policy, except Extra Expense. No deductible applies to Extra Expense.

**C. APPRAISAL**

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

1. Pay its chosen appraiser; and
2. Bear the other expenses of the appraisal and umpire equally.

If there is an appraisal, the Company will still retain its right to deny the claim.

**D. CANCELLATION AND NONRENEWAL**

1. Cancellation

- a. The first Named Insured shown in the Declarations may cancel this policy by mailing or delivering to the Company advance written notice of cancellation.
- b. The Company may cancel this policy by mailing or delivering to the first Named Insured written notice of cancellation at least:
  - (1) 10 days before the effective date of cancellation if the Company cancels for nonpayment of premium; or
  - (2) 60 days before the effective date of cancellation if the Company cancels for any other reason.
- c. The Company will mail or deliver notice to the first Named Insured's last mailing address known to the Company.
- d. Notice of cancellation will state the effective date of cancellation. If the policy is cancelled, that date will become the end of the policy period. Cancellation will not affect coverage on any shipment in transit on the date of the cancellation. Coverage will continue in full force for such property in transit until it is delivered and accepted.
- e. If this policy is cancelled, the Company will send to the first Named Insured any premium refund due. If the Company cancels, the refund will be pro rata. If the first Named Insured cancels, the refund may be less than pro rata. The cancellation will be effective even if the Company has not made or offered a refund.
- f. If notice is mailed, proof of mailing will be sufficient proof of notice.

2. Nonrenewal

In the event the Company decides not to renew this policy, the Company will mail or deliver to the first Named Insured shown in the Declarations written notice of the nonrenewal not less than 60 days before the expiration date.

**E. CHANGES**

This policy contains all the agreements between the Insured and the Company concerning the insurance afforded. The policy terms can be amended or waived only by written endorsement issued by the Company as part of this policy.

**F. CONCEALMENT, MISREPRESENTATION or FRAUD**

This policy is void in any case of fraud by the Insured as it relates to this policy at any time. It is also void if the Insured or any other person or entity insured under this policy, at any time, intentionally conceals or misrepresents a material fact concerning:

1. This policy;



2. The Covered Property;
3. The Insured's interest in the Covered Property; or
4. A claim under this policy.

**G. CONTROL OF PROPERTY**

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

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

**H. CURRENCY**

It is understood and agreed that all amounts used herein are in the currency of the United States of America and that premiums and losses are payable in United States currency. In the event of a loss adjustment involving foreign currency, the conversion into the currency of the United States of America will be at the rate of exchange quoted in *The Wall Street Journal* as of the date of the loss.

**I. EXAMINATION OF THE INSURED'S BOOKS AND RECORDS**

The Company may examine and audit the Insured's books and records as they relate to this policy at any time during the policy period and up to three years afterward.

**J. IDENTITY OF INTEREST**

If the Named Insured under this policy is comprised of more than one legal entity, liability under this policy will not exceed the amount of loss had all such interests comprised a single legal entity.

**K. INSPECTIONS AND SURVEYS**

The Company has the right but is not obligated to:

1. Make inspections and surveys at any time;
2. Give the Insured reports on the conditions found resulting therefrom; and
3. Recommend changes.

Neither the right to make inspections, nor the making thereof, nor any risk analysis, nor any advice or reports resulting therefrom will imply any liability, or constitute an undertaking on behalf of or for the benefit of the Insured. Any inspections, surveys, reports or recommendations relate only to insurability and the premiums to be charged. The Company does not make safety inspections. The Company does not undertake to perform the duty of any person or organization to provide for the health or safety of workers or the public. In addition, the Company does not warrant that the conditions are safe, healthful or in compliance with any law, rule, regulation, code or standard.

This condition applies not only to the Company, but also to any rating, advisory, rate service or similar organization that makes insurance inspections, surveys, reports or recommendations.

**L. KNOWLEDGE OF OCCURRENCE**

It is hereby understood and agreed that knowledge of an occurrence, accident, claim, loss or damage, or receipt or service of complaint, demand, notice, summons or other legal papers by the agent, servant or employee of the Insured will not in itself constitute knowledge or receipt by the Insured unless an executive officer or risk manager of the Named Insured has such knowledge or receives or is served such documents or notice from its agent, servant or employee.

**M. LEGAL ACTION AGAINST THE COMPANY**

No one may bring a legal action against the Company under this policy unless:

1. There has been full compliance with all of the terms of this policy; and
2. The action is brought in the United States of America, in a court having proper jurisdiction, within 2 years after the date on which the direct physical loss or damage occurred.

**N. LIBERALIZATION**



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

**O. LIMITS OF INSURANCE**

The most the Company will pay for all loss or damage in any one occurrence under this policy is the Policy Limit shown in the Supplemental Coverage Declarations. All other specified Limit(s) of Insurance shown in the Supplemental Coverage Declarations, Schedule(s), Coverage Form(s) or endorsement(s) are included within, and do not increase, the Policy Limit.

Subject to the Policy Limit:

1. The most the Company will pay in any one occurrence for any loss or damage to which a specific Limit of Insurance applies is the applicable specified Limit of Insurance.
2. Under the Property Coverage Form, unless otherwise stated in the Supplemental Coverage Declarations, or by endorsement:
  - a. Payments under the following Covered Costs and Expenses will not increase the applicable Covered Property Limit(s) of Insurance:
    - (1) Debris Removal. But if a Limit of Insurance for Debris Removal (additional) is specified in the Supplemental Coverage Declarations, that Limit of Insurance will apply in addition to the applicable Covered Property Limit(s) of Insurance;
    - (2) Fire Department Service Charge;
    - (3) Fire Protective Equipment Discharge;
    - (4) Preservation of Property;
    - (5) Protection of Property; and
    - (6) Water Damage, Other Liquids, Powder or Molten Material Damage.
  - b. The Limits of Insurance that are specified for the remaining Covered Costs and Expenses are in addition to the Covered Property Limit(s) of Insurance.
3. Under the Business Income Coverage Forms or the Extra Expense Coverage Form, unless otherwise stated in the Supplemental Coverage Declarations, or by endorsement:
  - a. Payments under the following Additional Coverage Extensions will not increase the Limit(s) of Insurance that applies to Business Income, Rental Value and/or Extra Expense:
    - (1) Civil Authority;
    - (2) Extended Business Income or Rental Value (Business Income Coverage Forms only);
    - (3) Expenses to Reduce Loss (Business Income Coverage Form Excluding Extra Expense only).
  - b. The Limits of Insurance that are specified for the remaining Additional Coverage Extensions are additional amounts of insurance.
4. Unless otherwise specified in the Supplemental Coverage Declarations, or by endorsement, when a Limit of Insurance is specified as applying separately "at each affected location, in any one occurrence" or on a per location basis, the description of a "location" contained in provision 1. of the Application Of Deductibles condition in Section B. of this form will apply.

**P. LOSS PAYMENT**

1. In the event of loss or damage to property covered by this policy, at the option of the Company, the Company will either:
  - a. Pay the value of lost or damaged property;
  - b. Pay the cost of repairing or replacing the lost or damaged property subject to 2. below;
  - c. Take all or any part of the property at an agreed or appraised value; or
  - d. Repair, rebuild, or replace the property with other property of like kind, size and quality subject to 2. below.

2. Except as otherwise specifically provided in this policy, the cost to repair, rebuild or replace does not include the increased cost attributable to enforcement of any ordinance or law regulating the construction, use or repair of any property.
3. The Company will give notice of its intentions within 30 days after the Company receives the proof of loss it requires.
4. The Company will not pay the Insured more than the Insured's financial interest in the Covered Property.
5. The Company may adjust losses with the owners of lost or damaged property if other than the Insured. If the Company pays the owners, such payments will satisfy the Insured's claims against the Company for the owner's property. The Company will not pay the owners more than their financial interest in the Covered Property.
6. The Company may elect to defend the Insured against suits arising from claims of owners of property. The Company will do this at its own expense.
7. The Company will pay for covered loss or damage within 30 days after the Company receives the sworn proof of loss it requires, if:
  - a. The Insured has complied with all of the terms of this policy; and
  - b. The Company has reached agreement with the Insured on the amount of loss or an appraisal award has been made.
8. At the option of the Company, the Company may make a partial payment toward any claims, subject to the policy provisions and the Company's normal adjustment process. To be considered for a partial claim payment, the Insured must submit a partial sworn proof of loss with supporting documentation. Any applicable policy deductibles must be satisfied before any partial payments are made.
9. If two or more of this policy's coverages apply to the same loss or damage, the Company will not pay more than the actual amount of the loss or damage

**Q. MORTGAGEE INTERESTS AND OBLIGATIONS**

Loss or damage, if any, as covered under this policy, will be payable to each mortgagee (or trustee) designated herein in order of their precedence as their interests may appear. With respect to the mortgagee's (or trustee's) interest, this insurance will not be invalidated by any act of the Insured (mortgagor or owner), nor by any foreclosure or other similar proceedings or notice of sale relating to the property, nor by any change in title or ownership of the property, provided that:

1. In the event the Insured (mortgagor or owner) has neglected to pay any premium due under this policy, the mortgagee (or trustee), at the request of the Company, pays the same;
2. The mortgagee (or trustee) has notified the Company of any change in ownership, occupancy or increase in the risk or hazards known to the mortgagee (or trustee) and, at the request of the Company, pays the premium for such increased risk or hazards; and
3. The mortgagee (or trustee) submits a signed, sworn proof of loss within sixty (60) days after having been notified by the Company that the Insured (mortgagor or owner) has failed to do so.

In the event the Company pays the mortgagee (or trustee) for any loss or damage covered under this policy and therefore claims that as to the Insured (mortgagor or owner) no liability existed, the Company will be subrogated to all the rights, to the extent of such payment, of the party to whom such payment was made. The Company may, at the Company's option, pay to the mortgagee (or trustee) the whole principal due plus any accrued interest. Thereupon, the Company will receive a full assignment and transfer of the mortgage and other such securities and the remaining mortgage debt will be payable by the Insured (mortgagor or owner) to the Company.

The Company reserves the right to cancel this policy at any time as provided by its terms but, in such case, this policy will continue in force for the benefit only of the mortgagee (or trustee) for ten (10) days after notice to the mortgagee (or trustee) of cancellation for nonpayment of premium or sixty (60) days after notice to the mortgagee (or trustee) of cancellation for any other reason. In the event the Company elects not to renew this policy, the Company will give written notice to the mortgagee (or trustee) at least thirty (30) days prior to the expiration of this policy.

**R. NO BENEFIT TO BAILEE**



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

**S. NO REDUCTION BY LOSS**

Except with respect to any aggregate limit(s) or aggregate sublimit(s) of insurance in this policy, it is mutually understood and agreed that the amount of insurance will not be reduced by the payment of losses under this policy.

**T. NOTICE OF LOSS AND DUTIES IN THE EVENT OF LOSS OR DAMAGE**

1. The Insured must see that the following are done in the event of loss of or damage:
  - a. Notify the police if a law may have been broken.
  - b. Give the Company prompt notice of the loss or damage. Include a description of the property involved.
  - c. As soon as possible, give the Company a description of how, when, and where the loss or damage occurred.
  - d. Promptly make claim in writing against any other party, which had custody of the Covered Property at the time of loss.
  - e. Take all reasonable steps to protect the Covered Property from further damage, and keep a record of expenses necessary to protect the Covered Property, for consideration in the settlement of the claim. This will not increase the Limit of Insurance. However, the Company will not pay for any subsequent loss or damage resulting from a cause of loss that is not a Covered Cause of Loss. Also, if feasible, set the damaged property aside and in the best possible order for examination.
  - f. At the request of the Company, give the Company complete inventories of the damaged and undamaged property. Include quantities, costs, values and amount of loss claimed.
  - g. As often as may be reasonably required, permit the Company to inspect the property and records proving the loss or damage and examine the Insured's books and records.  
Also permit the Company to take samples of damaged and undamaged property for inspection, testing and analysis and permit the Company to make copies from the Insured's books and records.
  - h. Send the Company a signed, sworn proof of loss containing the information that the Company requests to investigate the claim. The Insured must do this within 60 days after the Company's request. The Company will supply the Insured with the necessary forms.
  - i. Cooperate with the Company in the investigation or settlement of the claim.
2. The Company may examine any Insured under oath, while not in the presence of any other Insured and at such times as may be reasonably required, about any matter relating to this insurance or the claim, including an Insured's books and records. In the event of an examination, an Insured's answers must be signed.

**U. OTHER INSURANCE**

1. Underlying Insurance  
Permission is granted to the Insured to purchase insurance on all or any part of the deductibles of this policy, and the existence of such underlying insurance will not prejudice any recovery otherwise payable under this policy. If the limits of such underlying insurance exceed the deductible which would apply under this policy, then the insurance provided by this policy will apply only as excess after the limits applicable to the underlying insurance, including that portion which exceeds such deductible, have been exhausted.
2. Excess Insurance  
Permission is granted to the Insured to have excess insurance over the Limit(s) of Insurance set forth in this policy without prejudice to this policy. The existence of such insurance will not reduce the Company's liability under this policy.
3. Other Insurance Subject to Same Plan, Terms, Conditions and Provisions



In the event the Insured has other insurance subject to the same plan, terms, conditions and provisions as the insurance under this policy, the Company will pay its share of the covered loss or damage. The Company's share is the proportion that the applicable Limit of Insurance under this policy bears to the Limits of Insurance of all insurance covering on the same basis.

If there is other insurance covering the same loss or damage, other than that described above, the Company will pay only for the amount of covered loss or damage in excess of the amount due from that other insurance, whether the Insured can collect on it or not. But, the Company will not pay more than the applicable Limit of Insurance.

#### **V. POLICY PERIOD AND TERRITORY**

Under this policy, the Company will cover loss or damage that commences during the policy period as specified in the Declarations and, except as otherwise specifically provided, within the Policy Territory. The Policy Territory is:

1. The United States of America (including its territories and possessions);
2. Puerto Rico; and
3. Canada.

#### **W. RECOVERED PROPERTY**

In the event either the Insured or the Company recovers any property after loss settlement, that party must give the other prompt notice. At the option of the Insured, the property will be returned to the Insured. The Insured must then return to the Company the amount the Company paid to the Insured for the property.

1. The Company will pay:
  - a. Recovery expenses; and
  - b. Costs to repair the recovered property;
2. But the amount the Company pays will not exceed:
  - a. The total of 1. a. and 1. b. above;
  - b. The value of the recovered property; or
  - c. The Limit of Insurance;whichever is less.

#### **X. SUBROGATION AND SUBROGATION WAIVER**

##### **1. Subrogation – Transit**

The following subrogation provisions apply to any transit coverage provided under this policy:

- a. If any person or organization to or for whom the Company makes payment under any transit coverage provisions of this policy has rights to recover damages from another, those rights are transferred to the Company to the extent of such payment. That person or organization must do everything necessary to secure the Company's rights and must do nothing after the loss to impair them.
- b. Insurance under the transit coverage provisions will be null and void if any Insured does any act or enters into any agreement, before or after loss, which in any way releases, impairs or destroys the right to recover against any carrier for hire, or other party liable for the loss, or transfers such right to anyone other than the Company. Even if the transit coverage becomes null and void, the Company has the right to retain and recover the premium for this coverage. The Insured does have permission to accept the limited liability form receipts or bills of lading commonly used by carriers for hire without prejudice to this coverage. The Company is not liable however, for any loss that is settled or compromised without the written consent of the Company.
- c. If the Company pays for loss or advances or loans money under the transit coverage, the Insured will, upon request and at the expense of the Company, make claim upon and institute legal proceedings against any carrier, bailee or other party liable for the loss. At the option of the Company, such claims or legal proceedings may be instituted in the name of the Insured. The

Insured agrees to fully cooperate with the Company in making such claims and prosecuting such legal proceedings.

2. Subrogation – All Other Coverages

If any person or organization to or for whom the Company makes payment under this policy has rights to recover damages from another; those rights are transferred to the Company to the extent of such payment. That person or organization must do everything necessary to secure the Company's rights and must do nothing after the loss to impair them. The Company will be entitled to priority of recovery against any such third party (including interest) to the extent payment has been made by the Company, plus attorney's fees, expenses or costs incurred by the Company.

But, the Insured may waive its rights against another party by specific written agreement:

- a. Prior to a loss to Covered Property.
- b. After a loss to Covered Property or Covered Income only if, at time of loss, that party is one of the following:
  - (1) Someone insured by this insurance;
  - (2) A business firm owned or controlled by the Insured or that owns or controls the Insured; or
  - (3) The Insured's tenant.

Such waiver will not invalidate or restrict this insurance.

**Y. TRANSFER OF THE INSURED'S RIGHTS AND DUTIES UNDER THIS POLICY**

The Insured's rights and duties under this policy may not be transferred without the written consent of the Company except in the case of death of an individual Named Insured. If an individual Named Insured dies, the Insured's rights and duties will be transferred to the Insured's legal representative but only while acting within the scope of duties as the Insured's legal representative. Until the Insured's legal representative is appointed, anyone having proper temporary custody of the Insured's property will have rights and duties but only with respect to that property.

**Z. UNINTENTIONAL ERRORS IN DESCRIPTION**

The insurance provided by this policy is extended to apply with respect to loss or damage to property at locations within the Policy Territory that are owned, leased or operated by the Insured, if such loss or damage is not payable under this policy due solely to any unintentional error in the description of the address of the property. But this will not increase any Limits of Insurance that apply under this policy.

Upon discovery of the unintentional error, the Insured will report the correct information to the Company. An additional premium may be charged based upon the corrected information.



## REPLACEMENT COST

This endorsement modifies the Property Coverage Form.

The following Valuation Provisions are added:

### A. REPLACEMENT COST

In the event of a covered loss or damage, the Company will determine the value of Covered Property at replacement cost as of the time and place of loss, without deduction for physical deterioration, depreciation, obsolescence and depletion, except as otherwise provided in this endorsement or as stipulated by any other endorsement(s) attached to this policy. This replacement cost valuation is subject to the following conditions:

1. The Company will not pay more on a replacement cost basis than the least of:
  - a. The cost to repair, rebuild or replace, at the same site, the lost, damaged or destroyed property, with other property of comparable size, material and quality; or
  - b. The actual amount incurred by the Insured that is necessary to repair, rebuild or replace the lost, damaged or destroyed property; or
  - c. The Limit of Insurance applicable to the lost, damaged or destroyed property.
2. The Company will not pay for any loss or damage on a replacement cost basis until the property is repaired, rebuilt or replaced, and then only if such repair, rebuilding or replacement is made as soon as reasonably possible after the loss or damage. If the property is not repaired, rebuilt or replaced as soon as reasonably possible after the loss or damage, the value of the property will be determined at "Actual Cash Value". This restriction does not apply to losses less than \$25,000.
3. For property to which this replacement cost valuation applies, the Insured may make a claim for loss or damage on an "Actual Cash Value" basis instead of on a replacement cost basis. In the event the Insured elects to have loss or damage settled on an "Actual Cash Value" basis, the Insured may still make a claim on a replacement cost basis if the Insured notifies the Company within 180 days after the loss or damage.
4. The cost to repair, rebuild or replace does not include the increased cost attributable to enforcement of any ordinance or law regulating the construction, use or repair of any property unless a Limit of Insurance is specified for Ordinance or Law in the Supplemental Coverage Declarations, and then only to the extent provided under that coverage.
5. In the event the Insured decides to repair, rebuild or replace the damaged or destroyed property, payment will include any reasonable and necessary architectural, engineering, consulting or supervisory fees related to the construction, repair or replacement of the damaged or destroyed property. This will not increase the applicable Limits of Insurance.

### B. REPLACEMENT COST EXCEPTIONS

1. Valuable Papers and Records and Electronic Data Processing Data and Media will be valued as follows:
  - a. At the Insured's cost to research, replace or restore the lost information on lost, damaged or destroyed Valuable Papers and Records or Electronic Data Processing Data and Media for which duplicates do not exist;
  - b. At the cost of blank materials or media and the cost of copying data onto blank materials or media when duplicates of the papers, records or data exist;
  - c. At the cost of blank materials or media of the same kind and quality if the papers, records or data are not replaced;
  - d. At the specified amount per article for those articles which are specifically declared, described and valued in a schedule forming a part of this policy.
2. Brands and Labels - If branded or labeled merchandise that is Covered Property is damaged by a Covered Cause of Loss and the Company takes all or part of the property at an agreed or appraised value, the Company will also pay:



- a. Any expenses incurred by the Insured to:
  - (1) Stamp the word 'Salvage' on the merchandise or its containers, if the stamp will not physically damage the merchandise; or
  - (2) Remove the brands or labels, if doing so will not physically damage the merchandise. The Insured must relabel the merchandise or its containers to comply with the law.
- b. Any reduction in the salvage value of the damaged merchandise with the brands or labels removed.

But this will not increase the Limit(s) of Insurance applicable to the lost or damaged property.
3. "Electronic Data Processing Equipment" will be valued on a replacement cost basis as provided in Section A. of this endorsement. However, in the event replacement of "Electronic Data Processing Equipment" with identical property is impossible, the replacement cost will be the cost of items that are similar to the damaged or destroyed equipment and intended to perform the same function, but which may include technological advances.
4. "Fine Arts" will be valued at the least of:
  - a. The cost of reasonably restoring that property; or
  - b. The cost of replacing that property, at the time and place of loss, with substantially the same property; or
  - c. The market value of the property at the time and place of loss or, if the article of property is specifically declared, described and valued in a schedule forming a part of this policy, the amount per article specified in the Schedule.
5. "Finished Stock" will be valued at the selling price less discounts and expenses the Insured otherwise would have had.
6. Pairs, Sets, or Parts
  - a. Pairs or Sets - In case of loss to any part of a pair or set, the Company may, at its option:
    - (1) Repair or replace any part to restore the pair or set to its value before the loss; or
    - (2) Pay the difference between the value of the pair or set before and after the loss.
  - b. Parts - In case of loss to any part of Covered Property consisting of several parts when complete, the Company will only pay for the value of the lost or damaged part.
7. Patterns, dies, molds, and forms not in current usage will be valued at "Actual Cash Value". If loss is paid on an "Actual Cash Value" basis, and within 24 months from the date of the loss the Insured needs to repair or replace one or more of the items, the Company will pay the Insured, subject to the conditions of this insurance, the difference between "Actual Cash Value" and replacement cost for those patterns, molds and dies which are actually repaired or replaced.
8. Business Personal Property sold by the Insured but not delivered will be valued at the selling price less discounts and expenses the Insured otherwise would have had.
9. Business Personal Property of Others will be valued at the amount for which the Insured is liable, not to exceed the replacement cost.
10. "Stock in Process" will be valued at the cost of "raw stock", labor expended, plus the proper proportion of overhead charges.
11. Tenant's Improvements and Betterments will be valued at:
  - a. Replacement cost of the damaged or destroyed property (subject to the provisions of Section A. above) if the insured tenant makes the repairs or replaces promptly.
  - b. A proportion of the insured tenant's original cost if the insured tenant does not make repairs promptly. The Company will determine the proportionate value as follows:
    - (1) Multiply the original cost by the number of days from the loss or damage to the expiration of the lease; and
    - (2) Divide the amount determined in (1) above by the number of days from the installation of improvements to the expiration of the lease.

If the insured tenant's lease contains a renewal option, the expiration of the renewal option period will replace the expiration of the lease in this procedure.

- c. If repaired or replaced at the expense of others, there will be no liability hereunder.

12. "Vacant" property will be valued at "Actual Cash Value".

**C. ADDITIONAL DEFINITION**

The following definition is in addition to those contained in the Property Coverage Form.

**"Actual Cash Value"** means the cost to repair, rebuild or replace the lost or damaged property, at the time and place of the loss, with other property of comparable size, material and quality, less allowance for physical deterioration, depreciation, obsolescence and depletion.

## ERRORS AND OMISSIONS

This endorsement modifies the General Conditions.

General Condition Z, Unintentional Errors in Description, is deleted and replaced with the following:

### **Z. ERRORS AND OMISSIONS**

The insurance provided by this policy is extended to apply with respect to loss or damage to property at locations within the Policy Territory that are owned, leased or operated by the Insured, if such loss or damage is not payable under this policy solely due to:

1. Any error or unintentional omission in the description of the address of the property, whether made at the inception of the policy period or at the time of any subsequent endorsement(s) to the policy; or
2. Failure through any error or unintentional omission to:
  - a. Include any location of the Insured at the inception of the policy; or
  - b. Report any newly acquired location before the period of automatic coverage provided under this policy for the newly acquired location expires.

The most the Company will pay for loss or damage under this condition is the Limit of Insurance specified for Errors and Omissions shown in the Supplemental Coverage Declarations. But in no event will the Company pay more for loss or damage than the amount the Company would have paid had no error or unintentional omission occurred or had the period of automatic coverage for the newly acquired location not expired.

Upon discovery of the error or unintentional omission, the Insured will report the correct information to the Company. An additional premium may be charged based upon the corrected information.



## EXTRA EXPENSE DEDUCTIBLE

Under the General Conditions, the last sentence of Section B., APPLICATION OF DEDUCTIBLES, which states that no deductible applies to Extra Expense, does not apply. The Extra Expense coverage provided under this policy is subject to the applicable deductible(s) indicated in the Supplemental Coverage Declarations or in the forms or endorsements attached to this policy.

## CLAIM DATA EXPENSE ENDORSEMENT

This endorsement modifies insurance provided under the Property Coverage Form, the Business Income Coverage Form and the Extra Expense Coverage Form.

The following is added to the Claim Data Expense coverage:

The Company will not pay for any expenses incurred, directed, or billed by or payable to insurance brokers or agents, or their associates or subsidiaries, without the Company's written consent prior to such expenses being incurred.



**EXCLUSION OF NEW "FRAME BUILDINGS"  
IN THE COURSE OF CONSTRUCTION**

This endorsement modifies insurance provided under the policy.

- A. Under the Property Coverage Form, the following exclusion is added to Covered Property item B.1.g., Newly Constructed or Acquired Property:

This insurance does not apply to "frame buildings" in the course of construction.

- B. When the Builders Risk endorsement is attached to this policy, the Newly Constructed or Acquired Property coverage provided under that endorsement does not apply to "frame buildings" in the course of construction.

- C. Under the Business Income Coverage Form Including Extra Expense, the Business Income Coverage Form Excluding Extra Expense and the Extra Expense Coverage Form, the following exclusion is added to the Newly Acquired Premises Additional Coverage Extension:

This Additional Coverage Extension does not apply to any loss caused by or resulting from direct physical loss or damage to "frame buildings" in the course of construction.

- D. As used in this endorsement, "frame buildings" means buildings where the exterior walls are or will be constructed of wood or other combustible materials, including construction where combustible materials are combined with other materials such as brick veneer, stone veneer, wood iron-clad and stucco on wood.

**MULTIPLE OF AVERAGE DAILY VALUE  
TIME ELEMENT DEDUCTIBLE**

This endorsement modifies the General Conditions.

The following provision is added to General Condition B. APPLICATION OF DEDUCTIBLES:

**Multiple of Average Daily Value Deductibles**

1. When a Multiple of Average Daily Value is indicated in the Supplemental Coverage Declarations as the deductible applicable for Business Income, Rental Value and/or Extra Expense (Time Element), the Company will not pay for such loss in any one occurrence until the amount of loss exceeds the deductible amount developed as follows:
  - a. For all of the Insured's premises where Business Income, Rental Value or Extra Expense loss is incurred by the Insured due to the direct physical loss or damage by a Covered Causes of Loss, determine the total amount of Business Income and/or Rental Value that would have been earned or incurred by the Insured during the "period of restoration" had no direct physical loss or damage by the Covered Cause of Loss, including a covered Accident to a Covered Object, occurred;
  - b. Divide the amount determined in a. above by the number of days in the "period of restoration". This is the Average Daily Value;
  - c. Multiply the Average Daily Value determined in b. above by the Multiple of Average Daily Value specified in the Supplemental Coverage Declarations.

The Company will then pay the amount of loss in excess of this deductible, up to the applicable Limit(s) of Insurance.

2. If a Multiple of Average Daily Value deductible and one or more other deductibles apply to loss or damage in the same occurrence, the deductibles will be applied as follows:
  - a. All deductibles, other than the Multiple of Average Daily Value deductible, will be applied in accordance with the APPLICATION OF DEDUCTIBLES condition in Section B. of the General Conditions form, including the Two or More Deductibles in Any One Occurrence provision under item 5. of that condition.
  - b. The Multiple of Average Daily Value deductible will apply separately and in addition to deductible amounts applied to the covered Business Income, Rental Value and Extra Expense loss under 2.a. above.



**HIGH HAZARD WIND COUNTIES AND SPECIFIC CITIES**

The following listing of high hazard wind counties (parishes in Louisiana) and specific cities by State is provided to determine applicable Coverage, Limit(s) of Insurance and Deductible(s) referred to in the Supplemental Coverage Declarations. Specific cities are designated by an asterisk \*.

STATE	HIGH HAZARD WIND COUNTIES AND SPECIFIC CITIES		
Alabama	Baldwin	Mobile	
Delaware	Kent	Sussex	
Florida	All Counties		
Georgia	Brantley	Chatham	Long
	Bryan	Effingham	McIntosh
	Camden	Glynn	Wayne
	Charlton	Liberty	
Hawaii	All Counties		
Louisiana	Acadia	Jefferson	St. John the Baptist
	Allen	Jefferson Davis	St. Landry
	Ascension	Lafayette	St. Martin
	Assumption	Lafourche	St. Mary
	Beauregard	Livingston	St. Tammany
	Calcasieu	Orleans	Tangipahoa
	Cameron	Plaquemines	Terrebonne
	East Baton Rouge	Pointe Coupee	Vermillion
	East Feliciana	St. Bernard	Washington
	Evangeline	St. Charles	West Baton Rouge
	Iberia	St. Helena	West Feliciana
	Iberville	St. James	
Massachusetts	Barnstable	Dukes	Plymouth
	Bristol	Nantucket	
Maryland	Calvert	St. Mary's	Wicomico
	Dorchester	Somerset	Worcester
Mississippi	George	Harrison	Pearl River
	Hancock	Jackson	Stone
New Jersey	Atlantic	Cape May	Monmouth
	Burlington	Cumberland	Ocean
New York	Nassau	Suffolk	

STATE	HIGH HAZARD WIND COUNTIES AND SPECIFIC CITIES		
<b>North Carolina</b>	Beaufort	Dare	Onslow
	Bertie	Duplin	Pamlico
	Bladen	Gates	Pasquotank
	Brunswick	Greene	Pender
	Camden	Hertford	Perquimans
	Carteret	Hyde	Pitt
	Chowan	Jones	Sampson
	Columbus	Lenoir	Tyrrell
	Craven	Martin	Washington
	Currituck	New Hanover	
<b>Puerto Rico</b>	All Counties		
<b>Rhode Island</b>	Bristol	Newport	Washington
<b>South Carolina</b>	Beaufort	Dorchester	Horry
	Berkeley	Florence	Jasper
	Charleston	Georgetown	Marion
	Colleton	Hampton	Williamsburg
<b>Texas</b>	Aransas	Hardin	Live Oak
	Bee	Harris	Matagorda
	Brazoria	Hidalgo	Newton
	Brooks	Jackson	Nueces
	Calhoun	Jasper	Orange
	Cameron	Jefferson	Refugio
	Chambers	Jim Wells	San Patricio
	Fort Bend	Kenedy	Victoria
	Galveston	Kleberg	Wharton
	Goliad	Liberty	Willacy
	<b>Virginia</b>	Accomack	Little Creek City *
Chesapeake City *		Mathews	Portsmouth City *
Gloucester		Middlesex	Suffolk City *
Hampton City *		Newport News City *	Virginia Beach City *
Isle of Wight		Norfolk City *	York
Lancaster		Northampton	
Langley Field City *		Northumberland	



**HIGH AND MODERATE HAZARD EARTHQUAKE, VOLCANIC ERUPTION,  
LANDSLIDE AND MINE SUBSIDENCE COUNTIES**

The following listing of high hazard and moderate hazard Earthquake, Volcanic Eruption, Landslide and Mine Subsidence counties (and independent cities as indicated by an \*) by State is provided to determine applicable Coverage, Limit(s) of Insurance and Deductible(s) referred to in the Supplemental Coverage Declarations.

STATE	HIGH HAZARD COUNTIES	MODERATE HAZARD COUNTIES		
Arizona		Yuma		
Arkansas	Clay	Arkansas	Izard	Prairie
	Mississippi	Craighead	Jackson	Randolph
		Crittenden	Lawrence	Sharp
		Cross	Lee	St. Francis
		Cleburne	Lonoke	Stone
		Fulton	Monroe	White
		Greene	Phillips	Woodruff
		Independence	Poinsett	
Idaho		Bear Lake	Fremont	Teton
Illinois	Pulaski	Alexander	Jackson	Randolph
		Bond	Jasper	Richland
		Clay	Jefferson	St. Clair
		Clinton	Johnson	Saline
		Crawford	Lawrence	Shelby
		Cumberland	Macoupin	Union
		Edwards	Madison	Wabash
		Effingham	Marion	Washington
		Fayette	Massac	Wayne
		Franklin	Monroe	White
		Gallatin	Montgomery	Williamson
		Hamilton	Perry	
		Hardin	Pope	
Indiana		Adams	Pike	Sullivan
		Gibson	Posey	Vanderburgh
		Jay	Randolph	Warrick
		Knox	Spencer	
Kentucky	Fulton	Ballard	Hancock	Muhlenberg
	Hickman	Caldwell	Henderson	Ohio
		Calloway	Hopkins	Todd
		Carlisle	Livingston	Trigg
		Christian	Lyon	Union
		Crittenden	Marshall	Webster
		Daviess	McCracken	

STATE	HIGH HAZARD COUNTIES	Graves	McLean	
		MODERATE HAZARD COUNTIES		
<b>Mississippi</b>		Alcorn	Marshall	Tate
		Bolivar	Panola	Tippah
		Coahoma	Quitman	Tunica
		DeSoto	Pontotoc	Union
		Lafayette	Tallahatchie	
<b>Missouri</b>	Dunklin	Bollinger	Jefferson	St. Francois
	Mississippi	Butler	Perry	St. Louis
	New Madrid	Cape Girardeau	Madison	St. Louis City*
	Pemiscot	Carter	Oregon	Ste. Genevieve
		Crawford	Reynolds	Stoddard
		Dent	Ripley	Texas
		Franklin	Scott	Washington
		Howell	Shannon	Wayne
		Iron	St. Charles	
<b>Montana</b>		Flathead	Lake	
		Gallatin	Madison	
<b>Nevada</b>		Carson City*	Lyon	Storey
		Douglas	Mineral	Washoe
		Esmeralda	Nye	
<b>Ohio</b>		Allen	Hardin	Paulding
		Auglaize	Henry	Preble
		Champaign	Logan	Putnam
		Clark	Madison	Shelby
		Darke	Mercer	Union
		Greene	Miami	Van Wert
	Hancock	Montgomery	Wyandot	
<b>Oregon</b>		Coos	Curry	Klamath
<b>South Carolina</b>		Beaufort	Charleston	Dorchester
		Berkeley	Colleton	Georgetown
<b>Tennessee</b>	Dyer	Carroll	Hardeman	Houston
	Lake	Chester	Hardin	Madison
	Lauderdale	Crockett	Haywood	Montgomery
	Obion	Fayette	Henderson	Shelby
	Tipton	Gibson	Henry	Weakley
<b>Utah</b>		Box Elder	Davis	Weber
		Cache	Salt Lake	



STATE	HIGH HAZARD COUNTIES	MODERATE HAZARD COUNTIES		
Washington		Clallam	King	Pierce
		Clark	Kitsap	San Juan
		Cowlitz	Kittitas	Skagit
		Grays Harbor	Lewis	Snohomish
		Island	Mason	Thurston
		Jefferson	Pacific	Whatcom
Wyoming		Lincoln	Teton	

**EXCLUSION - CERTAIN COMPUTER RELATED LOSSES DUE TO DATES OR TIMES  
(Property and Boiler and Machinery Coverages)**

This endorsement modifies insurance provided under the following:

Property Coverages  
Boiler And Machinery Coverages

- a. This policy does not insure against loss or damage caused consisting of or caused directly or indirectly by any of the following. Such loss is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss except as provided in B.
  1. The failure, malfunction or inadequacy or the inability to use or have access to:
    - a. Any of the following, whether belonging to the Insured or to others:
      - (1) computer hardware, including microprocessors;
      - (2) computer application software;
      - (3) computer operating systems and related software;
      - (4) computer networks;
      - (5) microprocessors (computer chips) not part of any computer system;
      - (6) any other computerized or electronic equipment or components; or
    - b. Any other products or services that directly or indirectly use or rely upon, in any manner, any of the items listed in paragraph 1.a. of this endorsement;  
  
due to the inability of those products or services described in paragraphs 1.a. and 1.b. to correctly recognize, distinguish, interpret or accept one or more dates or times.
  2. Any advice, consultation, design, evaluation, inspection, installation, maintenance, repair or supervision done by or for the Insured to determine, rectify or test, any potential or actual failure, malfunction or inadequacy described in paragraph A.1. above.
  3. The destruction, disruption, distortion or corruption of any computer data, coding, program or software if related to dates or times due to the inability of those products or services described in paragraphs 1.a. and 1.b. to correctly recognize, distinguish, interpret or accept one or more dates or times.
- B. If an excluded Type or Cause of Loss as described in A. 1., 2. and 3. of this endorsement results in:
  1. A Covered Cause of Loss under the Property Coverages then this policy shall pay only for such resulting direct physical loss or damage subject to the following exceptions:  
  
This policy will not pay for resulting loss or damage if the cause of loss is:
    - a. Mechanical or machinery breakdown; or
    - b. Artificially generated electrical current, including electrical arcing, that disturbs items in paragraph A.1. above  
  
unless fire results, and then this policy shall pay only for the direct physical loss or damage caused by that fire.
  2. An accident to an object under the Boiler and Machinery Coverages then this policy shall pay only for such resulting direct physical loss or damage.
- C. This policy does not insure against any preventive or remedial costs to repair or modify any items in A.1.a. and b. above to correct any actual or potential deficiencies or change any features of logic or operation.

- D. This policy does not insure against any expense incurred by the insured or others in the defense, safeguarding, protecting or recovering of property whether before or after loss due to any actual or potential loss excluded in paragraph A. above.



**MASSACHUSETTS CHANGES**

This endorsement modifies insurance provided under this policy with respect to all locations in and coverages provided for locations in the state of Massachusetts.

**A. STANDARD FIRE POLICY PROVISIONS**

This policy contains LEGAL ACTION AGAINST THE COMPANY, APPRAISAL, and CANCELLATION AND NONRENEWAL provisions. Massachusetts law requires that the Suit, Appraisal and Cancellation provisions of the Massachusetts Standard Fire Policy supersede any similar provisions contained in your policy. Therefore, all LEGAL ACTION AGAINST THE COMPANY, APPRAISAL and CANCELLATION AND NONRENEWAL provisions contained in this policy are void. The Suit, Appraisal and Cancellation provisions of the Massachusetts Standard Fire Policy shall apply instead.

In consideration of the Provisions and Stipulations herein or Added Hereto, and of the Premium Specified in the Declarations, this Company, for the term of years specified in the Declarations from inception date (At 12:01 A.M. Standard Time) to expiration date (At 12:01 A.M. Standard Time) at location of property involved, to an amount not exceeding the amount(s) specified in the Declarations, does insure the Insured named in the Declarations and legal representatives, to the extent of the actual cash value of the property at the time of loss, but in no event for more than the interest of the insured against all LOSS BY FIRE, LIGHTNING, AND BY REMOVAL FROM PREMISES ENDANGERED BY THE PERILS INSURED AGAINST IN THIS POLICY, EXCEPT AS HEREINAFTER PROVIDED, to the property described in the Declarations while located or contained as described in this policy or pro rata for five days at each proper place to which any of the property shall necessarily be removed for preservation policy, but not elsewhere.

Assignment of this policy shall not be valid except with the written consent of this Company.

This policy is made and accepted subject to the foregoing provisions and stipulations and those hereinafter stated, which are hereby made a part of this policy, together with such other provisions, stipulations and agreements as may be added hereto, as provided in this policy.

**Concealment, Fraud**

This entire policy shall be void if, whether before or after a loss, the Insured has willfully concealed or misrepresented any material fact or circumstance concerning this insurance or the subject thereof, or the interest of the insured therein, or in case of any fraud or false swearing by the Insured relating thereto.

**Uninsurable and Excepted Property**

This policy shall not cover accounts, bills, currency, deeds, evidences of debt, securities; nor, unless specifically named hereon in writing, bullion or manuscripts.

**Perils Not Included**

This Company shall not be liable for loss by fire or other perils insured against in this policy caused, directly or indirectly, by: (a) enemy attack by armed forces, including action taken by military, naval or air forces in resisting an actual or an immediately impending, enemy attack; (b) invasion; (c) insurrection; (d) rebellion; (e) revolution; (f) civil war; (g) usurped power; (h) order of any civil authority except acts of destruction at the time of and for the purpose of preventing the spread of fire, provided that such fire did not originate from any of the perils excluded by this policy; (i) neglect of the insured to use all reasonable means to save and preserve the property at and after a loss, or when the property is endangered by fire in neighboring premises; (j) nor shall this Company be liable for loss by theft.

**Other Insurance**

Other insurance may be prohibited or the amount of insurance may be limited by endorsement attached hereto.

Includes copyrighted material of Insurance Services Office, Inc., with its permission.



**Conditions Suspending or Restricting Insurance**

Unless otherwise provided in writing added hereto this Company shall not be liable for loss occurring

- (a) while the hazard is increased by any means within the control or knowledge of the Insured; or
- (b) while described premises, whether intended for occupancy by owner or tenant, is vacant or unoccupied beyond a period of sixty consecutive days, for residential premises of three units or less and thirty (30) consecutive days for all other premises; or
- (c) as a result of explosion or riot, unless fire ensue, and in that event for loss by fire only.

**Other Perils or Subjects**

Any other peril to be insured against or subject of insurance to be covered in this policy shall be by endorsement in writing hereon or added hereto.

**Added Provisions**

The extent of the application of insurance under this policy and of the contribution to be made by this Company in case of loss, and any other provision or agreement not inconsistent with the provisions of this policy, may be provided for in writing added hereto, but no provision may be waived except such as by the terms of this policy is subject to change.

**Waiver Provisions**

No permission affecting this insurance shall exist, or waiver of any provision be valid, unless granted herein or expressed in writing added hereto. No provision, stipulation or forfeiture shall be held to be waived by any requirement or proceeding on the part of this Company relating to appraisal or to any examination provided for herein.

**Cancellation of Policy**

This policy shall be cancelled at any time at the request of the insured, in which case this Company shall, upon demand and surrender of this policy, refund the excess of paid premium above the customary short rates for the expired time. This policy may be cancelled at any time by this Company by giving to the insured a five days written notice of cancellation, and to the mortgagee to whom this policy is payable twenty days written notice of cancellation except where the stated reason for cancellation is nonpayment of premium where, in such instance, this policy may be cancelled at anytime by this Company by giving to the insured a ten days written notice of cancellation and the mortgagee a twenty days written notice of cancellation, with or without tender of the excess of paid premium above the pro rata premium for the expired time, which excess, if not tendered, shall be refunded on demand. Notice of cancellation shall state that excess premium (if not tendered) will be refunded on demand and shall state or be accompanied by a statement of the specific reason or reasons for such cancellation. After this policy has been in effect for sixty days, or after sixty days from any anniversary date, no notice of cancellation shall be effective unless it is based on the occurrence, after the effective date of the policy, of one or more of the following: (1) nonpayment of premium; (2) conviction of a crime arising out of acts increasing the hazard insured against; (3) discovery of fraud or material misrepresentation by the insured in obtaining the policy; (4) discovery of willful or reckless acts or omissions by the insured increasing the hazard insured against; (5) physical changes in the property insured which result in the property becoming uninsurable; or (6) a determination by the commissioner that continuation of the policy would violate or place the insurer in violation of the law. Where the stated reason is nonpayment of premium, the insured may continue the coverage and avoid the effect of the cancellation by payment at any time prior to the effective date of cancellation.

**Mortgagee Interests and Obligations**

Notwithstanding any other interests and provisions of this policy, if this policy shall be made payable to a mortgagee of the covered real estate, no act or default of any person other than such mortgagee or his agent or those claiming under him, whether the same occurs before or during the term of this policy, shall render



this policy void as to such mortgagee nor affect such mortgagee's right to recover in case of loss on such real estate; provided, that the mortgagee shall on demand pay according to the established scale of rate for any increase of risk not paid for by the insured; and whenever this company shall be liable to a mortgagee for any sum for loss under this policy for which no liability exists as to the mortgagor, or owner, and this company shall elect by itself, or with others, to pay the mortgagee the full amount secured by such mortgage, then the mortgagee shall assign and transfer to the company interested, upon such payment, the said mortgage together with the note and debt thereby secured.

**Pro Rata Liability**

This Company shall not be liable for a greater proportion of any loss than the amount hereby insured shall bear to the whole insurance covering the property against the peril involved.

**Requirements in Case Loss Occurs**

The Insured shall give immediate written notice to this Company of any loss, protect the property from further damage, forthwith separate the damaged and undamaged personal property, put it in the best possible order, furnish a complete inventory of the destroyed and damaged property, showing in detail the quantity, description, actual cash value and amount of loss claimed; and the insured shall forthwith render to this Company signed, sworn statement in proof of loss which sets forth to the best knowledge and belief of the insured as to the following: the time and origin of the loss, the interest of the insured and of all others in the property, the actual cash value of each item thereof and the amount of loss thereto, all encumbrances thereon, all other contracts of insurance, whether valid or not, covering any of said property, any changes in the title, use, occupancy, location, possession or exposures of said property since the issuing of this policy, by whom and for what purpose any building herein described and the several parts thereof were occupied at the time of loss and whether or not it then stood on leased ground, and shall furnish a copy of all the descriptions and schedules in all policies and detailed estimates for repair of the damage. The insured, as often as may be reasonably required, shall exhibit to any person designated by this Company all that remains of any property herein described, and submit to examinations under oath by any person named by this Company, and subscribe the same; and, as often as may be reasonably required, shall produce for examination all books of account, bills, invoices and other vouchers, or certified copies thereof if originals be lost, at such reasonable time and place as may be designated by this Company or its representative, and shall permit extracts and copies thereof to be made.

**When Loss Payable**

In case of any loss or damage, the company within thirty days after the insured shall have submitted a statement, as provided in the preceding clause, shall either pay the amount for which it shall be liable, which amount if not agreed upon shall be ascertained by award of referees as hereinafter provided, or replace the property with other of the same kind and goodness, or it may, within fifteen days after such statement is submitted, notify the insured of its intention to rebuild or repair the premises, or any portion thereof separately covered by this policy, and shall thereupon enter upon said premises and proceed to rebuild or repair the same with reasonable expedition. It is moreover understood that there can be no abandonment of the property described to the company, and that the company shall not in any case be liable for more than the sum insured, with interest thereon from the time when the loss shall become payable, as provided above. The company shall be liable for the payment of interest to the insured at a rate of one percent over the prime interest rate on the agreed figure commencing thirty days after the date an executed proof of loss for such figure is received by the company, said interest to continue so long as the claim remains unpaid.

**Appraisal**

In case of loss under this policy and a failure of the parties to agree as to the amount of loss, it is mutually agreed that the amount of such loss shall be referred to three disinterested persons, the company and the insured each choosing one out of three persons to be named by the other, and the third being selected by the two so chosen, and the award in writing by a majority of the referees shall be conclusive and final upon the parties as to the amount of loss or damage, and such reference, unless waived by the parties, shall be a



condition precedent to any right of action in law or equity to recover for such loss; but no person shall be chosen or act as a referee, against the objection of either party, who has acted in a like capacity within four months.

**Suit**

No suit or action against this company for the recovery of any claim by virtue of this policy shall be sustained in any court of law or equity in this commonwealth unless commenced within two years from the time the loss occurred; provided, however, that if, within said two years, in accordance with the provisions of the preceding paragraph, the amount of the loss shall have been referred to arbitration after failure of the parties to agree thereon, the limitation of time for bringing such suit or action shall in no event be less than ninety days after a valid award has been made upon such reference or after such reference or award has been expressly waived by the parties. If suit or action upon this policy is enjoined or abated, suit or action may be commenced at any time within one year after the dissolution of such injunction, or the abatement of such suit or action, to the same extent as would be possible if there was no limitation of time provided herein for the bringing of such suit or action.

**Subrogation**

This Company may require from the insured an assignment of all right of recovery against any party for loss to the extent that payment therefor is made by this Company.

**B. CHANGE TO THE PROPERTY COVERAGE FORM**

The PROPERTY COVERAGE FORM is amended as follows:

1. If loss or damage is caused by fire or lightning, Section D., EXCLUSIONS, Item 2.k. is replaced by the following:
  - k. If the building where loss or damage occurs, whether intended for occupancy by owner or tenant, has been "vacant" for more than:
    - (1) 60 consecutive days for residential premises of 3 units or less; or
    - (2) 30 consecutive days for all other premises;immediately before that loss or damage, the Company will not pay for the loss or damage.

**C. CHANGES TO THE GENERAL CONDITIONS**

The GENERAL CONDITIONS form is amended as follows:

1. The following provisions apply to coverage on real property which is used predominantly for residential purposes and consists of not more than four dwelling units, and to personal property of a person residing in such real property. If this policy covers such property, the following provision is added to Section D., CANCELLATION AND NONRENEWAL, Item 2., Nonrenewal:

In the event the Company decides not to renew this policy, the Company will mail or deliver notice of nonrenewal stating the specific reason for nonrenewal to the first Named Insured shown in the Declarations and the producer of record at least 60 days before the expiration date of this policy.
2. The following provisions are added under Section P., LOSS PAYMENT:
  1. In spite of any provision of any general or special law:
    - a. The Company will not pay for loss or damage to real property caused by any Covered Cause of Loss if the amount of loss is \$5,000 or more unless the Insured first submits to the Company a certificate of municipal liens from the collector of taxes of the city or town where the property is located.

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- b. The Company will pay to the city or town any amount outstanding on the certificate of municipal liens arising from the provisions of Massachusetts General Law Chapters 40, 59, 60, 80, 83, and 164, Sections 58B through 58F. The payment will not exceed the amount of loss payable under this policy. The Company will send the Insured and the mortgage holder proof of the Company's payment to the city or town.
  - c. The claim of the city or town will have priority over the claim of any mortgage holder, assignee, the Insured or any other interested party, except where otherwise provided by the laws of the United States.
  - d. The Company will not be liable to any city, town, mortgage holder, assignee, the Insured or any other interested party for:
    - (1) Amounts paid to a city or town; or
    - (2) Amounts not paid to a city or town;based upon a certificate showing that no municipal liens exist.
  - e. Paragraphs 1.a., 1.b., 1.c., and 1.d. above will not apply to any owner-occupied one to four-family dwelling if the owner of the dwelling lived there when the claim for loss or damage arose.
2. a. The Company will not pay any claim for:
- (1) Loss, damage or destruction of \$1,000 or more to a building or structure; or
  - (2) Loss, damage or destruction, of any amount, that causes a building or structure to become:
    - (a) Dangerous to life or limb; or
    - (b) Unused, uninhabited or abandoned and open to the weather;as provided under Massachusetts General Law, Section 6 of Chapter 143, without giving at least 10 days written notice before such payment to:
    - (i) The Building Commissioner or the appointed Inspector of Buildings; and
    - (ii) The Board of Health or the Board of Selectmen of the city or town where the property is located.
- b. If at any time before the Company's payment, the city or town notifies the Company by certified mail of its intent to begin proceedings designed to perfect a lien under Massachusetts General Law:
- (1) Chapter 143, Section 3A or 9; or
  - (2) Chapter 111, Section 127B;
- the Company will not pay while the proceedings are pending. The proceedings must be started within 30 days after we receive the notice.
- Any lien perfected under the Massachusetts General Laws referred to in b.(1) and b.(2) above will extend to the city or town and may be enforced by it against the proceeds of this policy.
- c. The Company will not be liable to any city, town, mortgage holder, assignee, the Insured or any other interested party for:
- (1) Amounts paid to a city or town; or
  - (2) Amounts not paid to a city or town;
- under provisions 2.a. and 2.b. above.

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**D. CHANGE TO THE REPLACEMENT COST ENDORSEMENT**

1. When the Replacement Cost endorsement is included in the policy, item 2. of Section A., REPLACEMENT COST, is replaced by the following:
  2. The Company will not pay for any loss or damage on a replacement cost basis until the property is repaired, rebuilt or replaced on the Insured premises or at some other location in the Commonwealth of Massachusetts, and then only if such repair, rebuilding or replacement is made within a reasonable time, but no more than 2 years after the loss or damage. If the property is not repaired, rebuilt or replaced within 2 years after the loss or damage after the loss or damage, the value of the property will be determined at "Actual Cash Value". This restriction does not apply to losses less than \$25,000.
2. The following is added to item 11. of Section B., Tenants' Improvements and Betterments of the Replacement Cost endorsement:

With respect to tenants' improvements and betterments, if covered, the following also applies:

11. d. If the condition in D.2 of this endorsement are not met, the value of tenants' improvements and betterments will be determined as a proportion of the Insured's original costs as set forth in the Valuation provision of the applicable Coverage Form; and
3. The Company will not pay for loss or damage to tenants' improvements and betterments if others pay for repairs or replacement.



**NOTICE TO POLICY HOLDERS**

**JURISDICTIONAL INSPECTIONS**

Dear Policyholder,

Many states and some cities issue certificates permitting the continued operation of certain equipment such as boilers, water heaters, pressure vessels, etc. Periodic inspections are normally required to renew these certificates. In most jurisdictions, insurance company employees who have been licensed by the jurisdictions are authorized to perform these inspections.

If:

- You own or operate equipment that requires a certificate from a state or city to operate legally, and
- We insure that equipment under this Policy, and
- You would like us to perform the next required inspection;

Then:

Call this toll-free number – 1-800-425-4119

When you call this number, our representative will ask you for the following information:

- Name of your business (as shown on this Policy)
- Policy Number
- Location where the equipment is located, including Zip Code
- Person to contact and phone number for scheduling of inspection
- Type of equipment requiring inspection
- Certificate inspection date and certificate number

Or:

Fill in the information on the following form and fax it to the toll free number indicated on that form.

Please note the following:

- Your jurisdiction may charge you a fee for renewing a certificate. It is your responsibility to pay such a fee.
- All the provisions of the INSPECTIONS AND SURVEYS Condition apply to the inspections described in this notice.

**REMINDER**

If new equipment is installed or old equipment replaced that requires a jurisdictional inspection please let us know by calling our toll free number listed above.

## REQUEST FOR JURISDICTIONAL INSPECTION

Name of Business (as shown on policy): \_\_\_\_\_

Policy Number: \_\_\_\_\_

Location of Equipment:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

City \_\_\_\_\_ State \_\_\_\_\_ Zip Code \_\_\_\_\_

Inspection Contact Name for ALL locations: \_\_\_\_\_

Phone: \_\_\_\_\_

Equipment Type	Certificate Number	Certificate Expiration Date

*Fax Form to 1 877-764-9535*

Completed by: \_\_\_\_\_ Phone Number: \_\_\_\_\_



## **IMPORTANT NOTICE REGARDING INDEPENDENT AGENT AND BROKER COMPENSATION**

For information about how Travelers compensates independent agents and brokers, please visit [www.Travelers.com](http://www.Travelers.com), or you may request a written copy from Marketing at One Tower Square, 2GSA, Hartford, Connecticut 06183.

**Toll Free Telephone Number: 1-866-904-8348**

## **TERRORISM RISK INSURANCE ACT OF 2002 DISCLOSURE**

This endorsement provides supplementary information regarding the insurance provided under this policy.

On December 26, 2007, the President of the United States signed into law amendments to the Terrorism Risk Insurance Act of 2002 (the "Act"), which, among other things, extend the Act and expand its scope. The Act establishes a program under which the Federal Government may partially reimburse "Insured Losses" (as defined in the Act) caused by "acts of terrorism". An "act of terrorism" is defined in Section 102(l) of the Act to mean any act that is certified by the Secretary of the Treasury – in concurrence with the Secretary of State and the Attorney General of the United States – to be an act of terrorism; to be a violent act or an act that is dangerous to human life, property, or infrastructure; to have resulted in damage within the United States, or outside the United States in the case of certain air carriers or vessels or the premises of a United States Mission; and to have been committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

The federal government's share of compensation for Insured Losses is 85% of the amount of Insured Losses in excess of each Insurer's statutorily established deductible, subject to the "Program Trigger", (as defined in the Act). In no event, however, will the federal government or any Insurer be required to pay any portion of the amount of aggregate Insured Losses occurring in any one year that exceeds \$100,000,000,000, provided that such Insurer has met its deductible. If aggregate Insured Losses exceed \$100,000,000,000 in any one year, your coverage may therefore be reduced.

The charge for Insured Losses is included in the total premium for this policy. The charge that has been included for this exposure under this policy is the amount indicated below, and does not include any charge for the portion of losses covered by the Federal Government under the Act:

\$ 500

## **CAP ON LOSSES FROM CERTIFIED ACTS OF TERRORISM**

This endorsement modifies the insurance provided under this policy.

### **A. Cap On Certified Terrorism Losses**

"Certified act of terrorism" means an act that is certified by the Secretary of the Treasury, in concurrence with the Secretary of State and the Attorney General of the United States, to be an act of terrorism pursuant to the federal Terrorism Risk Insurance Act. The criteria contained in the Terrorism Risk Insurance Act for a "certified act of terrorism" include the following:

1. The act resulted in insured losses in excess of \$5 million in the aggregate, attributable to all types of insurance subject to the Terrorism Risk Insurance Act; and
2. The act is a violent act or an act that is dangerous to human life, property or infrastructure and is committed by an individual or individuals, as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

If aggregate insured losses attributable to terrorist acts certified under the Terrorism Risk Insurance Act exceed \$100 billion in a Program Year (January 1 through December 31) and the Company has met its insurer deductible under the Terrorism Risk Insurance Act, the Company shall not be liable for the payment of any portion of the amount of such losses that exceeds \$100 billion, and in such case insured losses up to that amount are subject to pro rata allocation in accordance with procedures established by the Secretary of the Treasury.

### **B. Application Of Exclusions**

The terms and limitations of any terrorism exclusion, or the inapplicability or omission of a terrorism exclusion, do not serve to create coverage for any loss which would otherwise be excluded under this Coverage Part or Policy, such as losses excluded by the Nuclear Hazard Exclusion or the War And Military Action Exclusion.



WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY
INFORMATION PAGE
Associated Industries of Massachusetts Mutual Insurance Company
54 Third Avenue, Burlington, Massachusetts 01803
(800) 876-2765

NCCI NO 26158

POLICY NO. VWC 6003318012012
PRIOR NO. VWC 6003318012011

ITEM

1. The insured Sterling Suffolk Racecourse LLC
Mail Address: 525 McClellan Highway East Boston MA 02128

Street No. Town or City County State Zip Code
FEIN xxxxx7814

Individual Partnership Corporation Joint Venture Association Other Limited Liability Co

Other workplaces not shown above:

- 2. The policy period is from 12/01/2012 to 12/01/2013 12:01 a.m. standard time at the insured's mailing address.
3. A. Workers Compensation Insurance: Part One of the policy applies to the Workers Compensation Law of the states listed here; MA
B. Employers Liability Insurance: Part Two of the policy applies to work in each state listed in item 3.A.
The limits of our liability under Part Two are: Bodily Injury by Accident \$ 100,000 each accident
Bodily Injury by Disease \$ 500,000 policy limit
Bodily Injury by Disease \$ 100,000 each employee
C. Other States Insurance: Coverage Replaced By Endorsement WC 20 03 06A
D. This policy includes these endorsements and schedules: SEE SCHEDULE

4. The premium for this policy will be determined by our Manuals of Rules, Classifications, Rates and Rating plans. All information required below is subject to verification and change by audit.

Table with 4 columns: Classifications, Premium Basis, Rates, and another Rates column. Row 1: INTRA 311631, SEE EXTENSION OF INFORMATION PAGE.

Minimum premium \$ 332.00
As indicated interim adjustments of premium shall be made:
Annually Semi Annually Quarterly Monthly

Total Estimated Annual Premium \$ 82,410.00
Deposit Premium \$ 21,279.00
MA Assessment Chg. \$64,379.92 x 4.2000% \$2,704.00

Authorized Signature (Handwritten)

This policy, including all endorsements, is hereby countersigned by \_\_\_\_\_ 11/19/2012
Authorized Signature Date

Table with 7 columns: GOV STATE, GOV CLASS, KIND AUDIT, PLACING OFFICE, CLAIM OFFICE, NAME CHECK, SAFETY GROUP. Row 1: MA, 9016, 3, 601, , ,

Aon Risk Services Northeast Inc
100 Westminster St 10th Flr
Providence, RI 02903-2393

WC 00 00 01 A (7-11)

Schedule of Endorsements

Remarks:

AIM-1 A Dividend Classification Endorsement  
 AIM-2 AIM Mutual Policy Conditions Endorsement  
 WC000000 B Policy Conditions  
 WC000404 Pending Rate Change Endorsement  
 WC000414 Notification of Change in Ownership  
 WC200101 MA Terrorism End.  
 WC200301 Appl Lim Liab  
 WC200302 A MA Assess  
 WC200303 D MA Notice  
 WC200306 A MA Lim Other States  
 WC200307 Massachusetts Assigned Risk Pool Eligibility  
 WC200401 MA Pend Prem Change  
 WC200405 MA Premium Due Date Endorsement  
 WC200601 A MA Canc  
 WC200604 Massachusetts Policy Definition

This endorsement is attached to the policy indicated below and is effective on the date stated herein, at 12:01 A.M., standard time at the address of the insured as described in the information page.

Policy No.	Group	Expiration Date of Policy	Effective Date of Endorsement	Endorsement No.
VWC 6003318012012		12/01/2013	12/01/2012	
Issued to Sterling Suffolk Racecourse LLC			Additional Premium	Return Premium

ISSUED BY: ASSOCIATED INDUSTRIES OF MASSACHUSETTS MUTUAL INSURANCE COMPANY

Countersigned   
 Authorized Representative

Title: Schedule of Locations


Remarks:

Sterling Suffolk Racecourse LLC  
111 Waldemar Avenue  
East Boston, MA 02128

This endorsement is attached to the policy indicated below and is effective on the date stated herein, at 12:01 A.M., standard time at the address of the insured as described in the information page.

Policy No. VWC 6003318012012	Group	Expiration Date of Policy 12/01/2013	Effective Date of Endorsement 12/01/2012	Endorsement No.
Issued to Sterling Suffolk Racecourse LLC			Additional Premium	Return Premium

ISSUED BY: ASSOCIATED INDUSTRIES OF MASSACHUSETTS MUTUAL INSURANCE COMPANY

Countersigned   
Authorized Representative



WORKERS COMPENSATION AND EMPLOYERS LIABILITY POLICY  
EXTENSION OF INFORMATION PAGE  
ITEM 4. CONTINUED

POLICY NO. VWC 6003318012012

PAGE NO. 1

CLASSIFICATION OF OPERATIONS	CODE NO.	Estimated Total Annual Remuneration	Rates Per \$100 of Remuneration	Estimated Annual Premiums	
				Subject to Modification	All Other
MA-20 Intrastate I.D. 311631  Sterling Suffolk Racecourse LLC 111 Waldemar Avenue East Boston, MA 02128					
No. of Employees Per Location 202					
STABLE OR BREEDING FARM AND DRIVERS	8279	13,783	4.36	601	
Average Number of Employees: 1 INSPECTION OF RISKS FOR INSURANCE 0	8720	143,467	1.01	1,449	
Average Number of Employees: 7 CLERICAL OFFICE EMPLOYEES NOC	8810	2,716,310	0.09	2,445	
Average Number of Employees: 110 AMUSEMENT PARK OR EXHIBITION	9016	2,450,207	1.58	38,713	
Average Number of Employees: 84					
TOTALS		\$5,323,767		\$43,208	
Total Average Number of Employees: 202					

WORKERS COMPENSATION AND EMPLOYERS LIABILITY POLICY EXTENSION OF INFORMATION PAGE ITEM 4. CONTINUED		POLICY NO. <u>VWC 6003318012012</u>			
		PAGE NO. <u>2</u>			
CLASSIFICATION OF OPERATIONS	CODE NO.	Estimated Total Annual Remuneration	Rates Per \$100 of Remuneration	Estimated Annual Premiums	
				Subject to Modification	All Other
MA-20 Intrastate I.D.      311631					
12/01/2012 TO 12/01/2013					
Total Scheduled Premium For Period				43,208	
Subject to Experience Modifier/Merit Rating				43,208	
Experience Modification Factor	9898		1.4900	21,172	
INTRA      Published					
Premium Adjusted By Experience Modifier/Merit Rating	9999			64,380	
Subject to ARAP Surcharge				64,380	
ARAP Surcharge <    311631 >	0277		1.2500	16,095	
Premium Adjusted By ARAP				80,475	
Terrorism Risk Ins. Act of 2002 - Certified Losses	9740				1,597

WORKERS COMPENSATION AND EMPLOYERS LIABILITY POLICY EXTENSION OF INFORMATION PAGE ITEM 4. CONTINUED		POLICY NO. <u>VWC 6003318012012</u>			
		PAGE NO. <u>3</u>			
CLASSIFICATION OF OPERATIONS	CODE NO.	Estimated Total Annual Remuneration	Rates Per \$100 of Remuneration	Estimated Annual Premiums	
				Subject to Modification	All Other
MA-20 Intrastate I.D.      311631					
Total Estimated Standard Premium				64,380	
Expense Constant	0900				338
Terrorism Risk Ins. Act of 2002 - Certified Losses	9740				1,597
Policy Total				82,410	
Subject to Mass Assessment				64,380	
Mass Assessment			4.2000	2,704	



**DIVIDEND CLASSIFICATION ENDORSEMENT**

As required by Section 80 of Chapter 175 of the General Laws of Massachusetts, notice is hereby given that the risk insured by this policy is classified for the purpose of fixing and determining the percentage of dividend or expiration return of premium to be paid on expiring or cancelled policies in the classification(s) hereafter designated by an "X" below:

- 1. Workers Compensation except such policies subject to the Company's Retrospective Rating Plans, Loss Ratio, Safety Group, Retention, Large Risk Deductible or those policies assigned by The Massachusetts Workers Compensation Assigned Risk Pool or those policies placed by brokers within the scope of the Company's Brokerage Agreement.
- 2. Workers Compensation Policies subject to Retrospective Rating Plans.
- 3. Workers Compensation Policies subject to Loss Ratio Plans.
- 4. Workers Compensation Policies subject to Safety Group Plans.
- 5. Workers Compensation Policies subject to Retention Plans.
- 6. Workers Compensation Policies subject to Large Risk Deductible Plans.
- 7. Workers Compensation Policies subject to (1) above placed by brokers within the scope of the Company's Brokerage Agreement.
- 8. Workers Compensation Policies subject to Hospitality Loss Ratio Plan.
- 9. (Reserved for Future Use)
- 10. (Reserved for Future Use)

Nothing herein contained shall be held to waive, alter or extend any condition or provision of the policy other than as above stated.

Policy No. VWC 6003318012012	Safety Group	Expiration Date of Policy 12/01/2013	Effective Date of Endorsement 12/01/2012	Endorsement No.
Issued to Sterling Suffolk Racecourse LLC			Additional Premium	Return Premium

ISSUED BY: ASSOCIATED INDUSTRIES OF MASSACHUSETTS MUTUAL INSURANCE COMPANY

MUTUAL POLICY CONDITIONS ENDORSEMENT

MASSACHUSETTS WORKERS COMPENSATION ASSIGNED RISK POOL

This policy is issued by Associated Industries of Massachusetts Mutual Insurance Company as a designated insurance carrier of the Massachusetts Workers Compensation Assigned Risk Pool.

The Massachusetts Workers Compensation Assigned Risk Pool was created by statute to provide a means for Massachusetts employers who could not obtain coverage in the voluntary market to satisfy their obligations under Massachusetts General Law (M.G.L.) Chapter 152.

The Workers Compensation Rating and Inspection Bureau of Massachusetts has been designated by the Commissioner of Insurance, in accordance with Sections 65A and 65C of M.G.L. Chapter 152, to administer the Pool.

This policy is issued utilizing forms and in consideration of premiums, additional fees (if any) and charges as prescribed by the Pool Administrator and approved by the Commonwealth of Massachusetts.

It is understood and agreed that the "Mutual Policy Conditions" of this policy jacket are amended as follows:

MUTUAL POLICY CONDITIONS


THIS POLICY IS NON-ASSESSABLE. NO PERSON OR ORGANIZATION WHICH IS AN INSURED NAMED IN THIS POLICY SHALL BE A MEMBER OF THE ASSOCIATED INDUSTRIES OF MASSACHUSETTS MUTUAL INSURANCE COMPANY (THE CORPORATION) OR BE ENTITLED TO ANY OF THE RIGHTS OR BENEFITS OF MEMBERSHIP IN THE CORPORATION. SUCH INSURED ALSO NEED NOT BE A MEMBER IN GOOD STANDING OF ASSOCIATED INDUSTRIES OF MASSACHUSETTS.

IN WITNESS WHEREOF, the issuing Company has caused this policy to be signed by its president at Burlington, Massachusetts, and countersigned on the Information Page by a duly authorized representative of the Company.

This endorsement is attached to the policy indicated below and is effective on the date stated herein, at 12:01 A.M., standard time at the address of the insured as described in the information page.

Policy No. VWC 6003318012012	Group	Expiration Date of Policy 12/01/2013	Effective Date of Endorsement 12/01/2012	Endorsement No.
Issued to Sterling Suffolk Racecourse LLC			Additional Premium	Return Premium

ISSUED BY: ASSOCIATED INDUSTRIES OF MASSACHUSETTS MUTUAL INSURANCE COMPANY

Countersigned   
Authorized Representative

**WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY**

In return for the payment of the premium and subject to all terms of this policy, we agree with you as follows:

**GENERAL SECTION****A. The Policy**

This policy includes at its effective date the Information Page and all endorsements and schedules listed there. It is a contract of insurance between you (the employer named in Item 1 of the Information Page) and us (the insurer named on the Information Page). The only agreements relating to this insurance are stated in this policy. The terms of this policy may not be changed or waived except by endorsement issued by us to be part of this policy.

**B. Who is Insured**

You are insured if you are an employer named in Item 1 of the Information Page. If that employer is a partnership, and if you are one of its partners, you are insured, but only in your capacity as an employer of the partnership's employees.

**C. Workers Compensation Law**

Workers Compensation Law means the workers or workmen's compensation law and occupational disease law of each state or territory named in Item 3.A. of the Information Page. It includes any amendments to that law which are in effect during the policy period. It does not include any federal workers or workmen's compensation law, any federal occupational disease law or the provisions of any law that provide nonoccupational disability benefits.

**D. State**

State means any state of the United States of America, and the District of Columbia.

**E. Locations**

This policy covers all of your workplaces listed in Items 1 or 4 of the Information Page; and it covers all other workplaces in Item 3.A. states unless you have other insurance or are self-insured for such workplaces.

**PART ONE  
WORKERS COMPENSATION INSURANCE****A. How This Insurance Applies**

This workers compensation insurance applies to bodily injury by accident or bodily injury by disease. Bodily injury includes resulting death.

1. Bodily injury by accident must occur during the policy period.
2. Bodily injury by disease must be caused or aggravated by the conditions of your employment. The employee's last day of last exposure to the conditions causing or aggravating such bodily injury by disease must occur during the policy period.

**B. We Will Pay**

We will pay promptly when due the benefits required of you by the workers compensation law.

**C. We Will Defend**

We have the right and duty to defend at our expense any claim, proceeding or suit against you for benefits payable by this insurance. We have the right to investigate and settle these claims, proceedings or suits.

We have no duty to defend a claim, proceeding or suit that is not covered by this insurance.

**D. We Will Also Pay**

We will also pay these costs, in addition to other amounts payable under this insurance, as part of any claim, proceeding or suit we defend:

1. reasonable expenses incurred at our request, but not loss of earnings;
2. premiums for bonds to release attachments and for appeal bonds in bond amounts up to the amount payable under this insurance;
3. litigation costs taxed against you;
4. interest on a judgment as required by law until we offer the amount due under this insurance; and
5. expenses we incur.

**E. Other Insurance**

We will not pay more than our share of benefits and costs covered by this insurance and other



(Ed. 7-11)

insurance or self-insurance. Subject to any limits of liability that may apply, all shares will be equal until the loss is paid. If any insurance or self-insurance is exhausted, the shares of all remaining insurance will be equal until the loss is paid.

#### F. Payments You Must Make

You are responsible for any payments in excess of the benefits regularly provided by the workers compensation law including those required because:

1. of your serious and willful misconduct;
2. you knowingly employ an employee in violation of law;
3. you fail to comply with a health or safety law or regulation; or
4. you discharge, coerce or otherwise discriminate against any employee in violation of the workers compensation law.

If we make any payments in excess of the benefits regularly provided by the workers compensation law on your behalf, you will reimburse us promptly.

#### G. Recovery From Others

We have your rights, and the rights of persons entitled to the benefits of this insurance, to recover our payments from anyone liable for the injury. You will do everything necessary to protect those rights for us and to help us enforce them.

#### H. Statutory Provisions

These statements apply where they are required by law.

1. As between an injured worker and us, we have notice of the injury when you have notice.
2. Your default or the bankruptcy or insolvency of you or your estate will not relieve us of our duties under this insurance after an injury occurs.
3. We are directly and primarily liable to any person entitled to the benefits payable by this insurance. Those persons may enforce our duties; so may an agency authorized by law. Enforcement may be against us or against you and us.
4. Jurisdiction over you is jurisdiction over us for purposes of the workers compensation law. We are bound by decisions against you under that law, subject to the provisions of this policy that are not in conflict with that law.
5. This insurance conforms to the parts of the

workers compensation law that apply to:

- a. benefits payable by this insurance;
  - b. special taxes, payments into security or other special funds, and assessments payable by us under that law.
6. Terms of this insurance that conflict with the workers compensation law are changed by this statement to conform to that law.

Nothing in these paragraphs relieves you of your duties under this policy.

### PART TWO EMPLOYERS LIABILITY INSURANCE

#### A. How This Insurance Applies

This employers liability insurance applies to bodily injury by accident or bodily injury by disease. Bodily injury includes resulting death.

1. The bodily injury must arise out of and in the course of the injured employee's employment by you.
2. The employment must be necessary or incidental to your work in a state or territory listed in Item 3.A. of the Information Page.
3. Bodily injury by accident must occur during the policy period.
4. Bodily injury by disease must be caused or aggravated by the conditions of your employment. The employee's last day of last exposure to the conditions causing or aggravating such bodily injury by disease must occur during the policy period.
5. If you are sued, the original suit and any related legal actions for damages for bodily injury by accident or by disease must be brought in the United States of America, its territories or possessions, or Canada.

#### B. We Will Pay

We will pay all sums that you legally must pay as damages because of bodily injury to your employees, provided the bodily injury is covered by this Employers Liability Insurance.

The damages we will pay, where recovery is permitted by law, include damages:

1. For which you are liable to a third party by reason of a claim or suit against you by that third party to recover the damages claimed against

- such third party as a result of injury to your employee;
2. For care and loss of services; and
  3. For consequential bodily injury to a spouse, child, parent, brother or sister of the injured employee; provided that these damages are the direct consequence of bodily injury that arises out of and in the course of the injured employee's employment by you; and
  4. Because of bodily injury to your employee that arises out of and in the course of employment, claimed against you in a capacity other than as employer.

### C. Exclusions

This insurance does not cover:

1. Liability assumed under a contract. This exclusion does not apply to a warranty that your work will be done in a workmanlike manner;
2. Punitive or exemplary damages because of bodily injury to an employee employed in violation of law;
3. Bodily injury to an employee while employed in violation of law with your actual knowledge or the actual knowledge of any of your executive officers;
4. Any obligation imposed by a workers compensation, occupational disease, unemployment compensation, or disability benefits law, or any similar law;
5. Bodily injury intentionally caused or aggravated by you;
6. Bodily injury occurring outside the United States of America, its territories or possessions, and Canada. This exclusion does not apply to bodily injury to a citizen or resident of the United States of America or Canada who is temporarily outside these countries;
7. Damages arising out of coercion, criticism, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination against or termination of any employee, or any personnel practices, policies, acts or omissions;
8. Bodily injury to any person in work subject to the Longshore and Harbor Workers' Compensation Act (33 USC Sections 901–950), the Non-appropriated Fund Instrumentalities Act (5 USC Sections 8171–8173), the Outer Continental Shelf Lands Act (43 USC Sections 1331–1356a.), the Defense Base Act (42 USC Sections 1651–1654), the Federal Coal Mine Safety and Health Act (30 USC Sections 801–945), any other federal workers or workmen's compensation law or other federal occupational disease law, or any amendments to these laws;

9. Bodily injury to any person in work subject to the Federal Employers' Liability Act (45 USC Sections 51–60), any other federal laws obligating an employer to pay damages to an employee due to bodily injury arising out of or in the course of employment, or any amendments to those laws;
10. Bodily injury to a master or member of the crew of any vessel;
11. Fines or penalties imposed for violation of federal or state law; and
12. Damages payable under the Migrant and Seasonal Agricultural Worker Protection Act (29 USC Sections 1801–1872) and under any other federal law awarding damages for violation of those laws or regulations issued there under, and any amendments to those laws.

### D. We Will Defend

We have the right and duty to defend, at our expense, any claim, proceeding or suit against you for damages payable by this insurance. We have the right to investigate and settle these claims, proceedings and suits.

We have no duty to defend a claim, proceeding or suit that is not covered by this insurance. We have no duty to defend or continue defending after we have paid our applicable limit of liability under this insurance.

### E. We Will Also Pay

We will also pay these costs, in addition to other amounts payable under this insurance, as part of any claim, proceeding, or suit we defend:

1. Reasonable expenses incurred at our request, but not loss of earnings;
2. Premiums for bonds to release attachments and for appeal bonds in bond amounts up to the limit of our liability under this insurance;
3. Litigation costs taxed against you;
4. Interest on a judgment as required by law until we offer the amount due under this insurance; and
5. Expenses we incur.

(Ed. 7-11)

**F. Other Insurance**

We will not pay more than our share of damages and costs covered by this insurance and other insurance or self-insurance. Subject to any limits of liability that apply, all shares will be equal until the loss is paid. If any insurance or self-insurance is exhausted, the shares of all remaining insurance and self-insurance will be equal until the loss is paid.

**G. Limits of Liability**

Our liability to pay for damages is limited. Our limits of liability are shown in Item 3.B. of the Information Page. They apply as explained below.

1. **Bodily Injury by Accident.** The limit shown for "bodily injury by accident—each accident" is the most we will pay for all damages covered by this insurance because of bodily injury to one or more employees in any one accident.

A disease is not bodily injury by accident unless it results directly from bodily injury by accident.

2. **Bodily Injury by Disease.** The limit shown for "bodily injury by disease—policy limit" is the most we will pay for all damages covered by this insurance and arising out of bodily injury by disease, regardless of the number of employees who sustain bodily injury by disease. The limit shown for "bodily injury by disease—each employee" is the most we will pay for all damages because of bodily injury by disease to any one employee.

Bodily injury by disease does not include disease that results directly from a bodily injury by accident.

3. We will not pay any claims for damages after we have paid the applicable limit of our liability under this insurance.

**H. Recovery From Others**

We have your rights to recover our payment from anyone liable for an injury covered by this insurance. You will do everything necessary to protect those rights for us and to help us enforce them.

**I. Actions Against Us**

There will be no right of action against us under this insurance unless:

1. You have complied with all the terms of this policy; and
2. The amount you owe has been determined with our consent or by actual trial and final judgment.

This insurance does not give anyone the right to add us as a defendant in an action against you to determine your liability. The bankruptcy or insolvency of you or your estate will not relieve us of our obligations under this Part.

### PART THREE OTHER STATES INSURANCE

**A. How This Insurance Applies**

1. This other states insurance applies only if one or more states are shown in Item 3.C. of the Information Page.
2. If you begin work in any one of those states after the effective date of this policy and are not insured or are not self-insured for such work, all provisions of the policy will apply as though that state were listed in Item 3.A. of the Information Page.
3. We will reimburse you for the benefits required by the workers compensation law of that state if we are not permitted to pay the benefits directly to persons entitled to them.
4. If you have work on the effective date of this policy in any state not listed in Item 3.A. of the Information Page, coverage will not be afforded for that state unless we are notified within thirty days.

**B. Notice**

Tell us at once if you begin work in any state listed in Item 3.C. of the Information Page.

### PART FOUR YOUR DUTIES IF INJURY OCCURS

Tell us at once if injury occurs that may be covered by this policy. Your other duties are listed here.

1. Provide for immediate medical and other services required by the workers compensation law.
2. Give us or our agent the names and addresses of the injured persons and of witnesses, and other information we may need.
3. Promptly give us all notices, demands and legal



papers related to the injury, claim, proceeding or suit.

4. Cooperate with us and assist us, as we may request, in the investigation, settlement or defense of any claim, proceeding or suit.
5. Do nothing after an injury occurs that would interfere with our right to recover from others.
6. Do not voluntarily make payments, assume obligations or incur expenses, except at your own cost.

## PART FIVE—PREMIUM

### A. Our Manuals

All premium for this policy will be determined by our manuals of rules, rates, rating plans and classifications. We may change our manuals and apply the changes to this policy if authorized by law or a governmental agency regulating this insurance.

### B. Classifications

Item 4 of the Information Page shows the rate and premium basis for certain business or work classifications. These classifications were assigned based on an estimate of the exposures you would have during the policy period. If your actual exposures are not properly described by those classifications, we will assign proper classifications, rates and premium basis by endorsement to this policy.

### C. Remuneration

Premium for each work classification is determined by multiplying a rate times a premium basis. Remuneration is the most common premium basis. This premium basis includes payroll and all other remuneration paid or payable during the policy period for the services of:

1. all your officers and employees engaged in work covered by this policy; and
2. all other persons engaged in work that could make us liable under Part One (Workers Compensation Insurance) of this policy. If you do not have payroll records for these persons, the contract price for their services and materials may be used as the premium basis. This paragraph 2 will not apply if you give us proof that the employers of these persons lawfully secured their workers compensation obligations.

### D. Premium Payments

You will pay all premium when due. You will pay the premium even if part or all of a workers compensation law is not valid.

### E. Final Premium

The premium shown on the Information Page, schedules, and endorsements is an estimate. The final premium will be determined after this policy ends by using the actual, not the estimated, premium basis and the proper classifications and rates that lawfully apply to the business and work covered by this policy. If the final premium is more than the premium you paid to us, you must pay us the balance. If it is less, we will refund the balance to you. The final premium will not be less than the highest minimum premium for the classifications covered by this policy.

If this policy is canceled, final premium will be determined in the following way unless our manuals provide otherwise:

1. If we cancel, final premium will be calculated pro rata based on the time this policy was in force. Final premium will not be less than the pro rata share of the minimum premium.
2. If you cancel, final premium will be more than pro rata; it will be based on the time this policy was in force, and increased by our short-rate cancellation table and procedure. Final premium will not be less than the minimum premium.

### F. Records

You will keep records of information needed to compute premium. You will provide us with copies of those records when we ask for them.

### G. Audit

You will let us examine and audit all your records that relate to this policy. These records include ledgers, journals, registers, vouchers, contracts, tax reports, payroll and disbursement records, and programs for storing and retrieving data. We may conduct the audits during regular business hours during the policy period and within three years after the policy period ends. Information developed by audit will be used to determine final premium. Insurance rate service organizations have the same rights we have under this provision.

(Ed. 7-11)

**PART SIX—CONDITIONS****A. Inspection**

We have the right, but are not obliged to inspect your workplaces at any time. Our inspections are not safety inspections. They relate only to the insurability of the workplaces and the premiums to be charged. We may give you reports on the conditions we find. We may also recommend changes. While they may help reduce losses, we do not undertake to perform the duty of any person to provide for the health or safety of your employees or the public. We do not warrant that your workplaces are safe or healthful or that they comply with laws, regulations, codes or standards. Insurance rate service organizations have the same rights we have under this provision.

**B. Long Term Policy**

If the policy period is longer than one year and sixteen days, all provisions of this policy will apply as though a new policy were issued on each annual anniversary that this policy is in force.

**C. Transfer of Your Rights and Duties**

Your rights or duties under this policy may not be transferred without our written consent.

If you die and we receive notice within thirty days after your death, we will cover your legal representative as insured.

**D. Cancellation**

1. You may cancel this policy. You must mail or deliver advance written notice to us stating when the cancellation is to take effect.
2. We may cancel this policy. We must mail or deliver to you not less than ten days advance written notice stating when the cancellation is to take effect. Mailing that notice to you at your mailing address shown in Item 1 of the Information Page will be sufficient to prove notice.
3. The policy period will end on the day and hour stated in the cancellation notice.
4. Any of these provisions that conflict with a law that controls the cancellation of the insurance in this policy is changed by this statement to comply with the law.

**E. Sole Representative**

The insured first named in Item 1 of the Information Page will act on behalf of all insureds to change this policy, receive return premium, and give or receive notice of cancellation.

**PENDING RATE CHANGE ENDORSEMENT**

A rate change filing is being considered by the proper regulatory authority. The filing may result in rate different from the rates shown on the policy. If it does, we will issue an endorsement to show the new rates and their effective date.

If only one state is shown in item 3.A of the Information Page, this endorsement applies to that state. If more than one state is shown there, this endorsement applies only in the state shown in the Schedule.

Schedule

State  
Massachusetts

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.  
(The information below is required only when this endorsement is issued subsequent to preparation on the policy.)  
Endorsement Effective 12/01/2012 Policy No. 6003318012012 Endorsement No.  
Insured Sterling Suffolk Racecourse LLC Premium \$  
Insurance Company  
A.I.M. Mutual Insurance Co

Countersigned By \_\_\_\_\_



**WORKERS COMPENSATION AND EMPLOYERS LIABILITY COVERAGE CERTIFICATE**

**WC 00 04 14**

(Ed. 7-90)

**NOTIFICATION OF CHANGE IN OWNERSHIP ENDORSEMENT**

Policy Number: 6003318012012  
Policy Change Number:  
Insured: Sterling Suffolk Racecourse LLC  
Company: A.I.M. Mutual Insurance Co

Policy Effective Date: 12/01/2012 to 12/01/2013  
Change Effective Date: 12/01/2012

Carrier Code: 26158

Experience rating is mandatory for all eligible members. The experience rating modification factor, if any, applicable to this certificate, may change if there is a change in your ownership or in that of one or more of the entities eligible to be combined with you for experience rating purposes. Change in ownership includes sales, purchases, other transfers, mergers, consolidations, dissolutions, formations of a new entity and other changes provided for in the applicable experience rating plan manual.

You must report any change in ownership to us in writing within 90 days of such change. Failure to report such changes within this period may result in revision of the experience rating modification factor used to determine your premium.

**WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY**

**WC 20 01 01**

**Original Printing**

Effective January 1, 2008

Standard

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**MASSACHUSETTS TERRORISM RISK INSURANCE PROGRAM REAUTHORIZATION ACT  
ENDORSEMENT**

This Endorsement addresses requirements of the Terrorism Risk Insurance Act of 2002 as amended and extended by the Terrorism Risk Insurance Program Reauthorization Act of 2007.

**Definitions**

The definitions provided in this endorsement are based on and have the same meaning as the definitions in the Act. If words or phrases not defined in this endorsement are defined in the Act, the definitions in the Act will apply.

“Act” means the Terrorism Risk Insurance Act of 2002, which took effect on November 26, 2002, and any amendments there to resulting from the Terrorism Risk Insurance Program Reauthorization Act of 2007.

“Act of Terrorism” means any act that is certified by the Secretary of the Treasury, in concurrence with the Secretary of State, and the Attorney General of the United States as meeting all of the following requirements:

- a. The act is an act of terrorism.
- b. The act is violent or dangerous to human life, property or infrastructure.
- c. The act resulted in damage within the United States, or outside of the United States in the case of the premises of United States missions or certain air carriers or vessels.
- d. The act has been committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

“Insured Loss” means any loss resulting from an act of terrorism (including an act of war, in the case of workers compensation) that is covered by primary or excess property and casualty insurance issued by an insurer if the loss occurs in the United States or at the premises of United States missions or to certain air carriers or vessels.

“Insurer Deductible” means for the period beginning on January 1, 2008, and ending on December 31, 2014, an amount equal to 20% of our direct earned premiums, over the calendar year immediately preceding the applicable Program Year.

“Program year” refers to each calendar year between January 1, 2008 and December 31, 2014, as applicable.

**Limitation of Liability**

The Act limits our liability to you under this policy. If aggregate Insured Losses exceed \$100,000,000,000 in a Program year and if we have met our Insurer Deductible, we are not liable for the payment of any portion of the amount of Insured Losses that exceeds

**WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY**

**WC 20 01 01**

**Original Printing**

Effective January 1, 2008

Standard

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\$100,000,000,000. For aggregate Insured Losses up to \$100,000,000,000, we will pay only a pro rata share of such Insured Losses as determined by the Secretary of the Treasury.

**Policyholder Disclosure Notice**

1. Insured Losses would be partially reimbursed by the United States Government. If the aggregate industry Insured Losses exceeds \$100,000,000 in a Program Year, the United States Government would pay 85% of our Insured Losses that exceed our Insurer Deductible.
2. Notwithstanding item 1 above, the United States Government will not make any payment under the Act for any portion of Insured Losses that exceeds \$100,000,000,000.
3. The premium charged for the coverage for Insured Losses under this policy is shown in Item 4 of the Information Page.

**See Extention of Information Page**

**This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.**

**(The information below is required only when this endorsement is issued subsequent to preparation on the policy.)**

Endorsement Effective 12/01/2012  
Insured : Sterling Suffolk Racecourse LLC

Policy No. 6003318012012

Endorsement No.  
Premium \$

Insurance Company : A.I.M. Mutual Insurance Co

Countersigned by :





**MASSACHUSETTS LIMITS OF LIABILITY ENDORSEMENT**

This endorsement applies only to the insurance provided by Part Two (Employers Liability Insurance) because Massachusetts is listed in item 3.A. of the Information Page.

Our liability to you under Section 25 of Chapter 152 of the General Laws of Massachusetts is not subject to the limit of Liability that applies to Part Two (Employers Liability Insurance).

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

(The information below is required only when this endorsement is issued subsequent to preparation on the policy.)

Endorsement Effective 12/01/2012  
Insured Sterling Suffolk Racecourse LLC  
Insurance Company A.I.M. Mutual Insurance Co

Policy No. 6003318012012

Endorsement No.  
Premium \$

Countersigned By \_\_\_\_\_

**WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY WC 20 03 02 A**

**1st Reprint**

Effective September 1, 2008

**Standard**

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## **MASSACHUSETTS – ASSESSMENT CHARGE**

Massachusetts General Laws, Chapter 152, Section 65, as amended by Chapter 572 of the Acts of 1985, establishes a workers compensation special fund and a workers compensation trust fund.

On behalf of the Department of Industrial Accidents(DIA), the insurance company providing workers compensation coverage is required to bill and collect an assessment charge covering the special and trust funds from insured employers and remit the amounts collected to the State Treasury.

The assessment charge, which is determined by applying a rate (subject to annual change) to the DIA'S standard premium, as defined and outlined in 452 CMR 7.00, developed under your policy, is shown as a separate item on the information page of the policy. The rate may be different for private employers and for the Commonwealth and its political subdivisions.

The income derived from the assessment charge will be used to fund the operating expenses of the DIA and to fund certain employee benefits as described in Chapter 152.

**Note:**

Use this endorsement with any policy showing Massachusetts in item 3.A. of the Information Page.

Copyright 1986 Nation Council on Compensation Insurance.

**MASSACHUSETTS NOTICE TO POLICYHOLDER ENDORSEMENT**

This endorsement applies only to the insurance provided by the policy because Massachusetts is shown in item 3.A. of the information page.

**1. Rates and Premium**

The policy contains rates and classifications that apply to your type of business. If you have any questions regarding the rates or classifications, please contact your agent or us.

You may obtain pertinent rating information by submitting a written request to the Workers' Compensation Rating and Inspection Bureau of Massachusetts at the address shown in this endorsement or to us at our company address shown on this endorsement. We may require you to pay a reasonable charge for furnishing the information.

You may also submit a written request for a review of the method by which your classification, rates, premiums or audit results were determined. If we fail to grant or reject your request within thirty days after it is made or if you are not satisfied by the results of our review, you may submit a written request for review to the Workers' Compensation Rating and Inspection Bureau of Massachusetts ("WCRIBMA") at the address shown in this endorsement. If the WCRIBMA fails to grant or reject your request within thirty days after it is made or if you are not satisfied with the results of the WCRIBMA review, you may appeal to the Commissioner of Insurance at the address shown in this endorsement.

**2. Reserve or Settlements**

You may request a loss run, which contains reserve and settlement information for claims that relate to the premium for this policy. Such a request must be in writing and should be sent to our address shown on this endorsement. We will provide you with that information within thirty (30) days of receipt of your request, and at reasonable intervals thereafter.

If you have any questions or believe that we set unreasonable reserves or made unreasonable settlements that affected your premium or losses, you may make a written request through your agent or directly to us for a meeting with our company representative. If you are not satisfied with the results of the meeting, you may make a written appeal to the Insurance Commissioner at the address shown on the endorsement.

**3. Name Insured**

**You are responsible for immediately reporting all changes in name or legal status to us in writing at the company address shown in this Endorsement.**

**If you want to add a named insured or replace the named insured with another legal entity on any policy issued through the Massachusetts Assigned Risk Pool you must submit a new Assigned Risk Pool Application, including a Confidential Request for Information Form(ERM), to the Workers' Compensation Rating and Inspection Bureau of Massachusetts at the address shown in this Endorsement.**

**4. Insured's Mailing Address**

**Notices relating to this Policy will be mailed or delivered to your mailing address. Your mailing address is that which is shown in item 1 of the Information Page or in a change of address Endorsement to the Policy. You are responsible for notifying us in writing at the company address shown in this Endorsement about any changes to your mailing address.**

**Addresses**

The Workers' Compensation Rating and  
Inspection Bureau of Massachusetts  
Attention: Customer Service Department  
101 Arch Street, 5<sup>th</sup> Floor  
Boston, MA 02110  
[www.wcribma.org](http://www.wcribma.org)

**Company Address**

A.I.M. Mutual Insurance Co  
54 Third Avenue  
P.O. Box 4070  
Burlington, MA 01803-0970

Commissioner of Insurance  
Division of Insurance  
Department of Banking and Insurance  
1000 Washington St 8<sup>th</sup> Floor  
Boston, MA 02118-2218



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**MASSACHUSETTS LIMITED OTHER STATES INSURANCE ENDORSEMENT**

PART THREE-OTHER STATES INSURANCE of the policy is replaced by the following:

**A. How This Insurance Applies:**

1. We will pay promptly, when due, the benefits required of you by the workers compensation law of any state other than Massachusetts, but only if the claim for such benefits involves work performed by a Massachusetts employee.
2. If we are not permitted to pay the benefits directly to persons entitled to them under circumstances described in item 1. above, we will reimburse you for the benefits required to be paid.

**IMPORTANT NOTICE!**

If you hire any employees to work outside Massachusetts or begin operations in any state other than Massachusetts, you must obtain insurance coverage in that state and do whatever else may be required under that state's law, as this Limited Other States Endorsement does not satisfy the requirements of that state's workers compensation insurance law.

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

(The information below is required only when this endorsement is issued subsequent to preparation on the policy.)

Endorsement Effective 12/01/2012

Policy No. 6003318012012

Endorsement No.

Insured Sterling Suffolk Racecourse LLC

Premium \$

Insurance Company A.I.M. Mutual Insurance Co

Countersigned By \_\_\_\_\_

WC 20 03 06 A  
(Ed. 9-94)

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**MASSACHUSETTS ASSIGNED RISK POOL ELIGIBILITY ENDORSEMENT**

The following provision is added to the Policy in Part Six - Conditions:

**F. Assigned Risk Eligibility**

1. You are unable to obtain coverage through the Massachusetts voluntary workers compensation insurance market.
2. You will not be in default of premium on any Massachusetts workers compensation insurance policy;
3. You will have complied and will continue to comply with all laws, orders, rules and regulations in force and effect relating to the welfare, health and safety of your employees, including, but not limited to:
  - a. You will allow us to make a careful inspection of your operation for the purpose of measuring the hazards, making recommendations for the health and safety of employees, and determining the rate or rates which will be adequate and reasonable for this insurance;
  - b. You will comply with our reasonable recommendations aimed at controlling or reducing the hazard(s) insurance against;
  - c. You will keep records of information needed to compute premium and provide us with copies of those records when we ask for them;
  - d. You will let us examine and audit your records and otherwise fully cooperate with our attempts to conduct premium audits or inspect the premises for loss control purposes.

Your compliance with each eligibility condition is material to the continuation of Assigned Risk Pool coverage. We may, to the extent allowed by the Massachusetts law, initiate a mid-term cancellation, if you fail to comply with any of these policy conditions.

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

(The information below is required only when this endorsement is issued subsequent to preparation on the policy.)

Endorsement Effective 12/01/2012  
Insured Sterling Suffolk Racecourse LLC

Policy No. 6003318012012

Endorsement No.  
Premium \$

Insurance Company A.I.M. Mutual Insurance Co

Countersigned by \_\_\_\_\_

**MASSACHUSETTS PENDING PREMIUM CHANGE ENDORSEMENT**

A filing is being considered by the Massachusetts Division of Insurance which may result in premiums different from those shown on the policy. If it does, we will issue an endorsement to show the new premiums and their effective date.

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.(The information below is required only when this endorsement is issued subsequent to preparation on the policy.)

Endorsement Effective 12/01/2012

Policy No. 6003318012012

Endorsement No.

Insured Sterling Suffolk Racecourse LLC

Premium \$

Insurance Company A.I.M. Mutual Insurance Co

Countersigned by \_\_\_\_\_

WC 20 04 01  
(Ed. 11/90)



**MASSACHUSETTS PREMIUM DUE DATE ENDORSEMENT**

**WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY**

**WC 20 04 05**

**Original Printing**

**Effective June 1, 2001**

**Standard**

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**MASSACHUSETTS PREMIUM DUE DATE ENDORSEMENT**

Section D of Part Five of the Policy is replaced by this provision:

**PART FIVE  
PREMIUM**

**D. Premium Payments** is amended to read:

You will pay all premium when due. You will pay the premium even if part or all of a workers compensation law is not valid. **The audit and retrospective premiums shall be paid by the due date indicated on the billing statement.**

1<sup>st</sup> Reprint

Effective July 1, 2008

Standard

**MASSACHUSETTS CANCELLATION ENDORSEMENT**

This endorsement applies only to the insurance provided by the policy because Massachusetts is shown in item 3.A. of the information page.

The **Cancellation** Condition of the policy by the following:

**Cancellation**

1. You may cancel this policy by mailing or delivering to us advance written notice requesting cancellation. Such cancellation shall not be effective until ten days after written notice is given by us to The Workers' Compensation Rating and Inspection Bureau of Massachusetts (Bureau), or until notice has been received by the Bureau that you have secured insurance from another insurance company, whichever occurs first. **Our notice to the Bureau may be given by electronic transmission.**
  
2. We may cancel this policy only if based on one or more of the following reasons: (i) nonpayment of premium; (ii) fraud or material misrepresentation affecting your policy; or (iii) a substantial increase in the hazard insured against. Such cancellation shall not be effective until ten days after written notice is given by us to you and The Workers' Compensation Rating and Inspection Bureau Massachusetts (Bureau), or until notice has been received by the Bureau that you have secured insurance from another insurance company, whichever occurs first. **Our notice to the Bureau may be given by electronic transmission.**
  
3. We will mail or deliver the notice of cancellation to you at your last address, which shall be the mailing address shown in item 1 of the Information Page or the change of mailing address shown in an Endorsement to the Policy. Pursuant to M.G.L. Chapter 175, Section 187C a written notice of cancellation shall be deemed effective when mailed by us if we obtain a certificate of mailing receipt from the United States Postal Service showing your name and address as stated in the policy.
  
4. Any of these provisions that conflict with the law that controls the cancellation of this insurance policy is charged by this statement to comply with the law.

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated. (The information below is required only when this endorsement is issued subsequent to preparation on the policy.)

Endorsement Effective 12/01/2012

Policy No. 6003318012012

Endorsement No.  
Premium \$

Insured Sterling Suffolk Racecourse LLC

Insurance Company A.I.M. Mutual Insurance Co

Countersigned by \_\_\_\_\_

**MASSACHUSETTS POLICY DEFINITION ENDORSEMENT**

In the General Section, Part A. - The Policy, is replaced by the following:

This policy includes at its effective date the Information Page, all endorsements and schedules listed there, and your application for insurance. It is a contract of insurance between you (the employer named in Item 1 of the Information Page) and us (the insurer named on the Information Page). The only agreements relating to this insurance are stated in this policy. The terms of this policy may not be changed or waived except by endorsement issued by us to be part of this policy.

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

(The information below is required only when this endorsement is issued subsequent to preparation on the policy.)

Endorsement Effective 12/01/2012  
Insured Sterling Suffolk Racecourse LLC

Policy No. 6003318012012

Endorsement No.  
Premium \$

Insurance Company A.I.M. Mutual Insurance Co

Countersigned by \_\_\_\_\_



# QUALITY ASSURANCE FORM

## Help Us To Serve You Better

Every effort has been made to produce a quality product for you. Please review this transaction, and if it is incorrect list the correction needed in the space provided below and fax this Quality Assurance Form to us at 877-269-3277

Questions pertaining to any transaction should be referred to  
NY Metro Branch at 212-440-2525

Please send routine requests via standard ACORD forms through the same method you are using today. The preferred method is by fax to 877-269-3277

**Insured/Account Name:** STERLING SUFFOLK RACE COURSE LLC

**Policy Number:** L 2097865610

**Line of Business:** CUP

**Agent Name:** KRAUTER & COMPANY, LLC

**Producer code:** 046077

**Branch:** NEW YORK CITY

**Transaction Type:** Endorsement

**Transaction Effective Date:** 12/01/2012

Your Transaction was processed by Commercial Insurance Center - Chicago, IL

**C ID:** BY CAB7748

\_\_\_\_\_ **Transaction Incorrect – See Below.**

\_\_\_\_\_ **Transaction Processed Correctly**

**Correction needed:**



30020001020978656109158



**END OF COPY**

Commercial Umbrella

Endorsement Declaration

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<b>POLICY NUMBER</b> L 2097865610	<b>COVERAGE PROVIDED BY</b> CONTINENTAL CASUALTY COMPANY 333 S. WABASH CHICAGO, IL. 60604	<b>FROM - POLICY PERIOD - TO</b> 12/01/2012 12/01/2013
	<b>INSURED NAME AND ADDRESS</b> STERLING SUFFOLK RACE COURSE LLC 111 WALDEMAR AVE BOSTON, MA 02128-1035	
<b>AGENCY NUMBER</b> 046077	<b>AGENCY NAME AND ADDRESS</b> KRAUTER & COMPANY, LLC 18TH FLOOR 1350 AVENUE OF THE AMERICAS NEW YORK, NY 10019 Phone Number: (212)596-3400	
<b>BRANCH NUMBER</b> 030	<b>BRANCH NAME AND ADDRESS</b> NEW YORK CITY 40 WALL STREET NEW YORK, NY 10005 Phone Number: ( ) -	

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This endorsement changes your policy. Please read it carefully.

This endorsement results in no change in premium.

**PREMIUM**

Minimum Premium:	\$53,933	Annual	Total Advance Premium:	\$ .00
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**POLICY NUMBER**  
L 2097865610

**INSURED NAME AND ADDRESS**  
STERLING SUFFOLK RACE COURSE LLC  
111 WALDEMAR AVE  
BOSTON, MA 02128-1035

**CONFIDENTIAL**

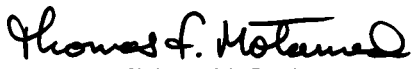
FORMS AND ENDORSEMENTS SCHEDULE

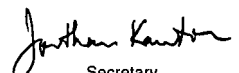
These following forms have been added to your policy

<b>Form Number</b>		<b>Form Title</b>
G56015B	11/1991	AMENDATORY ENDORSEMENT-EFF 12/1/2012

---

Countersignature

  
Chairman of the Board

  
Secretary



**POLICY NUMBER**

L 2097865610

**INSURED NAME AND ADDRESS**

STERLING SUFFOLK RACE COURSE LLC  
111 WALDEMAR AVE

BOSTON, MA 02128-1035

**POLICY CHANGES**

**AMENDATORY ENDORSEMENT-EFF 12/1/2012**

This Change Endorsement changes the Policy. Please read it carefully. This Change Endorsement is a part of your Policy and takes effect on the effective date of your Policy, unless another effective date is shown.

THE FOLLOWING IS ADDED TO THE UNDERLYING SCHEDULE OF INSURANCE:

EMPLOYEE BENEFITS LIABILITY:

CARRIER: NEW HAMPSHIRE INS CO  
POLICY NUMBER: AIP0000544738702  
EFF DATE 12/1/2012 EXP DATE 12/1/2013  
\$1,000,000 EACH OCCURRENCE/ \$1,000,000 AGGREGATE  
RETRO DATE: 12/1/03

THE FOLLOWING IS AMENDED TO THE UNDERLYING SCHEDULE:

HORSE LIABILITY:

POLICY NUMBER IS AMENDED FROM TBD TO AIP0000544738702  
LIMITS ARE AMENDED TO:  
\$1,000,000 PER HORSE  
\$2,000,000 PER OCCURRENCE  
\$2,000,000 AGGREGATE

ALL OTHER TERMS AND CONDITIONS REMAIN THE SAME.



*Thomas F. Motamed*  
Chairman of the Board

*Jonathan Kantor*  
Secretary

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**END OF COPY**

# QUALITY ASSURANCE FORM

## Help Us To Serve You Better

Every effort has been made to produce a quality product for you. Please review this transaction, and if it is incorrect list the correction needed in the space provided below and fax this Quality Assurance Form to us at 877-269-3277

Questions pertaining to any transaction should be referred to  
NY Metro Branch at 212-440-2525

Please send routine requests via standard ACORD forms through the same method you are using today. The preferred method is by fax to 877-269-3277

**Insured/Account Name:** STERLING SUFFOLK RACE COURSE LLC

**Policy Number:** L 2097865610

**Line of Business:** CUP

**Agent Name:** KRAUTER & COMPANY, LLC

**Producer code:** 046077

**Branch:** NEW YORK CITY

**Transaction Type:** Renewal

**Transaction Effective Date:** 12/01/2012

Your Transaction was processed by Commercial Insurance Center - Chicago, IL

**C ID:** BY C032592

\_\_\_\_\_ **Transaction Incorrect – See Below.**

\_\_\_\_\_ **Transaction Processed Correctly**

**Correction needed:**

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**END OF COPY**



**Commercial Umbrella**

**Renewal Declaration**

<p><b>POLICY NUMBER</b> L 2097865610</p>	<p><b>COVERAGE PROVIDED BY</b> CONTINENTAL CASUALTY COMPANY 333 S. WABASH CHICAGO, IL. 60604</p> <p><b>INSURED NAME AND ADDRESS</b> STERLING SUFFOLK RACE COURSE LLC 111 WALDEMAR AVE BOSTON, MA 02128-1035</p>	<p><b>FROM - POLICY PERIOD - TO</b> 12/01/2012 12/01/2013</p>
<p><b>AGENCY NUMBER</b> 046077</p>	<p><b>AGENCY NAME AND ADDRESS</b> KRAUTER &amp; COMPANY, LLC 18TH FLOOR 1350 AVENUE OF THE AMERICAS NEW YORK, NY 10019 Phone Number: (212)596-3400</p>	
<p><b>BRANCH NUMBER</b> 030</p>	<p><b>BRANCH NAME AND ADDRESS</b> NEW YORK CITY 40 WALL STREET NEW YORK, NY 10005 Phone Number: ( ) -</p>	

This policy becomes effective and expires at 12:01 A.M. standard time at your mailing address on the dates shown above.

The Named Insured is a Corporation.

Your policy is composed of this Declarations, with the attached Coverage Forms, and Endorsements if any. The Policy Forms and Endorsement Schedule shows all forms applicable to this policy at the time of policy issuance.

**PREMIUM**

Premium Basis	Estimated Exposure	Rate	Estimated Advance Premium
Flat Charge			\$53,933

Minimum Premium: \$53,933 Annual Total Advance Premium: \$53,933.00

Your Premium includes the following amount for Certified Acts of Terrorism Coverage \$539.00

Audit Period is Not Auditable

**POLICY NUMBER**  
L 2097865610

**INSURED NAME AND ADDRESS**  
STERLING SUFFOLK RACE COURSE LLC  
111 WALDEMAR AVE  
BOSTON, MA 02128-1035

**CONFIDENTIAL**

**POLICY LIMITS OF INSURANCE**

Each Incident: \$10,000,000      Aggregate: \$10,000,000

**RETAINED LIMIT**

Retained Limit: \$10,000

**SCHEDULE OF UNDERLYING INSURANCE**

<b>Underlying Insurer Policy Number Policy Period</b>	<b>Underlying Insurance</b>	<b>Coverages</b>	<b>Limits of Insurance</b>
New Hampshire Ins. Co.  AIP0000544738702  Eff: 12/01/2012 to 12/01/2013	General Liability	Each Occurrence Limit  General Aggregate Limit Doesn't apply per location Doesn't apply per project  Products/Completed Operations Aggregate Limit  Personal and Advertising Injury Liability Limit	\$1,000,000  \$3,000,000  \$2,000,000  \$1,000,000
Excelsior Insurance Company  BA1015850  Eff: 12/01/2012 to 12/01/2013	Automobile Liability	Combined Bodily Injury and Property Damage Liability: Each Accident Limit -----or----- Bodily Injury Liability: Each Person Limit Each Accident Limit  Property Damage Liability: Each Accident Limit	\$1,000,000  ----- \$ \$  \$
Assoc. Industries of Mass Mut Ins. Co.  VWC 6003318012010  Eff: 12/01/2012 to 12/01/2013	Employers Liability	Bodily Injury By Accident: Each Accident Limit  Bodily Injury By Disease: Each Employee Limit Policy Limit	\$100,000  \$100,000 \$500,000
New Hampshire Insurance Company  tbd  Eff: 12/01/2012 to 12/01/2013	Horse Liability	Each Horse Aggregate Limit	\$2,000,000 \$2,000,000 \$ \$

**POLICY NUMBER**  
L 2097865610

**INSURED NAME AND ADDRESS**  
STERLING SUFFOLK RACE COURSE LLC  
111 WALDEMAR AVE  
BOSTON, MA 02128-1035

**CONFIDENTIAL**

**FORMS AND ENDORSEMENTS SCHEDULE**

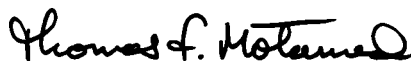
<b>Form Number</b>		<b>Form Title</b>
G56015B	11/1991	Insured List
G56015B	11/1991	Lead Paint Exclusion
G115922A	06/1995	Aircraft Limitation
G133136B	07/2005	Bridge Endorsement
G147178B	07/2006	Financial Service Company As Insured
G15057C	06/2005	Commercial Umbrella Plus Coverage Part
G17900B	01/2004	Personal and Advertising Injury Limitation Endt
G18132B	07/2005	Employee Benefits Liability Limitation Endorsement
G300912A	02/2010	Pollution Exclusion Amendment
G300982A	07/2010	Crisis Management Coverage Endorsement
G301134A	10/2010	Key Employee Replacement Expense Coverage Endt
IL0017	11/1998	Common Policy Conditions
P56015B	11/1991	Athletic or Sports Participants Exclusion

**\*\*\* PLEASE READ THE ENCLOSED IMPORTANT NOTICES CONCERNING YOUR POLICY \*\*\***

<b>Form Number</b>		<b>Form Title</b>
G144233F	01/2008	Notice - Offer of Terrorism Disclosure of Premium



\_\_\_\_\_  
Countersignature

  
Chairman of the Board

  
Secretary

**POLICY NUMBER**

L 2097865610

**INSURED NAME AND ADDRESS**

STERLING SUFFOLK RACE COURSE LLC  
111 WALDEMAR AVE

BOSTON, MA 02128-1035

**POLICY CHANGES**

**Insured List**

This Change Endorsement changes the Policy. Please read it carefully.  
This Change Endorsement is a part of your Policy and takes effect on the  
effective date of your Policy, unless another effective date is shown.

Sterling Suffolk Race Course LLC



*Thomas F. Motamed*  
Chairman of the Board

*Jonathan Kantor*  
Secretary



**POLICY NUMBER**

L 2097865610

**INSURED NAME AND ADDRESS**

STERLING SUFFOLK RACE COURSE LLC  
111 WALDEMAR AVE

BOSTON, MA 02128-1035

**POLICY CHANGES**

**Lead Paint Exclusion**

**This Change Endorsement changes the Policy. Please read it carefully. This Change Endorsement is a part of your Policy and takes effect on the effective date of your Policy, unless another effective date is shown.**

This endorsement modifies insurance provided under the following:  
COMMERCIAL UMBRELLA PLUS COVERAGE PART  
EXCESS THIRD PARTY LIABILITY POLICY

It is agreed that this insurance does not apply to any liability arising from past, present or future claims in whole or in part, either directly or indirectly, out of the manufacture, distribution, sale, resale, rebranding, installation, repair, removal, encapsulation abatement, replacement or handling of, or exposure to, lead paint or products containing lead whether or not the lead is, or was at any time, airborne as a particle, contained in a product ingested, inhaled transmitted in any fashion, or found in any form whatsoever.



*Thomas F. Mohamed*  
Chairman of the Board

*Jonathan Kantor*  
Secretary

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**  
**AIRCRAFT LIMITATION**

This endorsement modifies insurance provided under the following:

COMMERCIAL UMBRELLA PLUS COVERAGE PART

It is agreed that exclusion **h.** of **SECTION I – COVERAGES** is deleted and replaced by the following:

This insurance does not apply to:

- h.** Liability arising out of the ownership, maintenance, operation, use, or “loading or unloading” of any “aircraft”.

However, this exclusion does not apply if liability for “aircraft” is scheduled in this policy’s Schedule of Underlying Insurance for the full limits shown, and then only for such liability for which coverage is afforded under the “scheduled underlying insurance”.

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

## **BRIDGE ENDORSEMENT**

This endorsement modifies insurance provided under the following:

### **COMMERCIAL UMBRELLA PLUS COVERAGE PART**

Any "state amendatory" endorsement which is listed in the Commercial Umbrella Plus Coverage Part Declarations will modify the Commercial Umbrella Plus Coverage Part, even if the endorsement does not state that it will modify the Commercial Umbrella Coverage Part.

For the purposes of this endorsement, a "state amendatory" endorsement means any Insurance Services

Office (ISO) state cancellation, nonrenewal, or amendatory endorsement which begins with an IL or CG prefix.

When a "state amendatory" endorsement is attached to the Commercial Umbrella Plus Coverage Part, the term claim, as used in the "state amendatory" endorsement, shall mean "ultimate net loss" as defined in the Commercial Umbrella Plus Coverage Part.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**  
**FINANCIAL SERVICE COMPANY AS INSURED**

This endorsement modifies insurance provided under the following:

**COMMERCIAL UMBRELLA PLUS COVERAGE PART**

The following exclusion is added to Paragraph 2. **Exclusions, SECTION I – COVERAGES:**

This insurance does not apply to "bodily injury," "property damage," "personal and advertising injury" arising out of:

**A.** The rendering of or the failure to render "financial services" by any insured to others. For the purpose of this endorsement, "financial services" include but are not limited to:

1. Planning, administering or advising on:
  - a. Any:
    - (1) Investment,
    - (2) Pension,
    - (3) Annuity,
    - (4) Savings,
    - (5) Checking; or
    - (6) Individual retirement plan, fund or account;
  - b. The issuance or withdrawal of any bond, debenture, stock or other securities;
  - c. The trading of securities, commodities or currencies; or
  - d. Any acquisitions or mergers;
2. Acting as a dividend disbursing agent, exchange agent, redemption or subscription agent, warrant or scrip agent, fiscal or paying agent, tax withholding agent, escrow agent, clearing agent, or electronic funds transfer agent;
3. Lending, or arranging for the lending of, money, including credit card, debit card, leasing or mortgage operations or activities or interbank transfers;

4. Repossessing of real or personal property from a borrower or acting as an assignee for the benefit of creditors;
5. Checking or reporting of credit;
6. Maintaining of financial accounts or records;
7. Tax planning, tax advising or the preparation of tax returns; or
8. Selling or issuing travelers checks, letters of credit, certified checks, bank checks or money orders.

**B.** The rendering or failure to render "insurance company services." For the purpose of this endorsement "insurance company services" include but are not limited to:

1. Effecting or failing to effect, or any obligations assumed under a contract of insurance, reinsurance, suretyship, annuity or endowment;
2. Obligations as a member of, or contributor to, any insolvency or guaranty fund or similar organizations or associations;
3. Investigating, defending or settling any claim;
4. Auditing or maintenance of accounts or records of others;
5. Providing safety, engineering, loss or risk control or inspection services;
6. Investing, lending or similar activities;
7. Fiduciary, trustee or similar activities.

**C.** The ownership, maintenance or use, including all related operations, of any property for which you are acting in a fiduciary or representative capacity.

All other terms, conditions and exclusions of this policy remain unchanged.

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## COMMERCIAL UMBRELLA PLUS COVERAGE PART

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

Throughout this policy the words "you" and "your" refer to the Named Insured identified under **SECTION II – WHO IS AN INSURED** of this policy.

The word "insured" means any person or organization qualifying as such under **SECTION II – WHO IS AN INSURED**.

The words "we," "us" and "our" refer to the Company providing this insurance.

Other words and phrases that appear in quotation marks have special meaning. Refer to **SECTION V – DEFINITIONS**.

### SECTION I – COVERAGES

#### 1. Insuring Agreement

We will pay on behalf of the insured those sums in excess of "scheduled underlying insurance," "unscheduled underlying insurance" or the "retained limit" that the insured becomes legally obligated to pay as "ultimate net loss" because of "bodily injury," "property damage" or "personal and advertising injury" to which this insurance applies.

a. This insurance applies to "bodily injury" and "property damage" only if:

- (1) The "bodily injury" or "property damage" is caused by an "incident" anywhere in the world;
- (2) The "bodily injury" or "property damage" occurs during the policy period; and
- (3) With respect to "bodily injury" or "property damage" that continues, changes or resumes so as to occur during more than one policy period, both of the following conditions are met:
  - (i) Prior to the policy period, no "authorized insured" knew that the "bodily injury" or "property damage" had occurred, in whole or in part; and
  - (ii) During the policy period, an "authorized insured" first knew that the "bodily injury" or "property damage" had occurred, in whole or in part.

For purposes of this Paragraph (1) a.(3) only, if (a) "bodily injury" or "property damage" that occurs during this policy period does not continue, change or resume after the

termination of this policy period; and (b) no "authorized insured" first knows of this "bodily injury" or "property damage" until after the termination of this policy period, then such first knowledge will be deemed to be during this policy period.

- b. "Bodily injury" or "property damage" which occurs during the policy period and was not, prior to the policy period, known to have occurred by any "authorized insured" includes any continuation, change or resumption of that "bodily injury" or "property damage" after the end of the policy period.
- c. "Bodily injury" or "property damage" will be deemed to have been known to have occurred at the earliest time when any "authorized insured":
  - (1) Reports all, or any part, of the "bodily injury" or "property damage" to us or any other insurer;
  - (2) Receives a written or verbal demand, claim or "suit" for damages because of the "bodily injury" or "property damage"; or
  - (3) Becomes aware by any other means that "bodily injury" or "property damage" has occurred or has begun to occur.
- d. This insurance applies to "personal and advertising injury" caused by an "incident" committed anywhere in the world during the policy period.

If we are prevented by law, statute or otherwise from paying on behalf of the insured, then we will indemnify the insured for those sums that the insured is legally obligated to pay as "ultimate net loss" because of "bodily injury," "property damage" or "personal and advertising injury" to which this insurance applies.

#### 2. Exclusions

This Insurance does not apply to:

##### a. Expected or Intended Injury

"Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" resulting from the use of reasonable force to protect persons or property. This exclusion does not apply to Employers Liability claims for "bodily injury" covered by "scheduled underlying insurance."

##### b. Contractual Liability

"Bodily injury," "property damage" or "personal and advertising injury" for which the insured is obligated to pay damages by reason of the

assumption of liability in a contract or agreement. This exclusion does not apply to liability for "ultimate net loss":

- (1) That the insured would have in the absence of the contract or agreement; or
- (2) Because of "bodily injury" or "property damage" assumed in a contract or agreement that is an "insured contract," provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement.

**c. "Personal and advertising injury" Exclusions**

"Personal and advertising injury":

- (1) Caused by or at the direction of the insured with the knowledge that the act would violate the rights of another and would inflict "personal and advertising injury";
- (2) Arising out of oral or written publication of material, if done by or at the direction of the insured with knowledge of its falsity;
- (3) Arising out of oral or written publication of material whose first publication took place before the beginning of the policy period;
- (4) Arising out of a criminal act committed by or at the direction of the insured;
- (5) Arising out of a breach of contract, except an implied contract to use another's advertising idea in your "advertisement";
- (6) Arising out of the failure of goods, products or services to conform with any statement of quality or performance made in your "advertisement";
- (7) Arising out of the wrong description of the price of goods, products or services stated in your "advertisement";
- (8) Arising out of the infringement of copyright, patent, trademark, trade secret or other intellectual property rights;

However, this exclusion does not apply to infringement, in your "advertisement," of copyright, trade dress or slogan;

- (9) Committed by an insured whose business is:
  - (a) Advertising, broadcasting, publishing or telecasting;
  - (b) Designing or determining content of websites for others; or
  - (c) An Internet search, access, content or service provider;

However, this exclusion does not apply to paragraphs **10. a., b. and c.** of "personal and advertising injury" under **SECTION V – DEFINITIONS**;

For the purposes of this exclusion, the placing of frames, borders or links, or advertising, for you or others anywhere on the Internet, is not by itself, considered the business of advertising, broadcasting, publishing or telecasting.

- (10) Arising out of an electronic chatroom or bulletin board the insured hosts, owns, or over which the insured exercises control; or
- (11) Arising out of the unauthorized use of another's name or product in your e-mail address, domain name or metatag, or any other similar tactics to mislead another's potential customers.

**d. Workers' Compensation and Similar Laws**

Any obligation of the insured under a:

- (1) Workers' compensation;
- (2) Disability benefits; or
- (3) Unemployment compensation law or any similar law.

**e. Employers Liability**

"Bodily injury" to:

- (1) An employee of the insured arising out of and in the course of:
  - (a) Employment by the insured; or
  - (b) Performing duties related to the conduct of the insured's business; or
- (2) The spouse, child, parent, brother or sister of that employee as a consequence of (1) above.

This exclusion applies:

- (1) Whether the insured may be liable as an employer or in any other capacity; and
- (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

This exclusion does not apply:

- (1) To liability assumed by the insured under an "insured contract"; or
- (2) Only to the extent that coverage is provided by "scheduled underlying insurance."

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**f. Pollution**

- (1) "Bodily injury" or "property damage" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":
- (a) At or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to, any insured;
  - (b) At or from any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste;
  - (c) Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for any insured or any person or organization for whom you may be legally responsible; or
  - (d) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations:
    - (i) If the "pollutants" are brought on or to the premises, site or location in connection with such operations by such insured, contractor or subcontractor; or
    - (ii) If the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants."
  - (e) That are, or that are contained in property that is:
    - (i) Being transported or towed by, or handled for movement into, onto or from a covered "automobile";
    - (ii) Otherwise in the course of transit;
    - (iii) Being stored, disposed of, treated or processed in or upon the covered "automobile";
  - (f) Before the "pollutants" or property in which the "pollutants" are contained are moved from the place where they are accepted by the insured for movement into or onto the covered "automobile"; or
  - (g) After the "pollutants" or property in which the "pollutants" are contained are moved

from the covered "automobile" to the place where they are finally:

- (i) Delivered;
- (ii) Disposed of; or
- (iii) Abandoned

by the insured.

Subparagraphs (a) and (d)(i) do not apply to "bodily injury" or "property damage" arising out of heat, smoke or fumes from a hostile fire.

As used in this exclusion, a hostile fire means one which becomes uncontrollable or breaks out from where it was intended to be.

Subparagraph (d)(i) does not apply to "bodily injury" or "property damage" arising out of the escape of fuels, lubricants, or other operating fluids which are needed to perform the normal electrical, hydraulic or mechanical functions necessary for operation of "mobile equipment" or its parts, if such fuels, lubricants or other operating fluids escape from a vehicle part designed to hold, store or receive them. This exception does not apply if the "bodily injury" or "property damage" arises out of the intentional discharge, dispersal or release of the fuels, lubricants or other operating fluids, or if such fuels, lubricants or other operating fluids are brought on or to the premises, site or location with the intent that they be discharged, dispersed or released as part of the operations being performed by such insured, contractor or subcontractor.

Subparagraph (e)(iii) does not apply to fuels, lubricants, fluids, exhaust, gases or other similar "pollutants" that are needed for or result from the normal electrical, hydraulic or mechanical functioning of the covered "automobile" or its parts if the "pollutants" escape or are discharged, dispersed or released directly from an "automobile" part designed by its manufacturer to hold, store, receive or dispose of such "pollutants."

Subparagraphs (f) and (g) do not apply if the "pollutants" or property in which the "pollutants" are contained are upset, overturned or damaged as a result of the maintenance or use of a covered "automobile" and the discharge, dispersal, release or escape of the "pollutants" is caused directly by such upset, overturn or damage.

- (2) "Personal and advertising injury" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants" at any time.

- (3) Any loss, cost or expense arising out of any:
  - (a) Request, demand or order that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants"; or
  - (b) Claim or "suit" by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of "pollutants."

**g. Watercraft**

"Bodily injury" or "property damage" arising out of the:

- (1) Ownership;
- (2) Maintenance;
- (3) Use; or
- (4) Entrustment to others

of a "watercraft" owned or operated by or rented or loaned to an insured. Use includes operation or "loading or unloading."

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training, or monitoring of others by that insured, if the "incident" which caused the "bodily injury" or "property damage" involved the ownership, maintenance, use or entrustment to others of any watercraft that is owned or operated by or rented or loaned to any insured.

This exclusion does not apply to:

- (1) A "watercraft" while ashore on premises you own or rent;
- (2) A "watercraft" you do not own that is:
  - (a) Less than 55 feet long; and
  - (b) Not being used to carry persons or property for a charge; or
- (3) Liability assumed under an "insured contract" for the ownership, maintenance or use of "watercraft."

**h. Aircraft**

The ownership, maintenance, operation, use, entrustment to others or "loading or unloading" of any "aircraft":

- (1) Owned by an insured; or
- (2) Chartered without crew by an insured or on an insured's behalf.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training, or monitoring of others by that insured, if the "incident" which caused the "bodily injury" or "property damage" involved the ownership, maintenance, use or entrustment to others of any "aircraft" that is owned or operated by or rented or loaned to any insured.

**i. War**

Any liability arising out of:

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

**j. Damage to Property**

"Property damage" to:

- (1) Property you own, rent, or occupy, including any costs or expenses incurred by you, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property;
- (2) Premises you sell, give away or abandon, if the "property damage" arises out of any part of those premises;
- (3) Property loaned to you;
- (4) Personal property in the care, custody or control of the insured;
- (5) That particular part of real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the "property damage" arises out of those operations; or
- (6) That particular part of any property that must be restored, repaired or replaced because "your work" was incorrectly performed on it.

Paragraph (2) of this exclusion does not apply if the premises are "your work" and were never occupied, rented or held for rental by you.

Paragraphs (3), (4), (5) and (6) of this exclusion do not apply to liability assumed under a sidetrack agreement.

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Paragraph (6) of this exclusion does not apply to "property damage" included in the "products-completed operations hazard."

**k. Damage to your Product**

"Property damage" to "your product" arising out of it or any part of it.

**l. Damage to you Work**

"Property damage" to "your work" arising out of it or any part of it and included in the "products-completed operations hazard."

This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.

**m. Damage to Impaired Property or Property Not Physically Injured**

"Property damage" to "impaired property" or property that has not been physically injured, arising out of:

- (1) A defect, deficiency, inadequacy or dangerous condition in "your product" or "your work"; or
- (2) A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to "your product" or "your work" after it has been put to its intended use.

**n. Recall of Products, Work Or Impaired Property**

Damages claimed for any loss, cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:

- (1) "Your product";
- (2) "Your work"; or
- (3) "Impaired property";

if such product, work, or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it.

**o. E.R.I.S.A.**

Liability for alleged or actual violations of the Employees Retirement Income Security Act of 1974 or any amendments or additions thereto.

**p. Directors and Officers**

Liability for a wrongful act, error, omission or breach of duty by an insured in the performance of the office of director or officer of an organization.

**q. Uninsured/Underinsured Motorist and Similar Laws**

Liability imposed on the insured under an uninsured/underinsured motorist law, a personal injury protection law, a reparations benefit law or other similar law.

**r. Electronic Data**

Any liability arising out of the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate "electronic data."

**s. Nonemployment Related Discrimination**

To any alleged or actual nonemployment related discrimination committed intentionally against a person.

**t. Asbestos**

- (1) "Bodily Injury," "property damage" or "personal and advertising injury" arising out of the actual, alleged or threatened exposure at any time to "asbestos"; or
- (2) Any loss, cost or expense that may be awarded or incurred:
  - (a) By reason of a claim or "suit" for any such injury or damage; or
  - (b) In complying with a governmental direction or request to test for, monitor, clean up, remove, contain or dispose of "asbestos."

**u. Fungi and Microbes**

- (1) "Bodily injury," "property damage" or "personal and advertising injury," which would not have occurred, in whole or in part, but for the actual, alleged or threatened inhalation of, ingestion of, contact with, exposure to, existence of, or presence of any "fungi or microbes"; or
- (2) Any loss, cost, or expense arising out of the testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, remediating, or disposing of, or in any way responding to or assessing the effects of "fungi or microbes" by any insured or by anyone else.

This exclusion applies regardless of any other cause or event that contributes concurrently or in any sequence to such injury or damage, loss, cost or expense.

**v. Silica**

- (1) "Bodily injury" arising in whole or in part out of the actual, alleged or threatened respiration or ingestion at any time of "silica;" or

(2) "Personal and advertising injury" or "property damage" arising in whole or in part out of the actual, alleged or threatened presence of "silica."

**w. Named Insured vs. Named Insured**

Any liability arising out of claims or "suits" by a named insured against another named insured.

**x. Employment Related Practices**

Any liability arising out of:

- (1) A refusal to employ;
- (2) Termination of employment;
- (3) Demotion, evaluation, reassignment, discipline;
- (4) Coercion, defamation, discrimination, harassment or humiliation; or

any other employment related practices, policies, acts or omissions.

**y. Terrorism Limitation**

"Bodily injury" or "property damage" arising out of any act of terrorism, unless, and then only to the extent that coverage is provided by "scheduled underlying insurance."

**z. Liquor Liability Limitation**

"Bodily injury" or "property damage" for which an insured may be held liable by reason of:

- (1) Causing or contributing to the intoxication of any person;
- (2) The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or
- (3) Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages;

unless, and then only to the extent that coverage is provided by "scheduled underlying insurance."

**aa. Auto and Mobile Equipment Limitation**

Any liability arising out of the:

- (1) Ownership;
- (2) Maintenance;
- (3) Use; or
- (4) Entrustment to others

of an "automobile" or "mobile equipment" owned or operated by or rented or loaned to an insured unless, and then only to the extent that coverage is provided by "scheduled underlying insurance."

To the extent that this insurance applies to an "automobile" or "mobile equipment" it is further subject to the pollution exclusion, exclusion f. of this policy.

Use includes operation or "loading or unloading."

**bb. Do Not Call**

Any liability arising directly or indirectly out of any action or omission that violates or is alleged to violate:

- (1) The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law; or
- (2) The CAN-SPAM Act of 2003, including any amendment of or addition to such law; or
- (3) Any statute, ordinance or regulation, other than the TCPA or the CAN-SPAM Act of 2003, that prohibits or limits the sending, transmitting, communicating or distribution of material or information.

**SECTION II – WHO IS AN INSURED**

1. Named Insured means any individual or organization stated in the Declarations of this policy and if you are designated in the Declarations of this policy as:

a. An individual, you and your spouse, but only with respect to the conduct of a business of which you are the sole owner.

If you are designated in the Declarations of this policy as an individual, this policy shall not apply to liability arising out of your domestic or non-business activities. This does not apply to the ownership, maintenance, use or "loading or unloading" of any "automobile," or to the Personal Umbrella Liability Coverage Part.

b. A partnership or joint venture, you and your members, your partners, and their spouses, but only with respect to the conduct of your business.

No person or organization is an insured with respect to the conduct of any current or past partnership or joint venture that is not shown as a Named Insured in the Declarations.

c. An organization other than a partnership or joint venture, you and your executive officers and directors, but only with respect to their duties as your officers or directors. Your stockholders are also named insureds, but only with respect to their liability as stockholders.

d. A limited liability company, you and your members, but only with respect to the conduct of your business. Your managers are also named insureds but only with respect to their duties as your managers.

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No person or organization is an insured with respect to the conduct of any current or past limited liability company that is not shown as a Named Insured in the Declarations.

- e. A corporation or organization, other than partnerships, joint ventures or limited liability companies, that you form, acquire or gain control of during the policy period, but only with respect to "bodily injury," "property damage" or "personal and advertising injury" taking place after you form, acquire or gain control of such corporation or organization.

**2. Insured means the Named Insured and:**

- a. Your "volunteer workers" only while performing duties related to the conduct of your business, or your employees, other than your executive officers and directors (if you are an organization other than a partnership, joint venture or limited liability company) or your members (if you are a limited liability company ) but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business. However, none of these employees or "volunteer workers" is an insured for:

**(1) "Bodily injury" or "personal and advertising injury":**

- (a)** To you; to your partners or members (if you are a partnership or joint venture) to your members (if you are a limited liability company) or to a co-employee while in the course of his or her employment or performing duties related to the conduct of your business, or to your other "volunteer workers" while performing duties related to the conduct of your business;
- (b)** To the spouse, child, parent, brother or sister of that co-employee or "volunteer worker" as a consequence of Paragraph **(1)(a)** above;
- (c)** For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraphs **(1)(a)** or **(b)** above; or
- (d)** Arising out of his or her providing or failing to provide professional health care services.

**(2) "Property damage" to property:**

- (a)** Owned, occupied or used by;
- (b)** Rented to, in the care, custody or control or, or over which physical control is being exercised for any purpose by

you, any of your employees, "volunteer workers" any partner or member (if you are a partnership or joint venture) or any member (if you are a limited liability company).

- b. A person or organization for whom you are required, by virtue of a written contract entered into prior to the "bodily injury," "property damage" or "personal and advertising injury" occurring or being committed, to provide the insurance that is afforded by this policy. This insurance applies only with respect to operations by you or on your behalf or to facilities you own or use, but only to the extent of the limits of insurance required by such contract, not to exceed the limits of insurance in this policy.

- c. Any other persons or organizations included as an insured under the provisions of the "scheduled underlying insurance" shown in the Declarations of this policy and then only for the same coverage, except for limits of insurance, afforded under such "scheduled underlying insurance."

However, If a blanket additional insured endorsement is attached to the general liability "scheduled underlying insurance" pursuant to a written or oral contract or agreement between you and another person or organization (called additional insured), this insurance is excess over such insurance provided to the additional insured subject to the following conditions:

- (1)** If the limits specified in the written contract or agreement are less than the limits provided by the "scheduled underlying insurance," then no coverage is provided to the additional insured under this policy.
- (2)** If the limits specified in the written contract or agreement are greater than the limits provided by the "scheduled underlying insurance," then this insurance is excess over the insurance provided by the "scheduled underlying insurance." The limits of insurance for the additional insured are the lesser of:
  - (i)** The limits specified in the written contract; or
  - (ii)** The limits of the "scheduled underlying insurance" plus the limits of this policy.

**SECTION III – LIMITS OF INSURANCE**

- 1. The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:
  - a. Insureds;
  - b. Claims made or "suits" brought;
  - c. Persons or organizations making claims or bringing "suits."

- d. "Automobiles," "aircraft" or "watercraft" to which this policy applies; or
  - e. Coverages under which loss is insured in this policy.
2. The limit of insurance shown in the Declarations as the Aggregate Limit is the most we will pay for the sum of all "ultimate net loss," to which this insurance applies and applies separately to all "ultimate net loss":
- a. Included in the "products-completed operations hazard";
  - b. To which, and in the same manner, an aggregate limit applies under "scheduled underlying insurance" other than "ultimate net loss" included in the "products-completed operations hazard"; and
  - c. To which no "scheduled underlying insurance" applies.

The Aggregate Limit does not apply to "ultimate net loss" for which no aggregate limit applies in the "scheduled underlying insurance."

3. Subject to 2. above, the limit of insurance shown in the Declarations as the Each Incident limit is the most we will pay for the sum of all "ultimate net loss" to which this insurance applies arising arising out of any one "incident."
4. In the event of reduction or exhaustion of the aggregate limits of insurance under "scheduled underlying insurance" solely by reason of payments of a combination of covered:
- a. Expenses;
  - b. Settlements; or
  - c. Judgments

paid thereunder as a result of "bodily injury," property damage" or "personal and advertising injury" taking place during this policy period, this policy shall, subject to this limit of insurance provision and to the remaining terms and provisions and conditions of this policy:

- a. Apply in excess of such reduction of "scheduled underlying insurance"; or
- b. Apply in place of the exhausted amount of "scheduled underlying insurance."

Nothing in a. or b. above shall serve to increase the limits of insurance shown in the Declarations.

5. The limits of this policy shall apply separately to:
- a. Each consecutive annual period; and
  - b. Remaining periods of less than 12 months;
- starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less

than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the limits of insurance.

## SECTION IV – CONDITIONS

### 1. Financial Impairment

Bankruptcy, rehabilitation, receivership, liquidation or other financial impairment of you or an "underlying insurer" shall neither relieve nor increase any of our obligations under this policy.

In the event there is diminished recovery or no recovery available to you as a result of such financial impairment of an insurer providing "scheduled underlying insurance," the coverage under this policy shall apply only in excess of the limits of insurance stated in the "scheduled underlying insurance." Under no circumstances shall we be required to drop down and replace the limits of insurance, or assume the obligations of a financially impaired insurer.

### 2. Duties of the Insured

- a. In the event of an "incident" which has not resulted in a claim or suit.

Whenever you have information of an "incident" which involves injuries or damages likely to involve this policy, written notice shall be given by or for you to us or to our authorized agent as soon as practicable. The notice shall contain:

- (1) Particular information sufficient to identify the insured;
- (2) Such information as can be reasonably obtained with respect to time, place and circumstances of the occurrence or offense; and
- (3) Names and addresses of the insured and of available witnesses.

- b. In the Event of Claims or Suit

You shall provide us with written notice as soon as practicable whenever:

- (1) A claim is made or "suit" is brought against you;
- (2) You receive notice that a right to bring claim or "suit" against you will be asserted; or
- (3) You obtain information that the obligation of "underlying insurers" to:
  - (a) Investigate;
  - (b) Defend;
  - (c) Pay on behalf of; or
  - (d) Indemnifyyou has ceased.

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Every demand, notice, summons, amended complaint or other process received by you or your representative shall be forwarded with each notice.

### 3. Legal Action Against Us

No legal action shall be brought against us unless you have fully complied with all the terms of this policy and the amount of your obligation to pay has been finally determined either by:

- a. Judgment against you after actual trial; or
- b. Written agreement between us, you and the claimant.

### 4. Other Insurance

This insurance is excess over and will not contribute with any other insurance available to the insured whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise. This condition does not apply to insurance purchased specifically to apply in excess of this insurance.

### 5. Premium Audit

- a. We will compute all premiums for this policy in accordance with our rules and rates.
- b. If the premium is shown in the Declarations as flat, the premium for this policy is not subject to adjustment.
- c. If the premium is shown in the Declarations as adjustable, the premium shown as the advance premium is a deposit premium only. At the close of each audit period we will compute the earned premium for that period. Audit premiums are due and payable on notice to the first Named Insured shown in the Declarations. If the sum of the advance and audit premiums paid for the policy term are greater than the earned premium, we will return the excess, subject to the minimum premium, to the first Named Insured shown in the Declarations.
- d. The first Named Insured shown in the Declarations must keep records of the information we need for premium computation, and send us copies at such times as we request.

### 6. Nonrenewal

If we decide not to renew this policy, we will mail or deliver to the first Named Insured shown in the Declarations written notice of the nonrenewal not less than 30 days before the expiration date.

If notice is mailed, proof of mailing will be sufficient proof of notice.

### 7. Severability of Interests

The insurance afforded applies separately to each insured against whom claim is made or "suit" is

brought. However, the inclusion of more than one insured shall not operate to increase the limits of insurance.

### 8. Annual Rating

If this policy is issued for a period in excess of one year, the premium may be revised on each annual anniversary in accordance with our rates and rules in effect at that time.

### 9. "Scheduled Underlying Insurance"

Material change in premium for "scheduled underlying insurance" shall be promptly reported to us. Premium for this policy may be adjusted to reflect changes in underlying insurance in accordance with our manuals in effect at the time of the change.

### 10. Maintenance of "Scheduled Underlying Insurance"

While this policy is in force you agree that the policies listed in the Declarations as "scheduled underlying insurance" and their renewals and replacements shall be maintained, without alterations of terms or conditions, in full effect during the term of this policy; except for reduction or exhaustion of the aggregate limits of insurance in the "scheduled underlying insurance," provided that such reduction or exhaustion is solely the result of "incidents" taking place during this policy period, and not before. If you fail to maintain "scheduled underlying insurance," this condition shall not invalidate this policy. However, in the event of such failure, we will only be liable to the same extent as if you had complied with this condition.

### 11. Appeals

If you or your "underlying insurers" elect not to appeal a judgment in excess of the limits of insurance afforded by the:

- a. "Scheduled underlying insurance";
- b. "Unscheduled underlying insurance"; or
- c. "Retained limit";

we may elect to appeal. Our limit of liability shall not be increased because of such appeal. We will, however, pay the following costs and expenses:

- a. All premium bonds to release attachments for an amount not in excess of the applicable limit of liability of this policy;
- b. All premiums on appeal bonds required in such defended "suit," but without obligation to apply for or furnish such bonds;
- c. Court fees;
- d. Costs and expenses taxed against you by the appellate court and interest accruing after entry of a judgment against you and before we have:

- (1) Paid;

- (2) Offered to pay; or
- (3) Deposited in court

the part of the judgment that is within the applicable limit of insurance. Where the "underlying insurers" terminate their liability to pay interest on the judgment by an offer to pay their limits, you shall demand that such limits be paid. If the appeal is successful, such amounts not obligated to be paid shall be returned to such "underlying insurer."

**12. Subrogation**

In the case of any payments by us under the coverages of this policy, we shall be subrogated to all rights of recovery against any other party which you may have and will cooperate with you and all other interests. Amounts recovered shall be apportioned in the following order:

- a. Amounts paid in excess of the payments under this policy shall first be reimbursed up to the amount paid by those, including you, who made such payments;
- b. We are then to be reimbursed up to the amount we paid;
- c. Any remainder shall be available to the interests of those over whom this coverage is in excess and who are entitled to claim such remainder.

Expenses necessary to the recovery of such amounts shall be divided between the interests concerned, including you, in the ratio of their respective recoveries as finally settled.

**13. Settlement of Claims or Suit**

We may pay, but are not obligated to pay, any part or all of the amount of the "retained limit" to effect settlement of a claim or "suit." Upon notification of the action taken you shall promptly reimburse us for such part of the "retained limit" that we had paid. All named insureds are jointly and severally responsible for our reimbursement and agree to make such reimbursement within 30 days after we give you written notice or demand for payment.

**14. Sole Agent**

The insured first named in the Declarations is authorized to act on behalf of all named insureds and other insureds with respect to:

- a. The giving and receiving of notice of cancellation; and
- b. Receiving return premium that may be payable under this policy.

The insured first named in the Declarations is responsible for the payment of premiums, but the other named Insureds jointly and severally agree to make

such payments in full if the insured first named fails to pay the amount due within 30 days after we give written notice or demand.

**15. Trade Sanctions**

In accordance with laws and regulations of the United States concerning economic and trade embargoes, this policy is void ab initio (void from its inception) with respect to any term or condition of this policy that violates any laws or regulations of the United States concerning economic and trade embargoes including, but not limited to the following:

- a. Any insured, or any person or entity claiming the benefits of an insured, who is or becomes a Specially Designated National or Blocked Person or who is otherwise subject to U.S. economic or trade sanctions;
- b. Any claim or "suit" that is brought in a Sanctioned Country or by a Sanctioned Country Government, where any action in connection with such claim or "suit" is prohibited by U.S. economic or trade sanctions;
- c. Any claim or "suit" that is brought by any Specially Designated National or Blocked Person or any person or entity who is otherwise subject to U.S. economic or trade sanctions;
- d. Property that is located in a Sanctioned Country or that is owned by, rented to or in the care, custody or control of a Sanctioned Country Government, where any activities related to such property are prohibited by U.S. economic or trade sanctions; or
- e. Property that is owned by, rented to or in the care, custody or control of a Specially Designated National or Blocked Person, or any person or entity who is otherwise subject to U.S. economic or trade sanctions.

As used in this policy a Specially Designated National or Blocked Person is any person or entity that is on the list of Specially Designated Nationals and Blocked Persons issued by the U.S. Treasury Department's Office of Foreign Asset Control (O.F.A.C.) as it may be from time to time amended.

As used in this policy a Sanctioned Country is any country that is the subject of trade or economic embargoes imposed by the laws or regulations of the United States of America.

**SECTION V – DEFINITIONS**

- 1. "Advertisement" means a notice that is broadcast or published to the general public or specific market segments about your goods, products or services for the purpose of attracting customers or supporters. For the purposes of this definition

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- a. Notices that are published include material placed on the Internet or on similar electronic means of communication; and
- b. Regarding websites, only that part of a website that is about your goods or services for the purposes of attracting customers or supporters is considered an advertisement.

2. **"Automobile"** means

- a. A land motor vehicle, trailer or semitrailer designed for travel on public roads; including any attached machinery or equipment; or
- b. Any other land vehicle that is subject to a compulsory or financial responsibility law or other motor vehicle insurance law in the state where it is licensed or principally garaged.

However, "automobile" does not include "mobile equipment."

3. **"Bodily injury"** means bodily injury, sickness or disease sustained by a person, including death, humiliation, shock, mental anguish or mental injury by that person at any time which results as a consequence of the bodily injury, sickness or disease.

4. **"Aircraft"** means a vehicle designed to transport persons or property in the air.

5. **"Impaired property"** means tangible property, other than "your product" or "your work," that cannot be used or is less useful because:

- a. It incorporates "your product" or "your work" that is known or thought to be defective, deficient, inadequate or dangerous; or
- b. You have failed to fulfill the terms of a contract or agreement;

if such property can be restored to use by:

- a. The repair, replacement, adjustment or removal of "your product" or "your work"; or
- b. Your fulfilling the terms of the contract or agreement.

6. **"Insured contract"** means:

- a. A lease of premises;
- b. A sidetrack agreement;
- c. An easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;
- d. An indemnification of a municipality as required by ordinance, except in connection with work for a municipality;
- e. An elevator maintenance agreement; or
- f. The part of other contracts or agreements pertaining to your business (including an

indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability to pay damages because of "bodily injury" or "property damage" to a third person or organization, if the contracts or agreements are made prior to the "bodily injury" or "property damage."

Tort liability means liability that would be imposed by law in the absence of contracts or agreements.

An "insured contract" does not include that part of a contract or agreement:

a. That indemnifies an architect, engineer or surveyor for an injury or damages arising out of:

(1) Preparing, approving or failing to prepare or approve:

- (a) Maps;
- (b) Drawings;
- (c) Opinions;
- (d) Reports;
- (e) Surveys;
- (f) Change orders;
- (g) Designs; or
- (h) Specifications; or

(2) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage;

b. Under which the insured, if an architect, engineer or surveyor, assumes liability for injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in a.(1) above and supervisory, inspection or engineering services; or

c. That indemnifies a person or organization for damage by fire to premises rented or loaned to an insured.

7. **"Loading or unloading"** means the handling of property:

a. After it is moved from the place where it is accepted for movement into or onto an "aircraft," "watercraft" or "automobile";

b. While it is in or on an "aircraft," "watercraft" or "automobile"; or

c. While it is being moved from an "aircraft," "watercraft" or "automobile" to the place where it is finally delivered;

but "loading or unloading" does not include the movement of property by means of a mechanical device, other than a hand truck, that is not attached to the "aircraft," "watercraft" or "automobile."

8. **"Mobile equipment"** means any of the following types of land vehicles, including any attached machinery or equipment:

- a. Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
- b. Vehicles that travel on crawler treads;
- c. Vehicles maintained for use solely on or next to premises you own or rent;
- d. Vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:
  - (1) Power cranes, shovels, loaders, diggers or drills; or
  - (2) Road construction or resurfacing equipment such as graders, scrapers or rollers;
- e. Vehicles not described in **a., b., c.** or **d.** above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
  - (1) Air compressors, pumps, and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or
  - (2) Cherry pickers and similar devices used to raise or lower workers;
- f. Vehicles not described in **a., b., c.** or **d.** above maintained primarily for purposes other than the transportation of persons or cargo.

However, self-propelled vehicles with the following type of permanently attached equipment are not "mobile equipment" but will be considered "automobiles":

- (1) Equipment designed primarily for:
  - (a) Snow removal ;
  - (b) Road maintenance, but not construction or resurfacing; or
  - (c) Street cleaning;
- (2) Cherry pickers and similar devices mounted on "automobiles" or truck chassis and used to raise or lower workers; and
- (3) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.

However, "mobile equipment" does not include any land vehicles that are subject to a compulsory or financial responsibility law or other motor vehicle insurance law in the state where it is licensed or principally garaged. Land vehicles subject to a

compulsory or financial responsibility law or other motor vehicle insurance law are considered "automobiles"

9. **"Incident"**

- a. With respect to "bodily injury" and "property damage," "incident" means an occurrence. An occurrence means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.
- b. With respect to "personal and advertising injury," "incident" means an offense arising out of your business.

10. **"Personal and Advertising Injury"** means injury, including consequential "bodily injury," arising out of one or more of the following offenses:

- a. False arrest, detention or imprisonment;
- b. Malicious prosecution or abuse of process;
- c. Wrongful eviction from, wrongful entry into, or the invasion of the right of private occupancy of a room, dwelling or premises that a person occupies committed by or on behalf of its owner, landlord or lessor;
- d. Discrimination, unless such insurance is prohibited by law;
- e. Oral or written publication, in any manner, of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
- f. Oral or written publication, in any manner, of material that violates a person's right of privacy;
- g. The use of another's advertising idea in your "advertisement;"
- h. Infringing upon another's copyright, trade dress or slogan in your "advertisement."

11. a. **"Products-completed operations hazard"** includes "bodily injury" and "property damage" occurring away from premises an insured owns or rents and arising out of "your product" or "your work" except:

- (1) Products in your physical possession; or
- (2) Work not yet completed or abandoned.

b. "Your work" will be deemed completed at the earliest of the following:

- (1) When all work called for in the "insured contract" has been completed;
- (2) When all of the work to be done at the site has been completed if the "insured's contract" calls for work at more than one site; or

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(3) When that part of the work done at a job site has been put to its intended use by a person or organization other than another contractor or subcontractor working on the same project. Work that may need:

- (a) Service;
- (b) Maintenance;
- (c) Correction;
- (d) Repair; or
- (e) Replacement;

but which is otherwise complete, will be treated as completed.

c. This hazard does not include "bodily injury" or "property damage" arising out of:

- (1) The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle created by the "loading or unloading" of it; or
- (2) The existence of:
  - (a) Tools;
  - (b) Uninstalled equipment; or
  - (c) Abandoned or unused materials.

**12. "Property damage" means:**

- a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
- b. Loss of use of tangible property that is not physically injured. All such loss shall be deemed to occur at the time of the occurrence that caused it.

For the purposes of this insurance, "electronic data" is not tangible property.

**13. "Suit" means a civil proceeding in which damages because of:**

- a. "Bodily injury";
- b. "Property damage"; or
- c. "Personal and advertising injury";

to which this insurance applies are alleged. "Suit" includes:

- a. An arbitration proceeding alleging such damages to which you must submit with our consent; or
- b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which you submit with our consent.

**14. "Your product" means:**

- a. Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:
  - (1) You;
  - (2) Others trading under your name; or
  - (3) A person or organization whose business or assets you have acquired; and
- b. Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.

"Your product" includes warranties or representations made with respect to the fitness, quality, durability, performance or use of "your product" and the providing of or failure to provide warnings or instructions.

"Your product" does not include vending machines or other property rented to or located for the use of others but not sold.

**15. "Your work" means:**

- a. Work or operations performed by you or on your behalf; and
- b. Materials, parts or equipment furnished in connection with such work or operations.

"Your work" includes warranties or representations made with respect to the fitness, quality, durability, performance or use of "your work" and the providing of or failure to provide warnings or instructions.

**16. "Retained limit" means the amount stated as such in the Declarations. The "retained limit" is retained and payable by the insured as respects all "incidents" not covered by "scheduled underlying insurance" or by "unscheduled underlying insurance."**

**17. "Scheduled underlying insurance" means the insurance policies listed in the Schedule of Underlying Insurance including renewal or replacement of such contracts which are not more restrictive than those listed in the aforementioned Schedule of Underlying Insurance.**

**18. "Ultimate net loss"**

- a. "Ultimate net loss" means the actual damages the insured is legally obligated to pay, either through:
  - (1) Final adjudication on the merits; or
  - (2) Through compromise settlement with our written consent or direction;

because of "incident(s)" covered by this policy.

However, it includes the above mentioned sums only after deducting all other recoveries and salvages.

b. "Ultimate net loss" does not include the following:

(1) Costs or expenses related to:

- (a) Litigation,
- (b) Settlement;
- (c) Adjustment; or
- (d) Appeals;

nor costs or expenses incident to the same which an "underlying insurer" has paid, incurred or is obligated to pay to or on behalf of the insured;

- (2) Pre-judgment interest;
- (3) Office costs and expenses and salaries and expenses of the employees of an insured;
- (4) Our office costs and expenses and salaries of our employees; or
- (5) General retainer and/or monitoring fees of counsel retained by the insured.

19. "**Underlying insurer**" means an insurer whose policy covers "bodily injury," "property damage" or "personal and advertising injury" also covered by this policy but does not include insurers whose policies were purchased specifically to be in excess of this policy. It includes all insurers providing:

- a. "Unscheduled underlying insurance"; and
- b. "Scheduled underlying insurance."

20. "**Unscheduled underlying insurance**"

a. "Unscheduled underlying insurance" means insurance policies available to an insured, whether:

- (1) Primary;
- (2) Excess;
- (3) Excess-contingent; or
- (4) Otherwise;

except the policies listed in the Schedule of Underlying Insurance.

b. "Unscheduled underlying insurance" does not include insurance purchased specifically to be in excess of this policy.

21. "**Watercraft**" means a vehicle designed to transport persons or property in or on water.

22. "**Authorized Insured**" means any named insured or any employee authorized by a named insured to give or receive notice of a claim or "suit."

23. "**Electronic data**" means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including

systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

24. "**Pollutants**" means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

25. "**Fungi or microbes**" means:

- a. Any form of fungus, yeast, mold, mildew, or mushroom, including mycotoxins, spores, scents, byproducts or other substances produced or released by fungi; and
- b. Any bacteria, virus, or any other non-fungal, single celled or colony-form organism, including any toxins, scents, byproducts or other substances it produces or releases, whose injurious source is in or on a building or its contents.

But "fungi and microbes" does not include fungi that were deliberately grown for human consumption, microbes that were transmitted directly from person to person, or microbes that caused food poisoning, if your business is food processing, sales, or serving.

26. "**Silica**" means the chemical compound silicon dioxide (SiO<sub>2</sub>) in any form, including dust which contains "silica."

27. "**Asbestos**" means the mineral in any form whether or not the asbestos was at any time:

- a. Airborne as a fiber, particle or dust;
- b. Contained in or formed a part of a product, structure or other real or personal property;
- c. Carried on clothing;
- d. Inhaled or ingested; or
- e. Transmitted by any other means.

28. "**Volunteer worker**" means a person who is not your employee, and who donates his or her work and acts at the direction of and within the scope of duties determined by you, and is not paid a fee, salary or other compensation by you or anyone else for their work performed for you.

## SECTION VI – DEFENSE PAYMENT AND RELATED DUTIES

1. If a claim or "suit" alleges damages covered by underlying policies and the obligation of all "underlying insurers" either to:

- a. Investigate and defend the insured; or
- b. Pay the cost of such investigation and defense;

ceases solely through exhaustion of all underlying limits of insurance through payment of a combination

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of covered expenses, settlements or judgments for "bodily injury," "property damage" or "personal and advertising injury" taking place during our policy period, then we will either:

- a. Assume the investigation and defense of the insured against "suits" seeking damages; or
  - b. If we elect not to assume the investigation and defense in 1.a. above, we will reimburse the insured for reasonable defense costs and expenses incurred with our written consent. However, such reimbursement excludes:
    - (1) Office expenses of the insured;
    - (2) Salaries and expenses of employees; and
    - (3) General retainer fees of counsel retained by the insured.
2. We will investigate and defend an insured or reimburse an insured for "suits" brought against an insured for a claim or "suit" that alleges damages because of "bodily injury," "property damage" or "personal and advertising injury" not covered under:
- a. "Scheduled underlying insurance"; and
  - b. "Unscheduled underlying insurance";
- but which seeks damages because of "bodily injury," "property damage" or "personal and advertising injury" otherwise covered under this policy. Costs and expenses of such investigation and defense are not subject to the "retained limit."
3. We will investigate and defend an insured or reimburse an insured for such costs of investigation and defense described in either 1. or 2. above, even if the allegations of a "suit" are:
- a. Groundless;
  - b. False; or
  - c. Fraudulent;

but only until we make payment or offer to pay or deposit in court that part of judgment(s) not exceeding our limit of insurance.

4. We shall also have the sole right to make settlement of a "suit" as we deem expedient.
5. If not permitted by law or otherwise to perform these duties, we will pay an insured for defense costs and expenses incurred with our prior written consent.
6. Amounts we pay or incur pursuant to the obligation to defend or pay the costs and expenses of defense are in addition to, and not subject to, the limits of insurance stated in the Declarations.
7. In addition to our limits of insurance, we will pay prejudgment interest awarded against an insured on that part of a judgment covered by this policy. We will

not pay prejudgment interest on that period of time after we offer to pay:

- a. Our limit of insurance; or
  - b. That portion of our limit of insurance which equals the amount of a settlement demand when combined with the limits of "underlying insurers."
8. We will pay interest on a judgment that accrues after entry of that judgment, but before we have:
- a. Paid;
  - b. Offered to pay; or
  - c. Deposited in court

that part of the judgment that is within the limit of insurance of this policy. The amount of interest we pay will be in direct proportion that amount we pay as damages bears to the total amount of judgment. We will not pay additional interest that accrues after we have:

- a. Paid;
- b. Offered to pay;
- c. Deposited in court

that part of the judgment that is within the limit of insurance of this policy.

9. We will pay all reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit." This includes actual loss of earnings up to liability \$250. a day because of time off from work.

### **NUCLEAR ENERGY LIABILITY EXCLUSION ENDORSEMENT (BROAD FORM)**

It is agreed that:

- I. This policy does not apply:
  - A. Under Liability Coverage to "bodily injury" "personal and advertising injury" or "property damage"
    1. With respect to which an insured under this policy, is also an insured under a nuclear energy liability policy issued by the:
      - a. Nuclear Energy Liability Insurance Association;
      - b. Mutual Atomic Energy Liability Underwriters; or
      - c. Nuclear Insurance Association of Canada;or any of their successors, or would be an insured under any such policy but for its

termination upon exhaustion of its limit of liability; or

**2.** Resulting from the "hazardous properties" of "nuclear material" and with respect to which:

- a.** Any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law or amendment thereof; or
- b.** The insured is, or had this policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.

**B.** Under any Supplementary Payments provision relating to first aid, to expenses incurred with respect to "bodily injury" resulting from the "hazardous properties" of "nuclear material," and arising out of the operation of a "nuclear facility" by any person or organization.

**C.** Under any Liability Coverage, to "bodily injury" "personal and advertising injury" or "property damage" resulting from the "hazardous properties" of "nuclear material," if:

- 1.** The "nuclear material":
  - a.** Is at any "nuclear facility" owned by, or operated by or on behalf of, an insured; or
  - b.** Has been discharged or dispersed therefrom;
- 2.** The "nuclear material" is contained in "spent fuel" or "waste" at any time possessed, handled, used, processed, stored, transported or disposed of by or on behalf of an insured; or
- 3.** The "bodily injury," "personal and advertising injury," or "property damage" arises out of the furnishing by an insured of services, materials, parts or equipment in connection with the:
  - a.** Planning;
  - b.** Construction;
  - c.** Maintenance;
  - d.** Operation; or
  - e.** Use of

any "nuclear facility," but if such facility is located within the United States of America, its territories or possessions or Canada, this exclusion **(C.3.)** applies only to "property damage" to such "nuclear facility" and any property threat.

**II.** As used in this endorsement:

- A.** "Hazardous properties" include radioactive, toxic or explosive properties.
- B.** "Nuclear material" means "source material," "special nuclear material" or "byproduct material."
- C.** "Source material," "special nuclear material" and "by-product material" have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof.
- D.** "Spent fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a "nuclear reactor."
- E.** "Waste" means waste material:
  - 1.** Containing "by-product material" other than the tailings or waste produced by the extraction or concentration of uranium or thorium from ore processed primarily for its "source material" content; and
  - 2.** Resulting from the operation by any person or organization, of a "nuclear facility" included within paragraphs **1.** and **2.** of the definition of "nuclear facility."
- F.** "Nuclear facility" means:
  - 1.** Any "nuclear reactor";
  - 2.** Any equipment or device designed or used for:
    - a.** Separating the isotopes of uranium or plutonium;
    - b.** Processing or utilizing "spent fuel"; or
    - c.** handling, processing or packaging "waste";
  - 3.** Any equipment or device used for the processing, fabricating or alloying of special "nuclear material" if at any time the total amount of such material in the custody of the insured at the premises where such equipment is located consists of or contains more than:
    - a.** 25 grams of plutonium or uranium 233 or any combination thereof; or
    - b.** 250 grams of uranium 235;
  - 4.** Any structure, basin, excavation, premises or place prepared or used for the storage or disposal of "waste";

and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations.

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**G.** "Nuclear reactor" means an apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material.

**H.** "Property damage" includes all forms of radioactive contamination of property.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**  
**PERSONAL AND ADVERTISING INJURY LIMITATION ENDORSEMENT**

This endorsement modifies insurance provided under the following:

COMMERCIAL UMBRELLA PLUS COVERAGE PART

The following paragraph is added to **SECTION I - COVERAGE, 2. Exclusions:**

This insurance does not apply to:

"personal and advertising injury." However, this exclusion does not apply to any claim or "suit" for which coverage is provided by "scheduled underlying insurance."

All other terms, exclusions and conditions of this policy remain unchanged and in full force and effect.

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

**EMPLOYEE BENEFITS LIABILITY LIMITATION ENDORSEMENT**

This endorsement modifies insurance provided under the following:

**COMMERCIAL UMBRELLA PLUS COVERAGE PART**

The following coverage is added to **SECTION I – COVERAGES, 1. INSURING AGREEMENT:**

We will pay on behalf of the insured "ultimate net loss" in excess of "scheduled underlying insurance," that the insured becomes legally obligated to pay because of a wrongful act as covered in the "scheduled underlying insurance" by Employee Benefits Liability coverage to which this insurance applies. This insurance applies only if:

a. And to the extent that Employee Benefits Liability coverage is covered by "scheduled underlying insurance";

b. The wrongful act is committed during this policy period.

For the purposes of this endorsement wrongful act means a negligent act, error or omission committed in the administration of your employee benefits program.

Employee benefit program means the same as it does in the "scheduled underlying insurance."

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

**POLLUTION EXCLUSION AMENDMENT**

This endorsement modifies insurance provided under the following:

COMMERCIAL UMBRELLA PLUS COVERAGE PART

Exclusion f. of SECTION I – COVERAGES is deleted in its entirety, and is replaced by the following:

**f. Pollution**

(1) "Bodily injury" or "property damage" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":

(a) At or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to, any insured;

(b) At or from any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste;

(c) Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for any insured or any person or organization for whom you may be legally responsible; or

(d) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations:

(i) If the "pollutants" are brought on or to the premises, site or location in connection with such operations by such insured, contractor or subcontractor; or

(ii) If the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants."

(e) That are, or that are contained in property that is:

(i) Being transported or towed by, or handled for movement into, onto or from a covered "automobile";

(ii) Otherwise in the course of transit;

(iii) Being stored, disposed of, treated or processed in or upon the covered "automobile";

(f) Before the "pollutants" or property in which the "pollutants" are contained are moved from the place where they are accepted by the

insured for movement into or onto the covered "automobile"; or

(g) After the "pollutants" or property in which the "pollutants" are contained are moved from the covered "automobile" to the place where they are finally:

(i) Delivered;

(ii) Disposed of; or

(iii) Abandoned

by the insured.

Subparagraph (a) does not apply to "bodily injury" if sustained within a building and caused by smoke, fumes, vapor, or soot produced by or originating from equipment that is used to heat, cool, or dehumidify the building, or equipment that is used to heat water for personal use, by the building's occupants or their guests.

Subparagraphs (a) and (d)(i) do not apply to "bodily injury" or "property damage" arising out of heat, smoke or fumes from a hostile fire.

As used in this exclusion, a hostile fire means one which becomes uncontrollable or breaks out from where it was intended to be.

Subparagraph (d)(i) does not apply to "bodily injury" or "property damage" arising out of the escape of fuels, lubricants, or other operating fluids which are needed to perform the normal electrical, hydraulic or mechanical functions necessary for operation of "mobile equipment" or its parts, if such fuels, lubricants or other operating fluids escape from a vehicle part designed to hold, store or receive them. This exception does not apply if the "bodily injury" or "property damage" arises out of the intentional discharge, dispersal or release of the fuels, lubricants or other operating fluids, or if such fuels, lubricants or other operating fluids are brought on or to the premises, site or location with the intent that they be discharged, dispersed or released as part of the operations being performed by such insured, contractor or subcontractor.

Subparagraph (e)(iii) does not apply to fuels, lubricants, fluids, exhaust, gases or other similar "pollutants" that are needed for or

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result from the normal electrical, hydraulic or mechanical functioning of the covered "automobile" or its parts if the "pollutants" escape or are discharged, dispersed or released directly from an "automobile" part designed by its manufacturer to hold, store, receive or dispose of such "pollutants."

Subparagraphs **(f)** and **(g)** do not apply if the "pollutants" or property in which the "pollutants" are contained are upset, overturned or damaged as a result of the maintenance or use of a covered "automobile" and the discharge, dispersal, release or escape of the "pollutants" is caused directly by such upset, overturn or damage.

- (2)** "Personal and advertising injury" arising out of the actual, alleged or threatened discharge, dispersal,

seepage, migration, release or escape of "pollutants" at any time.

- (3)** Any loss, cost or expense arising out of any:
- (a)** Request, demand or order that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants"; or
  - (b)** Claim or "suit" by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of "pollutants."

All other terms, conditions and exclusions of this policy remain unchanged.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.
CRISIS MANAGEMENT COVERAGE ENDORSEMENT

This endorsement modifies insurance provided under the following:

COMMERCIAL UMBRELLA PLUS COVERAGE PART

SCHEDULE

Crisis Management Expense Aggregate Limit: \$250,000 per policy period.

Solely with respect to the Crisis Management Coverage provided by this endorsement, the following changes apply to the Commercial Umbrella Plus Coverage Part.

A. The following paragraph is added to SECTION I - COVERAGES, 1. Insuring Agreement:

- e. When this policy applies to an "incident" that causes "serious bodily injury or property damage," we will reimburse you for "eligible crisis management expense" you incur and report to us within six months of the "incident."

B. The following changes are made to SECTION III - LIMITS OF INSURANCE:

- 1. Paragraph 2. is deleted in its entirety and replaced with the following:

The limit of insurance shown in the Declarations as the Aggregate Limit is the most we will pay for the sum of all "ultimate net loss" and "eligible crisis management expense" to which this insurance applies. This Aggregate Limit applies separately to all "ultimate net loss":

- a. Included in the "products-completed operations hazard";
b. To which, and in the same manner, an aggregate limit under "scheduled underlying insurance" other than "ultimate net loss" included in the "products-completed operations hazard"; and
c. To which no "scheduled underlying insurance" applies

and includes any associated "eligible crisis management expense."

The Crisis Management Expense Aggregate Limit listed in the Schedule above is included within and is not in addition to the Aggregate Limit of this policy.

- 2. The following paragraph is added:

- 6. Subject to 2. above, the Crisis Management Expense Aggregate Limit stated in the Schedule is the most we will pay for the sum

of all "eligible crisis management expense" to which this insurance applies.

C. The following definitions are added to SECTION V - DEFINITIONS:

- 1. "Serious bodily injury or property damage" means injury to three or more people resulting in death, permanent disfigurement, or the permanent loss or impairment of a bodily function, body part or organ. "Serious bodily injury or property damage" also means "property damage" to which this insurance applies.
2. "Eligible crisis management expense" means reasonable and necessary expenses incurred by a crisis management firm that you hire to provide media management services for the purpose of maintaining and restoring public confidence in you.

But "eligible crisis management expense" does not mean any of the following:

- a. Salary, wages, or benefits of you, your employees or your temporary workers;
b. Costs to acquire, repair or replace real or personal property;
c. Your loss of business income;
d. Your expense to hire a public adjuster or appraiser or any other claim adjustment expenses incurred by you; and
e. "Bodily injury," "property damage," "personal and advertising injury," or any expense or other coverage this policy provides, other than this CRISIS MANAGEMENT COVERAGE ENDORSEMENT.

All other terms, conditions and exclusions of this policy remain unchanged.

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**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**  
**KEY EMPLOYEE REPLACEMENT EXPENSE COVERAGE ENDORSEMENT**

This endorsement modifies insurance provided under the following:

COMMERCIAL UMBRELLA PLUS COVERAGE PART

**SCHEDULE**

**Limit of Insurance:** \$100,000 per Key Employee

**Key Employee Replacement Expense Coverage Aggregate Limit:** \$100,000 per policy period.

Solely with respect to the Key Employment Replacement Expense Coverage provided by this endorsement, the following changes apply to the Commercial Umbrella Plus Coverage Part.

**I. The following paragraphs are added to SECTION I – COVERAGES, 1. Insuring Agreement:**

- f. We will reimburse you for the actual and necessary "Key Employee Replacement Expense" you incur due to your permanent loss of the services of a "Key Employee" caused by a "covered accident" and reported to us within six months of the "covered accident."

Insurance under this endorsement applies only if the "covered accident" occurs while your policy is in effect. But the period of time for which we will pay expenses covered under this endorsement will not be limited by the expiration of your policy.

Insurance under this endorsement does not apply to:

1. The death or permanent disability of a "Key Employee" relating to, or arising out of:
  - a. War and Military Action, meaning:
    - (1) War, including undeclared or civil war;
    - (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
    - (3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in defending against any of these;
  - b. Nuclear reaction or radiation or radioactive contamination, however caused;
  - c. Sickness or disease, including metal illness or mental injury;
  - d. Pregnancy, childbirth, miscarriage or abortion;
  - e. Suicide, attempted suicide or self inflicted bodily injury, while sane or insane;

- f. Any accident while the "Key Employee" was driving while intoxicated, impaired, or other wise under the influence of alcohol; or

- g. Taking illegally obtained drugs.

2. Any expenses you incur which you would not have incurred if you had used all reasonable means to:

- a. Find a permanent replacement for the "Key Employee"; and

- b. Reduce or discontinue the "Key Employee Replacement Expense";

as soon as possible after your permanent loss of the services of the "Key Employee" caused by a "covered accident."

Insurance under this endorsement includes the reasonable extra expense you incur to minimize the amount of "Key Employee Replacement Expense," but only to the extent the amount of "Key Employee Replacement Expense" otherwise payable under this endorsement is reduced.

3. Any additional expenses incurred due to your loss of the services of a permanent replacement employee appointed or hired to replace a "Key Employee," however caused. But this exclusion does not apply if the replacement employee is included in the definition as a "Key Employee" and your loss of the services of the replacement employee is caused by a "covered accident."

The amount of "Key Employee Replacement Expense" will be determined based on:

1. The actual and necessary expenses covered under this endorsement which you incur to find, to appoint or hire and to train a permanent replacement for the "Key Employee" and to continue the performance of the "Key Employee's" normal job responsibilities while a permanent replacement is being sought, appointed or hired,

and trained. We will deduct from the total of such expenses:

- a. Any expenses which would have been incurred by you for the "Key Employee" if you had not lost the services of the "Key Employee"; and
- b. Any "Key Employee Replacement Expense" that is paid for by any other insurance.

2. Necessary expenses that reduce the "Key Employee Replacement Expense" that otherwise would have been incurred.

**II. The following changes are made to SECTION III – LIMITS OF INSURANCE:**

A. Paragraph 2. is deleted in its entirety and replaced with the following:

2. The limit of insurance shown in the Declarations as the Aggregate Limit is the most we will pay for the sum of all "ultimate net loss," to which this insurance applies and applies separately to all "ultimate net loss":

- a. Included in the "products-completed operations hazard";
- b. To which, and in the same manner, an aggregate limit applies under "scheduled underlying insurance" other than "ultimate net loss" included in the "products-completed operations hazard"; and
- c. To which no "scheduled underlying insurance" applies.

The most we will pay for "Key Employee Replacement Expense" due to your loss of the services of any one "Key Employee" is the applicable Limit of Insurance shown in the Schedule for the "Key Employee." The amount payable under this endorsement is not subject to the "retained limit."

The limit of insurance shown in the Schedule above as the Key Employee Replacement Expense Coverage Aggregate Limit is the most we will pay for the sum of all "Key Employee Replacement Expense" to which this insurance applies. This Key Employee Replacement Expense Coverage Aggregate Limit listed in the Schedule above is included within and is not in addition to the Aggregate Limit of this policy.

The Aggregate Limit does not apply to "ultimate net loss" for which no aggregate limit applies in the "scheduled underlying insurance."

B. Paragraph 3. is deleted in its entirety and replaced with the following:

3. Subject to 2. above, the limit of insurance shown in the Declarations as the Each Incident limit is the most we will pay for the sum of all "ultimate net loss" and all "Key Employee Replacement Expense" to which this insurance applies arising out of any one "incident."

**III. The following definitions are added to SECTION V – DEFINITIONS:**

B. "Key Employee Replacement Expense" as used in this endorsement means the necessary expenses you incur that you would not have incurred if you had not lost the services of the "Key Employee":

1. To continue the performance of the "Key Employee's" normal job responsibilities, with comparable quality, while a permanent replacement for the "Key Employee" is being sought, appointed or hired, and trained. Insurance under this endorsement for these expenses will apply for the period of time beginning on the date of your permanent loss of the services of the "Key Employee" caused by a "covered accident," and ending 60 days after the date a permanent replacement for the Key Employee is appointed or hired, subject to a maximum period of 180 days.

2. To find a qualified permanent replacement to fill the "Key Employee's" position described in the Schedule, meaning the normal and reasonable:

- a. Costs of advertising the employment position opening;
- b. Travel, lodging, meal and entertainment expenses incurred in interviewing job applicants for the employment position opening; and
- c. Miscellaneous extra expenses incurred in finding, interviewing and negotiating with the job applicants, including, but not limited to, overtime pay, costs to verify the background and references the job applicants and legal expenses incurred to draw up employment contracts.

Insurance under this endorsement for these expenses will apply for the period of time beginning on the date of your permanent loss of the services of the "Key Employee" caused by a "covered accident," and ending on the date a permanent replacement for the "Key Employee" is appointed or hired, subject to a maximum period of 180 days.

3. To appoint or hire and to train a permanent replacement for the "Key Employee," meaning the normal and reasonable:

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- a. Expenses you incur to relocate the replacement employee to an area within a reasonable commute from the applicable employment location described in the Schedule;
- b. First year amounts of the replacement employee's:
  - (i) Annual base starting salary;
  - (ii) Employee perquisite costs; and
  - (iii) Employee benefit costs;in excess of the amounts which would have been incurred for the "Key Employee" if you had not lost the services of the "Key Employee." But we will not pay more for these expenses than 10% of the amounts which would have been incurred for the "Key Employee."
- c. First year costs of the replacement employee's training and education if the training and education is necessary for the replacement employee to perform the duties of the applicable position listed in the definition of "Key Employee" with the same quality of service as the "Key Employee."

Insurance under this endorsement for these expenses will apply only if the permanent replacement for the "Key Employee" is appointed or hired within 180 days after the date of your permanent loss of the services of the "Key Employee" caused by a "covered accident."

But "Key Employee Replacement Expense" does not mean any of the following:

- a. Except as provided in paragraph 3.b above, salary, wages, or benefits of you, your employees, your temporary workers or "volunteer workers";
- b. Costs to acquire, repair or replace real or personal property;
- c. Your loss of business income;
- d. Your expense to hire a public adjuster or appraiser or any other claim adjustment expenses incurred by you.

e. "Bodily injury," "property damage," "personal and advertising injury," or any expense or other coverage this policy provides, other than this **KEY EMPLOYEE REPLACEMENT EXPENSE COVERAGE ENDORSEMENT**.

C. "Covered Accident" means a sudden and unexpected "incident," not otherwise excluded in this endorsement, which solely and independently of any other cause results in the "Key Employee's":

- 1. Death; or
- 2. Permanent disability, meaning the permanent physical inability, or mental inability due to a permanent physical inability, of the "Key Employee" to perform the normal duties of the applicable position for which the individual qualifies as a "Key Employee"

within one year after the date of the sudden occurrence.

C. "Key Employee" means of the following officer and employment positions:

- 1. Chief Executive Officer;
- 2. Chief Operating Officer;
- 3. Chief Financial Officer;
- 4. Corporate Secretary;
- 5. Treasurer;
- 6. Executive Vice President; and
- 7. Risk Manager.

D. The following is added to the definition of "incident"

c. With respect to Key Employee Replacement Expense Coverage, "incident" means a "Covered Accident."

All other terms, conditions and exclusions of this policy remain unchanged.



### CHANGE ENDORSEMENT

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

**THIS ENDORSEMENT IS A PART OF YOUR POLICY AND TAKES EFFECT ON THE EFFECTIVE DATE OF YOUR POLICY, UNLESS ANOTHER EFFECTIVE DATE IS SHOWN BELOW.**

#### Athletic or Sports Participants Exclusion

It is agreed that this insurance does not apply to any liability to any person while practicing for or participating in any sports or athletic contest or exhibition that you sponsor.

20020001020978656109771



POLICY CHANGE NO.	EFFECTIVE DATE OF THIS POLICY CHANGE
-------------------	--------------------------------------

COUNTERSIGNED \_\_\_\_\_ BY \_\_\_\_\_  
(DATE) (AUTHORIZED REPRESENTATIVE)

# COMMON POLICY CONDITIONS

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

## A. Cancellation

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

## B. Changes

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

## C. Examination Of Your Books And Records

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

## D. Inspections And Surveys

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

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

- c. Recommend changes.

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

- a. Are safe or healthful; or

- b. Comply with laws, regulations, codes or standards.

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

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

## E. Premiums

The first Named Insured shown in the Declarations:

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

## F. Transfer Of Your Rights And Duties Under This Policy

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

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

20020001020978656109772



# IMPORTANT INFORMATION

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## NOTICE - OFFER OF TERRORISM COVERAGE NOTICE - DISCLOSURE OF PREMIUM

### **THIS NOTICE DOES NOT FORM A PART OF YOUR POLICY, GRANT ANY COVERAGE OR CHANGE THE TERMS AND CONDITIONS OF ANY COVERAGE UNDER THE POLICY**

You are hereby notified that under the Terrorism Risk Insurance Act, as extended and reauthorized ("Act"), you have a right to purchase insurance coverage of losses arising out of acts of terrorism, as defined in Section 102(1) of the Act, subject to all applicable policy provisions. The Terrorism Risk Insurance Act established a federal program within the Department of the Treasury, under which the federal government shares, with the insurance industry, the risk of loss from future terrorist attacks.

This Notice is designed to alert you to coverage restrictions and to certain terrorism provisions in the policy. If there is any conflict between this Notice and the policy (including its endorsements), the provisions of the policy (including its endorsements) apply.

### **CHANGE IN THE DEFINITION OF A CERTIFIED ACT OF TERRORISM**

The Act applies when the Secretary of the Treasury certifies that an event meets the definition of an act of terrorism. Originally the Act provides that to be certified an act of terrorism must cause losses of at least five million dollars and must have been committed by an individual or individuals acting on behalf of any foreign person or foreign interest to coerce the government or population of the United States. However, the 2007 reauthorization of the Act no longer requires the act of terrorism to be committed by or on behalf of a foreign interest and certified acts of terrorism now encompass, for example, a terrorist act committed against the United States government by a United States citizen when the act is determined by the federal government to be "a certified act of terrorism."

In accordance with the Act, we are required to offer you coverage for losses resulting from an act of terrorism that is certified under the federal program. The policy's other provisions, including nuclear, war or military action exclusions, will still apply to such an act. The premium charge for terrorism coverage is shown separately on your Policy Declarations, and is also included in the total premium.

### **DISCLOSURE OF FEDERAL PARTICIPATION IN PAYMENT OF TERRORISM LOSSES**

The United States Government, Department of the Treasury, will pay a share of terrorism losses insured under the federal program. The federal share equals 85% of that portion of the amount of such insured losses that exceeds the applicable insurer retention.

### **LIMITATION ON PAYMENT OF TERRORISM LOSSES (applies to policies which cover terrorism losses insured under the federal program, including those which only cover fire losses)**

If aggregate insured losses attributable to terrorist acts certified under the Act exceed \$100 billion in a Program Year (January 1 through December 31), the Treasury shall not make any payment for any portion of the amount of such losses that exceeds \$100 billion.

Further, this coverage is subject to a limit on our liability, pursuant to the federal law where, if aggregate insured losses attributable to terrorist acts certified under the Act exceed \$100 billion in a Program Year (January 1 through December 31) and we have met our insurer deductible under the Act, we shall not be liable for the payment of any portion of the amount of such losses that exceeds \$100 billion, and in such case insured losses up to that amount are subject to pro rata allocation in accordance with procedures established by the Secretary of the Treasury.







333 S Wabash  
Chicago, Illinois 60604

**CONFIDENTIAL**

Policy Number	From	Policy Period	To	Coverage Is Provided By	Agency
L2097865610	12/01/12	12/01/13		Continental Casualty Company	046077030
Named Insured And Address				Agent	
STERLING SUFFOLK RACE COURSE LLC 111 WALDEMAR AVE BOSTON, MA 02128-1035				KRAUTER & COMPANY, LLC 18TH FLOOR 1350 AVENUE OF THE AMERICAS NEW YORK, NY 10019	

**\*\* PAYMENT PLAN SCHEDULE \*\***

IT IS AGREED THAT THE TOTAL ESTIMATED PREMIUM SHOWN IN THE DECLARATIONS OF THIS POLICY IS PAYABLE AS FOLLOWS:

EFFECTIVE DATE	PREMIUM
12/01/2012	\$53,933.00
TOTAL PREMIUM	\$53,933.00

20020001020978656109774



ISSUE DATE 12/26/12

20020001020978656109775



**END OF COPY**

Suffolk Downs Corporate Control Environment Narrative

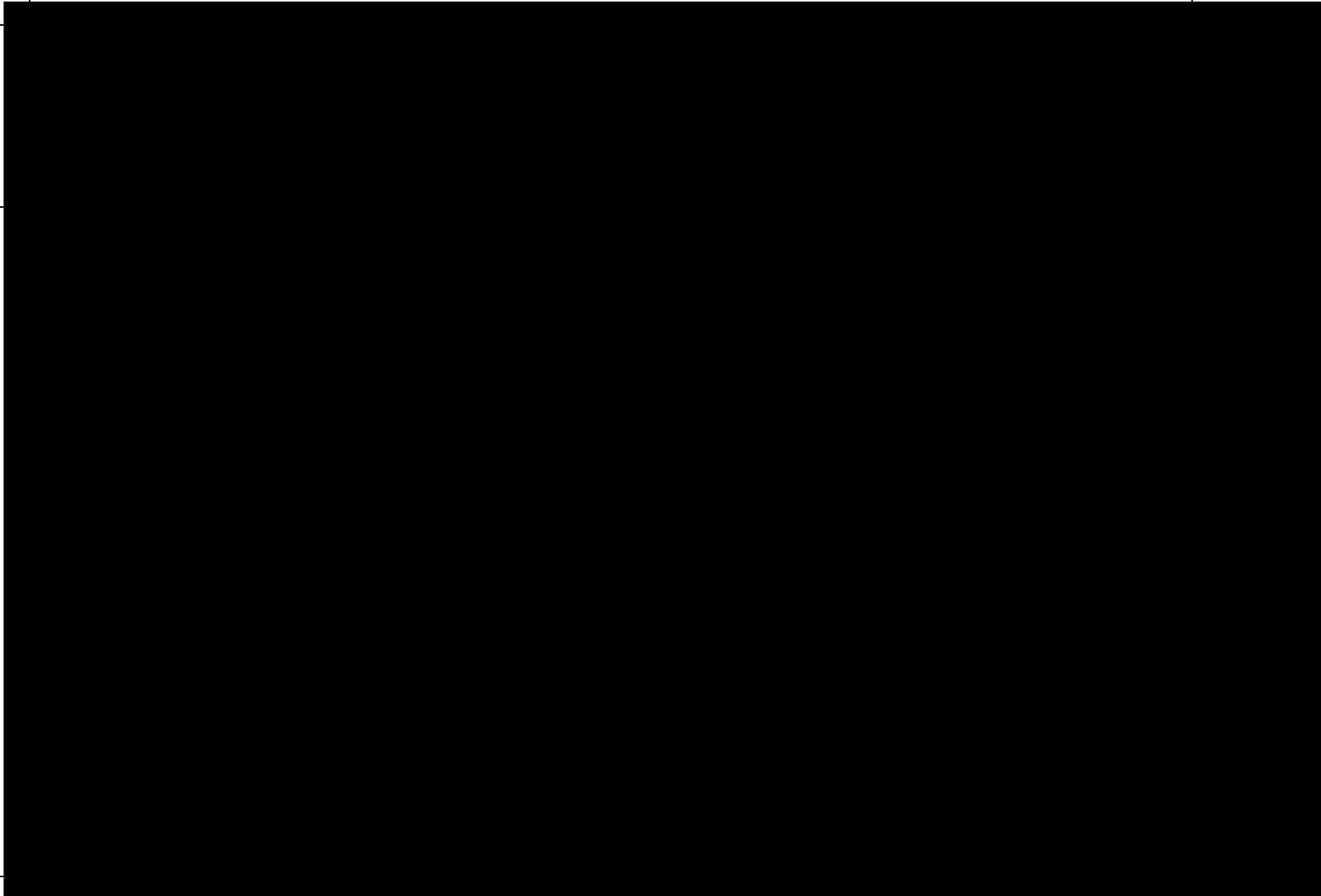
Effective: 8-31-13

**Background:**

The objective of this document is to record the function of the Corporate Controls Environment at Sterling Suffolk Racecourse LLC (herein referred to as Suffolk or the Company) in narrative form and to identify all of the discrete steps involved in this process.

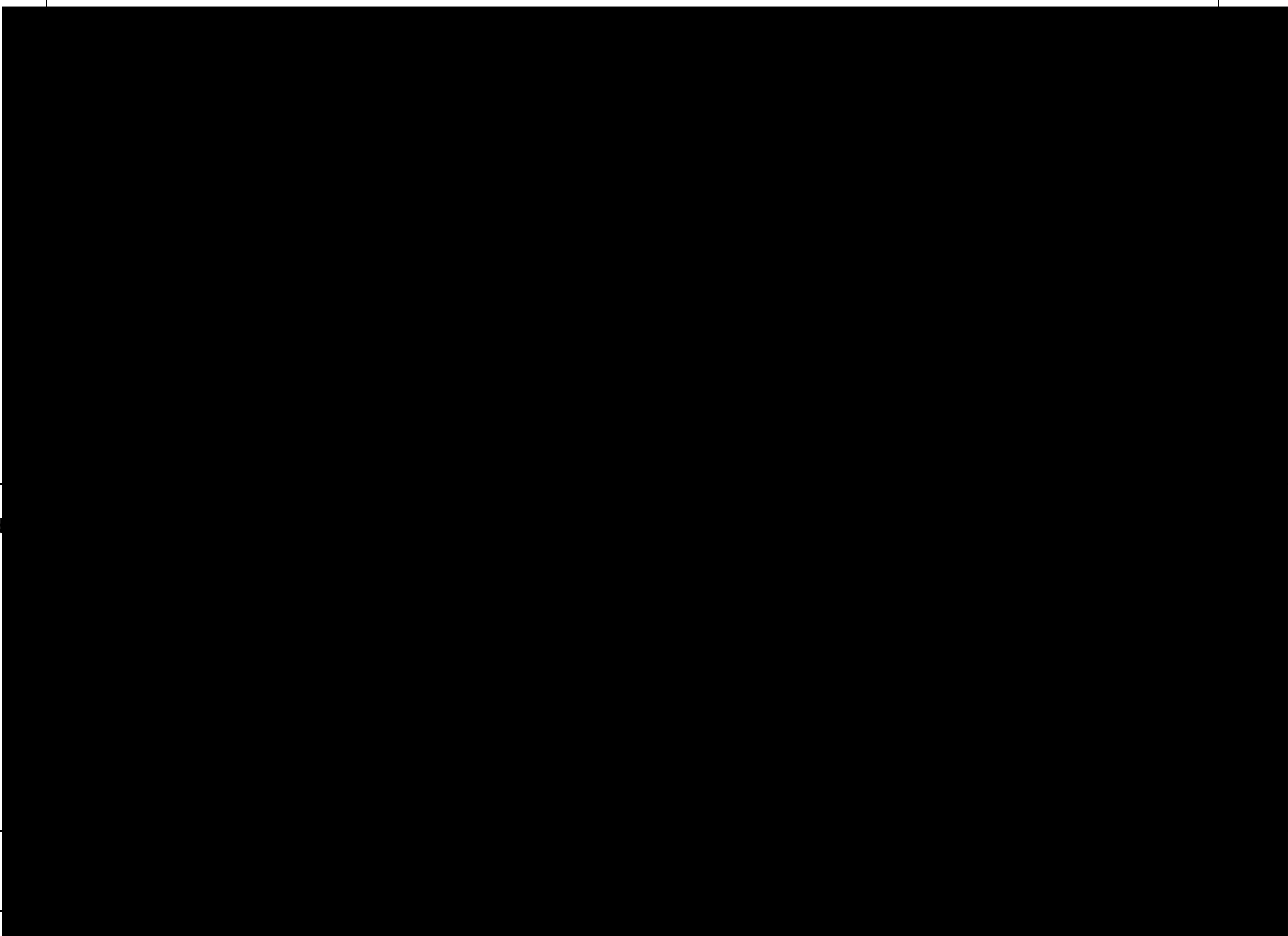
Throughout this document control objectives and types of controls are listed as follows: completeness, accuracy, validity and restricted access and by type, for example monitoring (preventative), and detecting controls.

Suffolk Downs Corporate Control Environment Narrative

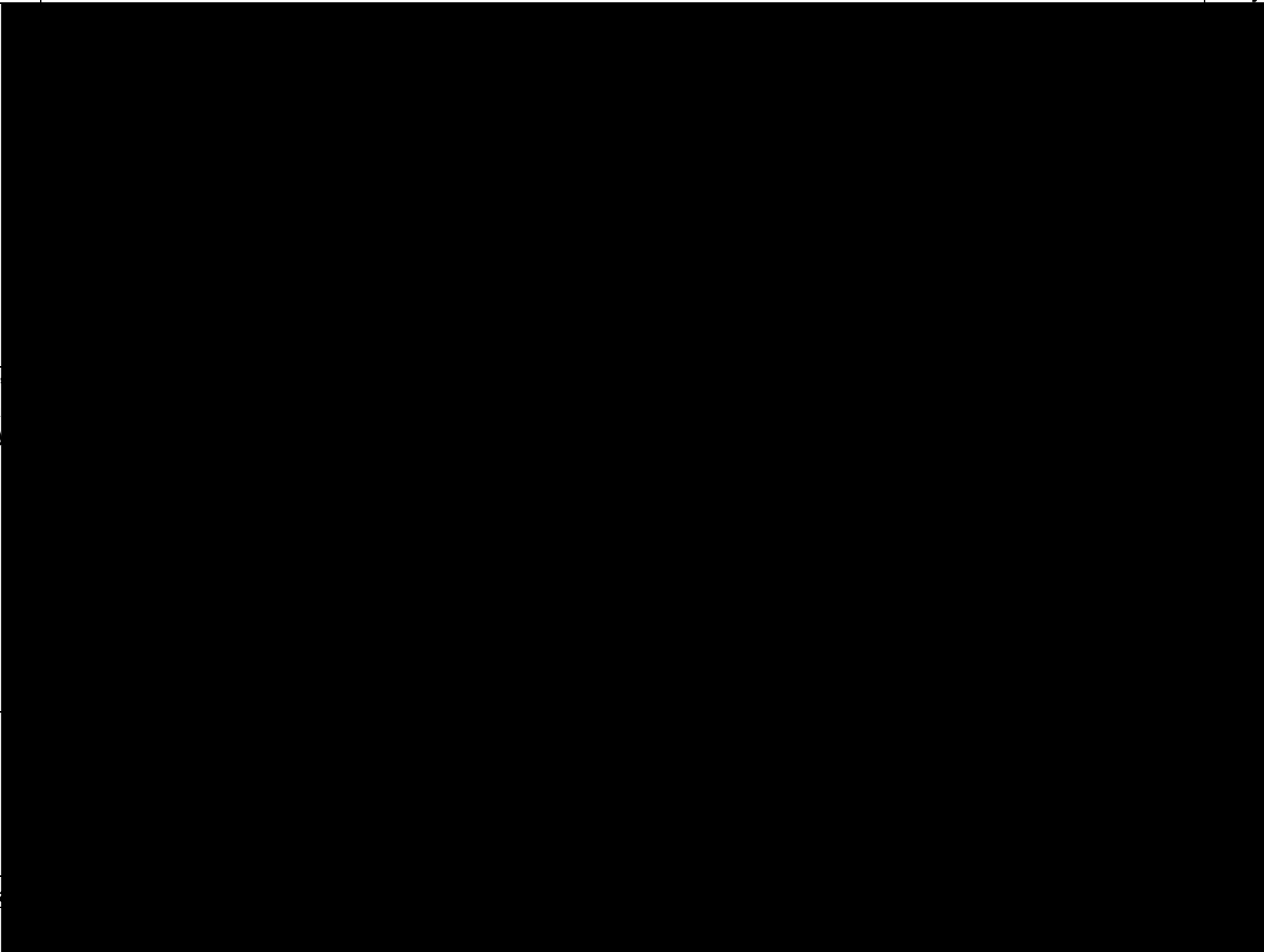
<b>Process</b>	<b>Process Description</b>	<b>Control Objective</b>
<b>Overview</b>		
<b>Corporate Governance</b>		



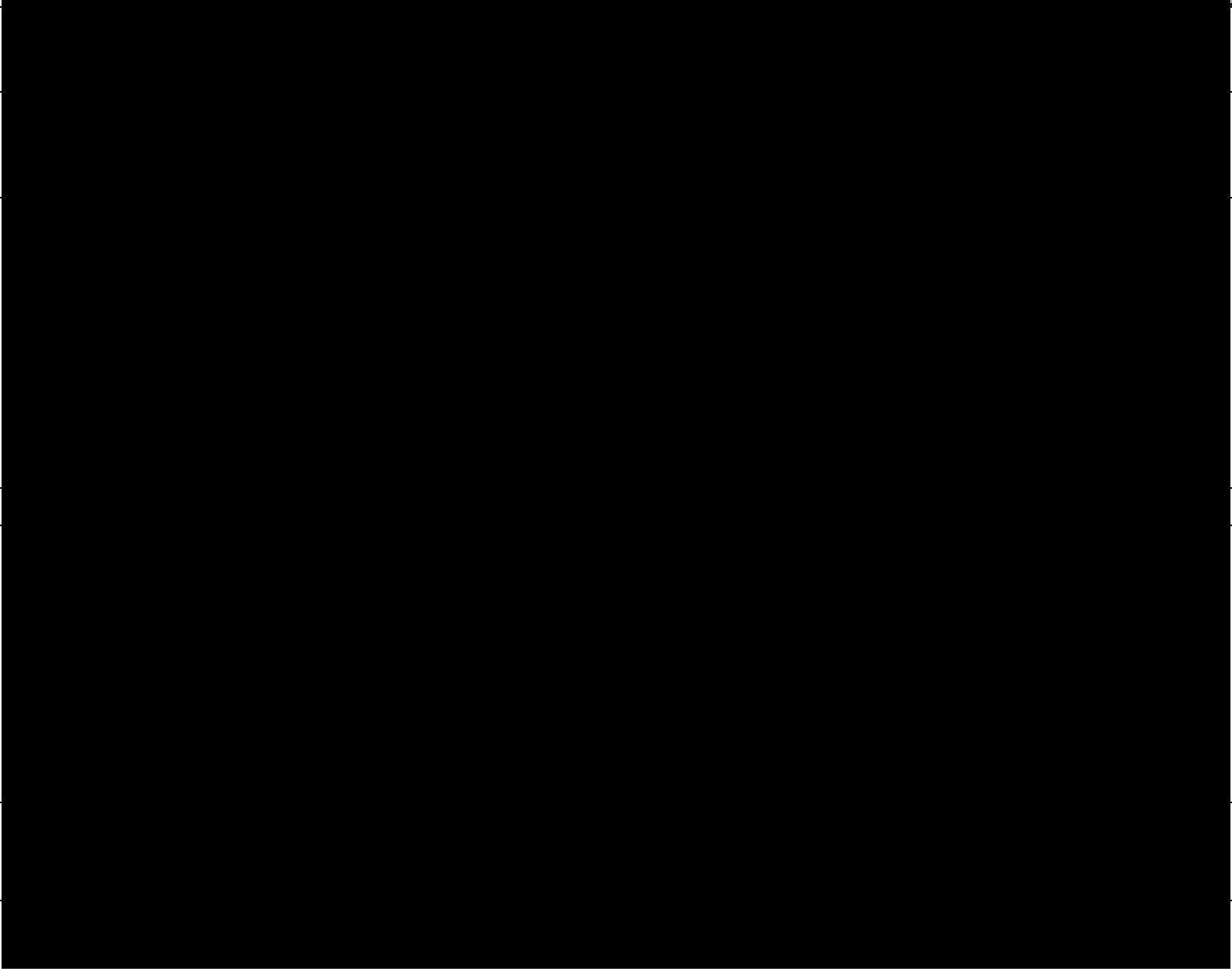
Suffolk Downs Corporate Control Environment Narrative

<b>Process</b>	<b>Process Description</b>	<b>Control Objective</b>
		
<b>Business Conduct and Ethics</b>		
<b>Oversight of Board of Managers</b>		

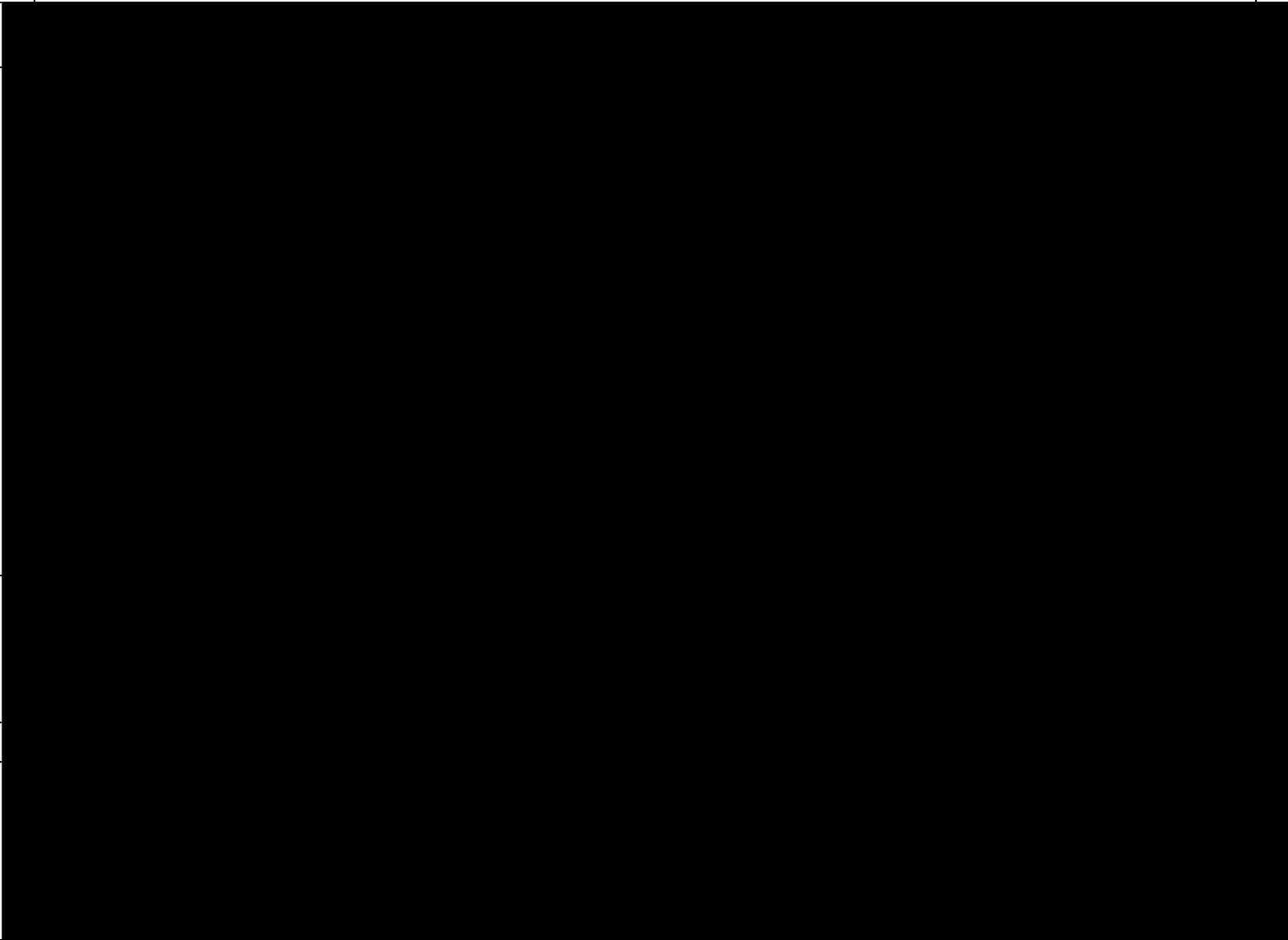
Suffolk Downs Corporate Control Environment Narrative

Process	Process Description	Control Objective
		
<b>Management Philosophy and Operating Style</b>		
<b>Communications with Independent Auditors and General Counsel</b>		
<b>Organization</b>		

Suffolk Downs Corporate Control Environment Narrative

<b>Process</b>	<b>Process Description</b>	<b>Control Objective</b>
<b>Structure</b>		
<b>Assignment of Authority and Responsibility</b>		
<b>Human Resource Policies and Practices</b>		
<b>Entity-Wide Objectives</b>		
<b>Activity-Level Objectives</b>		

Suffolk Downs Corporate Control Environment Narrative

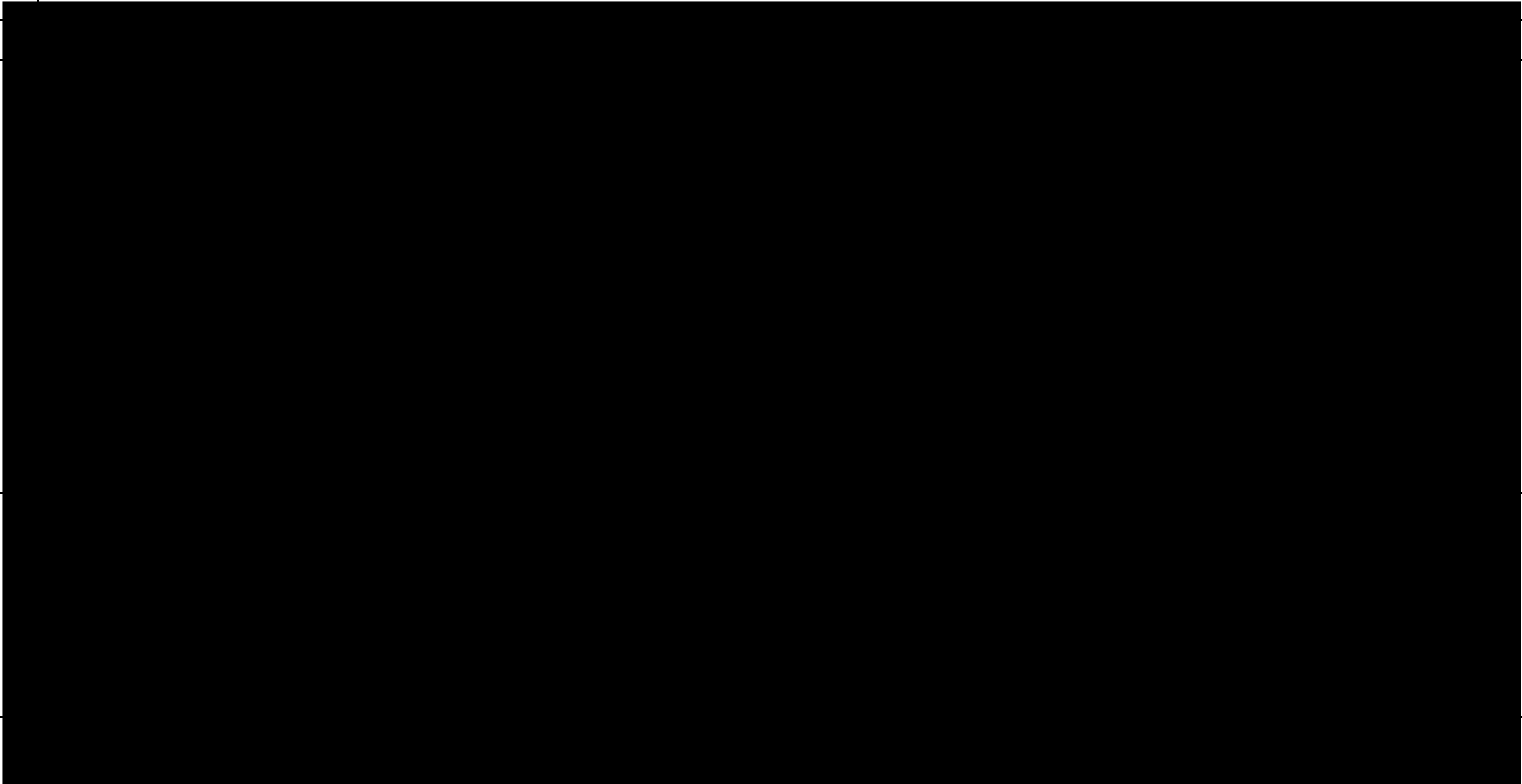
Process	Process Description	Control Objective
		
<b>Entity Risks</b>		
<b>Managing Change</b>		
<b>Control Activities</b>		



Suffolk Downs Corporate Control Environment Narrative

Process	Process Description	Control Objective
Information		
Communication		
Ongoing Monitoring		

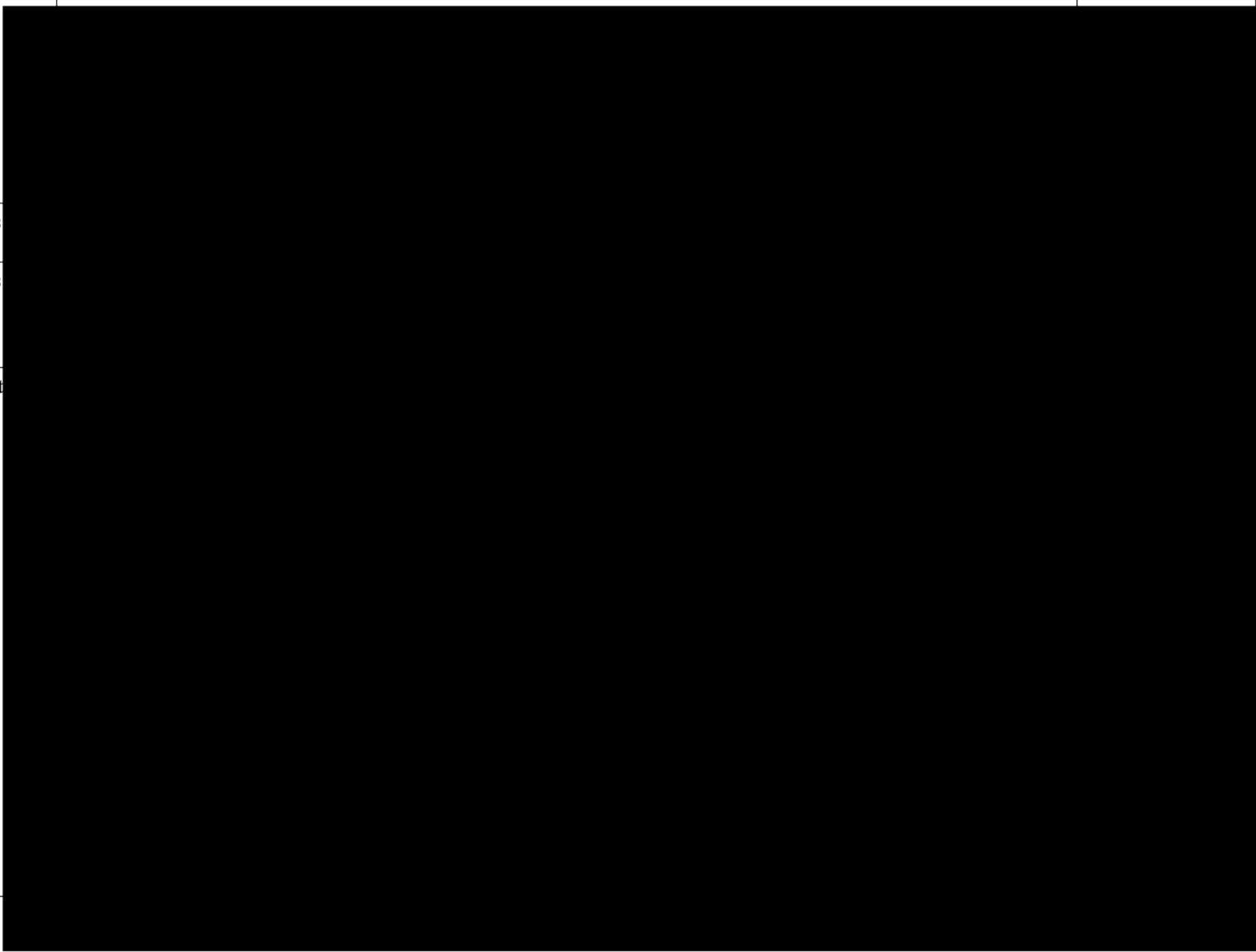
Suffolk Downs Corporate Control Environment Narrative


<b>Process</b>	<b>Process Description</b>	<b>Control Objective</b>
<b>Separate Evaluations</b>		
<b>Reporting Deficiencies</b>		

**Background:**

The objective of this document is to record the process for recording debt and equity activities at Sterling Suffolk Racecourse LLC (herein referred to as Suffolk) in narrative form and to identify all of the discrete steps involved to complete a transaction.

Throughout this document control objectives and types of controls are listed as follows: completeness, accuracy, validity, and restricted access and by type, for example monitoring (preventative) and detecting controls.

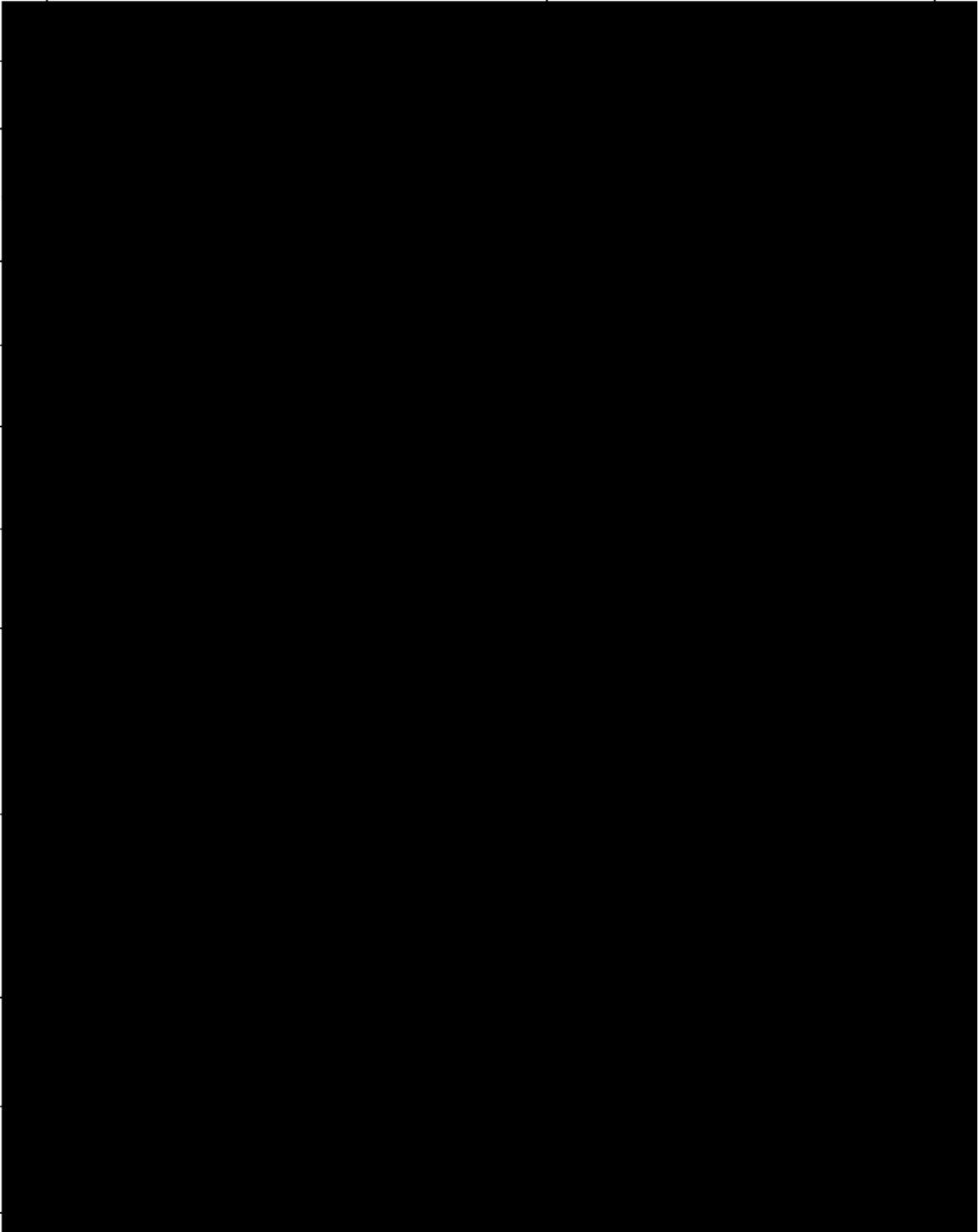
Process	Process Description	Control Objective
<b>Overview</b>		
<b>Agreement is Negotiated</b>		
<b>Agreement is Signed</b>		
<b>Debt &amp; Capital Lease Cycle Initiation</b>		

Process	Process Description	Control Objective
<b>Recording of Payable amounts Monthly principal and interest payments</b>		
<b>Initiating Equity Financing</b>		
<b>Maintaining Equity Records</b>		
<b>Termination of Shareholders' Equity</b>		
<b>Problem Resolution</b>		



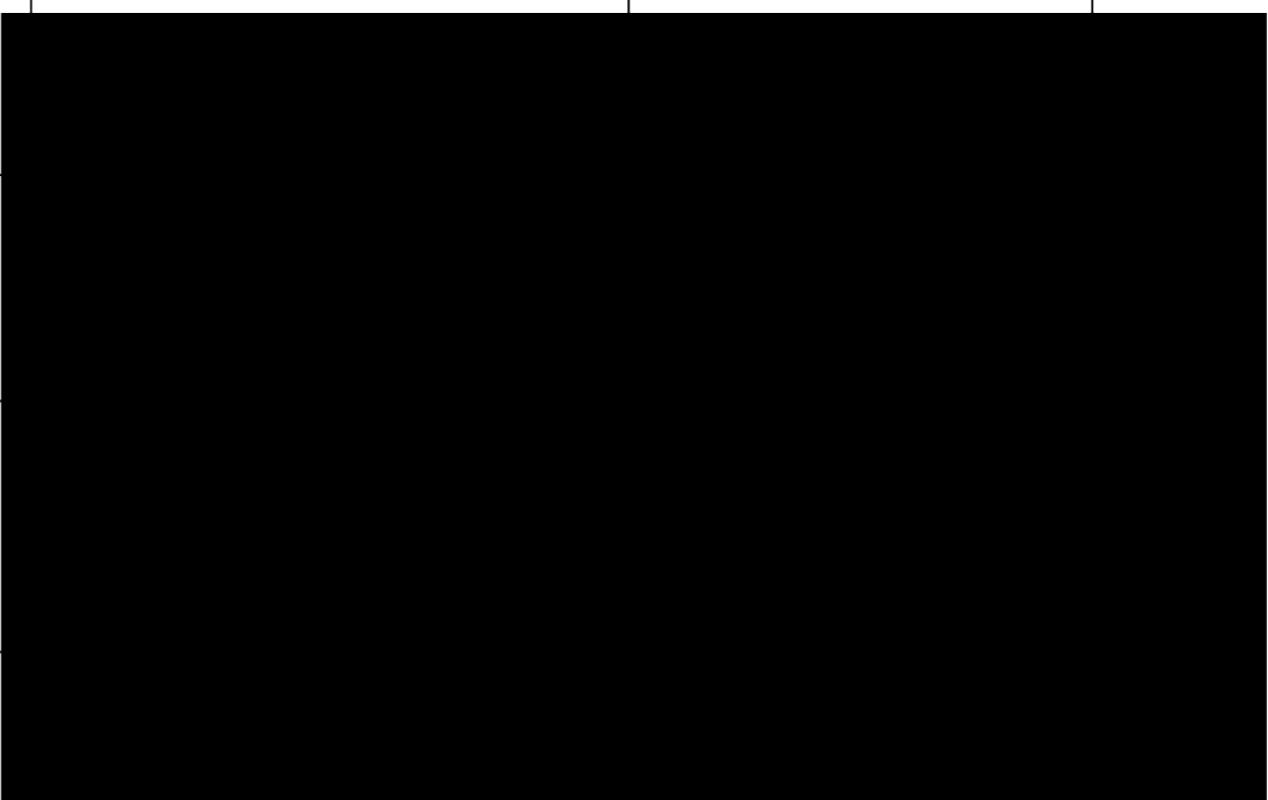
### Sterling Suffolk Racecourse, LLC

Cycle: Debt and Equity

Index #	Control	Testing Plan
DE		
DE		
DE		
DE		
DE		
DE		
DE		

**Sterling Suffolk Racecourse, LLC**

Cycle: Debt and Equity

Index #	Control	Testing Plan
DE - 7		
DE - 8		
DE - 9		

**Background:**

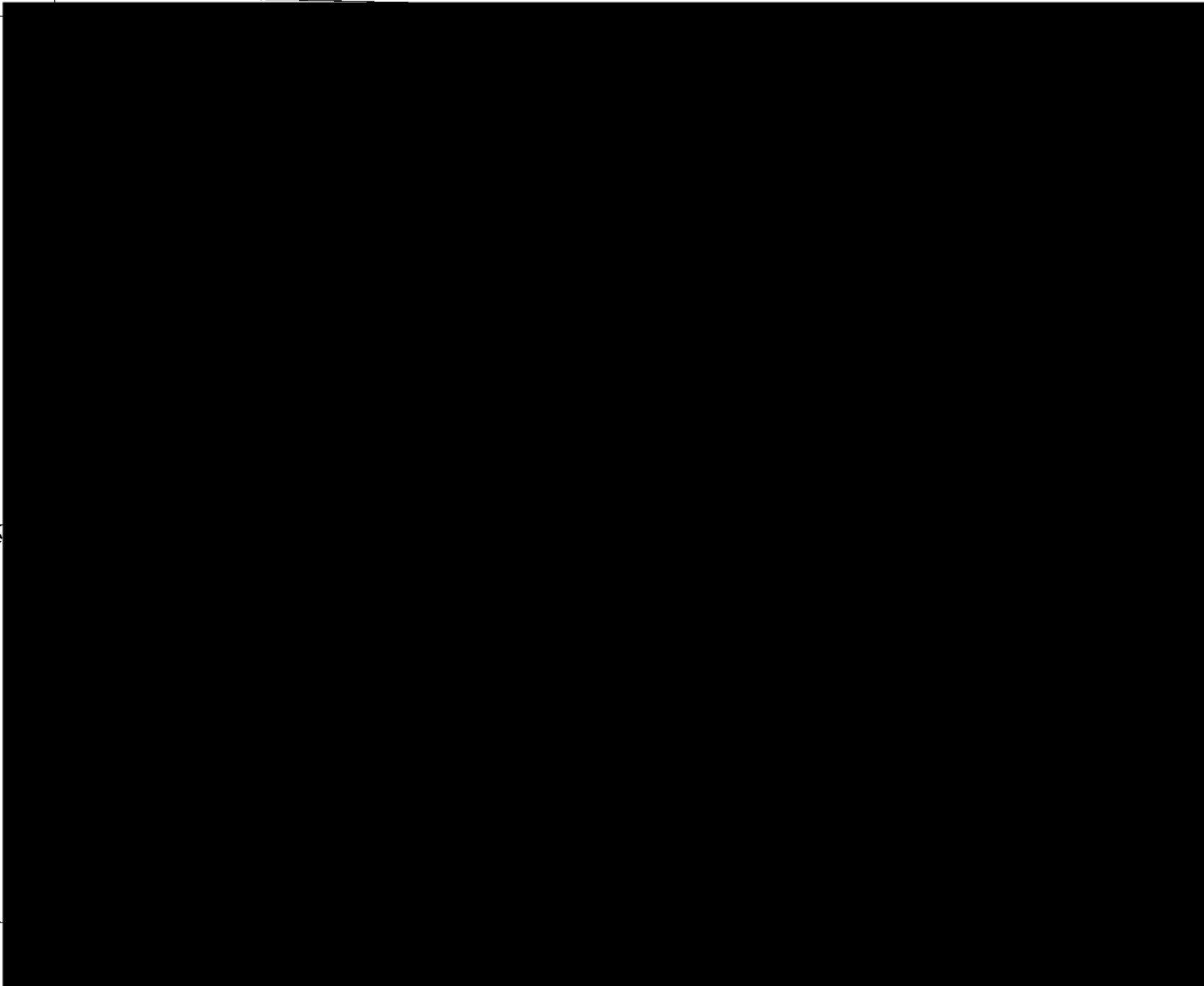
The objective of this document is to record the process of generating Sterling Suffolk Racecourse LLC's (herein referred to as "Suffolk") internal financial reporting function in narrative form and to identify all of the discrete steps involved to complete a transaction.

Throughout this document control objectives and types of controls are listed as follows: completeness, accuracy, validity and restricted access and by type, for example monitoring (preventative) and detecting controls.

Process	Process Description	Control Objective
---------	---------------------	-------------------

Process	Process Description
<b>Overview</b>	
<b>Budgeting Process</b>	
<b>Journal Entry Transactions</b>	

<b>Process</b>
<b>Monthly Close Binders</b>





<b>Process</b>	
<b>Period Closing</b>	
<b>Problem Resolution</b>	

### Sterling Suffolk Racecourse, LLC

Cycle: Financial Reporting

Index #	Control	Testing Plan
FR-		
FR-		
FR-		
FR-		
FR-		

**Sterling Suffolk Racecourse, LLC**

Cycle: Financial Reporting

Index #	Control	Testing Plan
FR		
FR		
FR		
FR -		
FR - 1		
FR - 1		

**Sterling Suffolk Racecourse, LLC**

Cycle: Financial Reporting

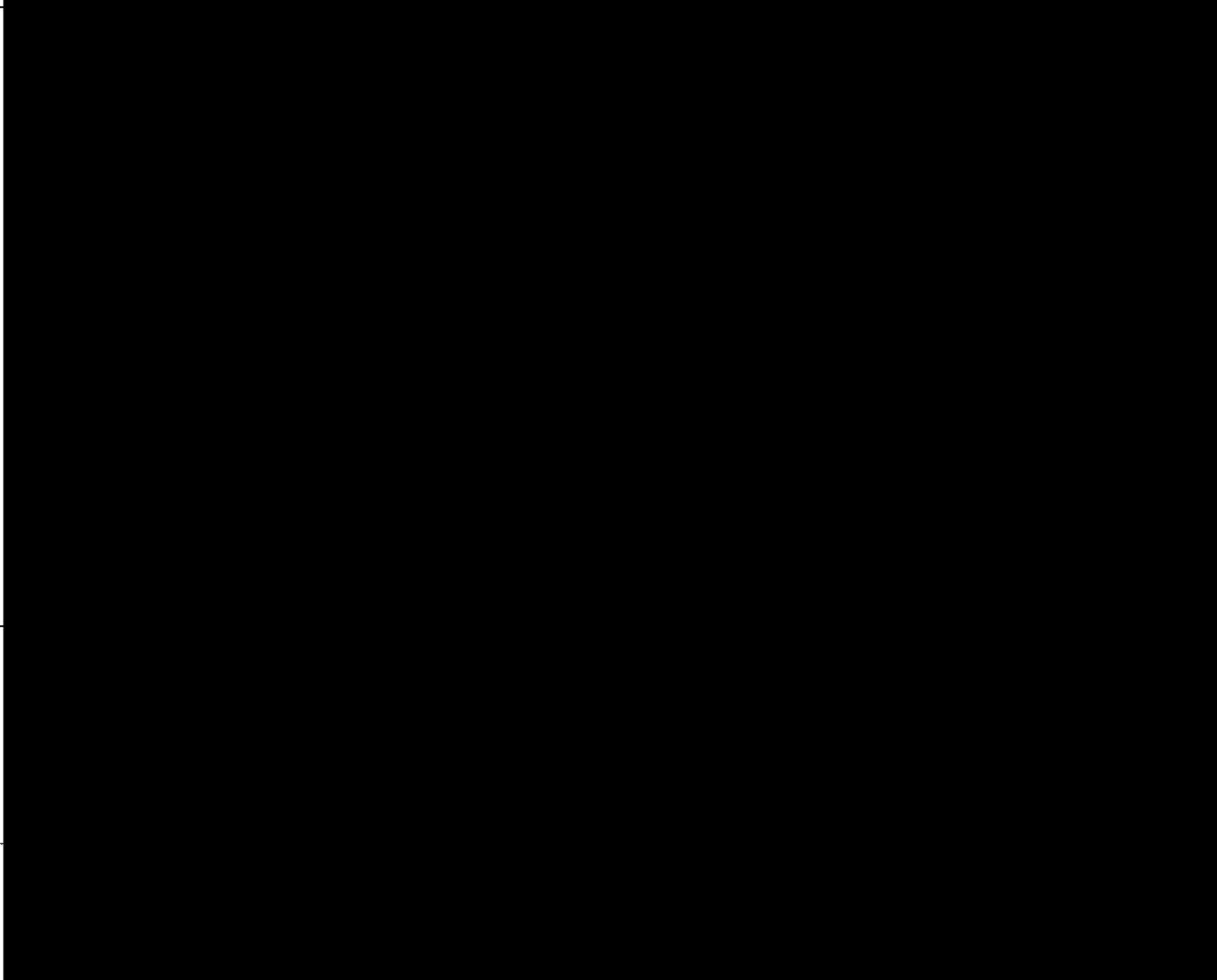
Index #	Control	Test Plan
FR -		
FR -		
FR -		

**Background:**

The objective of this document is to record the function of the Office of the Horsemen's Bookkeeper at Sterling Suffolk Racecourse LLC (herein referred to as Suffolk) in narrative form and to identify all of the discrete steps involved in this process.

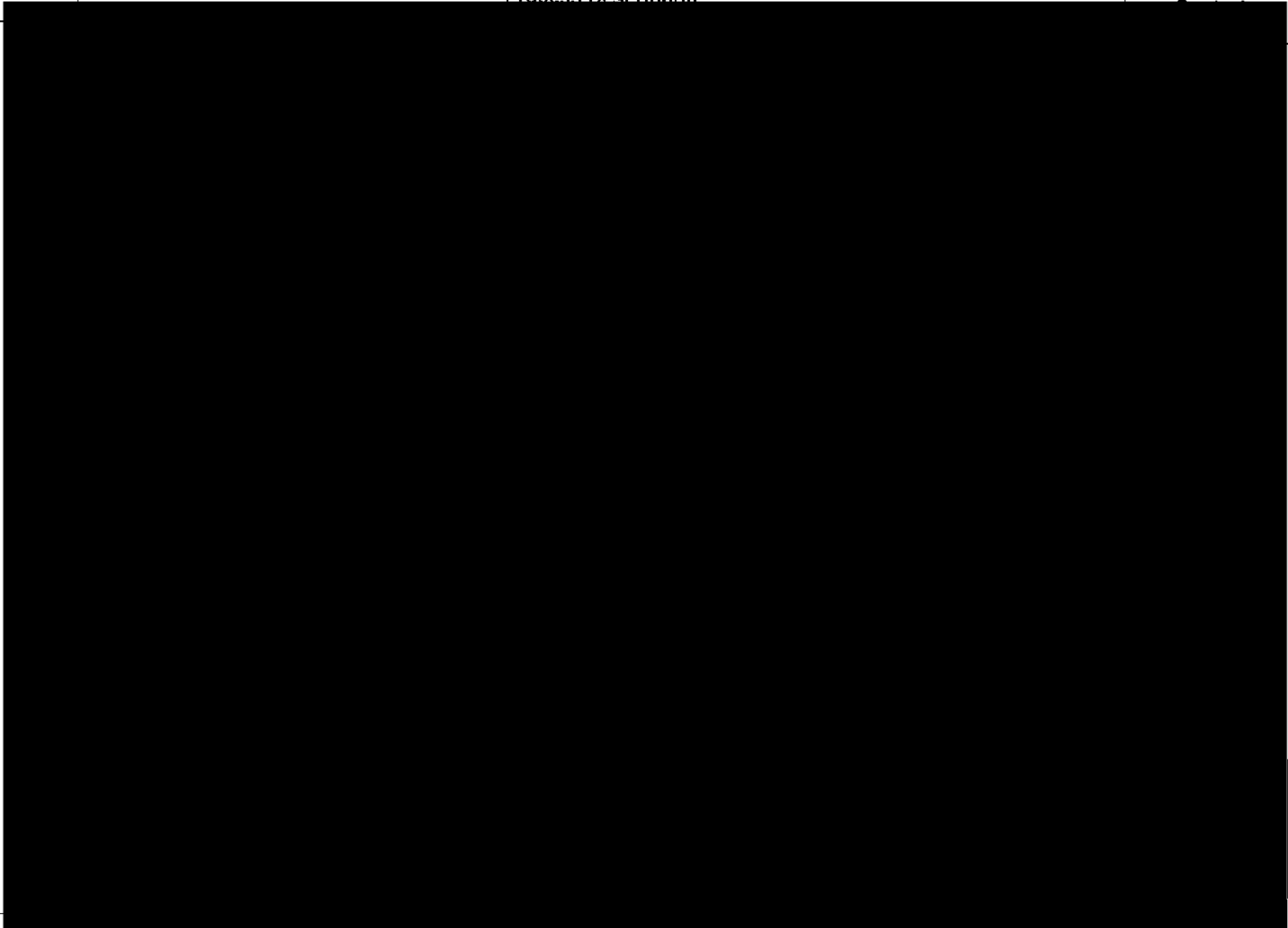
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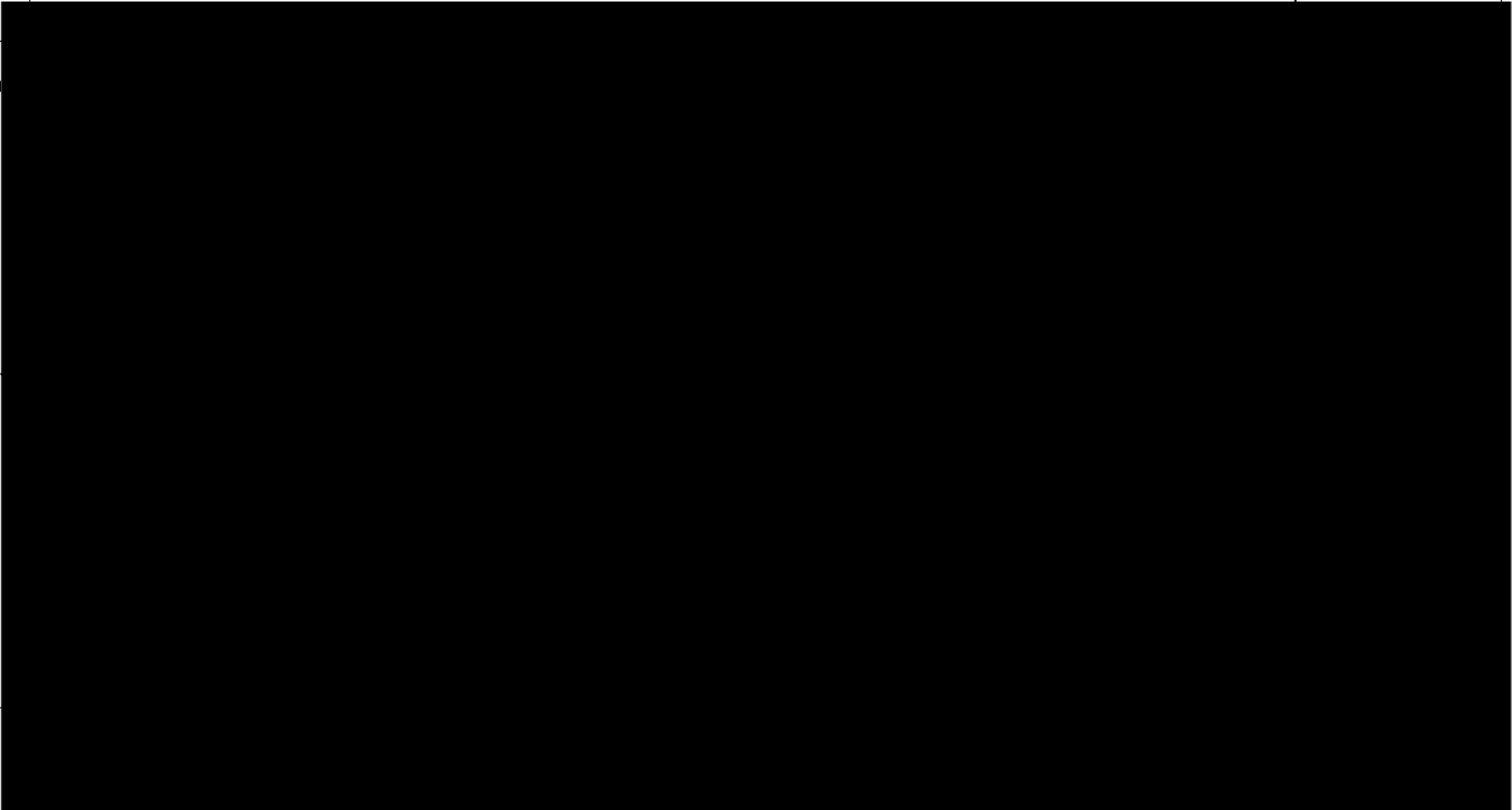


<b>Process</b>	<b>Process Description</b>	<b>Control</b>
<b>Overview</b>		
<b>Allocating Purses</b>		

Process	Process Description
Verifying Claims	
Processing Account Transactions	

Process	Process Description
	

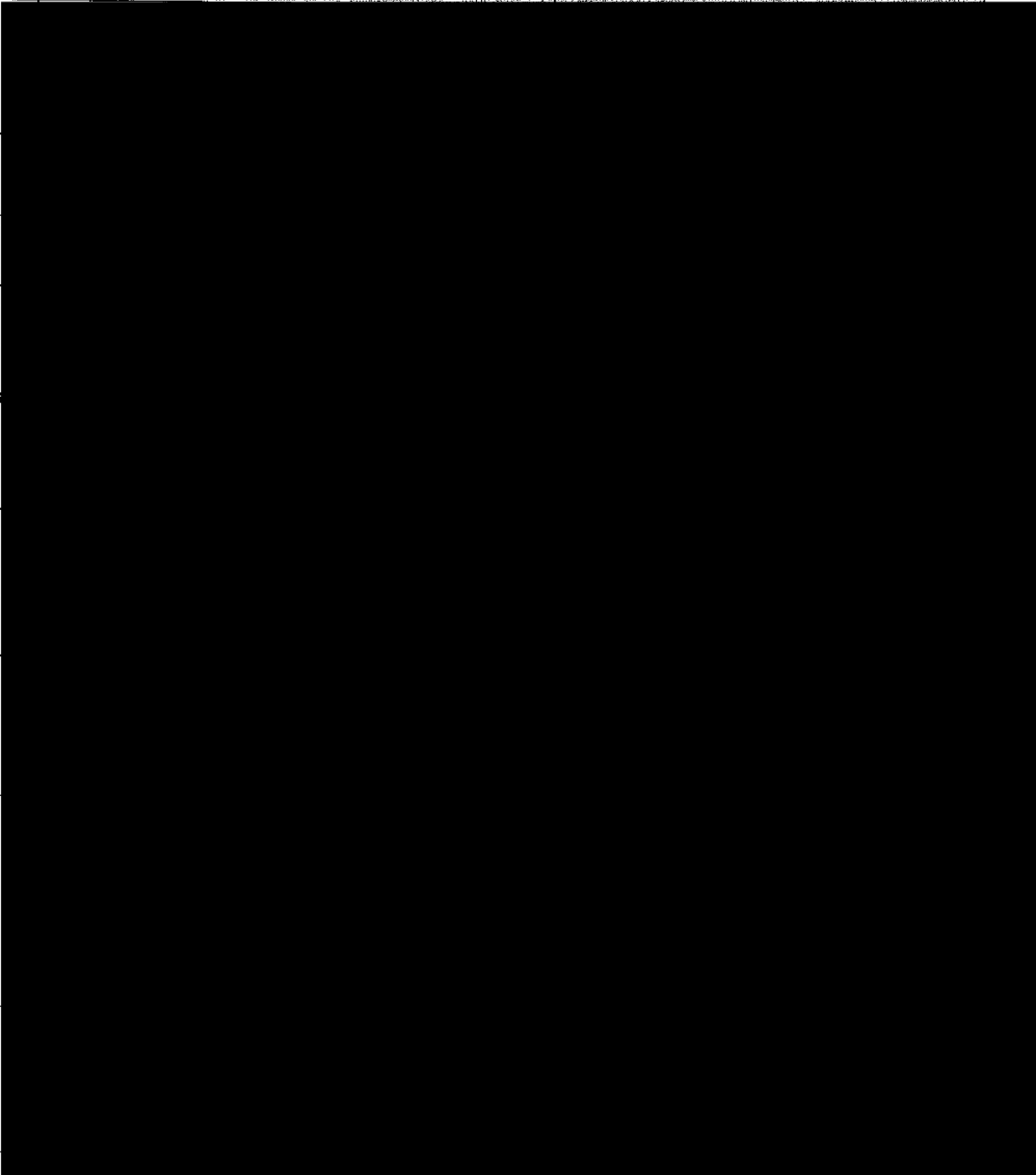
Process	Process Description
	

Process	Process Description	Control Objective
Account Reconciliation		
Problem Resolution		



**Sterling Suffolk Racecourse, LLC**

Cycle: Horsemen's Bookkeeper

Index #	Control	Testing Plan
HB -		
HB -		
HB - 3		
HB - 4		
HB - 5		
HB - 6		
HB - 7		

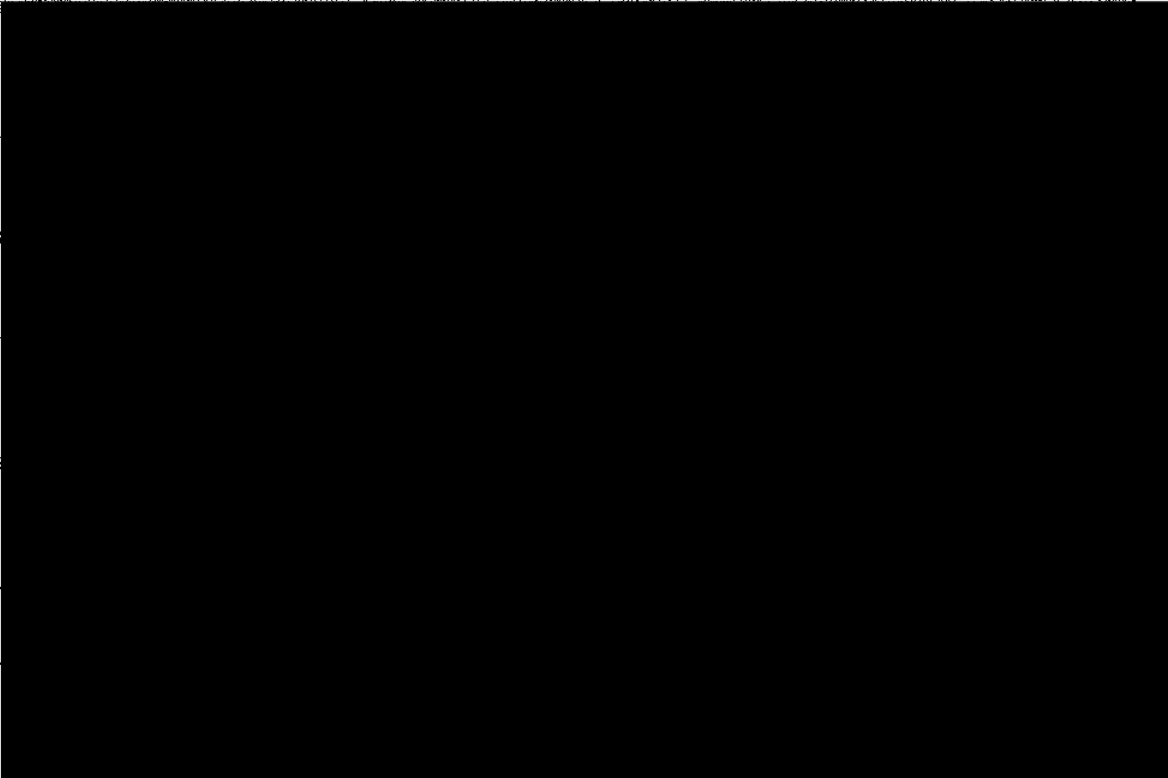
**Sterling Suffolk Racecourse, LLC**

Cycle: **Horsemen's Bookkeeper**

Index #	Control	Testing Plan
HB -		
HB -		
HB -		
HB -		
HB -		
HB -		
HB -		
HB -		
HB - 1		

**Sterling Suffolk Racecourse, LLC**

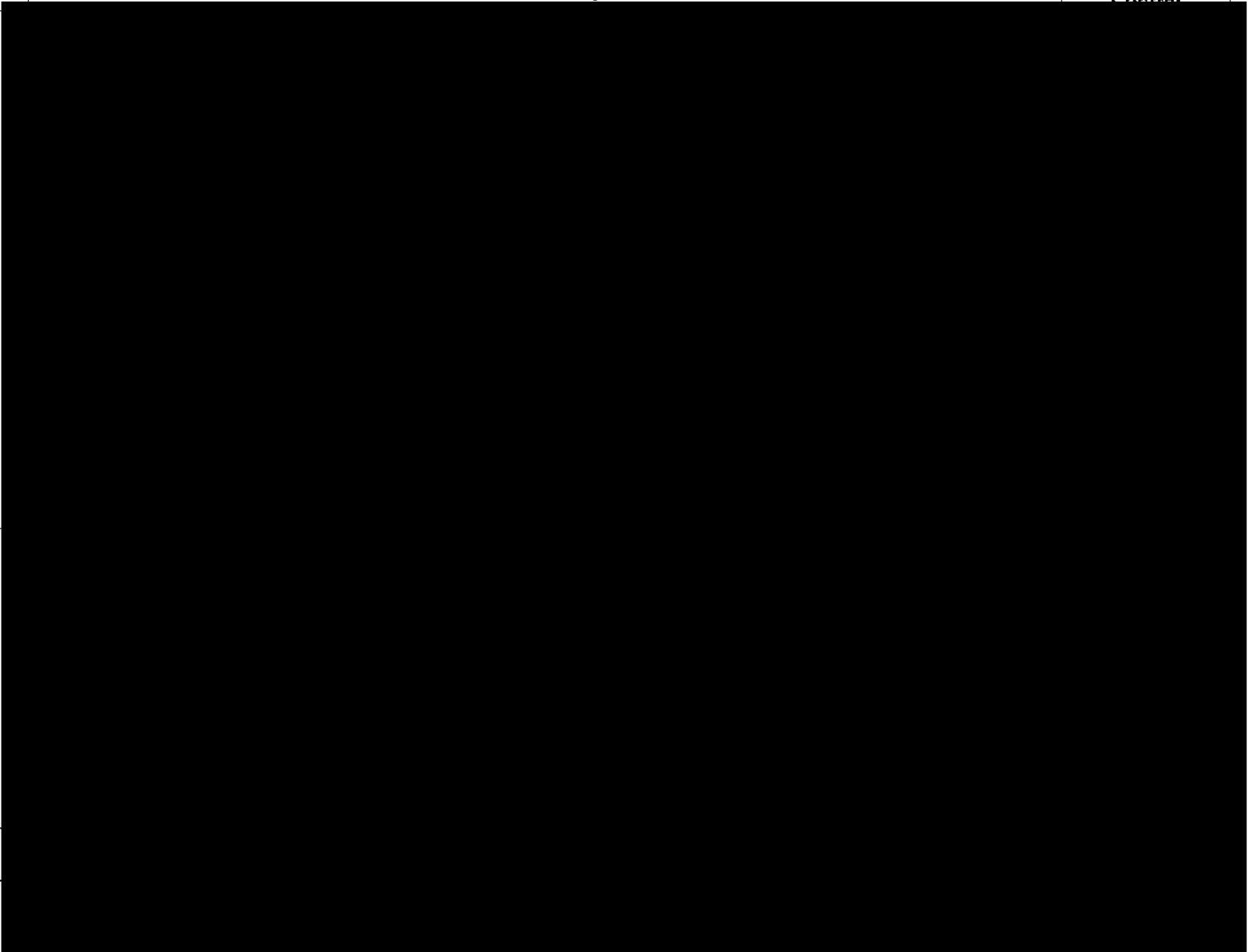
Cycle: Horsemen's Bookkeeper

Index #	Control	Testing Plan
HB - 1		
HB - 1		
HB - 19		
HB - 20		

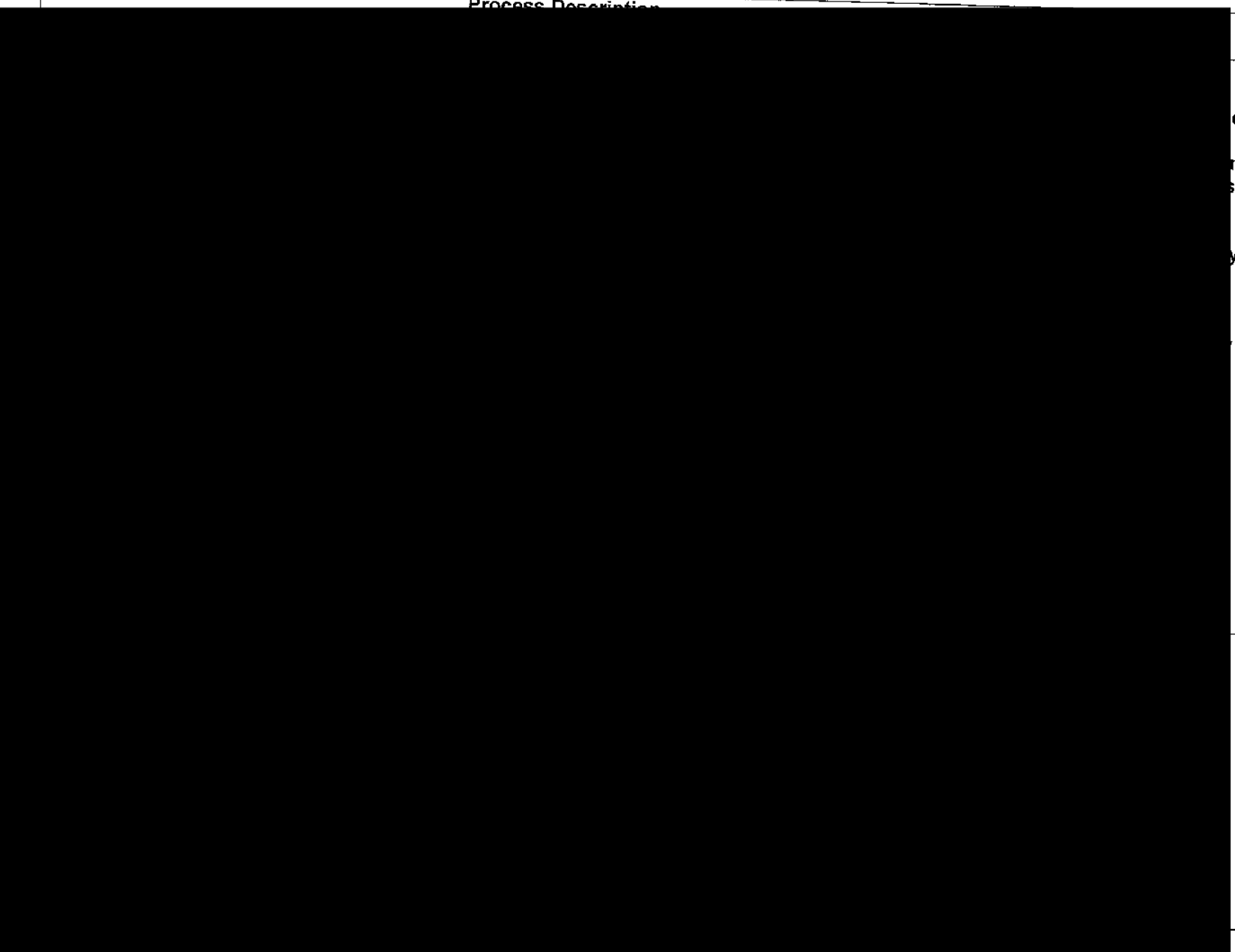
**Background:**

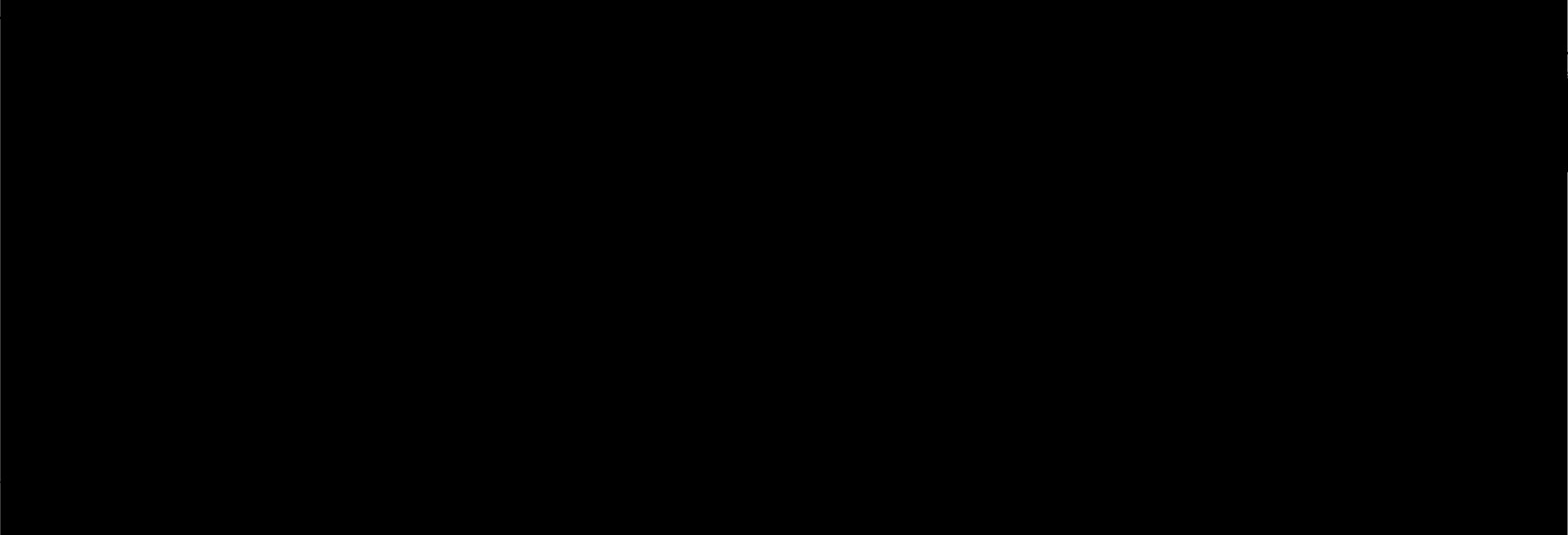
The objective of this document is to record the function of the Mutuel's Office at Sterling Suffolk Racecourse LLC (herein referred to as Suffolk) in narrative form and to identify all of the discrete steps involved in this process.


Throughout this document control objectives and types of controls are listed as follows: completeness, accuracy, validity and restricted access and by type, for example monitoring (preventative), and detecting controls.

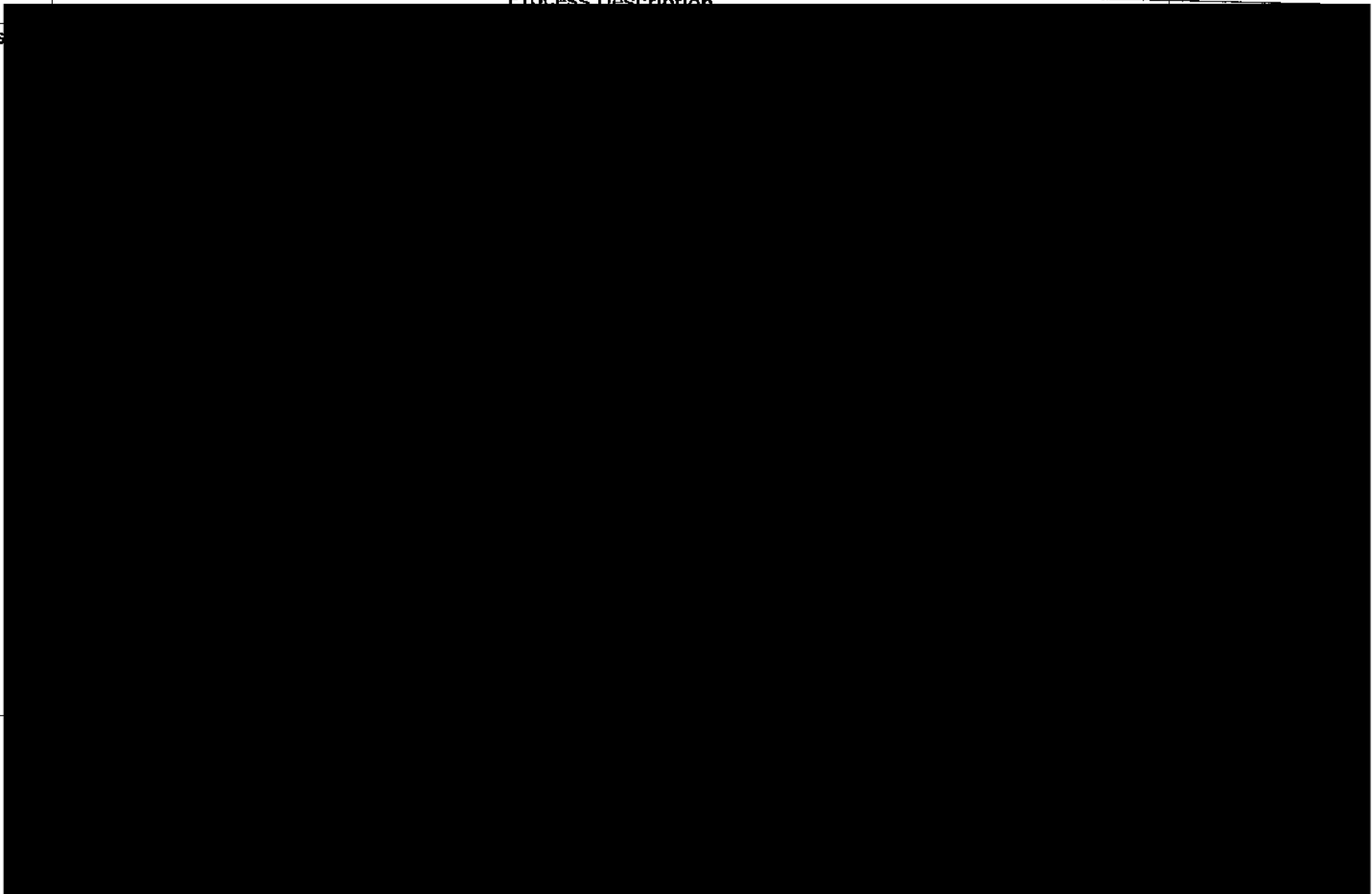
Process	Process Description	Control
Overview		
Hiring/Firing Personnel		
Managing Personnel		


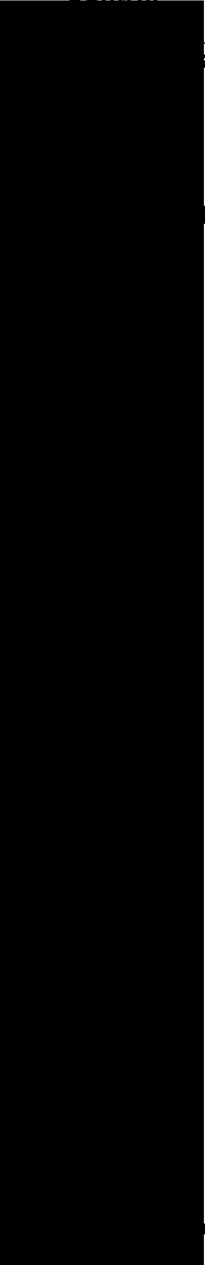


Process	Process Description
Contract Management	

Process	Process Description
Management Reports	

Process	Process Description
Live Racing Operations	

Process	Process Description
Missing/Lost Ticket Procedures	

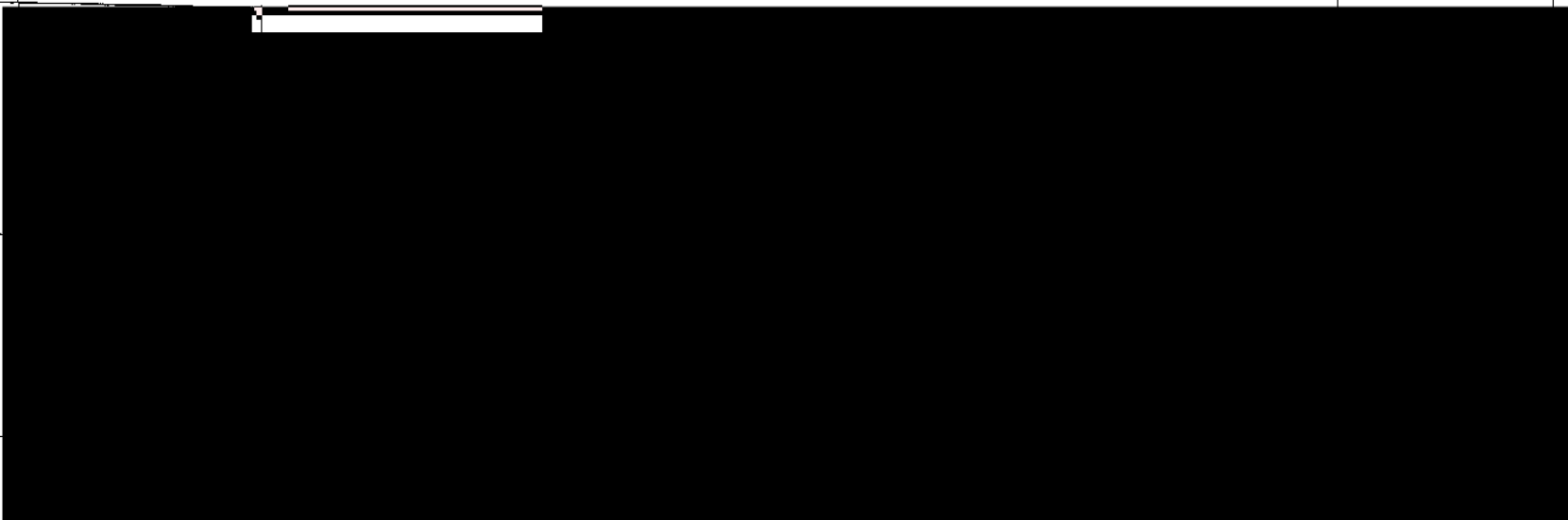
Process	Process Description	Control
Tax Reporting		



Process	Process Description	Control Objective
		Suffolk Downs

Cancelled  
Wagers

Problem  
Resolution



<b>Process</b>	<b>Process Description</b>	<b>Control Objective</b>
		<b>resolved.</b>

**Sterling Suffolk Racecourse, LLC**

Cycle: Mutuel's Office

Index #	Control	Testing Plan
M		
M		
M		
M		
MU		
MU		
MU -		
MU -		
MU - 1		
MU - 1		

**Sterling Suffolk Racecourse, LLC**

Cycle: Mutuel's Office

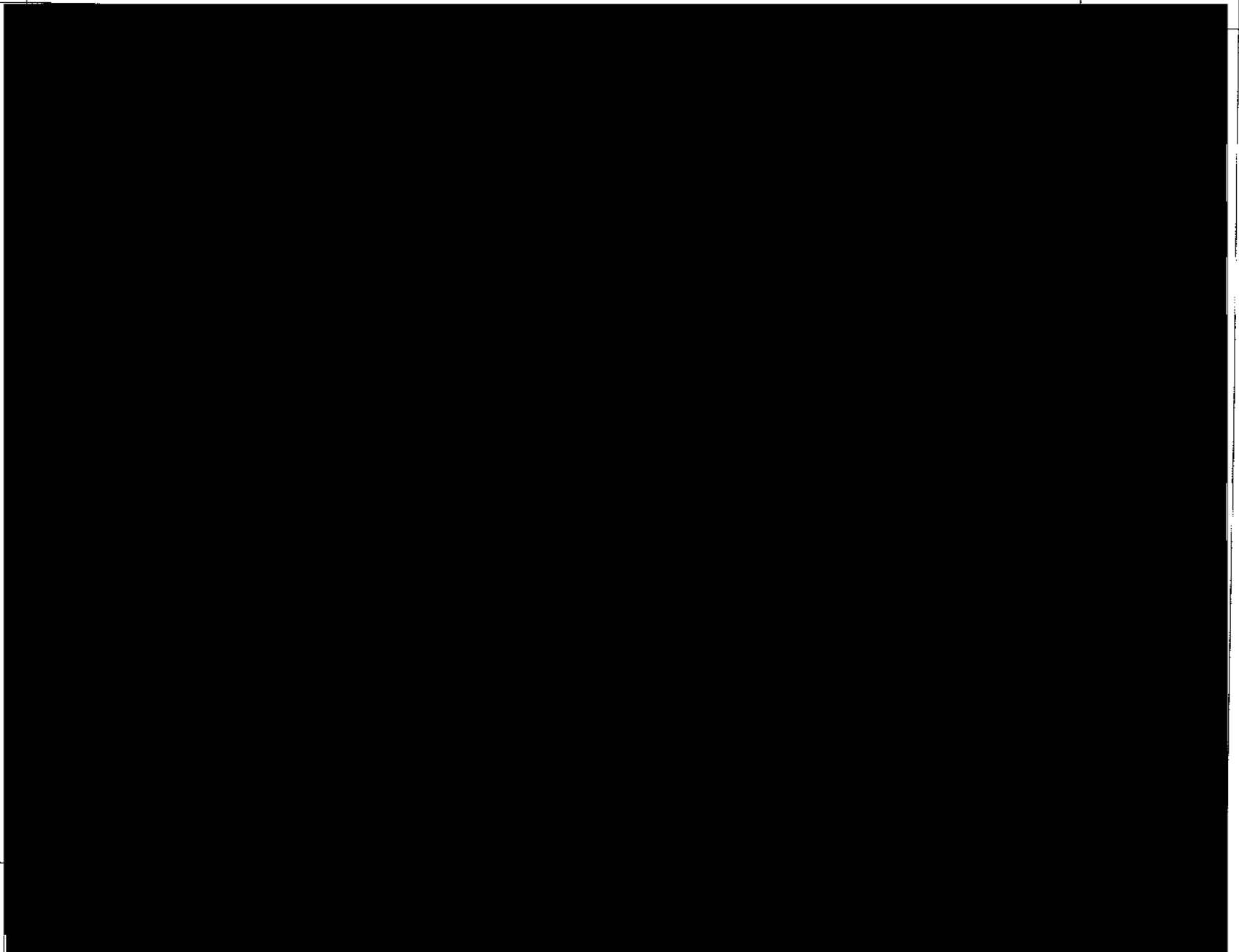
Index #	Control	Testing Date
MU - 12	[REDACTED]	[REDACTED]
MU - 13	[REDACTED]	[REDACTED]
MU - 14	[REDACTED]	[REDACTED]
MU - 15	[REDACTED]	[REDACTED]
MU - 16	[REDACTED]	[REDACTED]
MU - 17	[REDACTED]	[REDACTED]
MU - 18	[REDACTED]	[REDACTED]
MU - 19	[REDACTED]	[REDACTED]
MU - 20	[REDACTED]	[REDACTED]
MU - 21	[REDACTED]	[REDACTED]
MU - 22	[REDACTED]	[REDACTED]
MU - 23	[REDACTED]	[REDACTED]
MU - 24	[REDACTED]	[REDACTED]
MU - 25	[REDACTED]	[REDACTED]
MU - 26	[REDACTED]	[REDACTED]
MU - 27	[REDACTED]	[REDACTED]
MU - 28	[REDACTED]	[REDACTED]
MU - 29	[REDACTED]	[REDACTED]
MU - 30	[REDACTED]	[REDACTED]
MU - 31	[REDACTED]	[REDACTED]
MU - 32	[REDACTED]	[REDACTED]
MU - 33	[REDACTED]	[REDACTED]
MU - 34	[REDACTED]	[REDACTED]
MU - 35	[REDACTED]	[REDACTED]
MU - 36	[REDACTED]	[REDACTED]
MU - 37	[REDACTED]	[REDACTED]
MU - 38	[REDACTED]	[REDACTED]
MU - 39	[REDACTED]	[REDACTED]
MU - 40	[REDACTED]	[REDACTED]

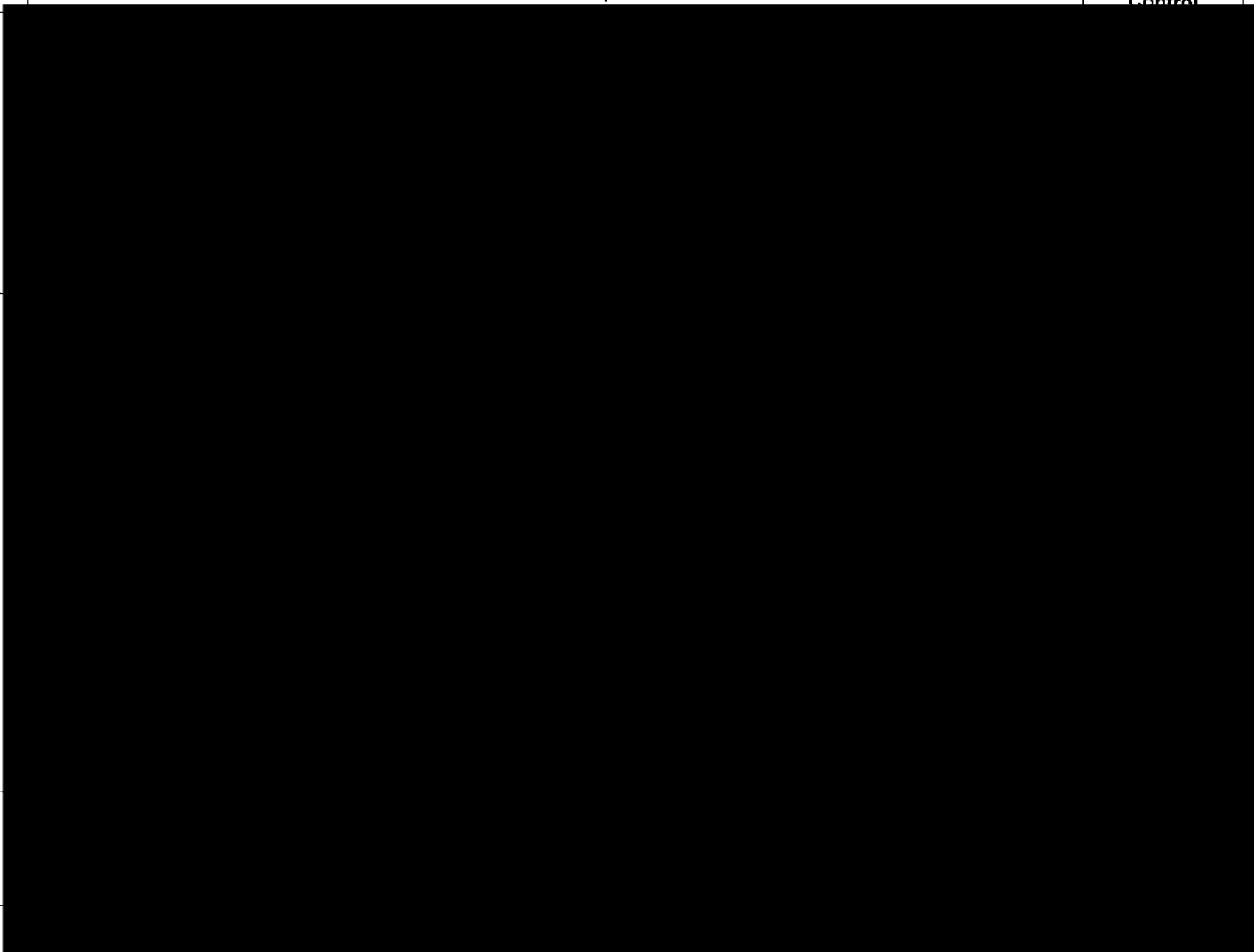
**Background:**

The objective of this document is to record the process of generating Sterling Suffolk Racecourse LLC's payroll and human resources function in narrative form and to identify all of the discrete steps involved to complete a transaction.

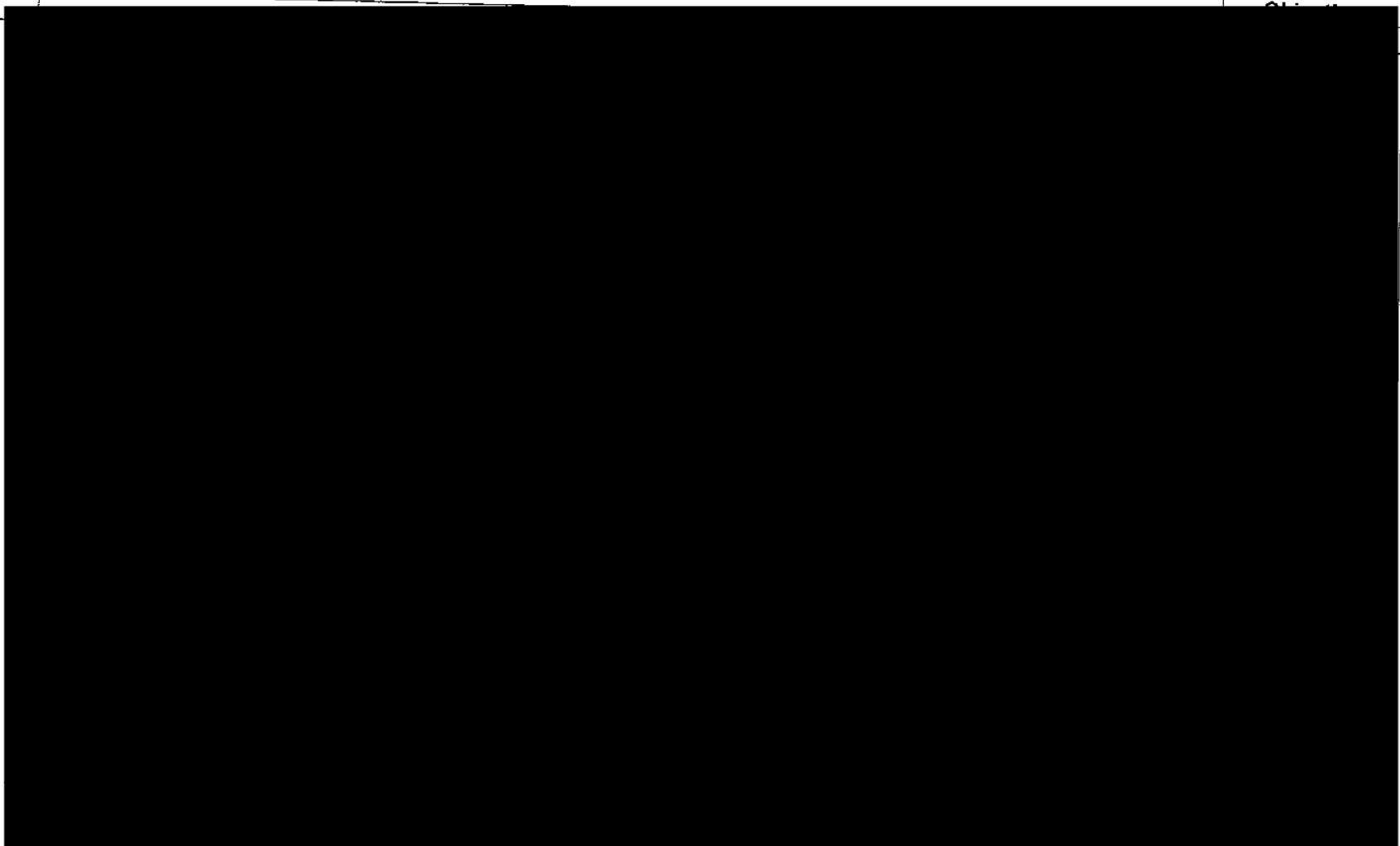

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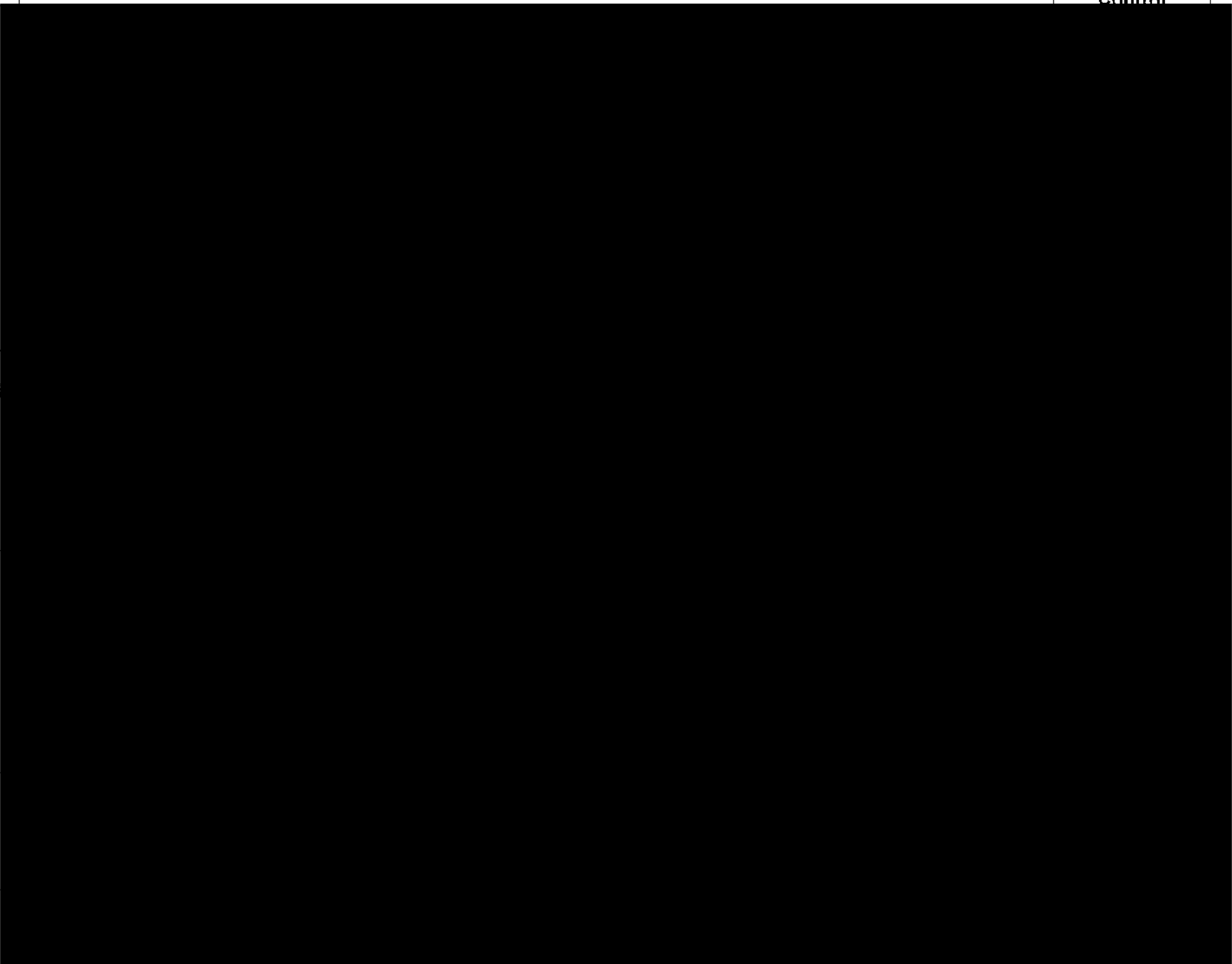


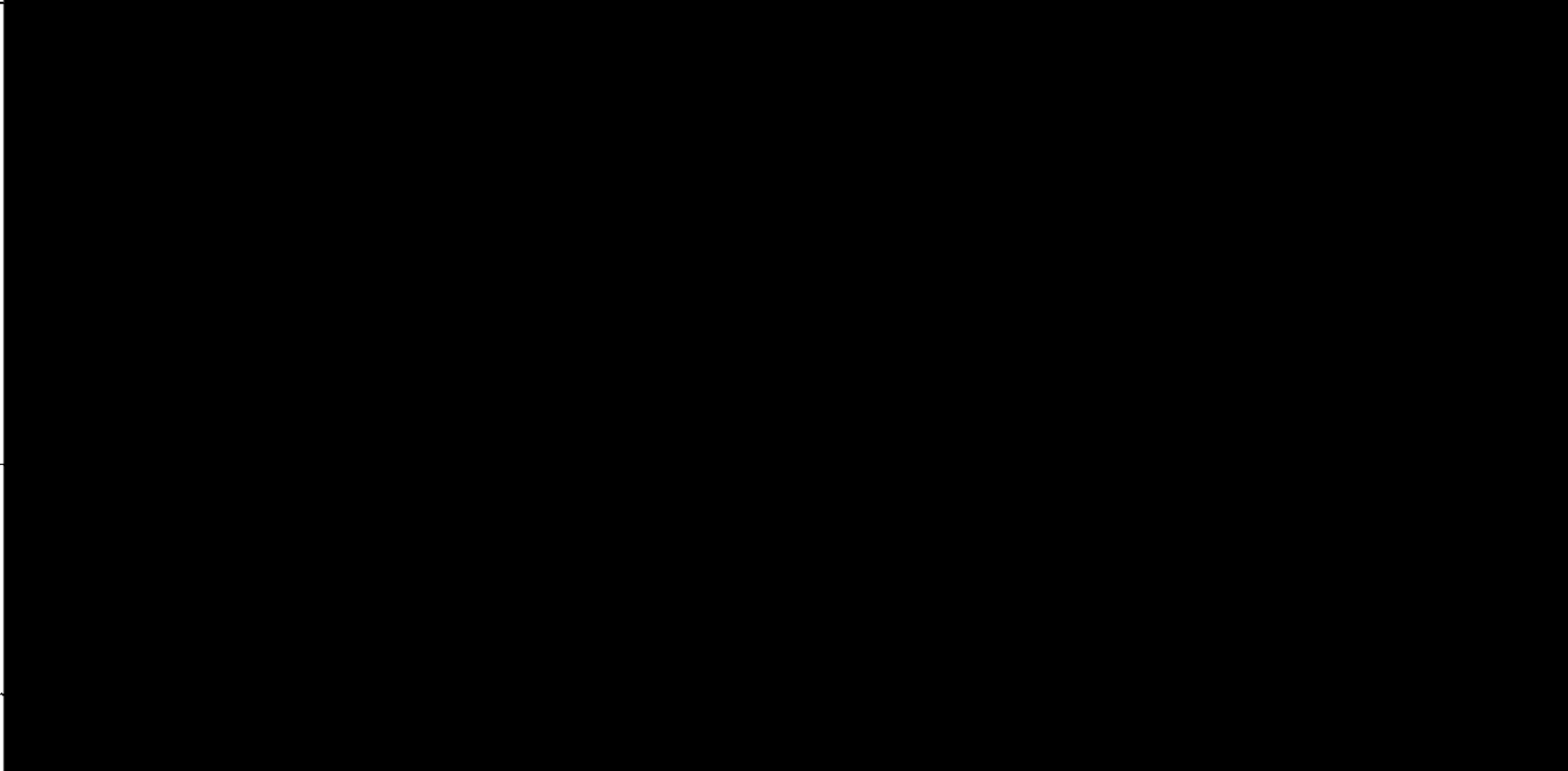
Process	Process Description	Control
Process		

Process	Process Description	Control
		
<b>Hiring Personnel</b>		
<b>Terminating Personnel</b>		

Process	Process Description	Contact
Change in Payroll Status		

Process	Process Description	Control
Weekly Payroll Processing		

Process	Process Description	Control
Employee Benefits		
Maintenance of the Payroll Database		
Distribution of Pay Stubs and Checks		
Payroll /Recording Payroll Expenditures to GL		

<b>Process</b>	<b>Process Description</b>	<b>Control</b>
		
<b>Problem Resolution</b>		



**Sterling Suffolk Racecourse, LLC**  
Cycle: Payroll and Human Resources

Index #	Control	Testing Plan
---------	---------	--------------

PR	[REDACTED]	[REDACTED]
PR	[REDACTED]	[REDACTED]
PR	[REDACTED]	[REDACTED]
PR -	[REDACTED]	[REDACTED]
PR -	[REDACTED]	[REDACTED]
PR -	[REDACTED]	[REDACTED]

**Sterling Suffolk Racecourse, LLC**  
Cycle: Payroll and Human Resources

Index #	Control	Testing Plan
PR - 7	[REDACTED]	[REDACTED]
PR - 8	[REDACTED]	[REDACTED]
PR - 9	[REDACTED]	[REDACTED]
PR - 10	[REDACTED]	[REDACTED]
PR - 11	[REDACTED]	[REDACTED]
PR - 12	[REDACTED]	[REDACTED]
PR - 13	[REDACTED]	[REDACTED]

**Sterling Suffolk Racecourse, LLC**  
Cycle: Payroll and Human Resources

Index #	Control	Testing Plan
PR - 14		
PR - 15		
PR - 16		
PR - 17		

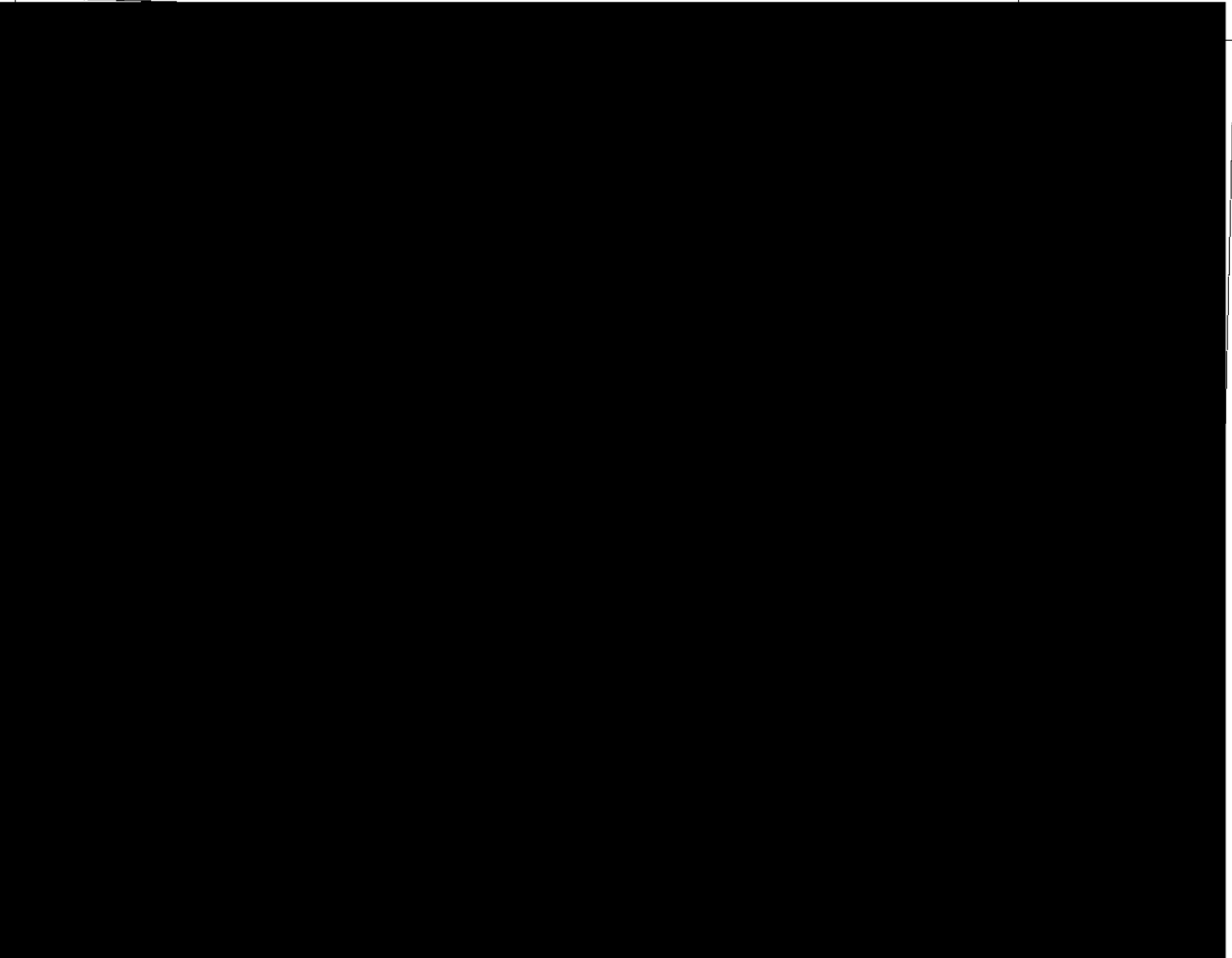
**Background:**

The objective of this document is to record the process of generating Sterling Suffolk Racecourse LLC's (herein referred to as "Suffolk") purchasing and payables in narrative form and to identify all of the discrete steps involved to complete a transaction.

Throughout this document control objectives and types of controls are listed as follows: completeness, accuracy, validity and restricted access and by type, for example monitoring (preventative) and detecting controls.

Process	Process Description	Control Objective
---------	---------------------	-------------------

Process		
Overview		Control Objective

Process	Process Description	Control Objective
<b>Request for Purchase and Purchase Transaction</b>		



Process	Process Description	Control Objective
		limited to the CFO and Controller
Receiving		
Maintenance of Payables Database		
Invoice Processing		

Process	
Payment Processing	

Process	Process Description		Control Objective
Inter-track Activity	[Redacted Content]		
Problem Resolution			
Suggestions for Improvement			

**Sterling Suffolk Racecourse, LLC**

Cycle: Purchasing and Payables

Index #	Control	Testing Plan
P		
PP		
PP		
PP -		
PP - 5		
PP - 6		

**Sterling Suffolk Racecourse, LLC**

Cycle: Purchasing and Payables

Index #	Control	Testing Plan
---------	---------	--------------

PP		
PP		
PP -		

**Sterling Suffolk Racecourse, LLC**

Cycle: Purchasing and Payables

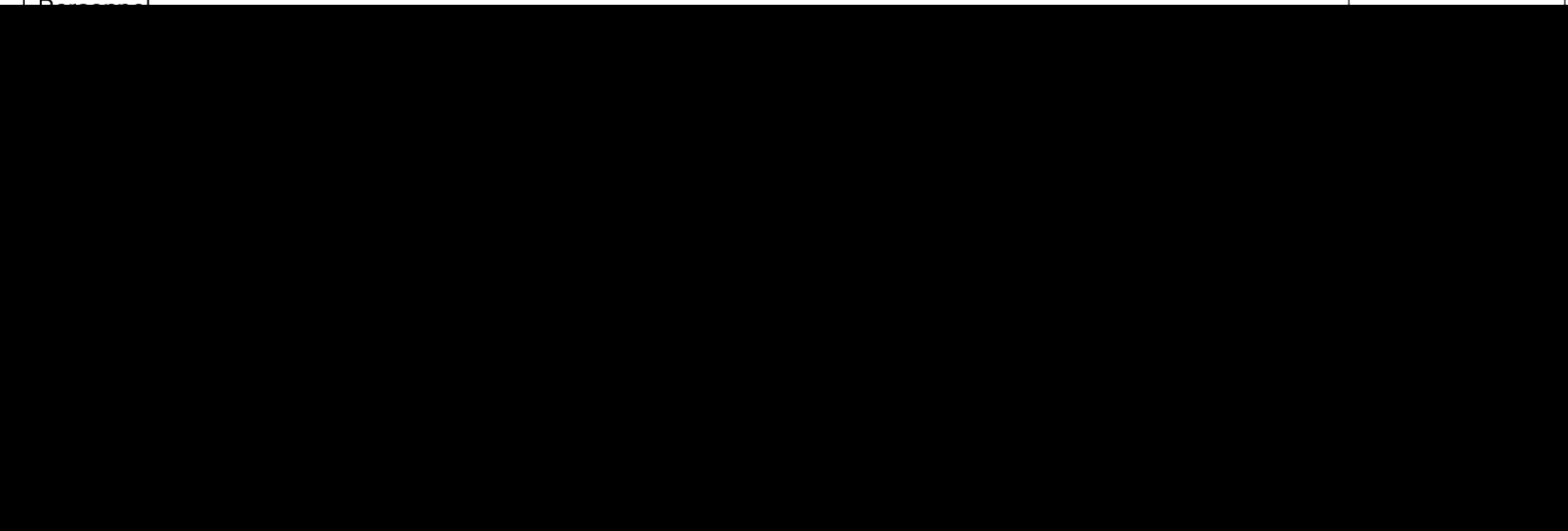
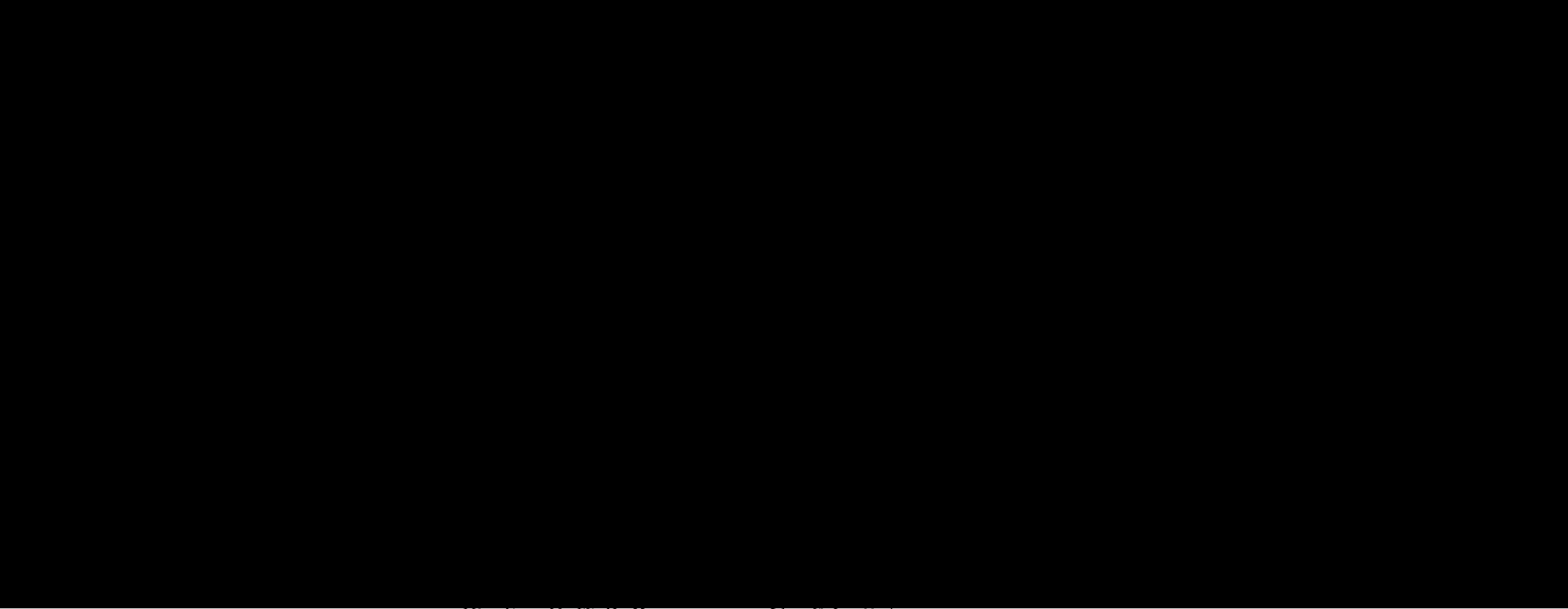
Index #	Control	Testing Plan
PP - 1	[REDACTED]	[REDACTED]
PP - 14	[REDACTED]	[REDACTED]
PP - 15	[REDACTED]	[REDACTED]
PP - 16	[REDACTED]	[REDACTED]

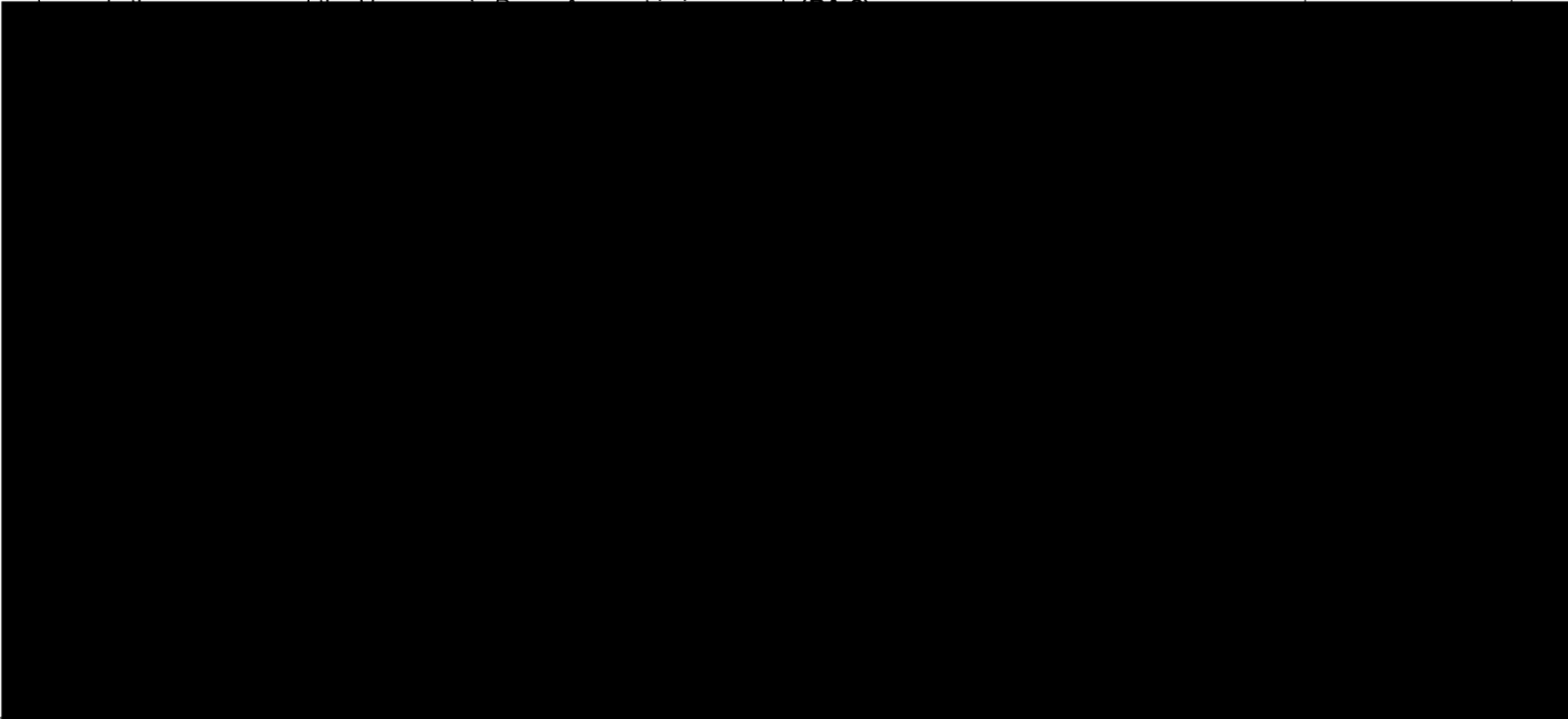
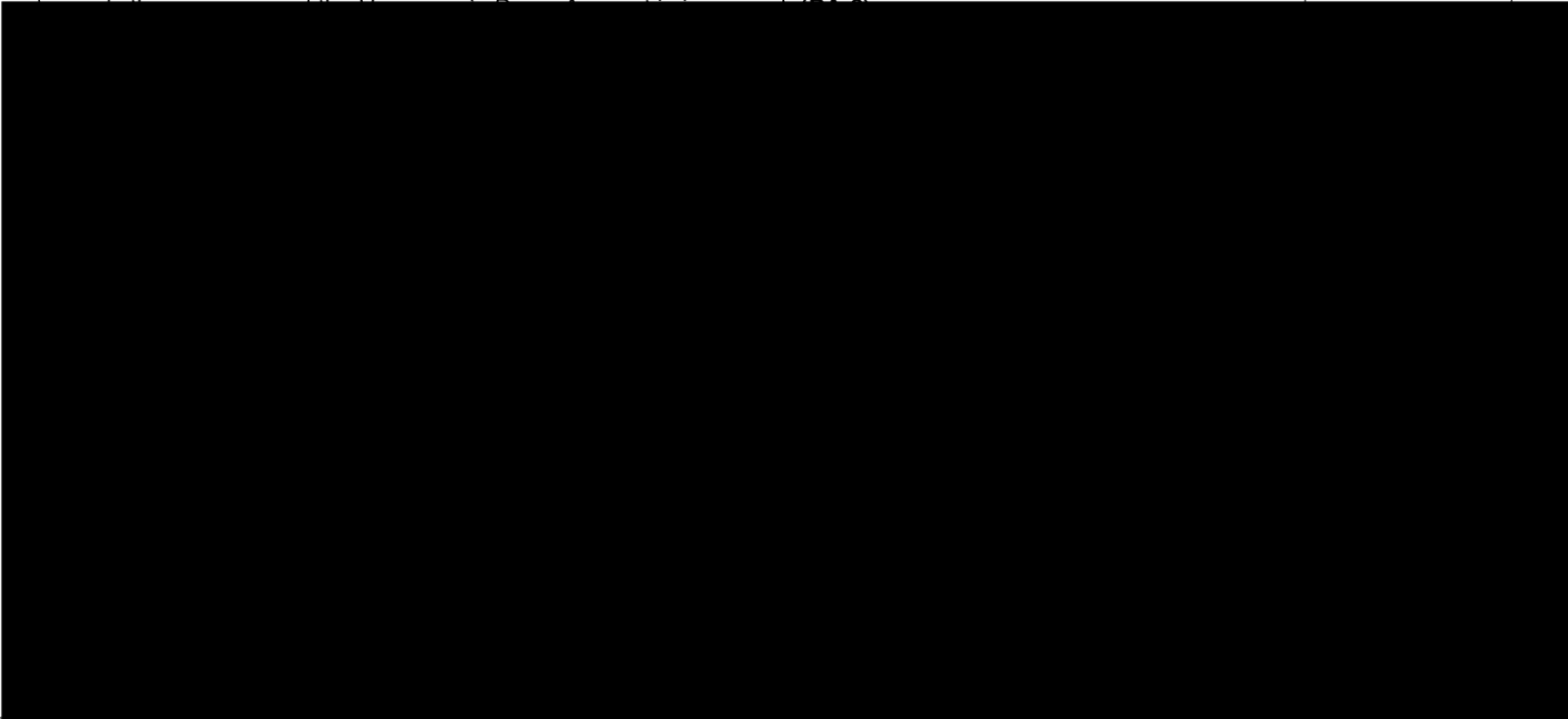
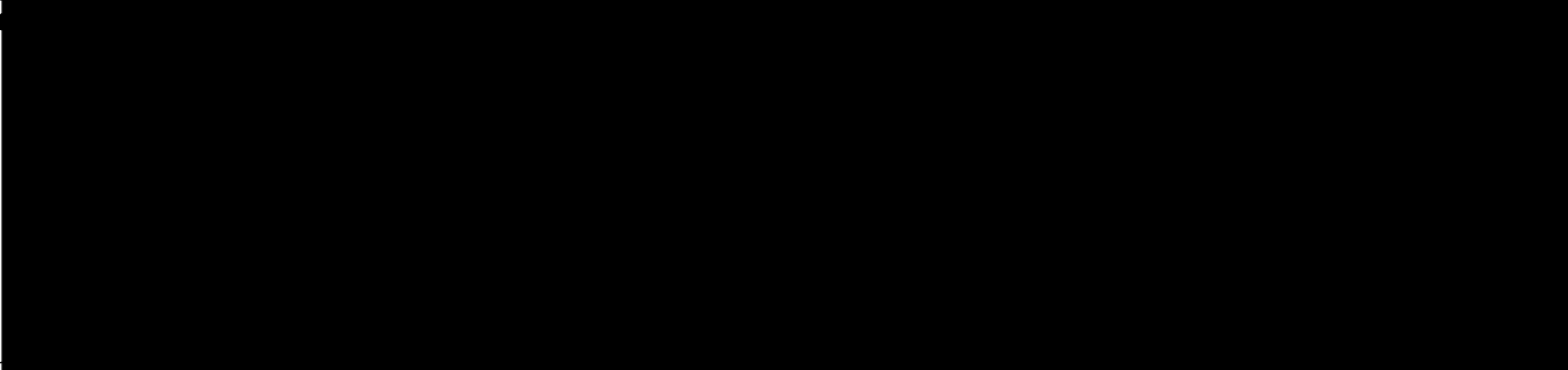
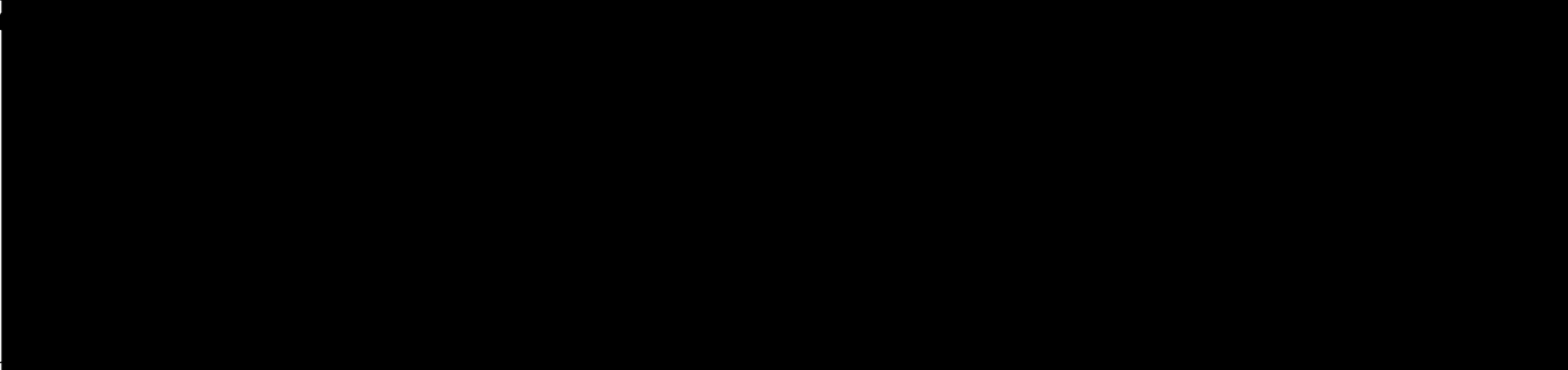


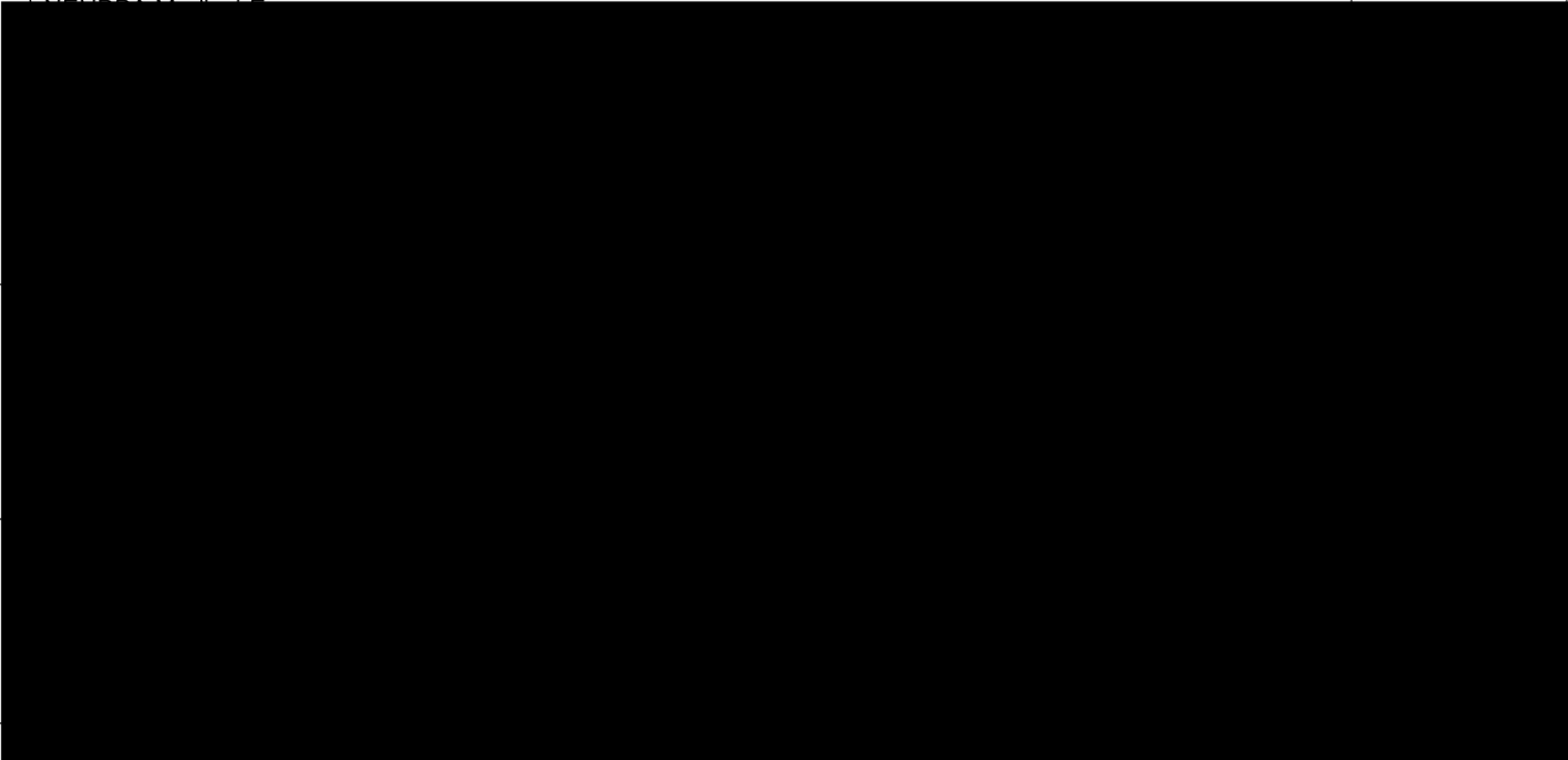
**Background:**

The objective of this document is to record the function of the Purse Accounting at Sterling Suffolk Racecourse LLC (herein referred to as Suffolk) in narrative form and to identify all of the discrete steps involved in this process.

Throughout this document control objectives and types of controls are listed as follows: completeness, accuracy, validity and restricted access and by type, for example monitoring (preventative), and detecting controls.

<b>Process</b>	<b>Process Description</b>	<b>Control Objective</b>
<b>Overview</b>		
<b>Elements of Purse Earnings</b>		

<b>Process</b>	<b>Process Description</b>	<b>Control Objective</b>
		
<b>Elements of Purse Expenses</b>		

<b>Process</b>	<b>Process Description</b>	<b>Control Objective</b>
		
<b>Accounting and Distribution</b>		
<b>Problem Resolution</b>		

**Sterling Suffolk Racecourse, LLC**

Cycle: Purse Accounting

Index #	Control	Testing Plan
PA - 1	[REDACTED]	[REDACTED]
PA - 2		
PA - 3		
PA - 4		
PA - 5		
PA - 6		
PA - 7		
PA - 8		
PA - 10		
PA - 11		

**Sterling Suffolk Racecourse, LLC**

Cycle: Purse Accounting

Index #	Control	Testing Plan
PA - 12		
PA - 13		
PA - 14		
PA - 15		
PA - 16		
PA - 17		

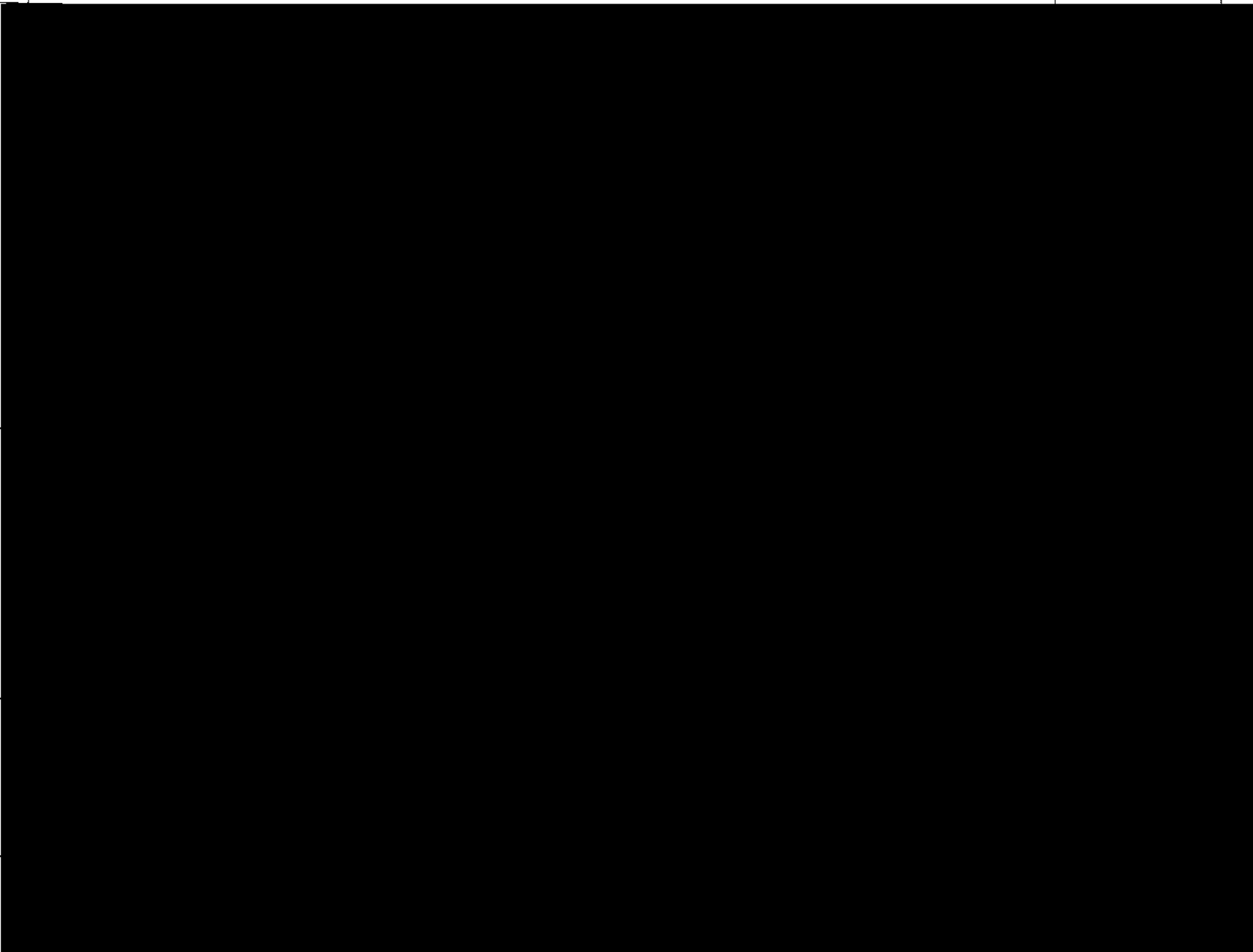


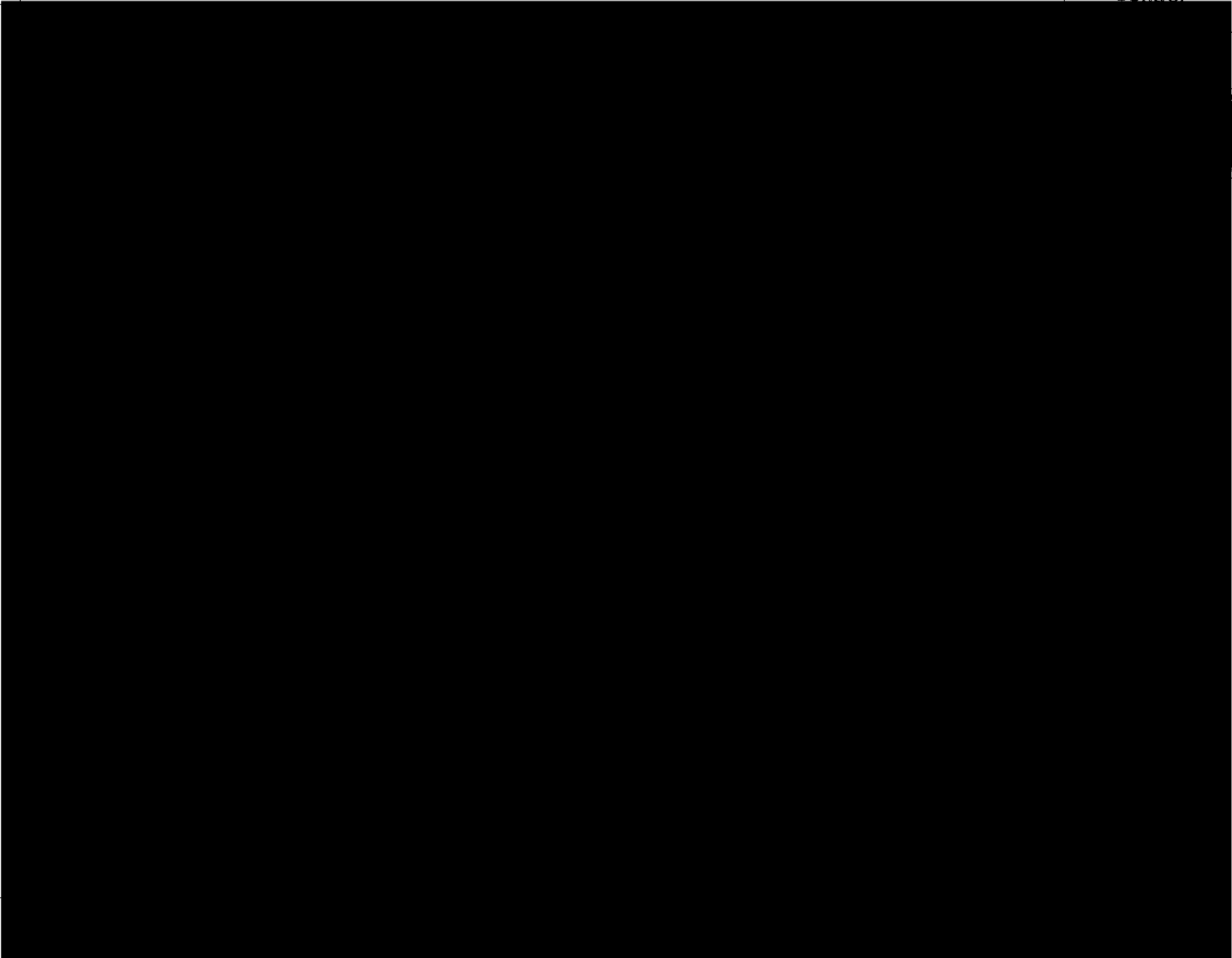
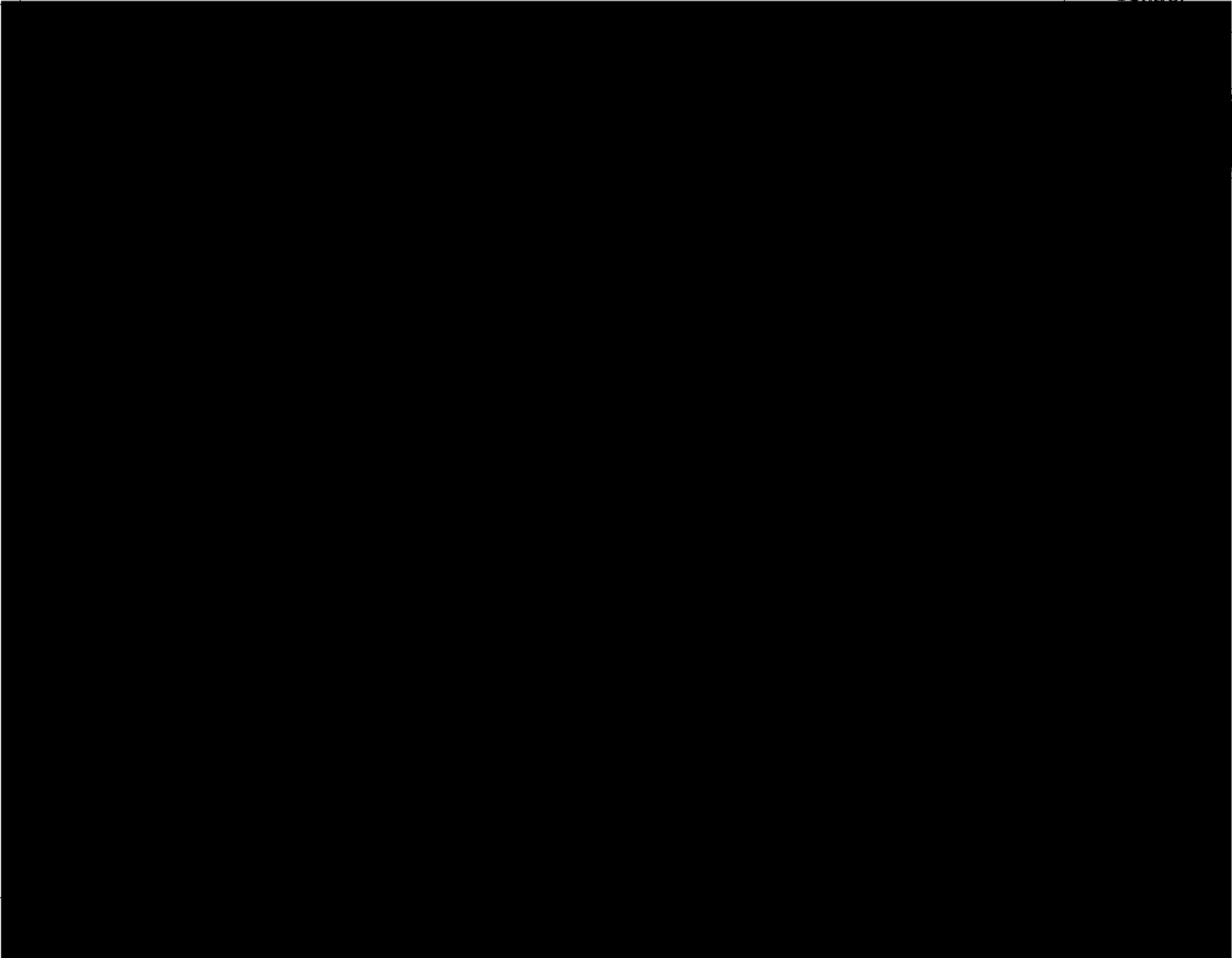
**During the year**

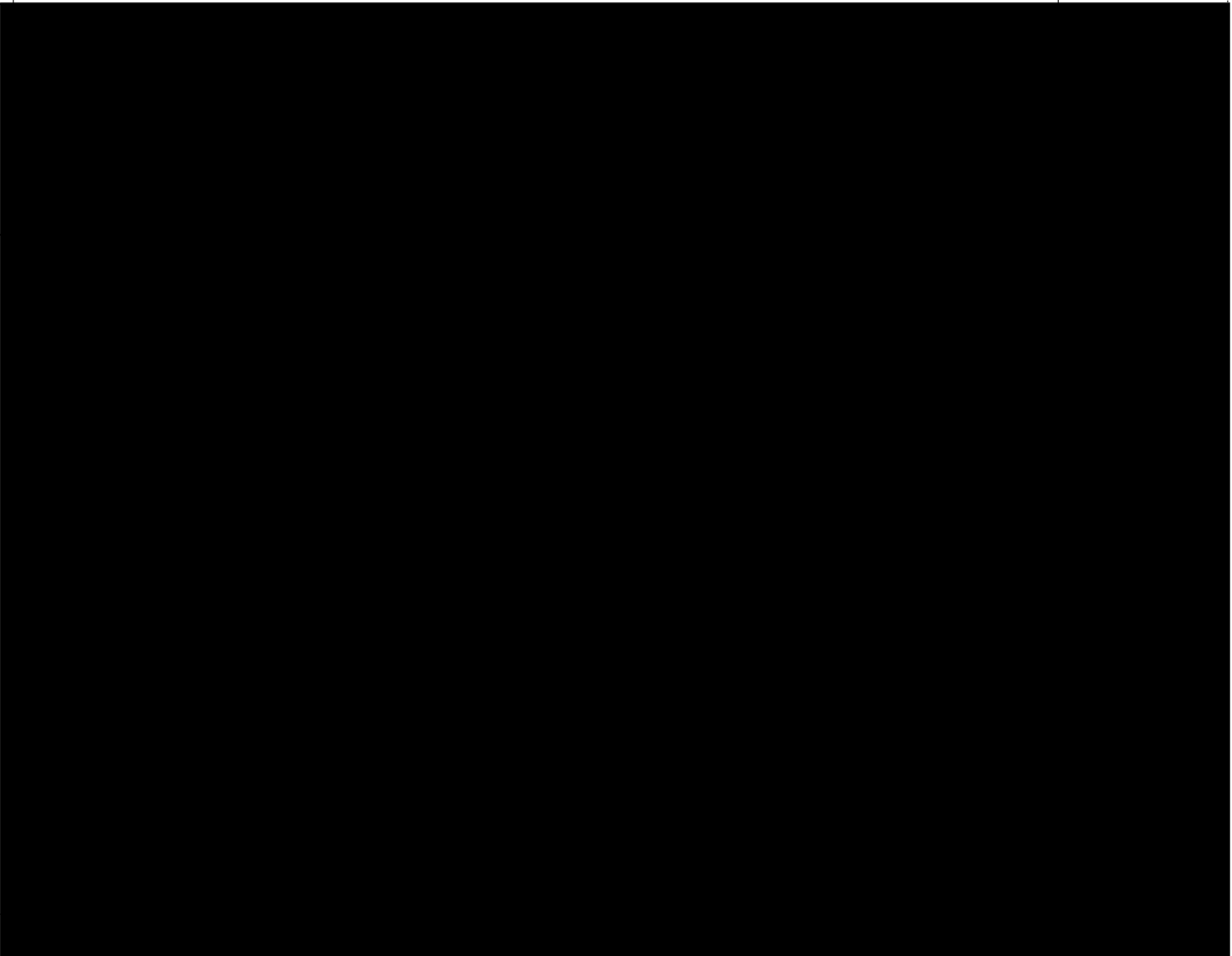
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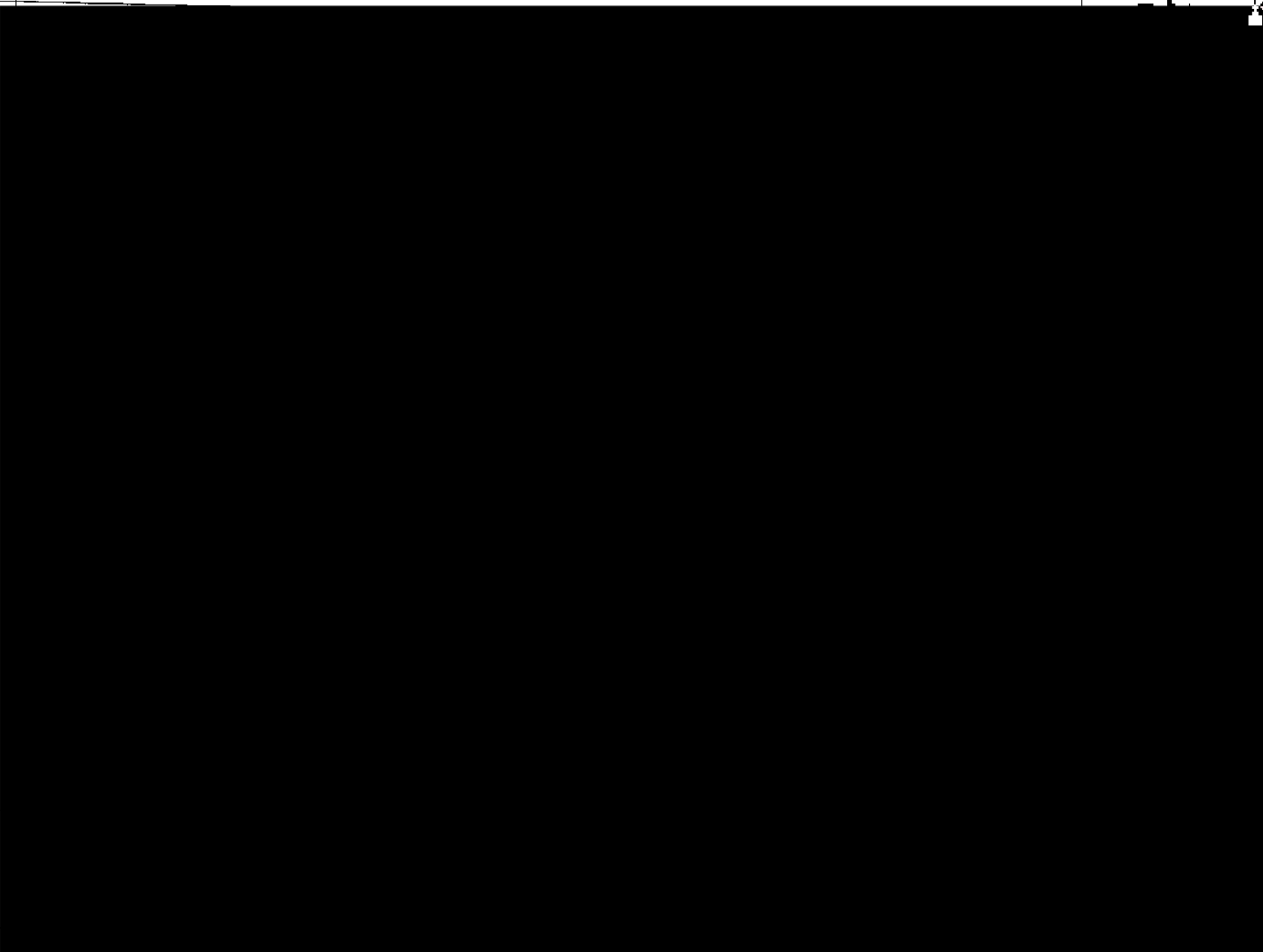
The objective of this document is to record the function of the Racing Office at Sterling Suffolk Racecourse LLC (herein referred to as Suffolk) in narrative form and to identify all of the discrete steps involved in this process.

Throughout this document control objectives and types of controls are listed as follows: completeness, accuracy, validity and restricted access and by type, for example monitoring (preventative), and detecting controls.

Process	Process Description	Control
Overview		
Stall Application Process		
Conditions Book		

Process	Process Description	Control
Live Racing Operations		

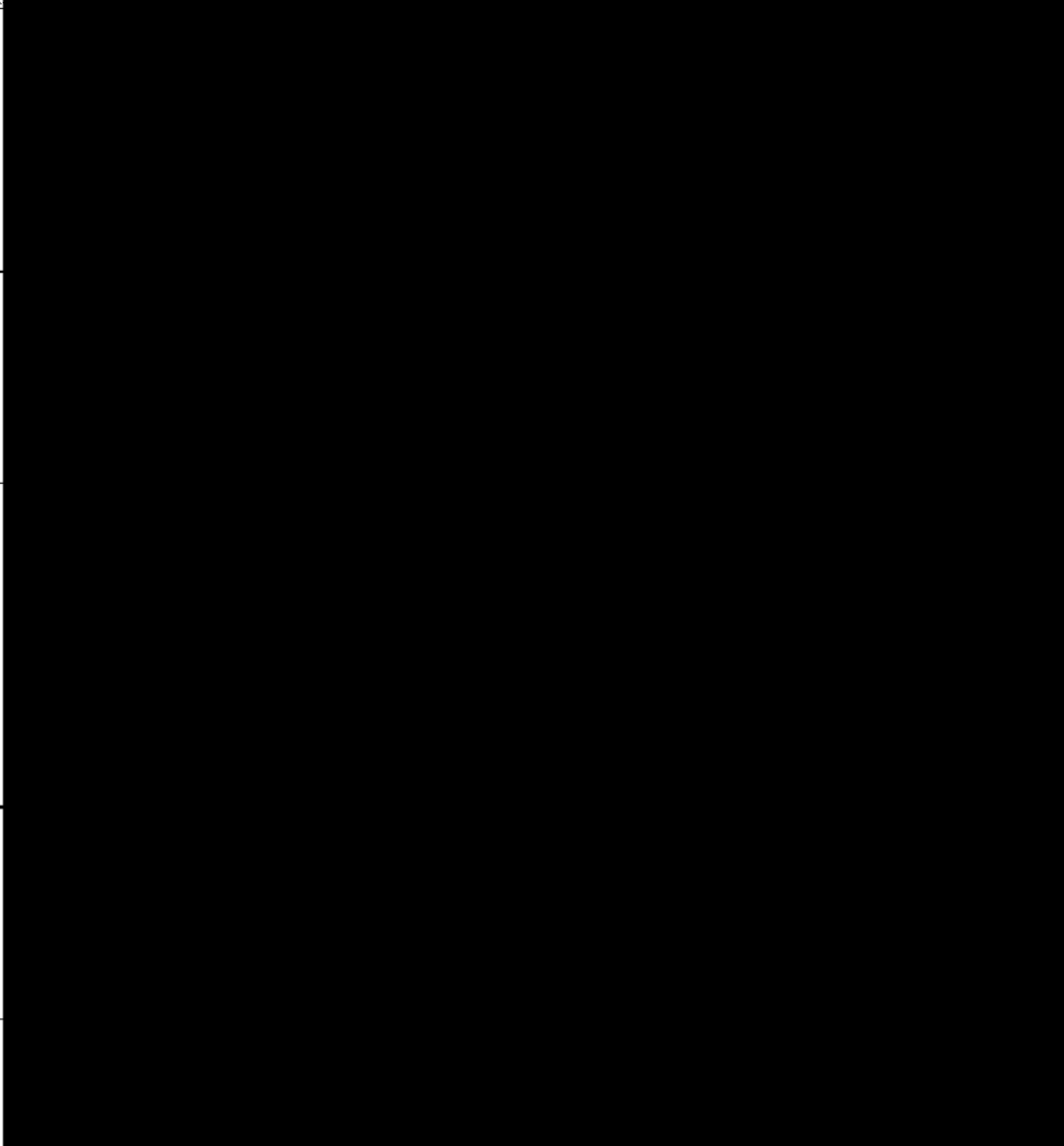
Process	Process Description	Control
		
Other Live Racing Personnel		

Process	Process Description	Control
		
<b>Problem Resolution</b>		

<b>Process</b>	<b>Process Description</b>	<b>Control Objective</b>
		<b>Office are resolved.</b>



**Sterling Suffolk Racecourse, LLC**  
Cycle: Racing Department

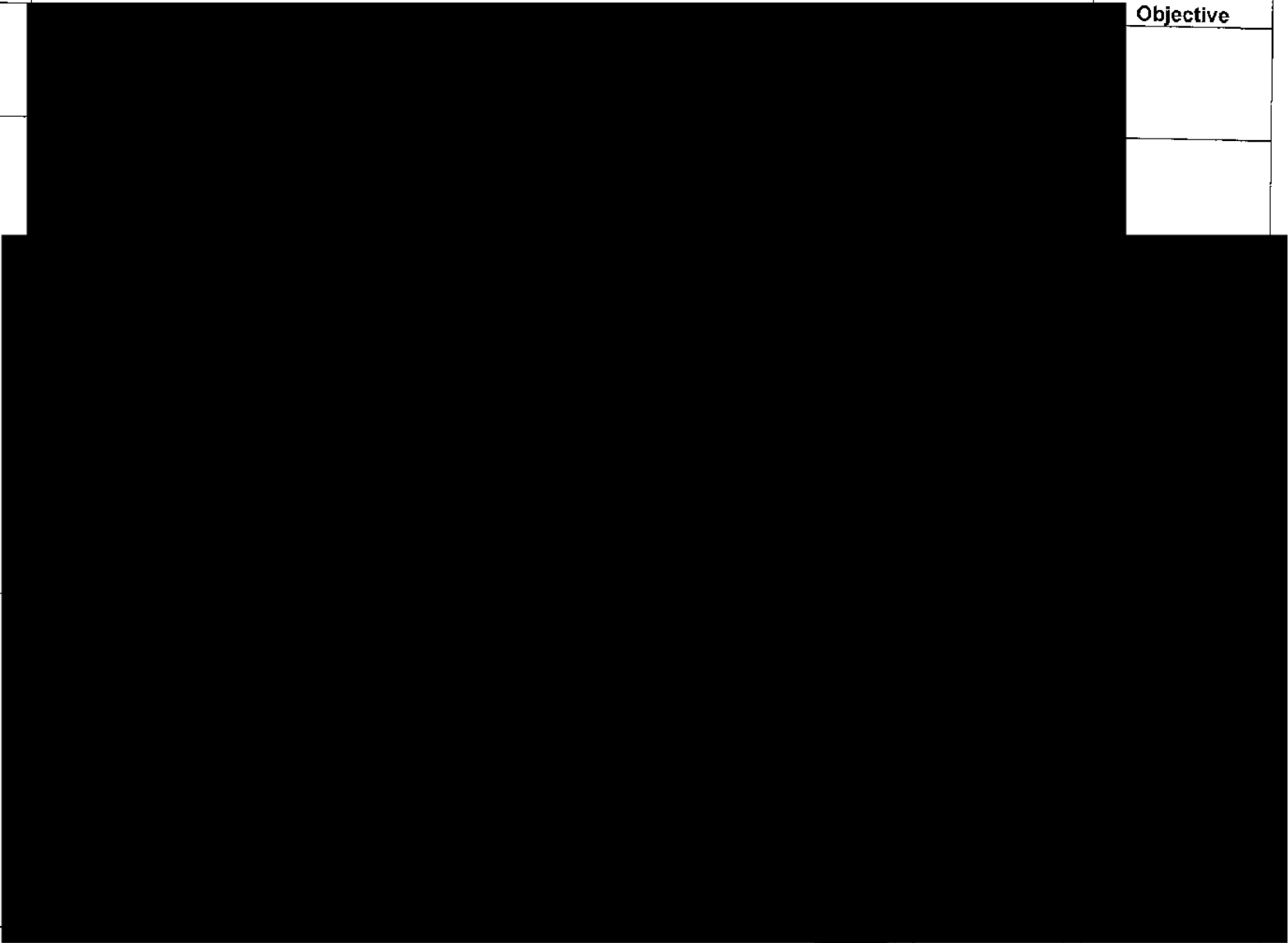
Index #	Control	Testing Plan
RD - 1		
RD - 2		
RD - 3		
RD - 4		

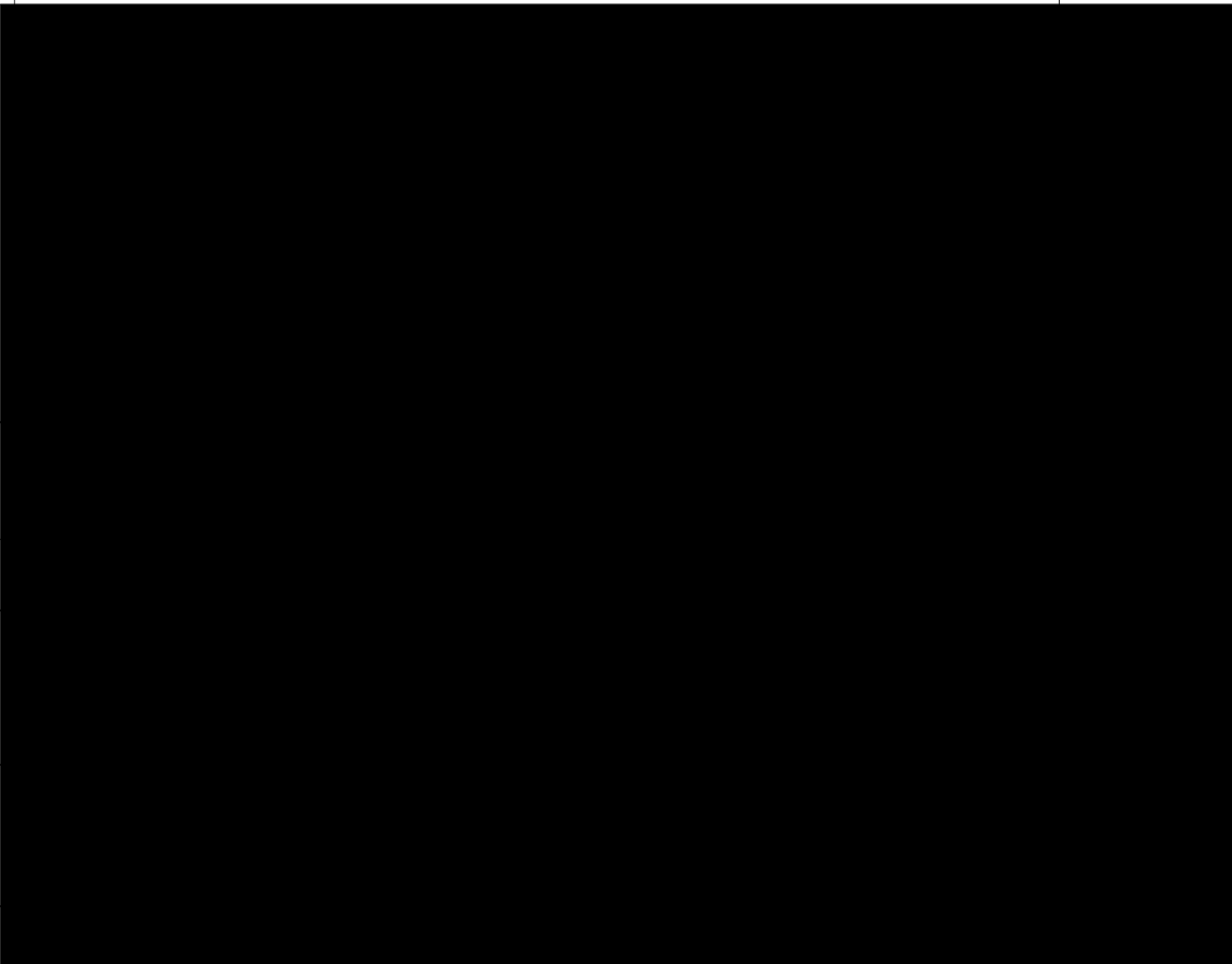
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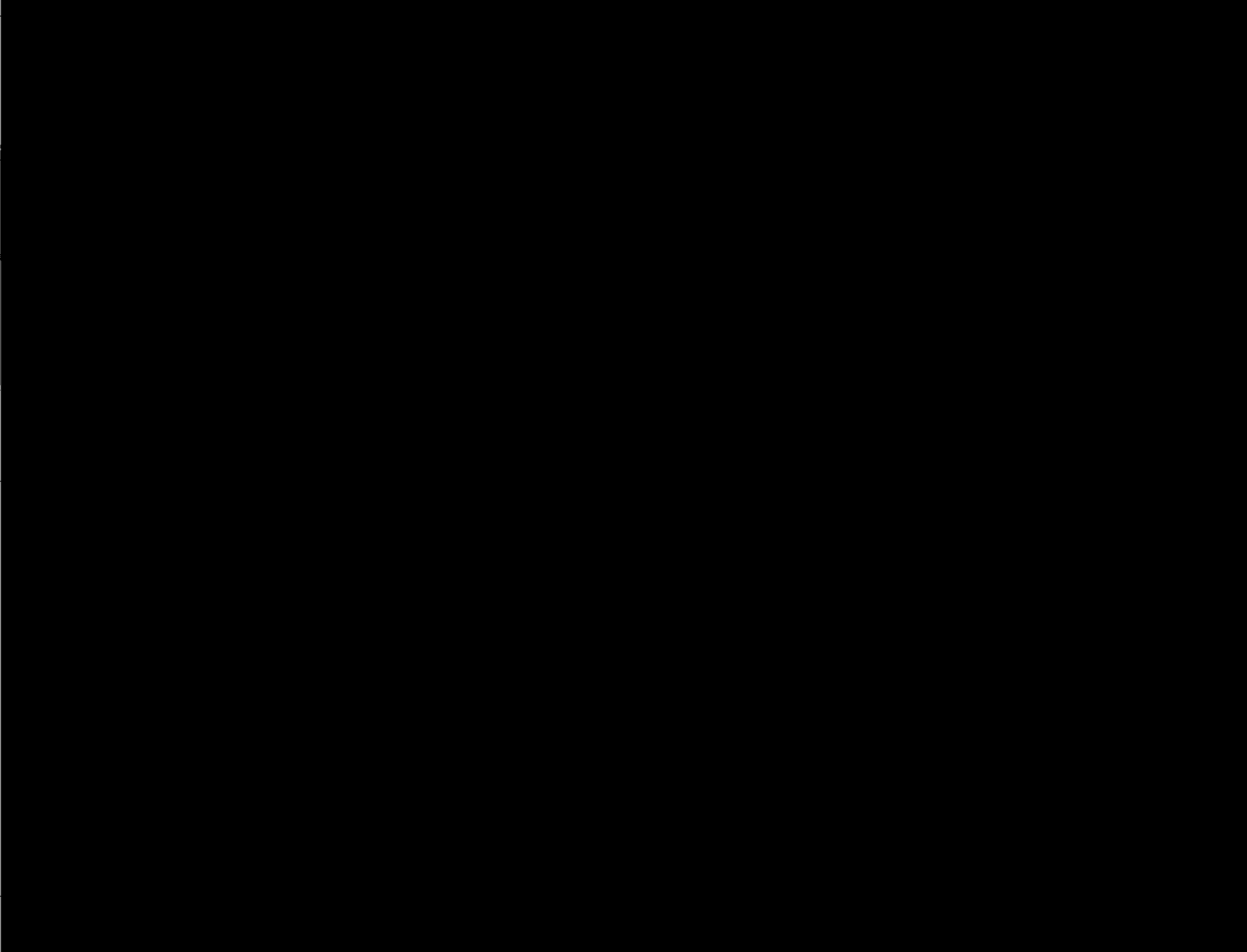
The objective of this document is to record the process of generating Sterling Suffolk Racecourse, LLC's (Suffolk Downs) revenue and receivables in narrative form and to identify all of the discrete steps involved to complete a transaction. The control activities related to this selected business process is in a related but separate document entitled Revenues & Receivables – Control Matrix.

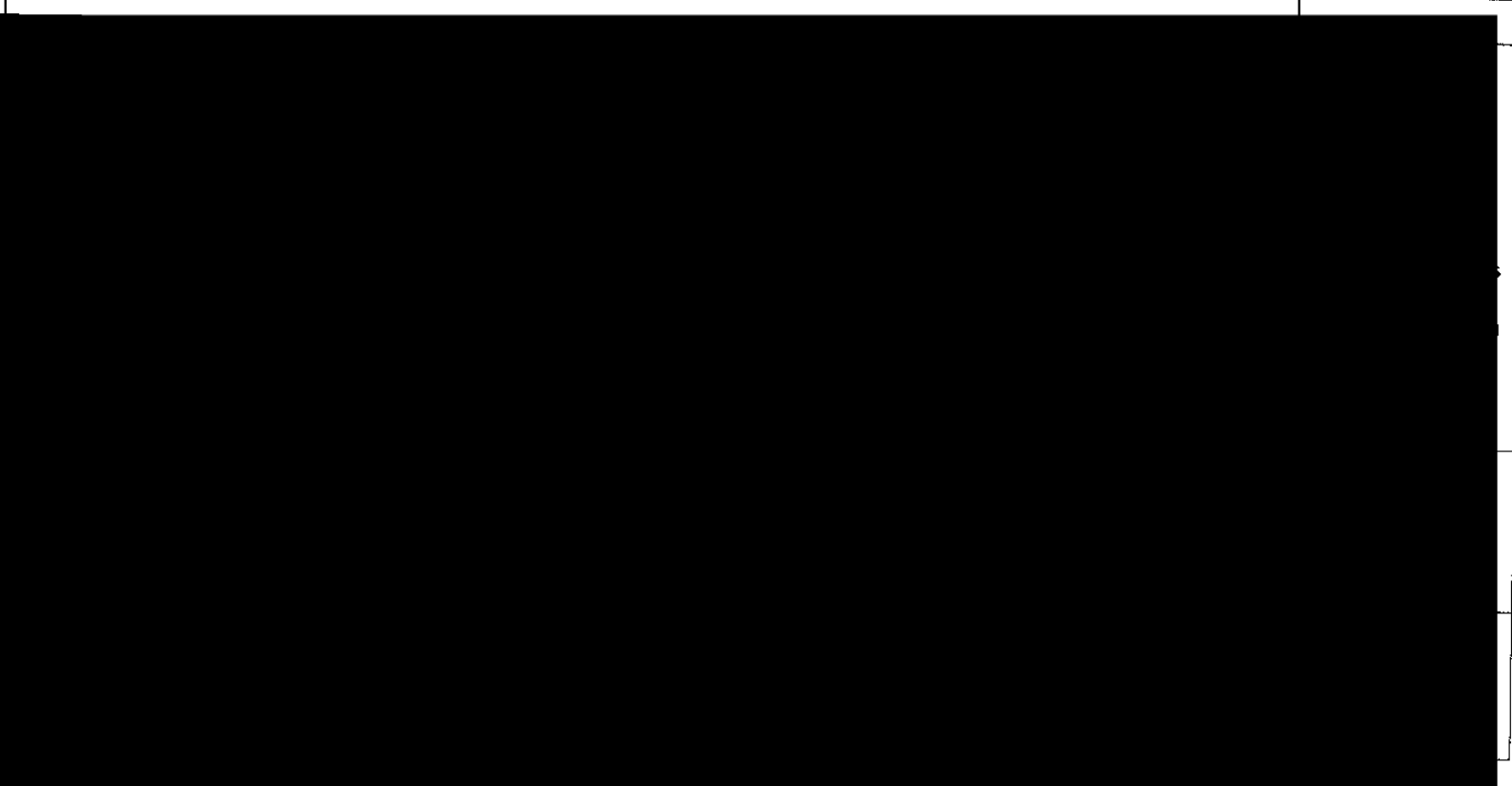
The Control Matrix includes a summary of key controls and the specific test of such controls.

Throughout this document control objectives and types of controls are listed as follows: completeness, accuracy, validity, and restricted access and by type, for example monitoring (preventative) and detecting controls.

Process	Process Description	Control Objective
General Policy		
Overview		
Daily Handle Activity		

Process	Process Description	Control
		
Review Process		
Distribution		
Inter-track Contracts		
Other Income		

Process	Process Description	Control Objective
Posting Transactions to the G/L		
Monthly Review Process and AR Invoicing		
Inter-track Accounts Receivables / Payables		

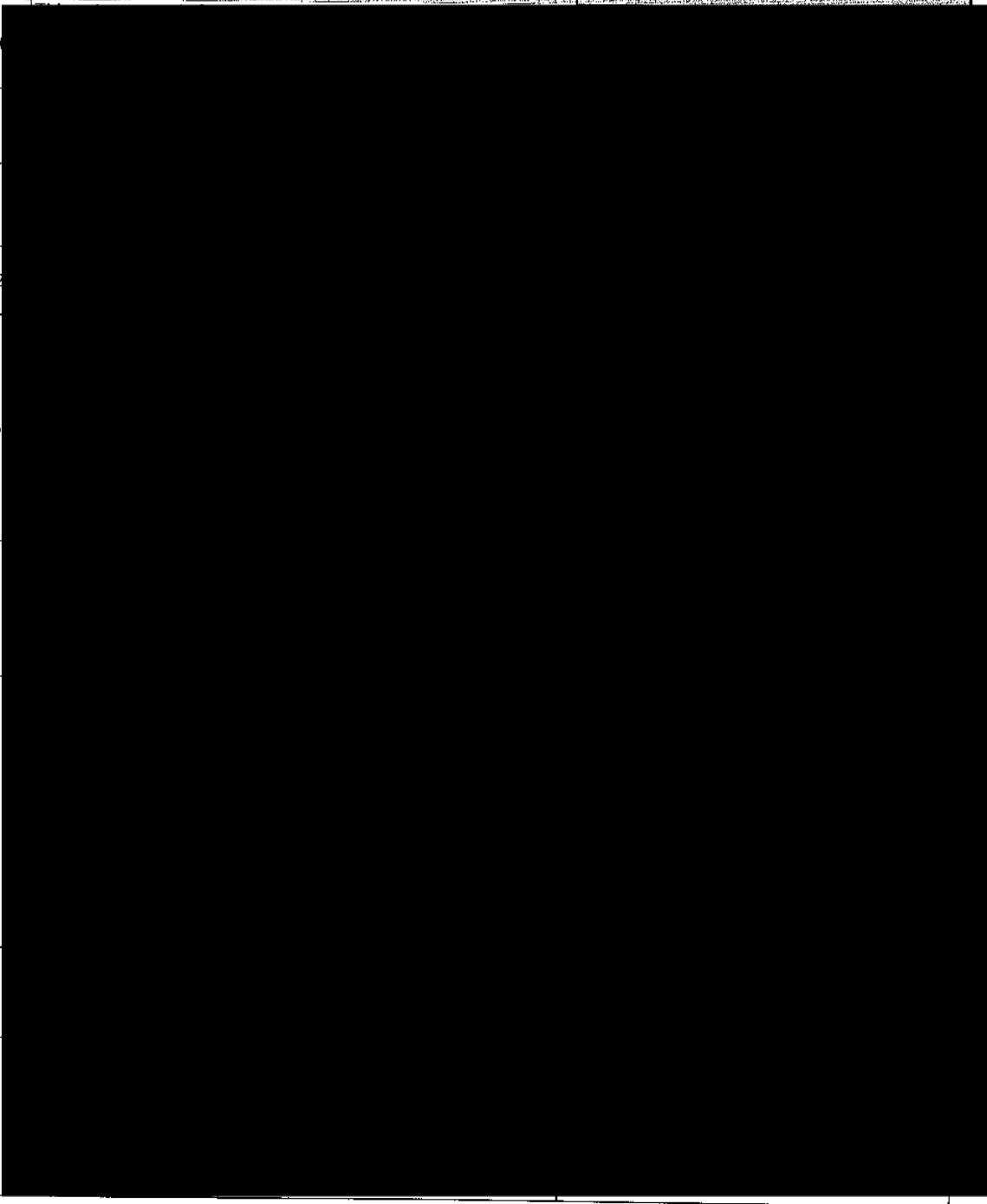
Process	Process Description	Control Objective
Allowance for Doubtful Accounts		
Master File Changes		
Problem Resolution		



**Sterling Suffolk Racecourse, LLC**  
Cycle: Revenues and Receivables

Index #	Control	Testing Plan
RR - 1	[REDACTED]	[REDACTED]
RR - 2		[REDACTED]
RR - 3		[REDACTED]
RR - 4		[REDACTED]
RR - 5		[REDACTED]
RR - 6		[REDACTED]
RR - 7		[REDACTED]
RR - 8		[REDACTED]
RR - 9		[REDACTED]

**Sterling Suffolk Racecourse, LLC**  
Cycle: Revenues and Receivables

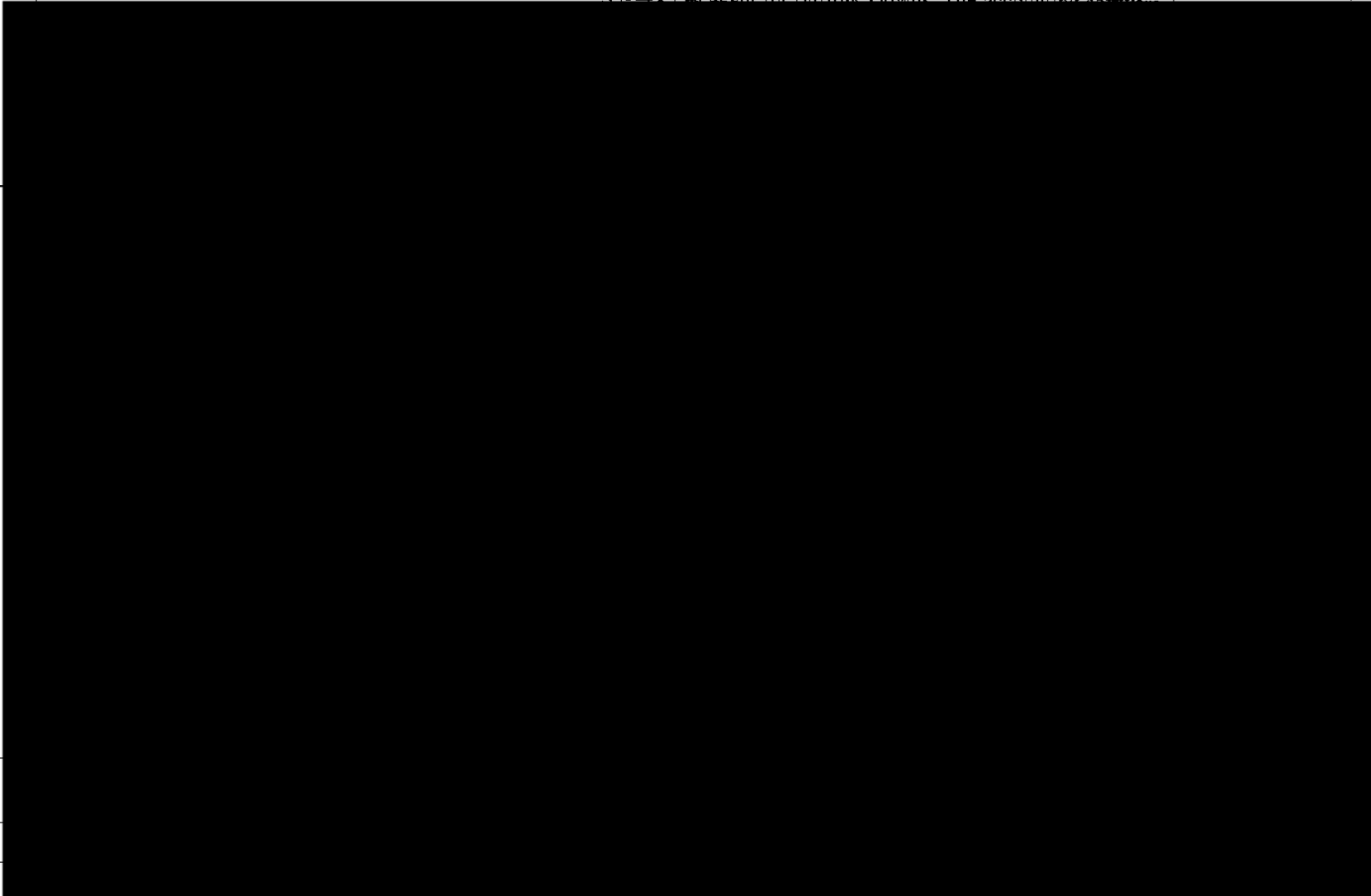
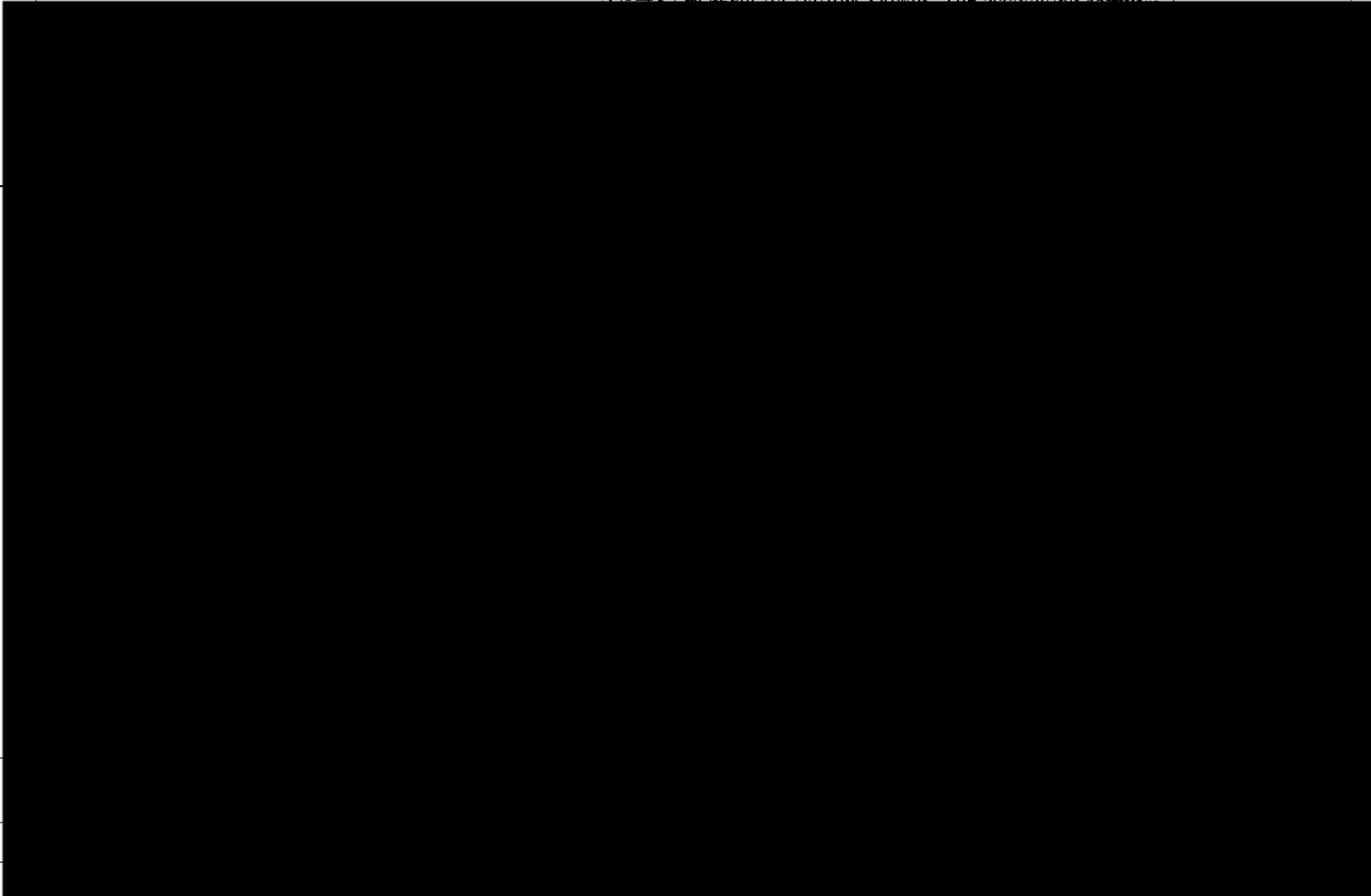
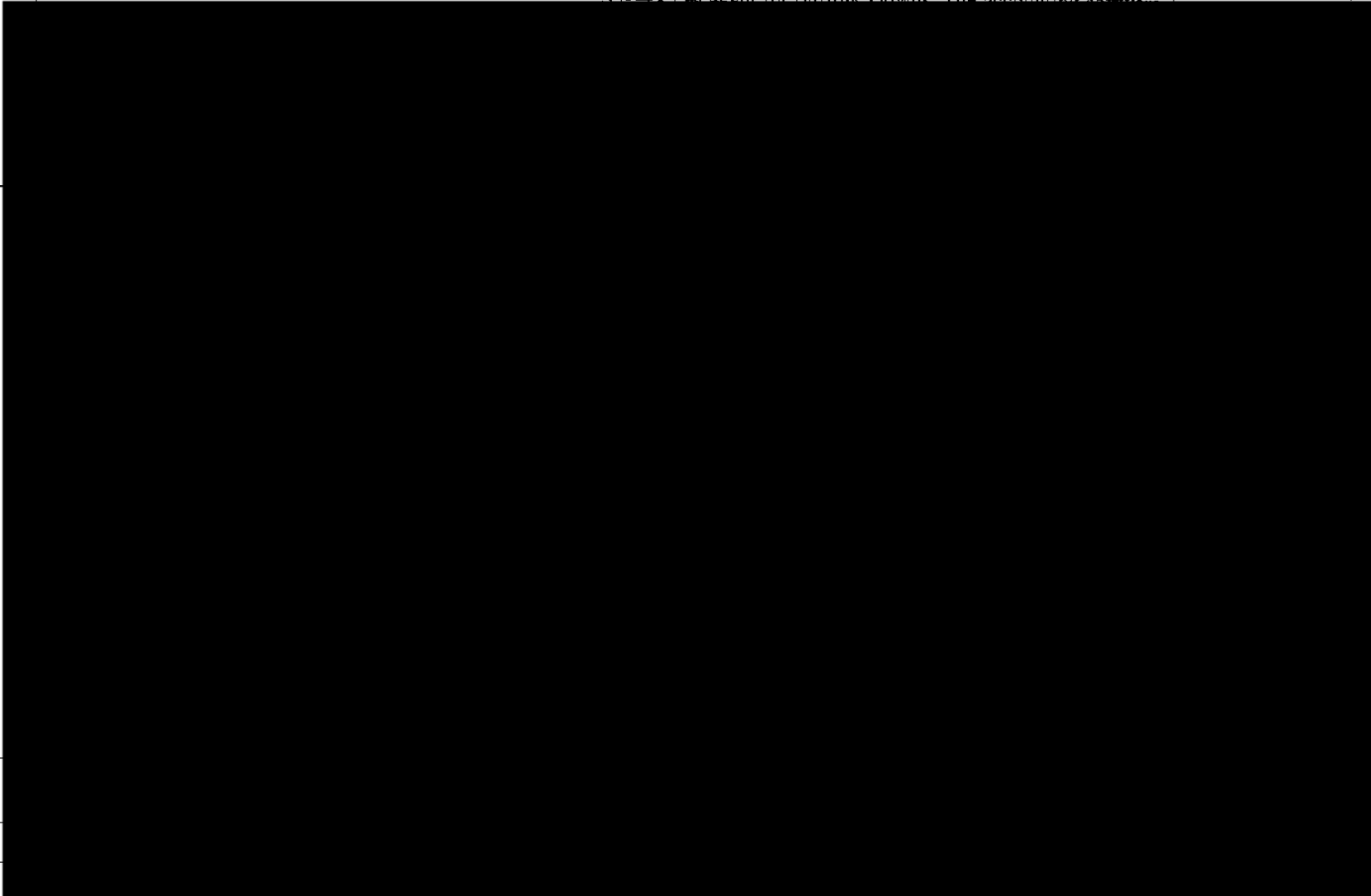
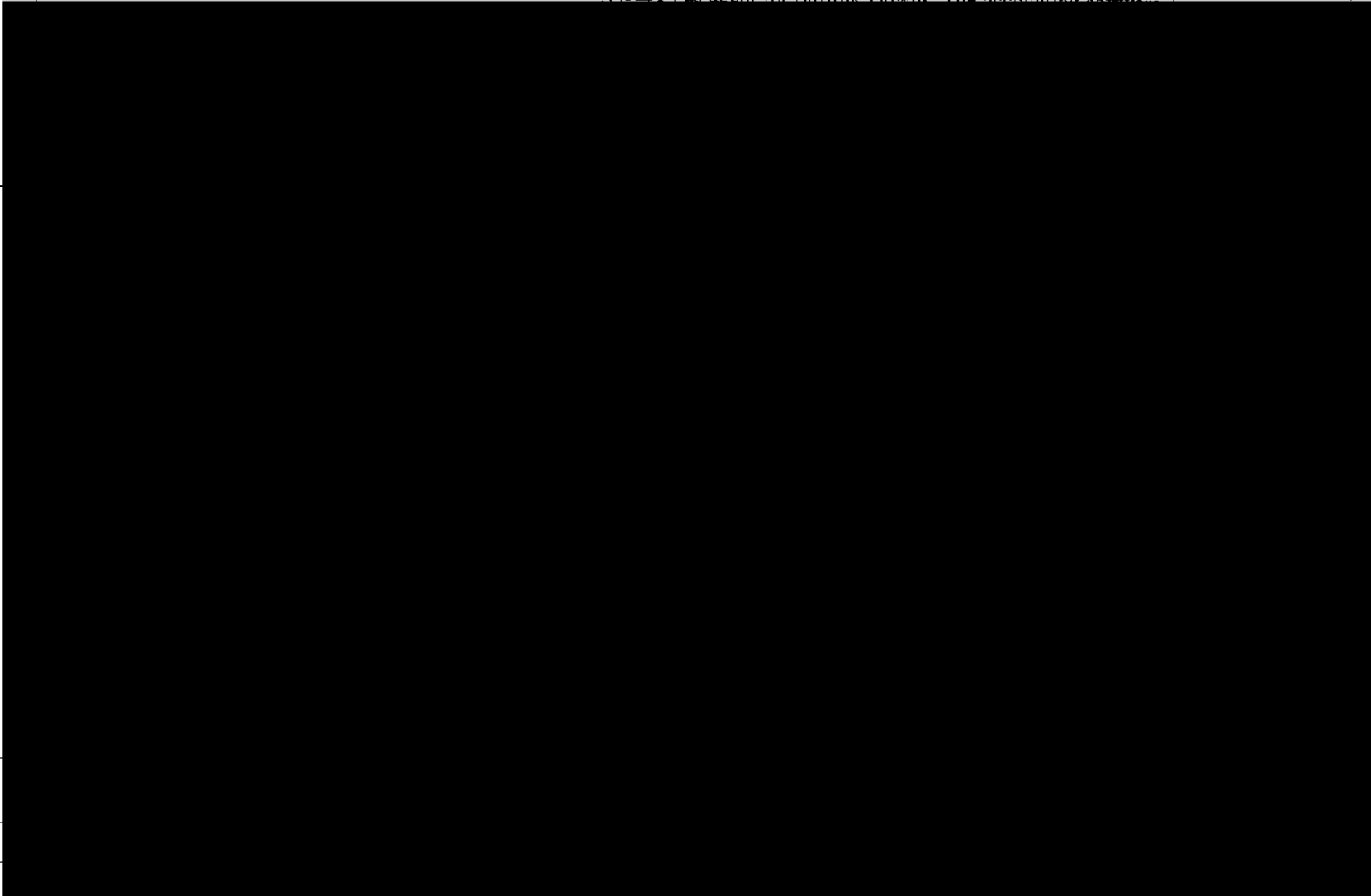
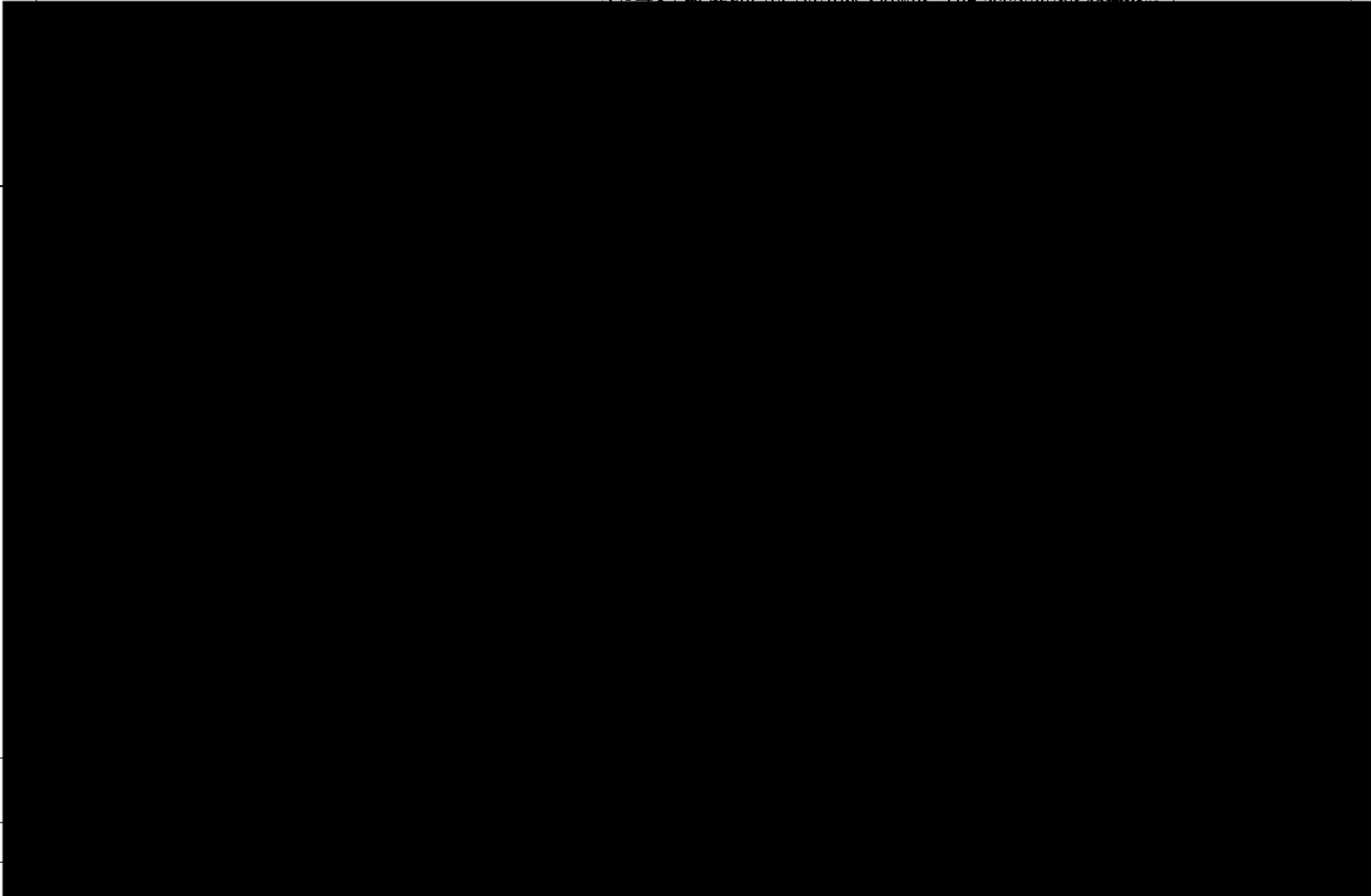
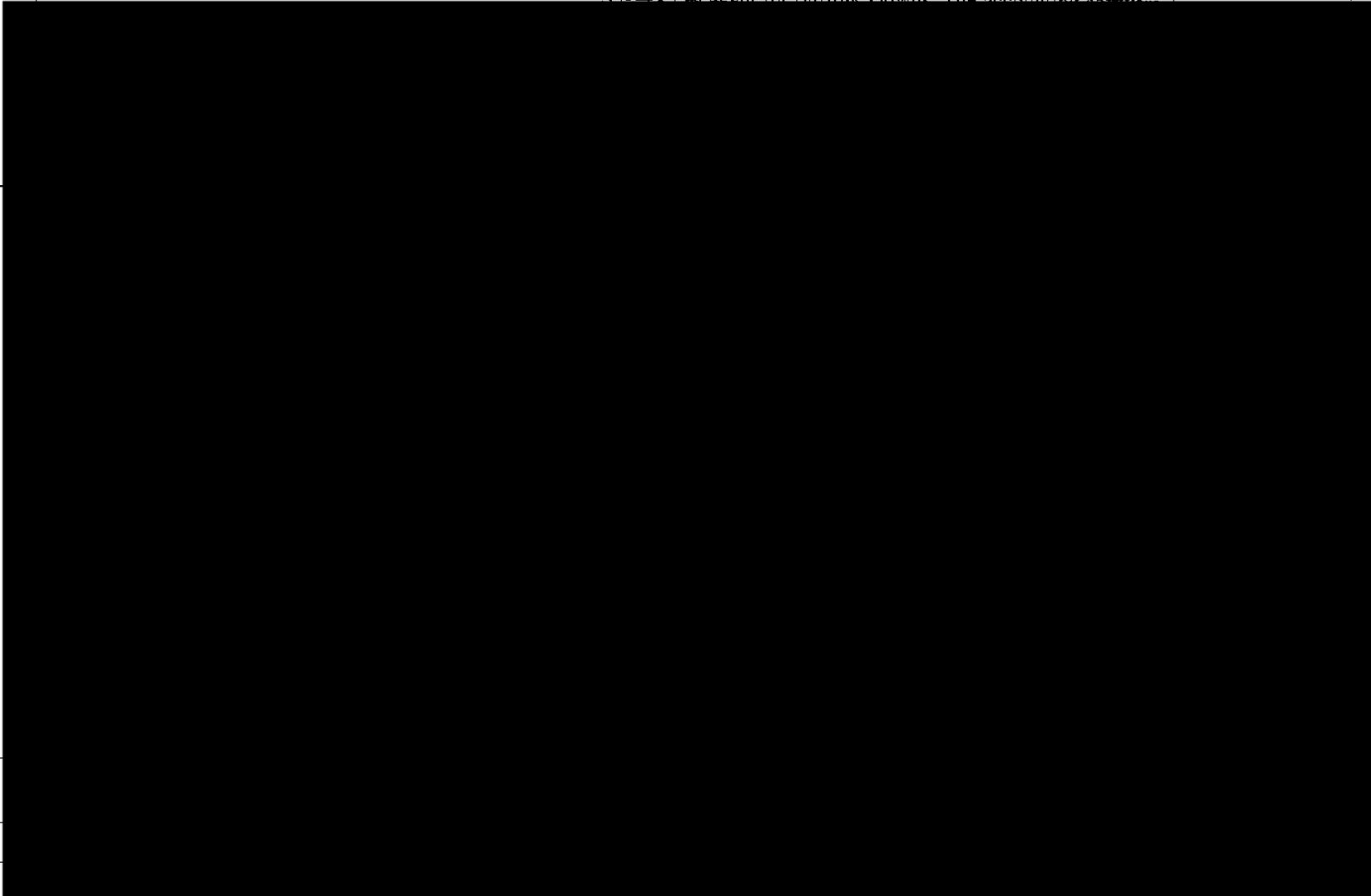
Index #	Control	Testing Plan
RR - 10		
RR - 11		
RR - 12		
RR - 13		
RR - 14		
RR - 15		
RR - 16		
RR - 17		

**Background:**

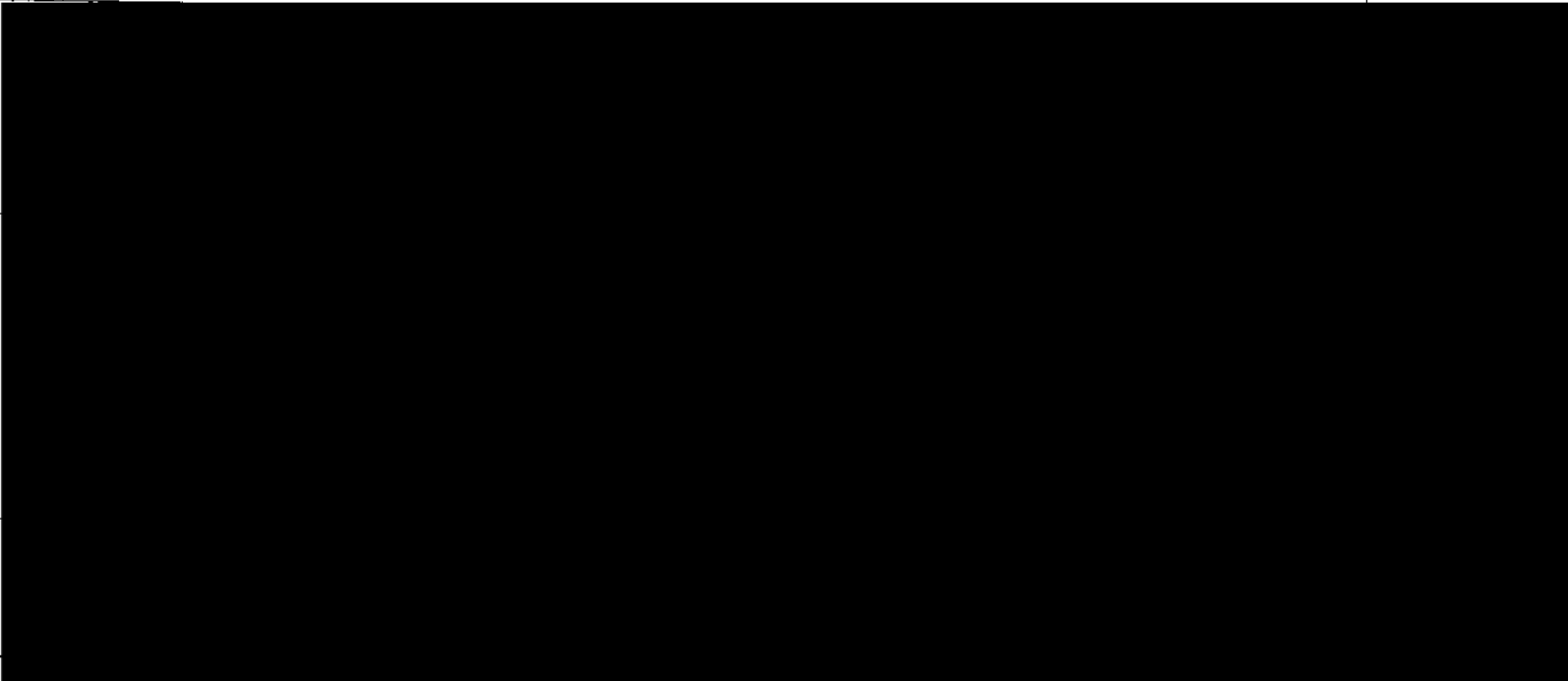
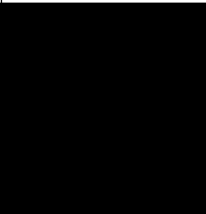
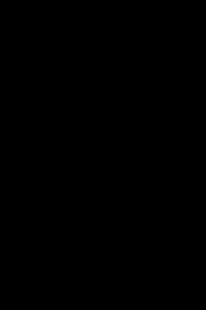
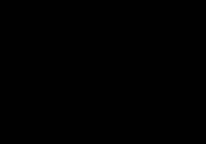
The objective of this document is to record the process of generating the Sterling Suffolk Racecourse (Suffolk Downs) Tax accounting and compliance in narrative form and to identify all of the discrete steps involved to complete a transaction. The control activities related to this selected business process is in a related but separate document entitled Tax – Control Matrix.

The Control Matrix includes a summary of key controls and the specific test of such controls.

Throughout this document control objectives and types of controls are listed as follows: completeness, accuracy, validity, and restricted access and by type, for example monitoring (preventative) and detecting controls.

Process	Process Description	Control Objective
Overview	<p>All Tax accounting and compliance processing is maintained and policed by the Finance department. The President of the Board of Directors who is the Tax Matters Person and Registered Agent for Suffolk and signs all corporate returns prepared by the external CPA firm. The Controller signs all franchise tax returns prepared by the Senior Accountant. All payroll tax returns are prepared and signed by Automated Data Processing (ADP) as agent for Suffolk Downs. The accounting software</p>	<p>To ensure access to Great</p>
Corporate Tax Returns		
Tax Filing Extensions		
Annual Reports		

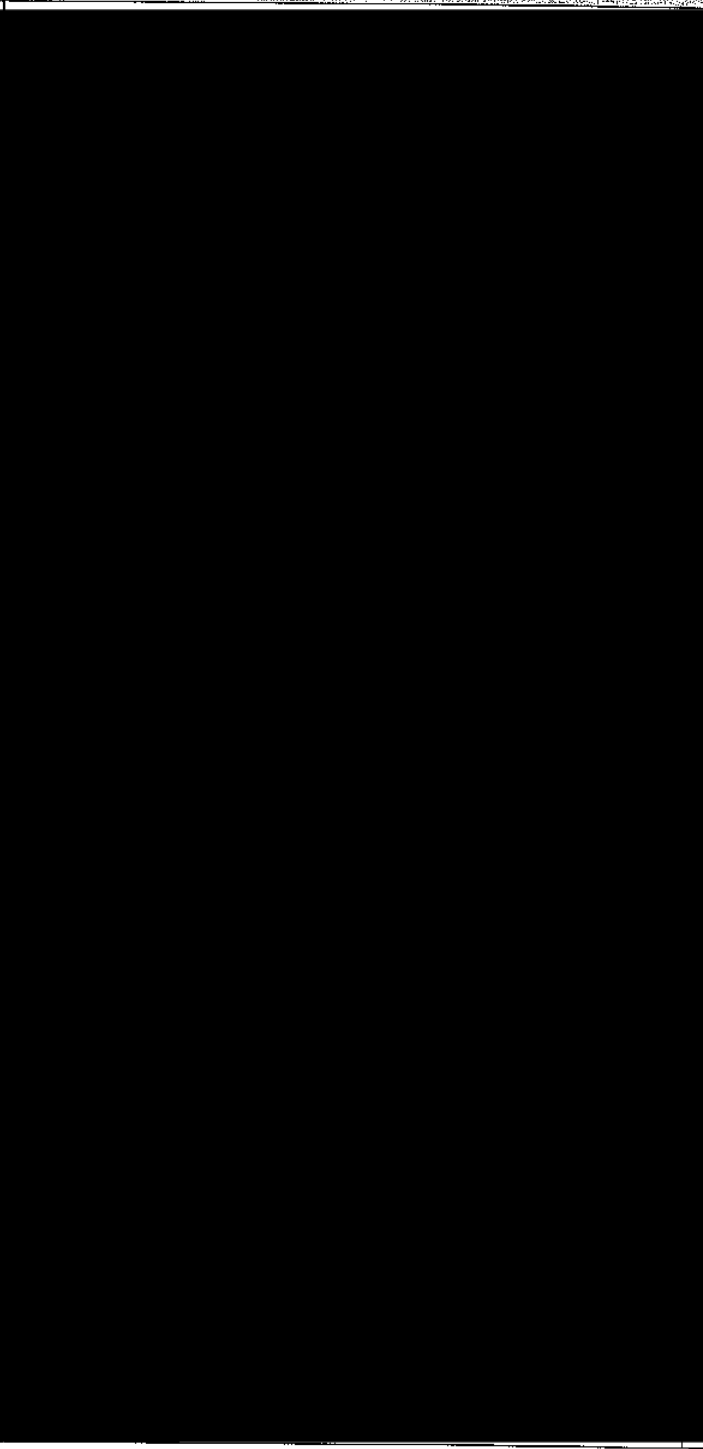
Process	Process Description	Control
		
Sales/ Use Tax		
Payroll Taxes		
Personal Property Tax Filings and Real Estate Taxes		
		

Process	Process Description	Control
Consulting		
Licensing		
Compliance Calendar		



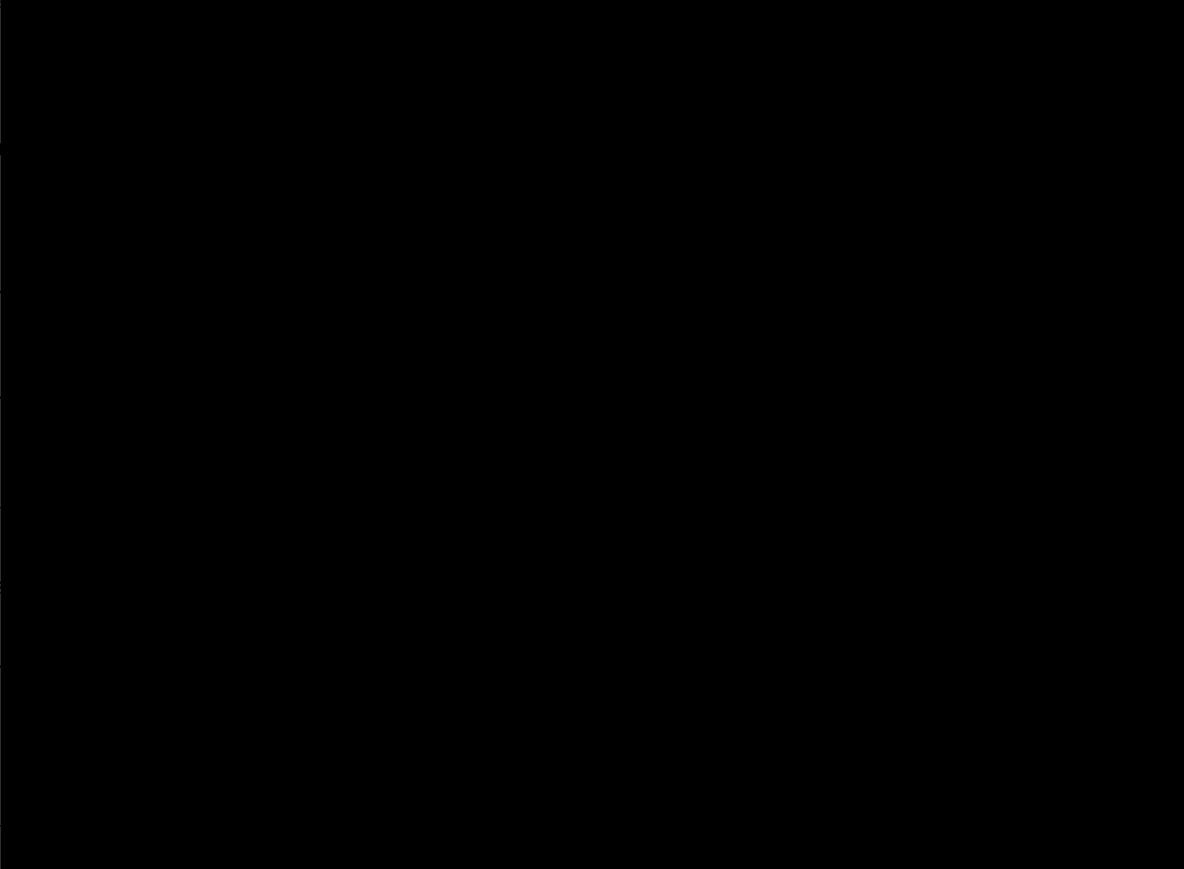
**Sterling Suffolk Racecourse, LLC**

Cycle: Tax and Licensing

Index #	Control	Testing Plan
TX - 1		Reg. cat review is
TX - 2		nd
TX - 3		g d
TX - 4		s
TX - 5		ee
TX - 6		
TX - 7		e
TX - 8		p
TX - 9		

**Sterling Suffolk Racecourse, LLC**

Cycle: Tax and Licensing

Index #	Control	Testing Plan
TX - 1		
TX - 11		
TX - 12		
TX - 13		

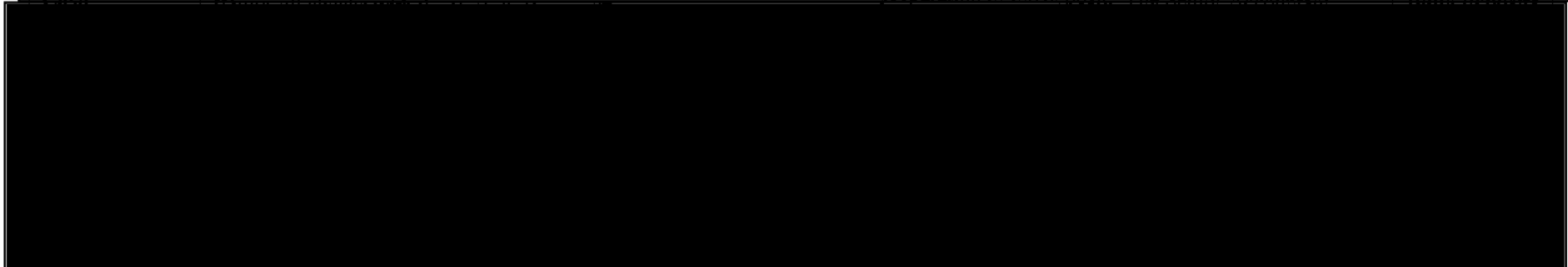
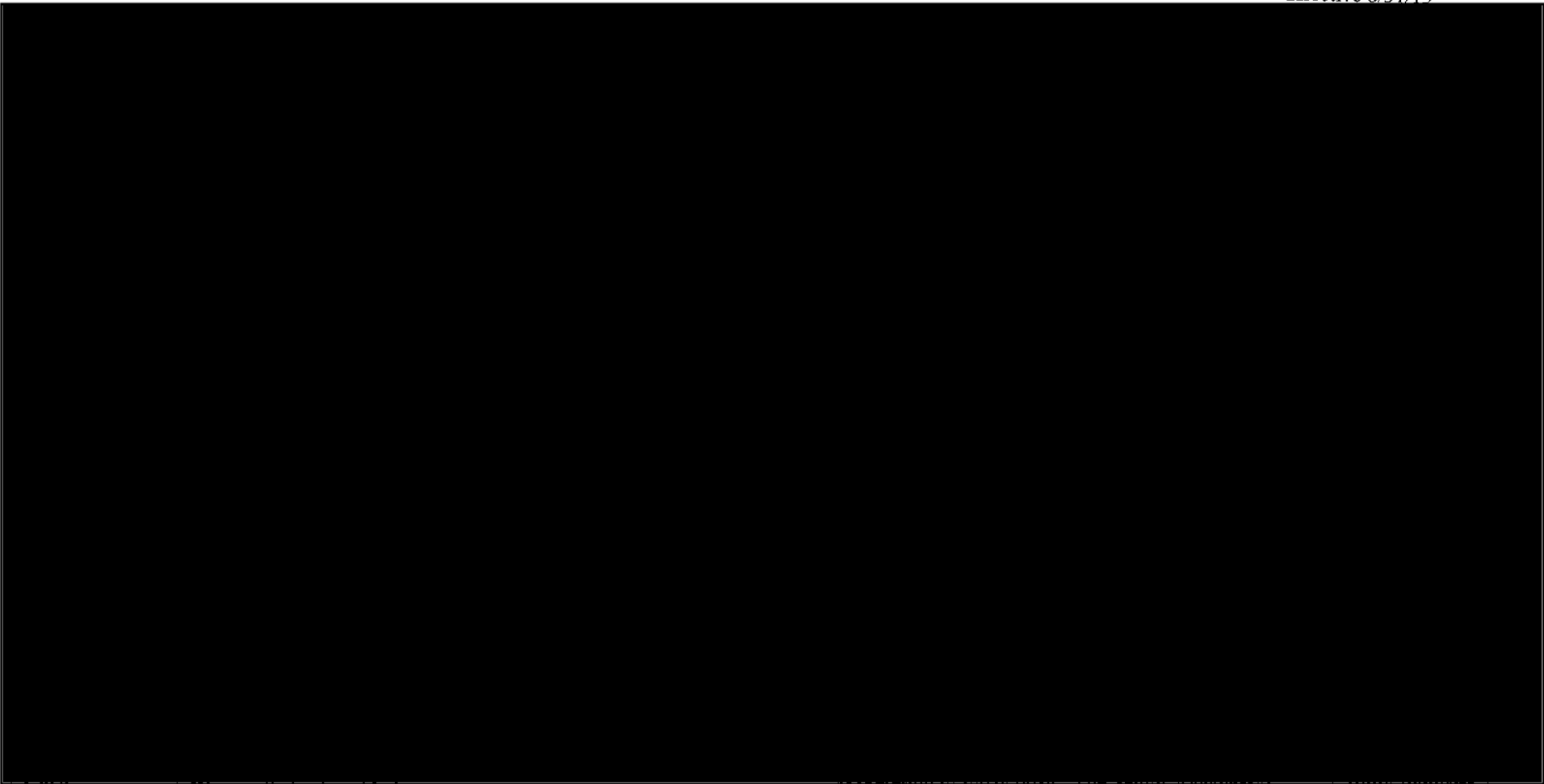
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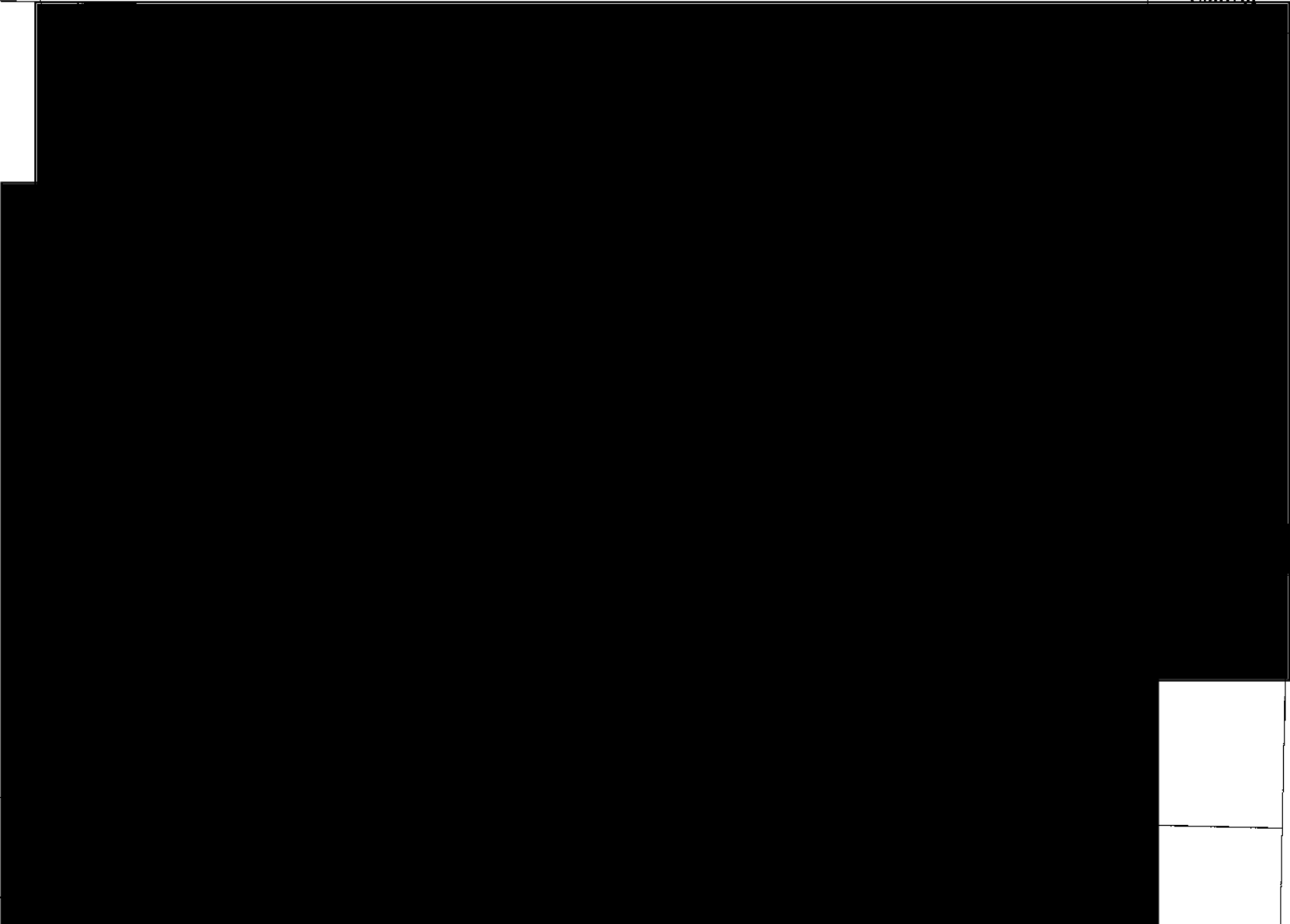
The objective of this document is to record the processes related to the Sterling Suffolk Racecourse (Suffolk Downs) treasury and cash management functions in narrative form and to identify all of the discrete steps involved to complete a transaction. The control activities related to this business process are in a related but separate document entitled Treasury and Cash Management - Control Matrix. The Control Matrix includes a summary of key controls and the specific test of such controls.

Throughout this document control objectives and types of controls are listed as follows: completeness, accuracy, validity and restricted access and by type, for example monitoring (preventative), and detecting controls.

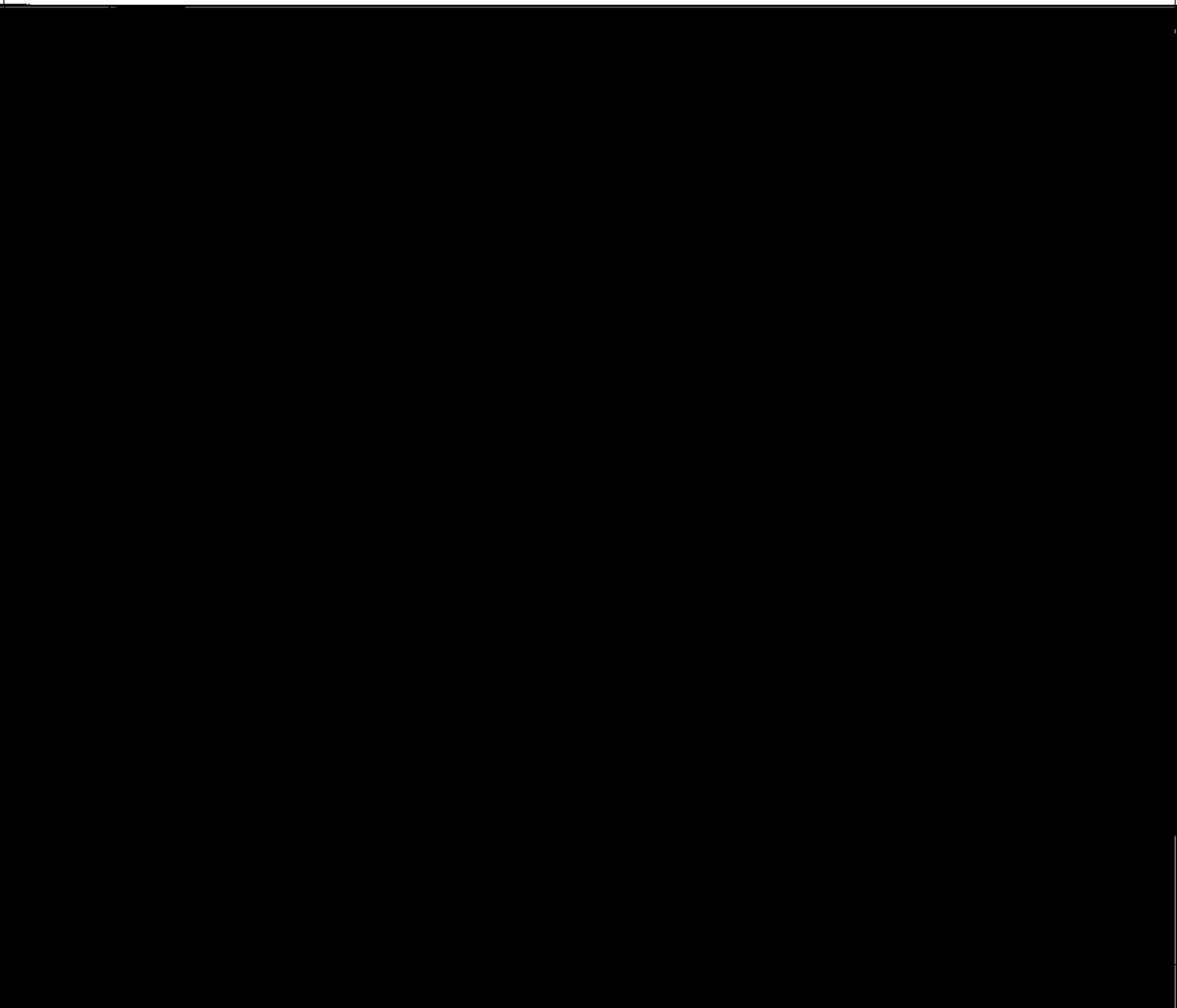

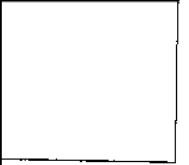


Confidential – Sterling Suffolk Racecourse, LLC

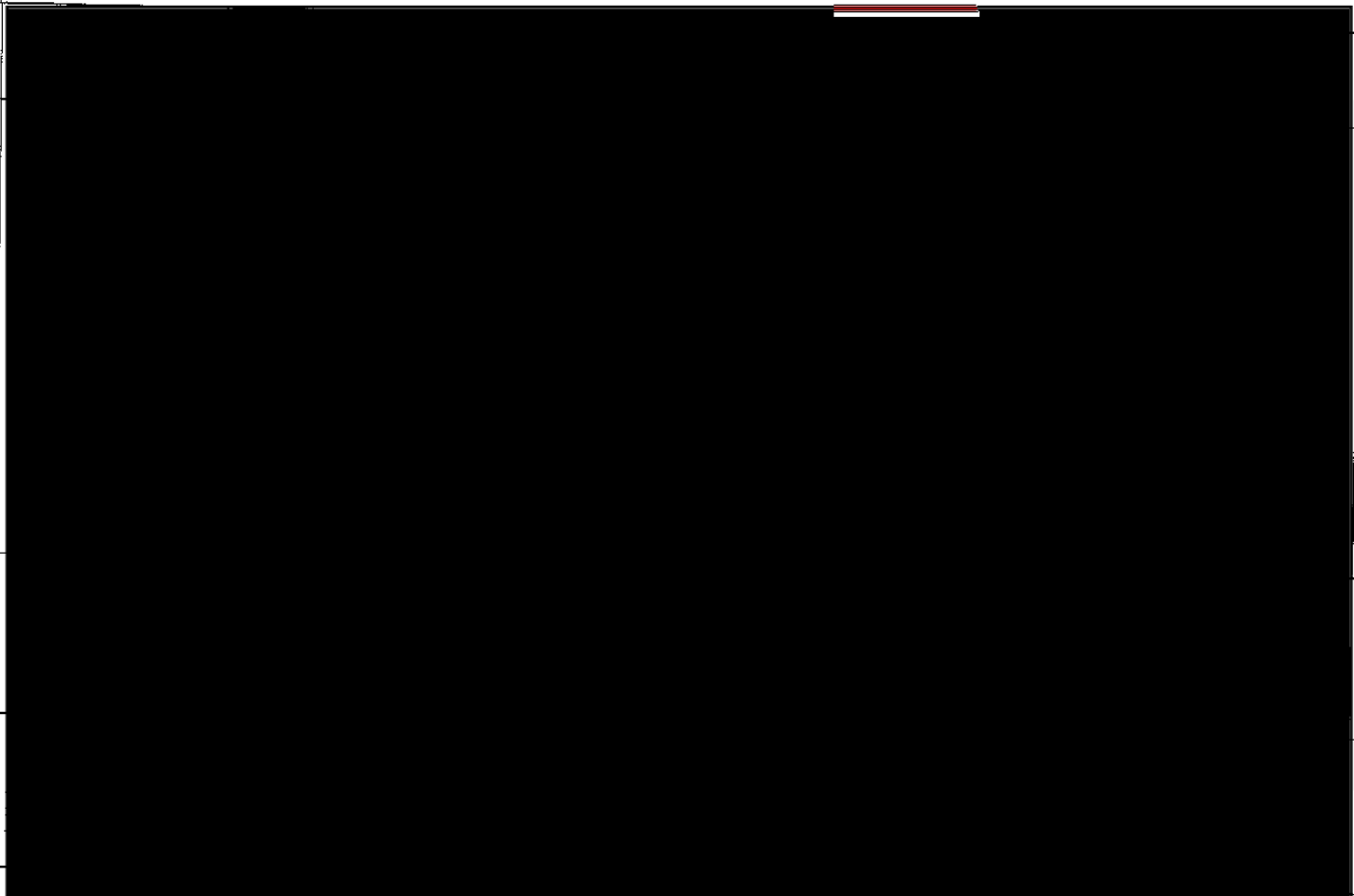
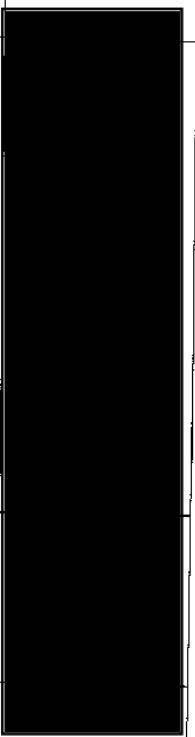


Process	Process Description	Control
		
<b>Interest Income &amp; Bank Fees</b>		

Confidential – Sterling Suffolk Racecourse, LLC

Process	Process Description	Control Objective
<b>Inter-track Activity</b>		
<b>Lottery Operations</b>		

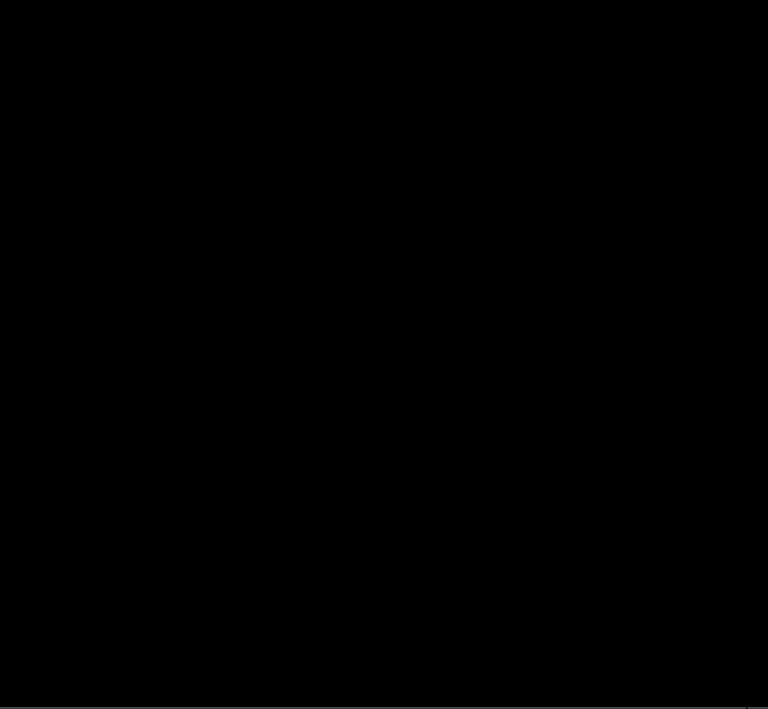

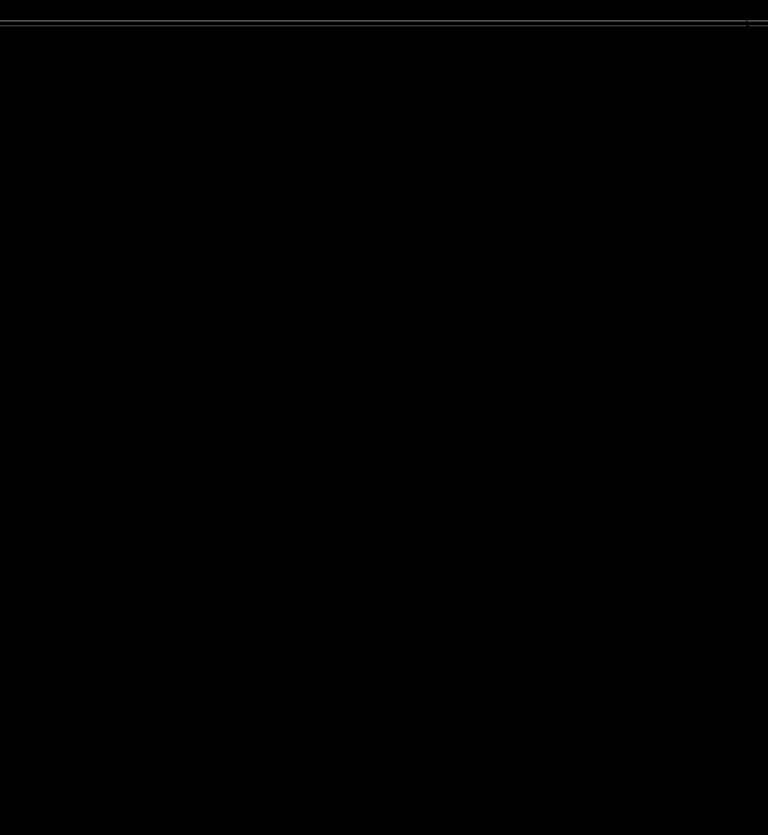
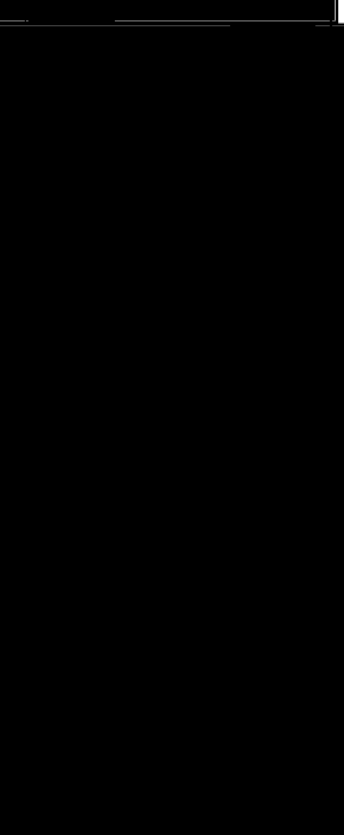


Process	Process Description	Control Objective
<p><b>Reconciliation of Monthly Statements</b></p>		
<p><b>Reporting, Presentation and Disclosures</b></p>		
<p><b>Problem Resolution</b></p>		

<b>Suggestions for Improvement</b>	[Redacted]	[Redacted]

**Sterling Suffolk Racecourse, LLC**

Cycle: Treasury & Cash Management

Index #	Control	Test/Plan
TR - 1		
TR - 2		
TR - 3		
TR - 4		
TR - 5		
TR - 6		
TR - 7		
TR - 8		

**Sterling Suffolk Racecourse, LLC**

Cycle: Treasury & Cash Management

Index #	Control	Testing Plan
TR - 9		
TR - 10		
TR - 11		
TR - 12		
TR - 13		

**Sterling Suffolk Racecourse, LLC**  
Cycle: Treasury & Cash Management

Index #	Control	Testing Plan
---------	---------	--------------

TR		
TR		
TR		
TR		
TR		

**Exhibit 23(c)**

Sterling Suffolk Racecourse, LLC, does not have an audit committee.

Compliance matters at Suffolk Downs and for Sterling Suffolk Racecourse, LLC, are overseen by Paul F. Evans, Jr., Executive Vice President of Security and Compliance. In August 2012, in anticipation of potentially receiving a gaming license from the Commission, the Board of Managers of Sterling Suffolk Racecourse, LLC adopted a resolution authorizing the formation of a compliance committee (copy attached at Tab 23(c)-1). The Applicant believes that, prior to appointing members of the compliance committee and developing its charter, is important to have discussions with the Gaming Commission and/or its staff about the appropriate scope, charge and membership of a compliance committee for a gaming license recipient who is not the operator of the gaming facility. Accordingly, the Applicant has not yet adopted a chartered or named members to the compliance committee.

# **Sterling Suffolk Racecourse, LLC**

## **ALCOHOL and DRUG ABUSE POLICY STATEMENT**

**Sterling Suffolk Racecourse, LLC** is committed to providing a safe work environment and to fostering the well-being and health of its employee/licensees. That commitment is jeopardized when any employee/licensee of Sterling Suffolk Racecourse, LLC illegally uses drugs or alcohol on the job, comes to work under their influence or possesses, distributes or sells drugs in the workplace. Therefore, Sterling Suffolk Racecourse, LLC has established the following policy:

- (1) It is a violation of company policy for any employee/licensee to possess, sell, trade, or offer for sale illegal drugs or otherwise engage in the illegal use of drugs on the job.
- (2) It is a violation of company policy for anyone to report to work under the influence of illegal drugs or alcohol.
- (3) It is a violation of the company policy for anyone to use prescription drugs illegally. (However, nothing in this policy precludes the appropriate use of legally prescribed medications.)
- (4) Violations of this policy are subject to disciplinary action up to and including termination.

It is the responsibility of the company's supervisors to counsel employee/licensees whenever they see changes in performance or behavior that suggest a drug or alcohol problem. Although it is not the supervisor's job to diagnose personal problems, the supervisor should encourage such individuals to seek help and advise them about available resources for getting help. Everyone shares responsibility for maintaining a safe work environment and co-workers should encourage anyone who may have a drug or alcohol problem to seek help.

The goal of this policy is to balance our respect for employee/licensees with the need to maintain a safe, productive and drug-free environment. The intent of this policy is to offer a helping hand to those who need it, while sending a clear message that the illegal use of drugs or being under the influence of alcohol while on the job is incompatible with employment and participation in active racing at Sterling Suffolk Racecourse, LLC.



## **PRE-EMPLOYMENT DRUG TESTING**

All job applicants at Sterling Suffolk Racecourse, LLC will undergo testing for the presence of illegal drugs as a condition of employment. Any applicant with a confirmed positive test result will be denied employment. This company will not discriminate against applicants for employment because of a past history of substance abuse. Therefore, individuals who have failed a pre-employment test may initiate another inquiry with the company after a period of no less than six months, but must present themselves drug-free.

## **EMPLOYEE/LICENSEES TESTING POLICY**

Sterling Suffolk Racecourse, LLC has adopted testing practices to identify employees/licensees who use illegal drugs either on or off the job or are under the influence of alcohol while on the job. It shall be a condition of employment for all employee/licensees to submit to drug and or alcohol testing under the following circumstances:

Pre-Employment. Testing of job applicants.

Post Accident. Testing done after certain types of accidents. When employee/licensees are involved in on-the-job accidents where personal injury or damage to company property occurs.

Random. Unannounced testing as part of a random selection testing program.

Reasonable Suspicion. When there is reasonable suspicion to believe that an employee/licensee is using illegal drugs or is under the influence of alcohol.

Return to Duty. As a condition to return to duty after a violation of the substance abuse testing policy. Also, after extended absences due to medical leaves or approved leaves of absence for other reasons.

Follow-Up. Unannounced testing over a specified period of time as determined by the Sterling Suffolk Racecourse, LLC for an employee/licensee who has successfully taken a return to duty drug and/or alcohol test following a violation of the substance abuse testing policy.

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Policy Statement	Page 1-3
Alcohol Testing Policy and Program	
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Prohibited Conduct	Page 6
How Breath Alcohol Testing is Done	Page 6-7
Reasons for Testing	Page 8
Consequences of Failed Tests	Page 8
Refusals to be Tested	Page 9
Follow Up Testing	Page 10
Drug Policy and Procedures	Page 11
Definitions	Page 11-13
How Testing is Done	Page 14
Urine Testing	Page 15
Hair Testing	Page 16
Various Drug Cutoff Levels	Page 16
Consequences of Failed Test and Refusal to Test	Page 17-19

**APPENDIX**

Effects of Alcohol on Body	Page 20-23
Drug Facts and Effects of Drugs	Page 24-25

## **DEFINITIONS**

### **Actively Participating in Racing Activities**

An employee/licensee is considered to be actively participating in racing activities when he or she begins work or is required to be in readiness to work until the time he or she is relieved from work and all responsibilities for performing work. Actively participating in racing activities includes five (5) specific job descriptions.

1. apprentice jockeys and jockeys
2. assistant starters
3. racing officials
4. valets
5. pony people

### **Alcohol**

Intoxicating agent in beverage alcohol, ethyl alcohol or other low molecular weight alcohols including methyl and isopropyl alcohol.

### **Alcohol Concentration (or content)**

Alcohol in a volume of breath (shown as grams of alcohol per 210 liters of breath) as indicated by an evidential breath test.

### **Alcohol Screening Device (ASD)**

A breath or saliva device, other than an evidential breath testing device (EBT), that is approved by the National Highway Traffic Safety Administration (NHTSA) and placed on a conforming products list (CPL) for such devices.

### **Alcohol Use**

The drinking or swallowing of any beverage, liquid mixture or preparation including medications containing alcohol

### **Breath Alcohol Technician (BAT)**

An individual who instructs and assists employee/licensees in the alcohol testing process and operates an evidential breath-testing device (EBT)

### **Confirmation Test**

In testing for alcohol: a second test, following a screening test with a result at or above the defined cutoff level of alcohol concentration that provides quantitative data of alcohol concentration. An evidential breath-testing (EBT) device must be used.

### **Designated Employer Representative (DER)**

An employee identified by the employer who is:

Able to receive communications and test results from service agents.

Authorized to take immediate actions to remove employee/licensees from participation in racing activities: and

able to make required decisions in the testing and evaluation processes.  
The individual must be an employee of the company.  
Service agents cannot serve as DERs.

**Evidential Breath Testing Device (EBT)**

A device that measures alcohol concentration in the breath. These devices have met the National Highway Traffic Safety Administration's (NHTSA) specifications for precision and accuracy.

**Screening Test**

In testing for alcohol: a test to determine if an employee/licensee has a prohibited concentration of alcohol in his or her breath or saliva specimen.

**Screening Test Technician (STT)**

A person who instructs and assists employee/licensees in the alcohol testing process and operates an alcohol screening device (ASD)

**WHO IS ELIGIBLE FOR TESTING**

All employees of Sterling Suffolk Racecourse, LLC.

All individuals, associations, corporations or other entities, which are granted a license by the Commission to engage in racing and/or pari-mutuel activities within the Commonwealth of Massachusetts.

**JOB CATEGORIES SUBJECT TO RANDOM TESTING**

apprentice jockeys and jockeys  
assistant starters  
racing officials  
valets  
pony people

**PROHIBITED CONDUCT**

Employees/Licensees whose occupation requires the handling of animals or the operation of vehicles on the grounds of a licensed racing association and performing their licensed occupation will be subject to the following policy.

Three alcohol concentration levels will be considered as reference levels for the purpose of defining allowable alcohol concentrations and prohibited alcohol concentrations as described in this policy.

The three alcohol levels are described by the term breath alcohol concentration: (brac)

brac <.020,

brac .020 through .039

brac .040 or greater

< .020 BRAC

An alcohol concentration of less than .020 will be accepted as a negative test and the employee/licensee will be considered fit to perform racing activities.

.020 through .039 BRAC

An alcohol concentration of .020 through .039 will not be considered a failure but will result in the employee/licensee being prohibited from performing racing activities for a period of 24 hours. The employee/licensee will be retested before resuming racing activities.

Except for the 24 hour layoff provision the employer shall take no other action against an employee/licensee with an alcohol concentration of .020 through .039.

.040 BRAC or higher

Alcohol tests with a result of .040 and greater will be considered in violation of the alcohol testing policy. The employee/licensee will be removed from racing activities until an evaluation by a substance abuse professional (SAP) is complete with substance abuse treatment and necessary counseling prescribed by the SAP. After successfully passing a return to duty test the employee/licensee will be allowed to resume duties in active racing.

### **HOW ALCOHOL TESTING IS DONE**

Evidentiary Breath Testing Device (EBT).

An EBT is capable of performing both the screening test and the confirmation test.

ASD (alcohol screening device) mouth swab, collection of a saliva sample to detect the level of alcohol. An ASD is approved to be used for a screening or presumptive test and is not approved to be used for confirmation testing..

Only breath and/or saliva testing devices approved by the National Highway Safety Administration will be used to perform alcohol tests.

All technicians conducting alcohol testing will be trained and certified to operate the devices used to test for alcohol.

**REASONS FOR TESTING**

- Pre-employment
- Random
- Reasonable suspicion
- Post Accident
- Return to Duty
- Follow Up

Employees/licenseses of Sterling Suffolk Racecourse, LLC will be subject to reasonable suspicion testing.

Licensee's identified as Gaming Commission Licensees and are participating in active racing duties will be subject to reasonable suspicion and random testing.

**CONSEQUENCES OF FAILED ALCOHOL TESTS or REFUSALS TO BE TESTED**

Immediate removal from duties.

1st Offense:

3 day suspension held in abeyance pending the successful completion of a substance abuse counseling program and no further violations of the program for two years. Offender will be required to pass a return to duty test before resuming participation in racing activities. Offender will be required to participate in a follow up testing program.

2d Offense: Occurring within two years of the date of the first offense  
Reinstatement of the immediate 3 day suspension held in abeyance from the first offense  
1 month suspension for the second offense.  
Reenter a substance abuse counseling program.  
Offender will be required to pass a return to duty test before resuming participation in racing activities.  
Offender will be required to participate in a follow up testing program.

2d Offense: Occurring more than two years after the date of the first offense  
Immediate 3 day suspension held in abeyance from the 1st offense addition of a second 3 day suspension.  
Reenter a substance abuse counseling program.  
Offender will be required to pass a return to duty test before resuming participation in racing activities.  
Offender will be required to participate in a follow up testing program.



3d Offense: Occurring within two years of a 1<sup>st</sup> offense.

Termination of employment and termination of racing privileges and permanent disqualification from participating in racing activities.

3d Offense: occurring 2 years after the 1<sup>st</sup> offense:

One year suspension.

Reenter a substance abuse counseling program.

Offender will be required to pass a return to duty test before resuming participation in racing activities.

Offender will be required to participate in a follow up testing program.

4<sup>th</sup> Offense: Termination of employment and termination of racing privileges and permanent disqualification from participating in racing activities.

### **REFUSALS TO TEST.**

Refusals to test or conduct intended to thwart the testing process is treated the same as a failed alcohol test. A refusal to test will be documented as an offense.

The consequences of refusals to test are described above in Consequences of Failed Tests.

#### **Refusals to test include but are not limited to:**

Failing to appear for a test within a reasonable time

Leaving the test site before the testing process is completed

Refusal to sign the consent section on the breath alcohol test form

Failure to provide an adequate amount of breath without a valid medical explanation

Failure to cooperate with the testing process in any way that prevents the completion of the test.

### **COUNSELING OPTIONS**

Counseling after a positive test result is required and must be performed by a certified substance abuse counselor (SAP).

Upon completion of an intake counseling evaluation and completion of the prescribed treatment the SAP will authorize the employee/licensee to undergo a return to duty test.

### **RETURN TO DUTY TESTING**

Upon completion of the SAP evaluation and prescribed treatment the employee/licensee will be required to submit to a return to duty test. A negative test result is required before being allowed to resume racing activities. The authorization for a return to duty test will be transmitted in writing from the SAP to the employer's designated employee representative (DER) before the employee/licensee is allowed to report for the test.

**FOLLOW UP TESTING**

After successful completion of the return to duty process the employee /licensee will be required to participate in a follow up testing program. Follow up testing is separate from random testing. Testing may be done at any time for a two (2) year period after failure to pass drug test.

**STERLING SUFFOLK RACECOURSE, LLC**

**DRUG TESTING POLICY**

**DEFINITIONS**

**Adulterated specimen.** A specimen that contains a substance that is not expected to be present in human urine, or contains a substance expected to be present but is at a concentration so high that it is not consistent with human urine.

**Cancelled test.** A drug or alcohol test that has a problem identified that cannot be or has not been corrected, or which for documented reasons otherwise requires to be cancelled. A cancelled test is neither a positive nor a negative test.

**Chain of custody.** The procedure used to document the handling of a specimen from the time the donor gives the specimen to the collector until the specimen is destroyed.

**Collection container.** A container into which the donor urinates to provide the specimen for a drug test or a container that is used in the collection of an alternative specimen for the purpose of drug testing.

**Collection site.** A place selected by the employer where employee/licensees present themselves for the purpose of providing a specimen for a drug test.

**Collector.** A person who instructs and assists donors at a collection site, who receives and makes an initial inspection of the specimen provided by those donors, and who initiates and completes the CCF.

**Confirmation drug test.** A second analytical procedure performed on a urine or alternative specimen to identify and quantify the presence of a specific drug or drug metabolite.

**Confirmation (or confirmatory) validity test.** A second test performed on a urine or alternative specimen to further support a validity test result.

**Confirmed drug test.** A confirmation test result received by an MRO from a laboratory.

**Cutoff.** The concentration used to establish and report a specimen negative or positive.

**Designated Employer Representative (DER).** An employee authorized by the employer to take immediate actions(s) to from safety-sensitive duties or cause to be removed from these duties and to make required decisions in the testing and evaluation processed. The DER also receives test results and other communications for the employer, consistent with the terms of the Company Policy. Service agents cannot act as DERs.

**Dilute specimen.** A specimen with creatinine and specific gravity values that is lower than expected for human urine.

**Donor.** An individual who is required by policy or has been randomly selected to be tested.

**Drugs.** The drugs for which tests are required by the company testing policy.

**Fatal Flaw.** Any error, mistake or problem in the testing process from the point of the specimen collection through the laboratory testing process that causes a specimen to be rejected by the lab or causes a test result to be canceled by the mro due to the error, mistake or problem.

**Follow-up test.** A test for drugs and or alcohol done to ensure that the donor remains drug and or alcohol free after being reinstated to performing safety sensitive duties.

**Initial drug test.** A screening test used to differentiate a negative specimen from one that requires further testing for drugs or drug metabolites.

**Initial validity test.** The first test used to determine if a specimen is adulterated, diluted or substituted.

**Invalid drug test.** The result of a drug test for a urine or alternative specimen that contains an unidentified adulterant or an unidentified interfering substance, has abnormal physical characteristics, or has an endogenous substance at an abnormal concentration that prevents the laboratory from completing or obtaining a valid drug test result.

**Laboratory.** A U. S. laboratory certified to perform workplace drug testing.

**Medical Review Officer.** (MRO) A person who is a licensed physician and who is responsible for receiving and reviewing laboratory results generated by an employer's drug testing program and evaluating medical explanations for certain drug test results.

**Oral Fluid Drug Screen Device.** A rapid, screening tests for the simultaneous, qualitative detection of selected drugs and their metabolites in human oral fluid.

**Oral Fluid Specimen.** A specimen of saliva obtained by placing an absorptive membrane or sponge like material in the donor's mouth.

**Rejected for Testing.** The result reported by a laboratory or test facility when it does not perform any tests on the specimen because of a fatal flaw or an unrecovered correctable error.

**Service Agent.** Any person or entity other than an employee of the employer who provides services specified by the company policy for the purposes of performing drug or alcohol tests.

**Substance Abuse Professional (SAP).** A person who evaluated employee/licenses who have violated a company policy drug and alcohol regulation and makes recommendations concerning education, treatment, follow-up testing and aftercare.

**Substituted specimen.** A specimen with creatinine and specific gravity values that are so diminished that they are not consistent with human urine. A specimen brought into the collection site by the donor for the purpose of using it in place of their own specimen for the collection.

**Urine specimen.** The portion of specimen collected from the donor for the purpose of performing a drug test.

**Verified test.** a drug test result or validity testing result from a certified laboratory that has undergone review and final determination by the MRO.

## **REASONS FOR TESTING**

Pre-employment Testing.  
Prior to hiring an individual.

Random Testing  
Random selection of a fixed percentage of the covered work force annually for testing

Reasonable Suspicion/For Cause Testing  
Testing of an individual who is suspected by their employer of using a prohibited drug.

Post Accident Testing  
Testing individual(s) involved in accidents or occurrences resulting in injury or property damage as defined in the employer's policy.

Return To Duty Testing.  
A test required after a refusal to be tested or a failed drug test. The individual may not return to safety sensitive duties until the employer has received a negative result.

Follow-up Testing  
Unannounced tests performed for individuals who have returned to performing safety sensitive duties after failing a drug test or refusing to be tested. These tests will be administered randomly as determined by the employer.

## **METHODS OF DRUG TESTING**

ORAL FLUID TESTING

URINE TESTING

HAIR TESTING

## **HOW DRUG TESTING IS DONE**

### **ORAL FLUID TESTING**

#### **URINE SPECIMEN ONE STEP SCREENING TEST**

#### **URINE SPECIMEN LABORATORY SCREENING WITH GC/MS**

##### **Step 1.**

A specimen of oral fluid is collected from the donor's mouth using a cotton or foam swab according to the collection protocol for the testing kit being used.

A testing kit will be opened and after obtaining an oral fluid specimen the collector will introduce the oral fluid into the testing kit.

According to the manufacturer's instructions the result of the test will be read usually within a maximum of several minutes.

All test kits will have a control mechanism impregnated in the testing device to show the collector that the testing device is working properly. In the event the control mechanism indicates a defective testing device the testing device will be discarded and the process will be repeated with a new testing device.

A test producing a negative result will be accepted as the test result.

##### **Step 2.**

An oral fluid test indicating the presence of one or more of the drug metabolites being tested for will be cause for a second screening test being performed by urine drug screen method..

Nonconfirmation of the oral swab test by the urine drug screen test will be a negative test and accepted as the final test result. No further testing will be performed on the urine specimen.

Confirmation of the oral swab test result.

Confirmation of the oral swab test result by the urine drug screen test will be cause for the urine specimen being sent to a certified lab for further testing.

Laboratory testing will include a screening test and all positives will undergo GC/MS confirmation testing

A test with a positive GC/MS confirmation test result will be sent to the Medical Review Officer (MRO).

**MRO Review.**

The medical review officer will review the full process from the collection through the laboratory testing. The donor will be contacted by the MRO and an interview of the donor will be conducted. The donor will be given the opportunity to present an acceptable explanation for the presence of the drug(s). The MRO will evaluate the information provided and determine the final drug test result. This final test result will be sent to the employer's DER either by the MRO or through the employer's service agent.

## **URINE SPECIMEN TESTING**

Onsite urine testing may be employed to identify negative tests from presumptive positive tests. Negative test results will be accepted as a final test result and the employee/licensee will be permitted to resume safety sensitive duties. Positive screening test results will not be considered positive drug tests but will be cause for the specimen to be sent to the lab with a chain of custody collection process for further testing and possible MRO review.

Chain of custody forms will be used to track the handling of all specimens being sent to a lab for further testing. Industry standard collection procedures for all methods of drug testing employed will be followed.

Single specimen or split specimen collections will be performed as defined by the employer's policy.

Specimens will be shipped overnight to the lab by authorized courier service.

Specimens collected on weekends, holidays and late Friday nights will be picked up the next business day for overnight shipment to the lab.

GC/MS confirmation testing on positive specimens will be required to validate the final result.

An MRO review of positive tests will be performed before a test result is certified as final. Upon completion of the MRO review the drug test result will be released to the employer's DER.



**HAIR SPECIMEN TESTING**

Chain of custody forms are used to track the handling of the specimen to the end of the testing process. Industry standard collection procedures are followed.

A specimen of the donor's hair is collected, sealed in the collection kit, initialed by the donor and sent to the lab with the chain of custody paper work.

The head is the preferred collection area; chest, arm, underarm and leg hair is also acceptable.

Head and body hair cannot be combined as a specimen.

The specimen must contain hair specific to one body area.

The hair is cut from as close as possible to the scalp and placed in the collection foil in a manner to identify which end of the hair is the root end.

Hair from other areas of the body can be placed in the center of the collection foil.

For hair collected from the head area the lab tests only the first 1 1/2 inches of hair measured from the root end.

GC/MS confirmation testing of positives and MRO reviews of test results are performed before a test result is validated as a final result.

**TEST PANEL FOR DRUGS OF ABUSE TESTING**

**Method of Testing**

Oral Fluid Drug Screen Device

The Oral Fluid Drug Screen Device for AMP/mAMP/COC/OPI/THC/PCP and their metabolites is a rapid, oral fluid screening test that can be performed without the use of an instrument. The test utilizes monoclonal antibodies to selectively detect elevated levels of specific drugs in human oral fluid.

**Urine Drug screen SAP 13 available test panel and cutoff levels**

<b>DRUG</b>	<b>CUTOFF LEVEL ng/ml</b>
Amphetamine	300
Barbiturates	300
Benzodiazepines	300
Cocaine	300
Marijuana	50
Methamphetamine	500
Methadone (MTD)	300
Methylenedioxymethamphetamine (MDMA) Ecstasy	500

Opiate	300
Oxycodone	100
Phencyclidine (PCP)	25
Propoxyphene (PPX)	300
Tricyclic Antidepressants (TCA)	1000

**CONSEQUENCES OF FAILED DRUG TESTS or REFUSALS TO BE TESTED**

The consequences for failing a drug test will be divided into two tiers.

Tier 1 consequences will apply to a test result from an onsite urine drug screen test indicating the presence of any drug or drug metabolite which is included in the test panel. A tier 1 test result is considered a presumptive test result.

Tier 2 consequences will apply to positive urine drug tests, following GC/MS testing by a certified laboratory and subsequent certification of the positive result by the Medical Review Officer (MRO).

**Tier 1 Consequences - positive onsite urine drug screen test.**

Clarifying Statement: An onsite urine drug screen test that indicates the presence of drug is a presumptive positive test. It alone will not be considered a final drug test result. The donor of the specimen will not be considered to have failed a drug test. A presumptive positive indicates that a drug or drug metabolite may be present in the donor's system. Each urine drug screen test with a presumptive positive result will be cause for the collection of a urine specimen with a chain of custody collection which will be sent to a certified laboratory for further testing.

The consequences from a positive urine drug screen test are as follows:

Immediate removal from performing racing activities and safety sensitive duties for the remainder of that work day without prejudice.

The employee/licensee will be allowed to submit to an onsite oral fluid screening test on their next day of work. Upon passing that test the employee/licensee will be allowed to return to performing racing activities and safety sensitive duties while waiting for the result of the laboratory test. Upon failing that test the temporary suspension from performing racing activities and safety sensitive duties will remain in place.

The employee/licensee will be allowed to submit to an oral fluid screening test to show they are fit for duty each day the employee/licensee is scheduled to work while waiting for the results of the urine drug test from the laboratory.

Conclusion of consequences from a urine drug screen test will occur when test results from all urine drug screen tests for the employee/licensee in question have been received by the employer's DER.

## **Tier 2 Consequences**

Failure of a gc/ms confirmation urine drug test with Medical Review Officer (MRO) review.

1st Offense:

3 day suspension held in abeyance pending the successful completion of a substance abuse counseling program and no further violations of the program for two years. Offender will be required to pass a return to duty test before resuming participation in racing activities.  
Offender will be required to participate in a follow up testing program.

2d Offense: Occurring within two years of the date of the first offense  
Reinstatement of the immediate 3 day suspension held in abeyance from the first offense  
1 month suspension for the second offense.  
Reenter a substance abuse counseling program.  
Offender will be required to pass a return to duty test before resuming participation in racing activities.  
Offender will be required to participate in a follow up testing program.

2d Offense: Occurring two years or more after the date of the first offense.  
Immediate 3 day suspension held in abeyance from the first offense, addition of a second 3 day suspension.  
Re-enter a substance abuse counseling program.  
Offender will be required to pass a return to duty test before resuming participation in racing activities.  
Offender will be required to participate in a follow up testing program.

3d Offense: Occurring within two years of a first offense  
Termination of employment and or termination of racing privileges and permanent disqualification from participating in racing activities.

3d Offense: Occurring two years or more after the 1<sup>st</sup> offense  
One-year suspension.  
Reenter a substance abuse counseling program.  
Offender will be required to pass a return to duty test before resuming participation in racing activities.  
Offender will be required to participate in a follow up testing program.

3 Offenses within any two (2) year period will result in:  
Termination of employment and or termination of racing privileges and permanent disqualification from participating in racing activities.

4<sup>th</sup> offense: Termination of employment and or termination of racing privileges and permanent disqualification from participating in racing activities.

**REFUSALS TO TEST.**

Refusals to test or conduct intended to thwart the testing process is treated the same as a failed drug test. A refusal to test will be documented as an offense.

The consequences of refusals are described above in Consequences of Failed Tests.

**Refusals to test include but are not limited to:**

- Failing to appear for a test within a reasonable time
- Leaving the test site before the testing process is completed
- Refusal to sign the consent section on the drug test form
- Failure to provide an adequate amount of urine specimen without a valid medical explanation
- Failure to cooperate with the testing process in any way that prevents the completion of the test.

**COUNSELING OPTIONS**

Counseling after a positive test result is required and must be performed by a certified substance abuse counselor (SAP).

Upon completion of an intake counseling evaluation and completion of the prescribed treatment the SAP will authorize the employee/licensee to undergo a return to duty test.

**RETURN TO DUTY TESTING**

Upon completion of the SAP evaluation and prescribed treatment the employee/licensee will be required to submit to a return to duty test. A negative test result is required before being allowed to resume racing activities. The authorization for a return to duty test will be transmitted in writing from the SAP to the employer's designated employee representative (DER) before the employee/licensee is allowed to report for the test.

**FOLLOW UP TESTING**

After successful completion of the return to duty process the employee/licensee will be required to participate in a follow up testing program. Follow up testing is separate from random testing. Follow up testing may be done at any time for two (2) years after any failure.

## **THE EFFECTS OF ALCOHOL ON THE BODY.**

Alcohol is a central nervous system depressant found in beer, wine, hard liquor and in some over-the-counter medications.

Signs and Symptoms of Use:

Dulled mental processes

Lack of coordination

Odor of alcohol on breath

Pupils may be constricted

Sleepy or stuporous condition

Slowed reactions and slurred speech

### **Other Effects:**

Greatly impaired driving ability

Reduced coordination and reflex actions.

Impaired vision and judgment

Inability to divide attention

Lowered inhibitions and

Headaches, nausea, dehydrations, unclear thinking, unsettled digestion and aching muscles are associated with overindulgence (hangover).

### **How Does it Work on the Body**

Alcohol first acts on the parts of the brain that affect self-control and other learned behaviors. Diminishing self control often leads to aggressive behavior. In large doses, alcohol dulls sensations and impairs muscular coordination, memory and judgment.

After ingestion alcohol is absorbed through the stomach and intestine into the bloodstream. Here it passes through the liver where it is metabolized in several steps. Metabolism helps prevent alcohol from accumulating in the body and destroying cells and organs. The liver can't metabolize alcohol as quickly as the body can absorb it. This is the point of intoxication. Any concentration of alcohol that remains unmetabolized can be detected and measured during a blood alcohol concentration test.

Many factors contribute to levels of alcohol absorption, rates of metabolism and intoxication. Among them are: body size and weight, food ingested, gender, physical condition and other drugs or medications in the body. Impairment begins with one drink.

## **HEALTH EFFECTS**

While beer, wine and hard liquor are considered recreational beverages when consumed in moderation our bodies view alcohol as a poison that needs to be expelled. When alcohol is abused our bodies can't expel it fast enough, causing damage to critical organs.

Over time, chronic consumption of alcohol may result in the following health hazards:

Liver damage

Inflammation of the esophagus  
Aggravation of peptic ulcers  
Acute and chronic pancreatitis  
Malabsorption of food nutrients that may lead to malnutrition  
Heart attack  
Hypertension  
Stroke  
Immune system depression (makes body more susceptible to infections)  
Cancers of the liver, esophagus, nasopharynx or larynx  
Brain damage (dementia, blackouts, seizures, hallucinations, peripheral neuropathy)

### **ALCOHOL'S TRIP THROUGH THE BODY**

Alcohol can do more physical damage than most people realize:

**Mouth and Esophagus:** Alcohol is an irritant to the delicate linings of the throat and esophagus, making them vulnerable to disease.

**Stomach and Intestines:** Alcohol has an irritating effect on the stomach's protective lining, resulting in gastric or duodenal ulcers. If this condition becomes acute it can cause a perforation of the stomach wall (peritonitis). In the small intestine, alcohol blocks absorption of important substances, such as thiamine, folic acid, fat, vitamin B1, vitamin B12, and amino acids.

**Bloodstream:** 95% of the alcohol taken into the body is absorbed into the bloodstream through the lining of the stomach and duodenum. Once in the bloodstream, alcohol quickly goes to every cell and tissue in the body. Alcohol causes red blood cells to clump together, slowing circulation and depriving tissues of oxygen. It also causes anemia by reducing red blood cell production. Alcohol slows the ability of white cells to destroy bacteria and degenerates the clotting ability of blood platelets.

**Pancreas:** Alcohol irritates the cells of the pancreas, causing them to swell and block the flow of digestive enzymes. Unable to enter the small intestine, the digestive juices begin to digest the pancreas, leading to acute hemorrhagic pancreatitis. One out of five people who develop this disease dies during the first attack. Pancreatitis can destroy the pancreas and cause a lack of insulin, resulting in diabetes.

**Liver:** Alcohol inflames the cells of the liver, causing them to swell and block the tiny canal to the small intestines. This prevents bile from being filtered properly through the liver. Jaundice develops, turning the whites of the eyes and skin yellow. Each drink of alcohol increases the number of liver cells destroyed, eventually causing cirrhosis of the liver. About 30,000 people die of liver disease each year. This disease is eight times more frequent among alcoholics than among non-alcoholics.

Heart: Alcohol inflames the lining of the urinary bladder making it unable to stretch properly. In the kidneys, alcohol causes increased loss of fluids.

Urinary Bladder and Kidneys: Alcohol inflames the lining of the urinary bladder making it unable to stretch properly. In the kidneys, alcohol causes increased loss of fluids.

Sex Glands: Swelling of the prostate gland caused by alcohol interferes with the ability of the male to perform sexually. It also interferes with the ability to climax during intercourse.

Brain: The most dramatic and noticed effect of alcohol is on the brain, reaching and affecting it within 15 minutes of consumption. Alcohol kills brain cells and brain damage is permanent. It depresses brain centers, producing progressive lack of coordination, confusion, disorientation, stupor, anesthesia, coma and even death. Drinking over a period of time causes loss of memory, judgment and learning ability. About 40,000 people die each year from brain disease.

### **HOW ALCOHOL IMPAIRS FUNCTIONS NEEDED FOR DRIVING:**

Because it takes subtle and complex skills to operate a motor vehicle safely, people are susceptible to impairment from even low doses of alcohol. The evidence linking alcohol and transportation accidents is supported by experimental studies conducted by the National Institute on Alcohol Abuse and Alcoholism, relating the effect of alcohol on specific driving-related skills.

### **WHAT IS IMPAIRMENT?**

Impairment is related to alcohol in terms of its concentration in the bloodstream. For example, a blood alcohol concentration (BAC) of 0.040 percent might be achieved by a 150-pound man consuming two drinks in one hour.

#### **Impaired Attention Span**

Drivers must divide their attention among many skills in order to keep a vehicle in the proper lane while monitoring the environment for vital safety information, such as other vehicles, traffic signals and pedestrians. Results of numerous studies show that a deficit in the ability to divide attention may occur at 0.020 percent BAC.

#### **Impaired Visual Tracking/Perception**

In driving, the eyes must focus briefly on important objects in the visual field and track them as they move (along with the vehicle). Low to moderate BAC's (0.03 to 0.05 percent) interfere with voluntary eye movements, impairing the eye's ability to rapidly track a moving target.



### **Impaired Reaction Time**

Steering is a complex psychomotor task. A delay in the body's eye-to-hand reaction time is compounded by the visual effects described above, causing significant impairment in Steering ability at about 0.035 percent BAC.

## **DRUG FACTS AND THE EFFECTS OF DRUGS**

### **Amphetamines (AMP)**

Amphetamine is a sympathomimetic amine with therapeutic indications. The drug is often self administered by nasal inhalation or oral ingestion. Depending on the route of administration, amphetamine can be detected in oral fluid as early as 5-10 minutes following use. Amphetamine can be detected in oral fluid for up to 72 hours after use.

The amphetamine assay contained within the oral fluid drug screen device yields a positive result when the amphetamine concentration in oral fluid exceeds 50 ng/ml.

### **Methamphetamine (mAMP)**

Methamphetamine is a potent stimulant chemically related to amphetamine but with greater central nervous system (CNS) stimulation properties. The drug is often self-administered by nasal inhalation, smoking or oral ingestion. Depending on the route of administration, methamphetamine can be detected in oral fluid as early as 5-10 minutes following use. Methamphetamine can be detected in oral fluid for up to 72 hours after use.

The Methamphetamine assay contained within the oral fluid drug screen device yields a positive result when the amphetamine concentration in oral fluid exceeds 50 ng/ml.

### **Cocaine (COC)**

Cocaine is a potent CNS stimulant and a local anesthetic derived from the coca plant (*Erythroxylum coca*). The drug is often self-administered by nasal inhalation, intravenous injection and free-base smoking. Depending on the route of administration, cocaine and its metabolites, benzoylecgonine and ecgonine methylester, can be detected in oral fluid as early as 5-10 minutes following use. Cocaine and benzoylecgonine can be detected in oral fluid for up to 24 hours after use.

The cocaine assay contained within the oral fluid drug screen device yields a positive result when the amphetamine concentration in oral fluid exceeds 20 ng/ml.

### **Opiates (OPI)**

The drug class opiates refers to any drug that is derived from the opium poppy, including naturally occurring compounds such as morphine and codeine and semi-synthetic drugs such as heroin. Opiates act to control pain by depressing the central nervous system. The drugs demonstrate addictive properties when used for sustained periods of time: Symptoms of withdrawal may include sweating, shaking, nausea and irritability. Opiates can be taken orally or by injection routes including intravenous, intramuscular and subcutaneous; illegal users may also take the drug intravenously or by nasal inhalation. Using an immunoassay cutoff level of 40 ng/ml, codeine can be in the oral fluid within 1 hour following a single oral dose and can remain detectable for 7-21 hours after the dose. 6-Monoacetylmorphine (6-MAM) is found more prevalently in oral fluid and is a

metabolic product of heroin. Morphine is a major metabolic product of codeine and heroin, and is detectable for 24-48 hours following an opiate dose.

The opiate assay contained within the oral fluid drug screen device yields a positive result when the morphine concentration in oral fluid exceeds 40 ng/ml.

**Marijuana (THC)**

Tetrahydrocannabinol (THC), the active ingredient in the marijuana plant (*cannabis sativa*) is detectable in oral fluid shortly after use. The detection of the drug is thought to be primarily due to the direct exposure of the drug to the mouth (oral and smoking administrations) and the subsequent sequestering of the drug in the buccal cavity. Historical studies have shown a window of detection for THC in oral fluid of up to 14 hours after drug use.

The THC assay contained within the oral fluid drug screen device yields a positive result when the THC-COOH concentration in oral fluid exceeds 12 ng/ml.

**Phencyclidine (PCP)**

Phencyclidine (PCP), the hallucinogen commonly referred to as Angel Dust, can be detected in oral fluid as a result of the exchange of the drug between the circulatory system and the oral cavity. In a paired serum and oral fluid sample collection of 100 patients in a hospital emergency department, PCP was detected in the oral fluid of 79 patients at levels as low as 2 ng/ml and as high as 600 ng/ml.

The Phencyclidine assay contained within the oral fluid drug screen device yields a positive result when the PCP concentration in oral fluid exceeds 10 ng/ml.

**Sterling Suffolk  
Racecourse, LLC and Subsidiary**  
Consolidated Financial Statements and  
Other Financial Information  
December 31, 2012

**Sterling Suffolk Racecourse, LLC and Subsidiary**

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**December 31, 2012**

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## Independent Auditor's Report

To the Members of  
Sterling Suffolk Racecourse, LLC

We have audited the accompanying consolidated financial statements of Sterling Suffolk Racecourse, LLC and its subsidiary, which comprise the consolidated balance sheet as of December 31, 2012, and the related consolidated statements of operations, changes in members' interests and cash flows for the year then ended.

### ***Management's Responsibility for the Consolidated Financial Statements***

Management is responsible for the preparation and fair presentation of the consolidated financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of consolidated financial statements that are free from material misstatement, whether due to fraud or error.

### ***Auditor's Responsibility***

Our responsibility is to express an opinion on the consolidated financial statements based on our audit. We conducted our audit in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the consolidated financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the consolidated financial statements. The procedures selected depend on our judgment, including the assessment of the risks of material misstatement of the consolidated financial statements, whether due to fraud or error. In making those risk assessments, we consider internal control relevant to the Company's preparation and fair presentation of the consolidated financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the consolidated financial statements. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.



**Opinion**

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of Sterling Suffolk Racecourse, LLC and its subsidiary at December 31, 2012, and the results of their operations and their cash flows for the year then ended in accordance with accounting principles generally accepted in the United States of America.

**Other Matter**

As described in note 3 to the consolidated financial statements, the Company has restated its 2011 financial statements to correct errors at December 31, 2011 from amounts previously reported on by other auditors.

Our audit was conducted for the purpose of forming an opinion on the basic financial statements as a whole. The Massachusetts State Gaming Commission – Information Required for Purse Account Distributions schedules are presented for purposes of additional analysis and are not a required part of the basic financial statements. Such information has not been subjected to the auditing procedures applied in the audit of the basic financial statements, and accordingly, we do not express an opinion or provide any assurance on it.

*Pricewaterhouse Coopers LLP*

Boston, Massachusetts  
September 26, 2013



**Sterling Suffolk Racecourse, LLC and Subsidiary**  
**Consolidated Balance Sheet**  
**December 31, 2012**

	2012
<b>Assets</b>	
Current assets	
Cash	\$ 1,715,958
Restricted cash	220,134
Accounts receivable (less allowance for doubtful accounts of \$94,000)	3,694,702
Prepaid expenses	179,583
Total current assets	<u>5,810,377</u>
Property and equipment	
Land	11,111,723
Buildings and improvements	36,710,102
Site improvements	7,805,169
Furniture, fixtures, and equipment	5,246,249
Construction in progress	5,172,538
	<u>66,045,781</u>
Less: Accumulated depreciation	<u>(21,172,606)</u>
	<u>44,873,175</u>
Other assets	
Deferred financing costs (net of accumulated amortization of \$55,880)	233,548
Racing license	50,600
	<u>284,148</u>
Total assets	<u>\$ 50,967,700</u>
<b>Liabilities and Members' Interests</b>	
Current liabilities	
Accounts payable	\$ 7,169,879
Accrued liabilities	457,687
Accrued purses	270,025
Accrued environmental liability	409,000
Pari-mutuel tickets outstanding	723,207
Amounts due horsemen	33,765
Amounts due state lottery	61,369
Total current liabilities	<u>9,124,932</u>
Other liabilities	
Mortgage loans payable – long term	47,600,000
Members' capital options, at fair value (Note 4 and 5)	28,402,760
Accrued environmental liability	461,950
Total other liabilities	<u>76,464,710</u>
Members' interests	
Members' capital	15,216,561
Members' deficit	(49,838,503)
Total members' interests	<u>(34,621,942)</u>
Total liabilities and members' interests	<u>\$ 50,967,700</u>

The accompanying notes are an integral part of these consolidated financial statements.

**Sterling Suffolk Racecourse, LLC and Subsidiary**  
**Consolidated Statement of Operations**  
**Year Ended December 31, 2012**

	2012
<b>Revenues</b>	
Net pari-mutuel wagering	\$ 17,049,045
Simulcast commission income	4,036,130
Breakage	(338,732)
Host track commission	(2,606,209)
Net pari-mutuel revenue	<u>18,140,234</u>
<b>Other revenue</b>	
Recovery of breakage and state fees	434,502
Admissions	4,955
Programs	260,027
Rental revenue	3,600
Other	732,050
	<u>1,435,134</u>
Net revenues	19,575,368
<b>Expenses</b>	
Stakes and purses	8,768,687
State fees	753,446
Occupancy	6,946,460
Racing and backstretch	7,871,884
Advertising and promotion	901,770
General and administrative	3,668,607
Public affairs and consulting fees	10,460,971
Interest	694,924
Depreciation and amortization	1,643,817
Total expenses	<u>41,710,566</u>
<b>Other gain</b>	
Change in fair value of members' capital options (Note 4 and 5)	<u>8,100,000</u>
Net loss	<u>\$ (14,035,198)</u>

The accompanying notes are an integral part of these consolidated financial statements.

**Sterling Suffolk Racecourse, LLC and Subsidiary**  
**Consolidated Statement of Changes in Members' Interests**  
**Year Ended December 31, 2012**

	Members' Capital			Total	Members' Deficit	Total
	Economic Interests	Preferred Interests	Total			
Balance at December 31, 2011	\$ 10,696,000	\$ -	\$ 10,696,000	\$ (34,708,544)	\$ (24,012,544)	
Issuance of preferred interests (Note 1 and 4)	-	3,975,001	3,975,001	-	3,975,001	
Dividends accumulated	-	545,560	545,560	(545,560)	-	
Net loss	-	-	-	(14,035,198)	(14,035,198)	
Transaction costs	-	-	-	(549,201)	(549,201)	
<b>Balance at December 31, 2012</b>	<b>\$ 10,696,000</b>	<b>\$ 4,520,561</b>	<b>\$ 15,216,561</b>	<b>\$ (49,838,503)</b>	<b>\$ (34,621,942)</b>	

The accompanying notes are an integral part of these consolidated financial statements.

**Sterling Suffolk Racecourse, LLC and Subsidiary**  
**Consolidated Statement of Cash Flows**  
**Year Ended December 31, 2012**

	2012
<b>Operating activities</b>	
Net loss	\$ (14,035,198)
Adjustments to reconcile net loss to net cash used in operating activities	
Depreciation	1,481,705
Amortization of deferred financing costs	162,112
Accrued environmental liability adjustment	(20,700)
Bad debt expense	12,000
Change in fair value of members' capital options (Note 4 and 5)	(8,100,000)
Changes in operating assets and liabilities	
Accounts receivable	1,704,538
Prepaid expenses	83,477
Accounts payable and accrued liabilities	350,455
Accrued purses	(3,532)
Pari-mutuel tickets outstanding	(46,267)
Amounts due horsemen	(19,239)
Amounts due state lottery	23,184
Restricted cash	(3,945)
Accrued environmental liability	(1,250,350)
Net cash used in operating activities	<u>(19,661,760)</u>
<b>Investing activities</b>	
Acquisition of property and equipment	<u>(7,965,739)</u>
Net cash used in investing activities	<u>(7,965,739)</u>
<b>Financing activities</b>	
Deferred financing costs	(289,428)
Proceeds from loan	2,800,000
Repayment of loan	(2,800,000)
Issuance of preferred interests	28,077,761
Transaction costs	(549,201)
Net cash provided by financing activities	<u>27,239,132</u>
Decrease in cash	(388,367)
<b>Cash</b>	
Beginning of year	<u>2,104,325</u>
End of year	<u>\$ 1,715,958</u>
<b>Supplemental cash flow information</b>	
Cash paid for interest	\$ 694,924
<b>Supplemental noncash investing and financing activities</b>	
Noncash acquisitions of property and equipment	\$ 1,110,157
Dividends accumulated	\$ 545,560
Allocation of preferred interest conversion option (Note 4)	\$ 24,043,100
Allocation of preferred interest put and call rights (Note 4)	\$ 59,660

The accompanying notes are an integral part of these consolidated financial statements.



**Sterling Suffolk Racecourse, LLC and Subsidiary**  
**Notes to Consolidated Financial Statements**  
**December 31, 2012**

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**1. Organization**

Sterling Suffolk Racecourse, LLC, a Massachusetts limited liability company (the Company), was organized on June 30, 1997 for the purpose of acquiring, developing, and operating certain real property located in East Boston and Revere, Massachusetts (the Property) as a first-class thoroughbred horseracing facility (Suffolk Downs), and for other commercial activities and real estate development.

Sterling Suffolk Racecourse Limited Partnership (the Partnership) was formed in December 1991 for the purpose of acquiring a leasehold interest in the Property, and developing such property as a first-class thoroughbred horseracing track. The Company was formed pursuant to an agreement and plan of merger with the Partnership. The Partnership and the Company merged as the surviving entity. Each of the partners of the Partnership was granted an ownership interest in the Company.

The Company holds, directly and indirectly, 100% of the interest in SSR Acquisitions, LLC. SSR Acquisitions, LLC, a Massachusetts limited liability company, was organized on August 13, 2008 for the purpose of holding an option to acquire, develop and/or operate certain real property located in Revere, Massachusetts. SSR Acquisitions, LLC is a wholly owned subsidiary of the Company.

As of December 31, 2012, the Company's three largest members owned approximately 41.7%, 31.2% and 19.9%, respectively. The initial capital contributions of the members are available to satisfy obligations to general creditors.

The Company entered into a Subscription Agreement with a New Member ("New Member") on March 29, 2011. In connection with the Subscription Agreement, New Member contributed \$60,000,000. Associated with this transaction, the Company incurred costs of \$3,651,397. New Member has the option to purchase two tranches of additional equity in the Company in accordance with the Subscription Agreement. The first tranche is equivalent to 2.8% of the issued and outstanding equity interests of the Company with the second tranche equivalent to 10% of issued and outstanding equity interests. The Company recorded a liability for the option to purchase additional equity on its consolidated balance sheet at March 29, 2011 and records the change in fair market value at each period end through the statement of operations. New Member has not exercised its options to purchase additional equity interests at December 31, 2012.

The Company entered into a Standby Equity Purchase Agreement with New Member on June 20, 2012. In connection with the Standby Equity Purchase Agreement, New Member contributed \$28,077,761 for preferred interests in the Company. Associated with this transaction, the Company incurred costs of \$549,201. In accordance with the Standby Equity Purchase Agreement, New Member has committed to purchase additional preferred interests of \$19,022,239 through December 31, 2014, at the Company's option.

## **Sterling Suffolk Racecourse, LLC and Subsidiary**

### **Notes to Consolidated Financial Statements**

#### **December 31, 2012**

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The Company has sustained operating losses in the past several years. Given these losses, the Company is dependent upon raising capital to fund its operations. The Second Amended and Restated Limited Liability Company Agreement ("LLC Agreement") under which the Company operates allows the New Member to require the Company's Board of Directors to issue a Mandatory Managed Projected Capital Call to fund the development, construction or operation of the Managed Project (which includes the operation of the horseracing facility) in an amount up to \$45,000,000. \$4,035,000 and \$15,175,000 have been called against the \$45,000,000 in 2012 and 2013, respectively. In addition, the Company's largest members have committed in writing in the form of irrevocable and binding support letters to the Company, to fund the operations (consolidated operating expenses, working capital needs and other obligations) of the Company through January 1, 2014, in an amount up to \$23,130,000, of which \$12,872,000 has already been funded as of September, 2013. Additional funding from other members as of September, 2013 is \$2,303,000, bringing total 2013 funding to \$15,175,000. The Company expects that its cash on hand at December 31, 2012, as well as additional capital contributions made in 2013, will be sufficient to fund the operations of the Company through January 1, 2014.

## **2. Summary of Significant Accounting Policies**

### **Basis of Presentation**

The accompanying consolidated financial statements include all of the accounts of the Company and its wholly owned subsidiary. All intercompany accounts and transactions have been eliminated in consolidation.

### **Cash**

The Company maintains cash balances at a single high quality financial institution. Accounts at this US institution are insured by the Federal Deposit Insurance Corporation ("FDIC"). In addition, the FDIC implemented a transaction account guarantee program. Through this program all non-interest bearing business operating accounts at participating institutions were fully guaranteed by the FDIC for the full account balances through December 31, 2012.

### **Restricted Cash**

Restricted cash includes funds held by the Company for the benefit of the horsemen, and the Commonwealth of Massachusetts' (the Commonwealth) lottery, as well as funds held for the payment of interest on certain loans and cash held in a certificate of deposit as collateral on the racing license.

### **Accounts Receivable and Allowance for Doubtful Accounts**

The Company extends credit on an unsecured basis to other racetracks in the normal course of business. The Company maintains an allowance for doubtful accounts for estimated losses that may result from the inability of other racetracks to make required payments. That estimate is based on historical collection experience, current economic and market conditions, and a review of the current status of each customer's trade accounts receivable. The Company charges actual losses to this allowance when incurred.

If the financial condition of the Company's customers were to deteriorate, or its judgment regarding their financial condition was to change negatively, additional allowances may be required, resulting in a charge to income in the period such determination was made. Conversely, if the financial condition of its customers were to improve, or its judgment regarding their financial condition was to change positively, a reduction in the allowances may be required, resulting in an increase in income in the period such determination was made.