



CASE NO: A-21-830904-C
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17 DISTRICT COURT
18 CLARK COUNTY, NEVADA

19 GOLDEN ENTERTAINMENT, INC. ,
20 Plaintiff,

21 v.

22 FACTORY MUTUAL INSURANCE
23 COMPANY,
24 Defendant.

CASE NO.:
DEPT NO.:

**COMPLAINT AND
DEMAND FOR JURY TRIAL**

Exempt from Arbitration:
Business Court Matter
Declaratory Relief Sought and Amount in
Controversy Greater Than \$50,000

Business Court Requested:
EDCR 1.61 – Business Tort
Claim/Enhanced Case Management

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1 **COMPLAINT AND DEMAND FOR JURY TRIAL**

2 This suit concerns the refusal by Factory Mutual Insurance Company (“FM Global”) to
3 stand by its promises and comply with its obligations to Plaintiff Golden Entertainment, Inc.
4 (“Golden”). In exchange for significant premiums, FM Global issued an insurance policy that
5 provided “*all risk*” coverage for Golden and its insured locations. This is the broadest form of first-
6 party insurance coverage available in the marketplace, and it provides coverage expressly designed
7 to respond to the types of business losses occasioned by pandemic conditions.

8 Repudiating the broad coverage promised to Golden, FM Global has refused to pay for the
9 business interruption caused by the imminent or actual property damage from the ubiquitous
10 presence of the novel coronavirus known as SARS-CoV-2 and the disease it causes, COVID-19.
11 While damage from the pandemic has ravaged every aspect of the economy, perhaps no sector has
12 been hit harder than gaming and hospitality, which requires the very type of indoor, in-person
13 congregation and interaction that government closure orders (the “Closure Orders”) and similar
14 limitations prohibit. As a result, Golden has suffered significant business interruption losses, which
15 through the course of the pandemic have mounted to more than \$130 million to date. Yet despite
16 paying nearly \$2 million in premiums (in addition to the millions more paid to FM Global for
17 coverage in prior years) to secure a top of the line, all-risk policy affording \$1.1 billion in policy
18 limits per occurrence, FM Global refused to honor its obligations when Golden needed its insurer
19 the most.

20 To date, FM Global has failed to pay a single penny of Golden’s losses. Accordingly, for
21 its causes of action against FM Global, Golden alleges as follows:

22 **INTRODUCTION**

23 1. Golden is a Nevada-based gaming and entertainment company that owns and
24 operates a diversified entertainment platform, including over 16,000 slots, 120 table games, and
25 6,200 hotel rooms across two reportable operating segments: “Casinos” and “Distributed Gaming.”

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28 2. In its Casinos segment, Golden owns and operates ten resort casino properties in

1 Nevada and Maryland, including casinos, hotels, dining and entertainment venues, retail shops,
2 meeting and entertainment venues, a golf course, and other locations that host large numbers of
3 people. Golden’s Casinos include:

- 4 a. The STRAT Hotel, Casino & SkyPod (“The Strat”): Golden’s premier resort casino
5 property located on the Las Vegas Strip, which houses the iconic SkyPod, an 80,000
6 square foot casino, hotel, nine restaurants, two rooftop pools, fitness center, retail
7 shops, and entertainment facilities.
- 8 b. Arizona Charlie’s Casinos: Golden’s Arizona Charlie’s Boulder and Arizona
9 Charlie’s Decatur casino properties provide an alternative experience to the Las
10 Vegas Strip. Arizona Charlie’s Decatur offers hotel rooms, gaming and bingo
11 facilities, and five restaurants, while Arizona Charlie’s Boulder has four restaurants
12 and an RV park with approximately 220 RV hook-up sites.
- 13 c. Laughlin Casinos: Golden’s Aquarius Casino Resort (“Aquarius”), Edgewater
14 Hotel & Casino Resort (“Edgewater”), and Colorado Belle Hotel & Casino Resort
15 (“Colorado Belle”) facilities are located in Laughlin, Nevada along the heart of the
16 Laughlin Riverwalk. In addition to hotel rooms and gaming, the Aquarius has nine
17 restaurants, the Colorado Belle features three restaurants, and the Edgewater offers
18 six restaurants and dedicated entertainment venues, including the Laughlin Event
19 Center, an outdoor arena that can seat up to approximately 12,000 guests at events
20 such as concerts, festivals, bull riding, rodeo, off-road racing, and extreme sports
21 events.
- 22 d. Pahrump Casinos: Golden owns and operates three casinos in Pahrump, Nevada,
23 including the Pahrump Nugget Hotel Casino (“Pahrump Nugget”), Gold Town
24 Casino, and Lakeside Casino & RV Park. In addition to hotel rooms, gaming, and
25 bingo at the Pahrump Casinos, the Pahrump Nugget offers a bowling center and a
26 4,700 square foot banquet and event center.
- 27 e. The Rocky Gap Casino Resort (“Rocky Gap”): Rocky Gap is situated in the Rocky
28 Gap State Park in Maryland and offers three restaurants, a spa, an event and
conference center, and a Jack Nicklaus signature golf course in addition to hotel
accommodations and gaming.

3 Golden also operates a Distributed Gaming segment, which consists of (1) the
4 operation of over sixty branded taverns (the “Taverns”) targeting local patrons located primarily in
5 the Las Vegas, Nevada metropolitan area, and (2) the installation, maintenance, and operation of
6 slots and amusement devices in non-casino locations such as restaurants, bars, taverns, convenience
7 stores, liquor stores, and grocery stores in Nevada and Montana (the “Route Operations”). Because
8 gaming in these Distributed Gaming locations is incidental to the primary business, the gaming area
9 is typically small (generally limited to 15 slots in Nevada and 20 in Montana), and in many
10 instances, segregated from the primary business area through the use of alcoves in grocery stores
11 and drug stores and the installation of slots into the physical bar (“bar top” slots) in bars and taverns.

1 In Montana, Distributed Gaming is limited to business locations licensed to sell alcoholic beverages
2 for on-premises consumption only.

3 4. Despite Golden’s best efforts to operate its gaming, hospitality, entertainment, and
4 dining operations amid the unprecedented challenges presented by the pandemic, its businesses
5 have suffered physical loss or damage to property caused by SARS-CoV-2 and/or COVID-19,
6 along with substantial losses from closures, suspensions, capacity restrictions, and/or interruptions
7 to business activities. This includes losses at Golden’s Casinos, Taverns, and/or third-party
8 customers’ locations at which Golden’s Distributed Gaming slot and amusement devices are housed
9 (“Contingent Time Element Locations”).

10 5. In addition, all of Golden’s Casinos and Taverns (together with locations listed in
11 Schedule A of the All Risk Policy, the “Covered Properties”) and Route Operations at Contingent
12 Time Element Locations, were shut down pursuant to various Closure Orders in Maryland on
13 March 16, 2020 and in Montana and Nevada on March 17, 2020. Since then, government orders
14 have required, at various times and in various locations, shutdowns, lockdowns, facility closures,
15 quarantines, travel restrictions, and operating restrictions, all of which substantially impacted
16 Golden’s businesses (as well as nearby properties).

17 6. In compliance with these Closure Orders and to ensure Golden’s Covered Properties
18 did not become a vector for the spread of SARS-CoV-2 and/or COVID-19, Golden’s Covered
19 Properties remained closed to the public until June 2020¹ and its Route Operations remained shut
20 down until May 4, 2020 and June 4, 2020 in Montana and Nevada, respectively. During this time,
21 each of the Covered Properties was unfit for its intended purposes due to the physical loss or
22 damage incurred.

23 7. Notably, Golden did not stand idle during this shutdown period. It diligently worked
24 to mitigate the physical loss or damage to its properties by creating a reopening plan for operations
25 at its Covered Properties during the COVID-19 pandemic, while at the same time prioritizing the
26 health and safety of its employees and patrons. Despite operating with a skeleton crew of roughly
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28 ¹ To mitigate the losses associated with the COVID-19 pandemic, the Colorado Belle in Laughlin,
Nevada has remained closed.

1 five percent of its pre-pandemic workforce, Golden stayed attuned to the latest research and
2 education proffered by the scientific community in implementing strategies, procedures, and
3 techniques to mitigate the property damage or loss and better assure safe operations through
4 extraordinary remedial measures and reduced capacity restrictions.

5 8. These strategies and procedures—including reduced capacity, enhanced cleaning
6 and sanitation protocols, installation of sanitizing stations and Plexiglass barriers, health
7 screenings, social distancing and face covering, and other safety procedures—were the product of
8 best practices issued by the scientific community as it continued to learn more in those intervening
9 months about SARS-CoV-2 and COVID-19. Moreover, they are continually updated and modified
10 as new information arises about SARS-CoV-2 and COVID-19 and their impacts to Golden’s
11 properties’ intended use and purpose.

12 9. Golden continues to prioritize a safe physical environment for its guests and team
13 members by training employees on new operating procedures, implementing health checks, testing
14 employees, implementing contact tracing, and social distancing measures. Other steps, including
15 closing restaurants for in-service dining (or altogether in some cases), closing or reducing
16 occupancy in retail stores, reducing the number of available spaces for both slots and table games,
17 and reducing overall occupancy at properties, greatly affected Golden’s Covered Properties and
18 Contingent Time Element Locations. Yet even with these significant limitations and mitigation
19 techniques, the impact of SARS-CoV-2 and COVID-19 persist on Golden’s Covered Properties.

20 10. The toll the COVID-19 pandemic has had on lives, properties, and businesses in
21 Maryland, Montana, Nevada, the United States, and across the globe has been both profound and
22 unprecedented, and is among the worst public health and economic catastrophes of the last hundred
23 years.

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1 11. Indeed, to date, COVID-19 has killed more than 7,800 Marylanders,² 5,000
2 Nevadans,³ 1,377 Montanans,⁴ 520,000 Americans,⁵ and is currently the number one cause of
3 death in the United States.⁶ Thousands of Americans are still perishing daily, with surges of cases
4 occurring throughout the country.

5 12. While the pandemic has devastated families and the economy nationwide, Nevada's
6 labor market has been especially hard hit. In February 2020, the seasonally unadjusted
7 unemployment rate sat under 1.5%. In the last two weeks of March 2020, more than 164,000 people
8 in Nevada filed first-time unemployment claims—a record number that overwhelmed the state
9 system.⁷ In April 2020 with Closure Orders in place, the unemployment rate in Nevada's
10 metropolitan areas in particular leapt to 34%,⁸ and by mid-May 2020 state unemployment soared
11 to 26.75%.⁹ Even after its unemployment peak, Nevada's labor market continued to struggle. As
12 of December 2020, compared to other states, Nevada had the second highest seasonally adjusted
13 unemployment rate at 9.2%—behind only Hawaii at 9.3%—signaling a slow and painful recovery
14 likely due to a tourism-heavy economy that depends on the physical presence of visitors.¹⁰ The
15 Las Vegas metropolitan area suffered more, with a 10.4% seasonally unadjusted unemployment

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17 ² *Maryland COVID-19 Data Dashboard*, MD. DEP'T. HEALTH,
<https://coronavirus.maryland.gov/> (last visited Mar. 9, 2021).

18 ³ *Nevada Health Response*, NEV. DEP'T. HEALTH & HUMAN SERVS.,
<https://nvhealthresponse.nv.gov/#covid-data-tracker> (last visited Mar. 9, 2021).

19 ⁴ *Coronavirus Disease 2019*, MONT. DEP'T HEALTH & HUMAN SERVS.,
<https://dphhs.mt.gov/publichealth/cdepi/diseases/coronavirusmt/demographics> (last visited
20 Mar. 9, 2021).

21 ⁵ *COVID Data Tracker*, CTRS. DISEASE CONTROL & PREVENTION, [https://covid.cdc.gov/covid-
22 data-tracker/#datatracker-home](https://covid.cdc.gov/covid-data-tracker/#datatracker-home) (last visited Mar. 9, 2021).

23 ⁶ Cynthia Cox & Krutika Amin, *COVID-19 Is the Number One Cause of Death in the U.S. in
24 Early 2021*, PETERSON-KFF HEALTH SYS. TRACKER (Feb. 22, 2021),
<https://dphhs.mt.gov/publichealth/cdepi/diseases/coronavirusmt/demographics>.

25 ⁷ Katherine Sayre, *In Las Vegas, Coronavirus Job Losses Could Double Those of 2007-09
26 Recession*, WALL ST. J. (Apr. 9, 2020), [https://www.wsj.com/articles/in-las-vegas-coronavirus-
27 job-losses-could-double-those-of-2007-09-recession-11586433601](https://www.wsj.com/articles/in-las-vegas-coronavirus-job-losses-could-double-those-of-2007-09-recession-11586433601).

28 ⁸ *See Local Area Unemployment Statistics: Metropolitan Areas, Nevada*, U.S. BUREAU LAB. STAT.,
[https://data.bls.gov/timeseries/LAUMT322982000000003?amp%253bdata_tool=XGtable&out
put_view=data&include_graphs=true](https://data.bls.gov/timeseries/LAUMT322982000000003?amp%253bdata_tool=XGtable&output_view=data&include_graphs=true) (last visited Mar. 9, 2021).

⁹ *Nevada Unemployment Insurance Weekly Claims Data*, U.S. DEP'T LAB. STAT.,
<https://oui.doleta.gov/unemploy/wkclaims/report.asp> (last visited Mar. 9, 2021).

¹⁰ *State Unemployment Rates, Seasonally Adjusted*, U.S. BUREAU LAB. STAT.,
[https://www.bls.gov/charts/state-employment-and-unemployment/state-unemployment-rates-
map.htm](https://www.bls.gov/charts/state-employment-and-unemployment/state-unemployment-rates-map.htm) (last visited Mar. 9, 2021).

1 rate in December 2020 compared with 3.5% in the previous year.¹¹

2 13. The effects of the pandemic are not limited to the labor market. Nevada’s statewide
3 taxable sales revenue plunged 29.1% in April 2020 and 19.0% in May 2020, with Clark County’s
4 revenues decreasing 36.1% and 27.1% respectively as well.¹² The pandemic decimated the live
5 entertainment industry the most, grinding it to a halt with a 94% decrease in Live Entertainment
6 Taxes in June 2020 compared to the prior year.¹³

7 14. Meanwhile, Nevada’s support services system strained under the surge of caseloads
8 caused by the pandemic. Supplemental Nutrition Assistance Program (“SNAP”) recipients
9 increased by 3.44% in March 2020 and 16.6% in April 2020,¹⁴ and mortgage delinquencies rose
10 to 10% in May 2020, reflecting one of the worst rates in the country.¹⁵

11 15. With regard to Golden specifically, the impacts of its closures had an outsized effect
12 on the communities in the more rural areas in which it operates, including Pahrump, Nevada and
13 Allegany County, Maryland, where Golden’s Casinos employ a significant number of local
14 residents.

15 16. The spread of SARS-CoV-2 and COVID-19, along with the resulting Closure
16 Orders produced unprecedented challenges to Golden’s financial condition and liquidity. In
17 response, Golden undertook aggressive mitigation measures to remain viable while wholly or
18 partially shut down, including: (i) furloughing and placing on leave approximately 7,450
19 employees, which represents over 95 percent of Golden’s pre-pandemic workforce; (ii) drawing
20 down the available \$200 million under its revolving credit facility; and (iii) executing substantial
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22 ¹¹ *Local Area Unemployment Statistics*, U.S. BUREAU LAB. STAT.,
23 [https://data.bls.gov/timeseries/LAUMT322982000000003?amp%253bdata_tool=XGtable&out
put_view=data&include_graphs=true](https://data.bls.gov/timeseries/LAUMT322982000000003?amp%253bdata_tool=XGtable&output_view=data&include_graphs=true) (last visited Mar. 9, 2021).

24 ¹² *Monthly Revenue Statistics*, NEV. DEP’T TAX’N,
<https://tax.nv.gov/Publications/Taxation Revenue Statistics/> (last visited Mar. 9, 2021).

25 ¹³ *Gross Revenue Comparison 2020*, NEV. DEP’T TAX’N,
<https://tax.nv.gov/Publications/Taxation Revenue Statistics/> (last visited Mar. 9, 2021).

26 ¹⁴ Kelly Nichols, *June 2020 Welfare Caseload Summary*, DEPT. HEALTH & HUM. SERVS. (July
27 20, 2020)
[https://dwss.nv.gov/uploadedFiles/dwssnv.gov/content/Home/Features/202007%20Caseload%2
0Website.pdf](https://dwss.nv.gov/uploadedFiles/dwssnv.gov/content/Home/Features/202007%20Caseload%20Website.pdf).

28 ¹⁵ Jeff Ostrowski, *Housing Hardship Index: Hawaii tops list of states most affected by
coronavirus* (Nov. 4, 2020), <https://www.bankrate.com/mortgages/housing-hardship-index/>.

1 reductions in operating expenses, capital expenditures (including temporary suspension of planned
2 development projects), and overall costs.

3 17. While Golden struggled to stabilize amid these crippling closures, it nevertheless
4 did what it could to support the local communities and those in need, as it helped with temporary
5 food banks for individuals and families in need and testing/vaccination sites. During this time,
6 Golden also maintained significant human resources staffing, who fielded more than 10,000 calls,
7 providing information and directing furloughed employees to various means of support for food
8 and other necessities.

9 18. The harms to Golden include, without limitation, physical loss and/or damage to
10 property that was adversely altered by SARS-CoV-2 and/or COVID-19 or that was rendered
11 unreasonably dangerous and/or unfit for its intended purpose; substantial Time Element losses due
12 to partial or complete closures and government-ordered suspensions of business activities due to
13 the actual and/or the threatened presence of SARS-CoV-2 and/or COVID-19; millions of dollars in
14 extra expenses, logistical costs and expediting costs to safely resume or continue business
15 operations; substantial claims preparation costs; and other losses incurred across numerous Covered
16 Properties and Contingent Time Element Locations throughout the country.

17 19. In addition, Golden has incurred losses resulting from the *threat* posed to property
18 and persons at Golden's Covered Properties and Contingent Time Element Locations by the
19 physical prevalence of SARS-CoV-2 and/or COVID-19 in nearby locations and properties and their
20 surrounding communities. The risk of SARS-CoV-2 and/or COVID-19 spreading has rendered
21 many such properties unreasonably dangerous and/or unfit for their intended purposes until safe
22 occupancy and operation can be assured through the undertaking of extraordinary remedial or
23 preventative measures.

24 20. Golden is continuing to experience physical loss and/or damage to property and
25 interruption of its business as the pandemic continues, all the while taking measures to mitigate the
26 risk associated with SARS-CoV-2 and/or COVID-19. While Golden is continuing to assess the
27 ongoing losses incurred by its businesses, the impact to date is believed to exceed \$130 million.

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1 21. These losses have impacts beyond those to Golden, as the community and national
2 nonprofits that Golden supports have also been affected. For example, Golden was forced to cancel
3 its Scale the Strat annual fundraising event for the American Lung Association and its annual golf
4 tournament benefitting the ALS Association Nevada Chapter.

5 22. Golden fortunately had the foresight to purchase broad insurance protection against
6 the potentially catastrophic risks posed by events such as a pandemic. For a premium of nearly \$2
7 million (after already having paid millions in past premiums), Golden procured broad “All Risks”
8 coverage under Policy No. 1062764 (the “All Risk Policy”), a true copy of which is attached as
9 Exhibit 1, from Defendant FM Global precisely to insure against the catastrophic losses Golden has
10 incurred and continues to incur.¹⁶ The All Risk Policy expressly provides coverage to Golden for
11 “ALL RISKS OF PHYSICAL LOSS OR DAMAGE, except as . . . excluded” *See* All Risk
12 Policy, Cover Page.

13 23. “All risk” property insurance policies are broad policies that cover all risks of
14 physical loss or damage to insured property, unless particular risks are specifically excluded. The
15 very nature of such a policy is that, unless an insurance company specifically excludes the particular
16 risk at issue, the policy covers the risk.

17 24. The purpose and nature of the business interruption coverage provided in “all risk”
18 property policies is to protect policyholders like Golden against losses arising from an inability to
19 continue normal business operations due to circumstances precisely like those presented by the
20 COVID-19 pandemic. *See Leslie Salt Co. v. St. Paul Mercury Ins. Co.*, 637 F.2d 657, 660 (9th Cir.
21 1981) (“[R]ecovery under an ‘all risk’ policy will be allowed for all fortuitous losses not resulting
22 from misconduct or fraud, unless the policy contains a specific provision expressly excluding the
23 loss from coverage.”) (citation omitted). When the risk of physical loss or damage occurs at
24 Golden’s Covered Properties and Contingent Time Element Locations or at other properties in the
25 vicinity causing business interruption losses, the All Risk Policy pays up to the respective policy
26 limits to preserve the continuity of Golden’s business.

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28 ¹⁶ In December 2020, Golden renewed its insurance for approximately \$2.9 million in premiums,
an increase of nearly 50% from the previous policy period for comparable coverage.

1 25. Golden is entitled to indemnification under the All Risk Policy’s broad and
2 overlapping coverages because SARS-CoV-2 and/or/ COVID-19 cause physical loss or damage of
3 the type insured. It is widely accepted by the scientific community that two of the primary ways
4 SARS-CoV-2 and/or COVID-19 spread involve transmission from an infected person to tangible
5 objects to another person, or from infected persons to other persons through the air, with particular
6 susceptibility for transmission occurring in indoor spaces where large numbers of people are
7 present. The presence of SARS-CoV-2 and/or COVID-19 causes physical loss and damage
8 because, among other things, tangible, physical droplets containing SARS-CoV-2 reside in (and
9 become part of) the air and on the fixtures and surfaces of property, thus altering, damaging, and
10 rendering the physical property unfit and unsafe for its intended use if not mitigated.

11 26. In addition, the All Risk Policy purchased from FM Global includes specific
12 coverage for property damage and Time Element losses caused by the actual on-site presence of
13 “communicable diseases” such as COVID-19.

14 27. The All Risk Policy goes even further, providing coverage designed to address the
15 principal economic consequence of pandemics: lockdowns, facility closures, and other
16 interruptions triggered by the *threat* that *off-site prevalence of SARS-CoV-2 and/or COVID-19*
17 will spread to uninfected Casinos, Taverns, and other Contingent Time Element Locations that
18 could become disease vectors if permitted to operate “as usual” during the pandemic. The All Risk
19 Policy thus specifically addresses the principal economic harm arising from the highly unusual
20 event of *pandemic-caused interruptions* to business, by providing coverage for losses resulting
21 from the *threat* that the offsite SARS-CoV-2 and/or COVID-19 will spread to Golden’s Covered
22 Properties and Contingent Time Element Locations.

23 28. The All Risk Policy’s coverage for *threat*-based interruptions to business (in
24 addition to those interruptions resulting from the *actual or suspected* on-site presence of SARS-
25 CoV-2 and/or COVID-19) has been triggered here, as many Covered Properties and Contingent
26 Time Element Locations experienced, for example, closures that were instituted as a response to
27 the threat that local outbreaks of COVID-19 within five miles could spread to nearby workplaces.
28 These losses are expressly covered under, among other coverage parts, the All Risk Policy’s Civil

1 or Military Authority coverage extension.

2 29. In sum, befitting the top dollar necessary to pay for best-in-class insurance coverage,
3 the All Risk Policy provides many broad protections against a wide range of pandemic-related
4 losses, including direct physical loss and damage to property and associated Time Element loss,
5 losses sustained and extra expenses incurred due to Closure Orders or restrictions as a result of
6 physical loss or damage at or within five miles of an insured location, losses due to impaired ingress
7 to or egress from Golden’s Covered Properties, contingent time element losses, extra expenses and
8 logistical costs to remain in business despite pandemic conditions, claims preparation costs, losses
9 directly resulting from any communicable disease confirmed to be at Golden locations, and other
10 forms of coverage.

11 30. In total, the All Risk Policy provides coverage of up to \$1.1 billion per occurrence
12 for precisely the types of losses incurred by Golden and at issue in this action.

13 31. Even though Golden’s past and ongoing losses fall within the All Risk Policy’s
14 coverages, FM Global has repeatedly refused to provide coverage, and has indicated that it does
15 not consider the presence of COVID-19 and/or SARS-CoV-2 to be “physical loss or damage,”
16 thereby seeking to preclude coverage for a significant portion of Golden’s losses. On account of
17 FM Global’s refusal to acknowledge coverage, Golden now brings suit to enforce its rights under
18 the coverages it bought and relied upon, conscious of the expiration of potentially applicable filing
19 limitations contained in the All Risk Policy.

20 32. Importantly, Golden is bringing this suit mindful of FM Global’s conduct and
21 handling of similar claims. FM Global has consistently “rejected” proofs of loss and denied similar
22 coverage in other cases involving first-party claims for loss or damage to property and Time
23 Element losses resulting from the COVID-19 pandemic, despite receiving extensive documentation
24 supporting such losses. *See, e.g., AU Health System, Inc. v. Affiliated FM Insurance Company,*
25 *Case No. 1:21-cv-00019-JRH-BKE (S.D. Ga. Feb. 4, 2021), ECF 1-3, 1-4, 1-6, 1-7.*

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1 33. Furthermore, as reflected by FM Global’s internally-distributed “Talking Points”
2 (discussed *infra* at ¶¶ 222-237), FM Global has pursued a strategy whereby it instructs adjusters to
3 respond to SARS-CoV-2/COVID-19 coverage claims by only seeking information that pertains to
4 the Communicable Disease Response Additional Coverage and the Interruption By Communicable
5 Disease Additional Time Element coverage (together, the “Onsite Communicable Disease
6 Coverage”), because those coverage parts arguably provide lower limits compared to other
7 triggered coverages. Similarly, FM Global’s Talking Points instruct adjusters to insist that Civil or
8 Military Authority coverage is foreclosed.

9 34. Therefore, an actual controversy exists concerning Golden’s right to coverage for
10 its COVID-19-related losses.

11 35. FM Global’s refusal to honor the promises it made in the All Risk Policy it sold to
12 Golden has compelled Golden to commence this lawsuit. This civil suit seeks declaratory relief
13 and money damages arising from FM Global’s breach of contract and bad faith failure to pay
14 Golden’s pandemic-related insurance claims.

THE PARTIES

16 36. Plaintiff Golden Entertainment, Inc. is a corporation organized under the laws of the
17 State of Minnesota with its principal place of business in Las Vegas, Nevada.

18 37. Upon information and belief, Defendant FM Global is an insurance company
19 organized and existing under the laws of the State of Rhode Island with its principal place of
20 business in Johnston, Rhode Island.

JURISDICTION AND VENUE

22 38. This Court possesses jurisdiction over this matter pursuant to NRS 14.065, and the
23 amount in dispute is in excess of \$15,000.

24 39. Venue and jurisdiction in this District are proper under NRS 13.010 because both
25 Golden and FM Global transact business within this judicial district, including insofar as the All
26 Risk Policy was issued to cover Golden’s locations within this District.

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1 40. FM Global is subject to personal jurisdiction in Nevada pursuant to NRS 14.065,
2 and within this District, as FM Global availed itself of opportunities to conduct business in Nevada,
3 establishing minimum contacts with the forum, and this State and District are the locations where
4 a substantial part of the events or omissions giving rise to the claims set forth herein occurred and
5 where a substantial part of the losses underlying the claims occurred.

6 41. FM Global agreed in the All Risk Policy that “any disputes arising hereunder will
7 be exclusively subject to the jurisdiction of the United States of America,” which includes the State
8 of Nevada.

9 42. FM Global is additionally subject to jurisdiction in Nevada because it committed
10 tortious acts within this State aimed at a Nevada-based organization.

11 **FACTUAL BACKGROUND**

12 **A. Golden**

13 43. Over the past twenty years, Golden has grown from a small gaming company to a
14 premier, diverse gaming corporation.

15 44. Golden’s Casinos have approximately 5,300 gaming machines, 130 table games,
16 and 6,200 hotel rooms. In addition, Golden’s Taverns have over 1,000 gaming machines, and
17 Golden manages and services over 5,800 gaming machines for third parties and over 1,650
18 gaming machines in chain and convenience stores through its Route Operations. As of December
19 31, 2020 Golden employed approximately 4,900 individuals through its Casinos, 900 at its
20 Taverns, 650 through its Route Operations, and 270 in its corporate department.

21 45. The vast majority of Golden’s revenue results from its Casinos, which are highly
22 dependent upon the volume of customers who can congregate and visit Golden’s properties.
23 Golden also derives revenue from its hotels, dining, retail, concessions, and certain other ancillary
24 activities, all of which have been hit hard by the pandemic.

25 **B. The All Risk Policy**

26 46. FM Global provided coverage to Golden under the All Risk Policy for the period
27 December 1, 2019 to December 1, 2020. *See* All Risk Policy at 1.

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1 47. The All Risk Policy “covers property, as described in this Policy, against ALL
2 RISKS OF PHYSICAL LOSS OR DAMAGE, except as hereinafter excluded, while located as
3 described in this Policy.” *Id.*

4 48. The All Risk Policy provides a wide range of available coverages, including but not
5 limited to the following:

- 6 a. **Direct Property Loss/Damage Time Element Losses:** The All Risk Policy
7 provides coverage of up to \$1.1 billion per occurrence for “PHYSICAL LOSS OR
8 DAMAGE” to Golden property with a limit of \$250 million for “Time Element loss”
9 “directly resulting from physical loss or damage of the type insured.” *Id.* at 3, 38.
- 10 b. **Losses Due to Orders of Civil Authority:** The All Risk Policy provides up to \$250
11 million per occurrence for losses “incurred by the Insured” for up to 30 consecutive
12 days when “an order of civil or military authority limits, restricts or prohibits partial
13 or total access to an insured **location**¹⁷ provided such order is the direct result of
14 physical damage of the type insured at the insured **location** or within five statute
15 miles/eight kilometres of it.” *Id.* at 51-52.
- 16 c. **Losses Due to Impairment of Ingress or Egress:** The All Risk Policy provides up
17 to \$250 million per occurrence for losses “incurred by the Insured” due to the
18 “necessary interruption of the Insured’s business due to partial or total physical
19 prevention of ingress to or egress from an insured **location**, whether or not the
20 premises or property of the Insured is damaged, provided that such prevention is a
21 direct result of physical damage of the type insured to property of the type insured.”
22 *Id.* at 53.
- 23 d. **Contingent Time Element Losses:** The All Risk Policy provides up to \$25 million
24 per occurrence for losses “incurred by the Insured” that directly result from
25 “physical loss or damage of the type insured to property of the type insured at
26 **contingent time element locations**,” *e.g.*, physical loss or damage to property at
27 locations of suppliers, vendors or customers. *Id.* at 52-53.
- 28 e. **Response Costs and Interruption/Time Element Losses Due to Onsite
Communicable Disease:** The All Risk Policy provides up to \$1,000,000 for
cleanup, removal and/or disposal of property impacted by the actual presence of
communicable diseases, public relations costs, and interruption/Time Element
losses due to the actual presence of such communicable disease at a covered
“location.” *Id.* at 3, 5, 22-23, 59.
- f. **Expediting Costs and Extra Expenses:** The All Risk Policy provides up to \$100
million per occurrence in combined coverage for expediting costs and extra expense
incurred by to minimize losses. *Id.* at 4, 25, 43-44.
- g. **Logistics Extra Costs:** The All Risk Policy provides up to 200% of normal costs
for 180 days to cover the extra logistical costs to minimize losses incurred by as a
result of a covered occurrence. *Id.* at 5, 54-55.
- h. **Claims Preparation Costs:** The All Risk Policy provides up to \$500,000 incurred
by Golden to produce and certify any “particulars or details” FM Global requires for
purposes of submission of its claim to FM Global. *Id.* at 22.

¹⁷ Unless otherwise noted, bolded words and terms appearing in quotes include the emphasis provided in the All Risk Policy.

1 **C. The SARS-CoV-2 / COVID-19 Global Pandemic**

2 49. In or around December 2019, a novel, highly contagious virus now known as SARS-
3 CoV-2 was first identified in China. SARS-CoV-2 rapidly spread throughout Europe and into the
4 United States, causing outbreaks of the disease known as COVID-19.

5 50. “[D]eeply concerned by the alarming levels of spread and severity,” the World
6 Health Organization (“WHO”) declared COVID-19 a global pandemic in March 2020.¹⁸ Days
7 later, the then President of the United States declared a national public health emergency, citing the
8 “need[] to successfully contain and combat the virus in the United States.”¹⁹ As explained further
9 herein, a succession of governmental orders followed at every level in response to SARS-CoV-2
10 and COVID-19.

11 51. The rapid spread of COVID-19, and concurrent governmental measures taken in
12 attempts to contain it, are due in part to the highly contagious and transmissible nature of SARS-
13 CoV-2 and COVID-19.

14 52. Governmental authorities at every level, regulatory bodies, private companies
15 (including Golden), and individuals have taken actions in response to SARS-CoV-2 and the
16 COVID-19 pandemic. These actions have included, without limitation:

- 17 a. Governmental orders of various kinds, including:
- 18 i. Quarantine orders applicable to individuals infected by COVID-19 or
19 potentially exposed to SARS-CoV-2, whether or not infected or
20 symptomatic;
 - 21 ii. Orders closing or limiting business facilities confirmed to have experienced
22 the actual presence of either SARS-CoV-2 or confirmed cases of COVID-
23 19 at their premises;
 - 24 iii. Orders closing businesses or limiting commercial activity at locations
25 without the confirmed or suspected presence of SARS-CoV-2 and without
26 any actual or suspected cases of COVID-19 at their premises, based on their
27 geographic proximity to places where SARS-CoV-2 was confirmed to be
28 present, where cases of COVID-19 occurred, and where property loss or
 damage has resulted from the presence of SARS-CoV-2 and/or COVID-19.

25 ¹⁸ *WHO Director-General’s opening remarks at the media briefing on COVID-19 - 11 March*
26 2020, WORLD HEALTH ORG. (Mar. 11, 2020), [https://www.who.int/dg/speeches/detail/who-
26 director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020](https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020).

27 ¹⁹ *Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease*
28 *(COVID-19) Outbreak*, WHITE HOUSE (Mar. 13, 2020),
[https://trumpwhitehouse.archives.gov/presidential-actions/proclamation-declaring-national-
28 emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/](https://trumpwhitehouse.archives.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/).

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- b. Responses of various kinds by private business (including Golden), including but not limited to:
- i. **Remediating or Replacing Physical Property Adversely Altered by SARS-CoV-2 Adhering to Property:** In March and April 2020, mitigation efforts were difficult (or outright impossible) to implement because the scientific community was still developing best practices for containing the spread of SARS-CoV-2 and COVID-19—at times even with guidance being overruled shortly after implementation. But gradually over the next few months, as scientific understanding grew more robust, businesses like Golden were able to learn and implement strategies to mitigate the impact of SARS-CoV-2 and COVID-19 while they awaited for the reopening of their properties. These strategies include remediation and/or disposal and/or replacement of personal property and real property that had been physically contacted and adversely altered by respiratory particles, phlegm, and other materials expelled by persons with COVID-19;
 - ii. **Business Shutdowns Due to SARS-CoV-2 and/or COVID-19 Being Present at a Location:** When disease outbreaks occur at a facility, or when other circumstances create a suspicion that SARS-CoV-2 and/or COVID-19 is present, a common and necessary response is to shut down the facility and undertake remedial efforts;
 - iii. **Time Element Loss Due to SARS-CoV-2 and/or COVID-19 Being in the Community (Even if *Not* at the Business Location):** Suspension of business activities due to business premises being rendered unreasonably dangerous for occupancy and unfit for their ordinary or intended purposes (even in cases in which SARS-CoV-2 and/or COVID-19 was not confirmed to be actually present), due to pandemic conditions and the threat posed by SARS-CoV-2 and/or COVID-19 in general geographic proximity (*i.e.*, within one or five miles) of the business location;
 - iv. **Extra Expenses to Remain Operational Even with SARS-CoV-2 and COVID-19 at the Business Location:** Undertaking out-of-the-ordinary activities and expenses, such as testing, protective equipment, reconfiguration of work spaces for social distancing, reduced or staggered schedules, facilitation of remote work, etc., in order to continue operations at a business location or at replacement locations and to mitigate the effects of shutdowns or slowdowns caused by the actual presence of SARS-CoV-2 and COVID-19 on the premises;
 - v. **Extra Expenses and Expediting Costs to Remain Operational Even with SARS-CoV-2 and/or COVID-19 Being in the Community (Even if *Not* Confirmed at the Business Location):** Undertaking out-of-the-ordinary activities and expenses, such as testing, protective equipment, reconfiguration of work spaces for social distancing, reduced or staggered schedules, facilitation of remote work, etc., in order to render business premises safe for occupancy and fit for their ordinary purpose or intended purposes (even when SARS-CoV-2 and/or COVID-19 were not confirmed to be present at the business location), due to pandemic conditions and the threat posed by SARS-CoV-2 and/or COVID-19 in geographic proximity to the business location;

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- 1 vi. **Logistics Costs:** Addressing the disruption of the normal movement of
2 goods and materials between business locations and/or vendor or customer
3 locations; and
4 vii. **Claims Preparation Costs:** Retention of outside financial and operational
5 experts to document and calculate losses arising from the SARS-CoV-2
6 virus and/or COVID-19.

7 **D. When SARS-CoV-2 Particles Come in Contact with Property, That Property**
8 **Suffers Actual Physical Damage (Including Adverse Alteration)**

9 53. SARS-CoV-2 is a respiratory virus that causes COVID-19, a dangerous disease that
10 has resulted in widespread illness, death, loss and damage to property, and general economic
11 devastation with newly discovered variants appearing to worsen and/or extend the pandemic.

12 54. According to the WHO, “anyone can get sick with COVID-19 and become seriously
13 ill or die at any age.”²⁰ The Centers for Disease Control and Prevention (“CDC”) states that the
14 time between exposure to SARS-CoV-2 and symptom onset extends up to fourteen days.²¹ SARS-
15 CoV-2 and COVID-19 can be spread by symptomatic, presymptomatic, and asymptomatic
16 carriers.²² In other words, even individuals who are unaware that they are carriers and who do not
17 present symptoms, can spread SARS-CoV-2 and COVID-19 by touching common objects or
18 surfaces, or by simply breathing.

19 55. In fact, studies estimate that “silent” asymptomatic and presymptomatic spread is
20 responsible for more than half of the transmission risk in COVID-19 outbreaks.²³ According to
21 the CDC, these asymptomatic and presymptomatic carriers are also more likely to carry and spread
22 SARS-CoV-2 due to large viral loads coupled with a lack of awareness that they are infected and

23 ²⁰ *Coronavirus disease (COVID-19)*, WORLD HEALTH ORG. (published Oct. 12, 2020; updated
24 Nov. 10, 2020), [https://www.who.int/emergencies/diseases/novel-coronavirus-2019/question-
25 and-answers-hub/q-a-detail/coronavirus-disease-covid-19](https://www.who.int/emergencies/diseases/novel-coronavirus-2019/question-and-answers-hub/q-a-detail/coronavirus-disease-covid-19).

26 ²¹ *Interim Clinical Guidance for Management of Patients with Confirmed Coronavirus Disease*
27 *(COVID-19)*, CTRS. DISEASE CONTROL & PREVENTION (updated Feb. 12, 2021),
28 <https://www.cdc.gov/coronavirus/2019-ncov/hcp/clinical-guidance-management-patients.html>.

²² See Apoorva Mandavilli, *Even Asymptomatic People Carry the Coronavirus in High Amounts*,
N.Y. TIMES (Aug. 6, 2020), [https://www.nytimes.com/2020/08/06/health/coronavirus-
asymptomatic-transmission.html](https://www.nytimes.com/2020/08/06/health/coronavirus-asymptomatic-transmission.html).

²³ Seyed M. Moghadas et al., *The implications of silent transmission for the control of COVID-19 outbreaks*, PROC. NAT’L ACAD. SCI. (July 28, 2020),
<https://www.pnas.org/content/117/30/17513>.

1 must isolate.²⁴

2 56. To understand why SARS-CoV-2 and COVID-19 have had such devastating health
3 consequences and resulted in so much physical loss and damage to property (and so many Closure
4 Orders or privately undertaken shutdowns and restrictions), it is important to understand how it
5 interacts with the physical environment and why SARS-CoV-2 triggers the insurance protection
6 provided by FM Global for exactly these types of losses.

7 57. SARS-CoV-2 is a tangible, physical substance and can be present outside the
8 human body in fluid particles. SARS-CoV-2 is expelled from the mouth and/or nose, and travels
9 within respiratory droplets when humans cough, sneeze, scream, sing, or even speak or breathe.²⁵
10 These tangible fluid particles physically attach to both surfaces²⁶ and micro-droplets, which are
11 expelled in the air, float around, and change the surrounding environment.²⁷

12 58. Through the simple act of breathing, an infected person emits aerosols that infect
13 other persons when inhaled.²⁸ Airborne transmission can be exacerbated through heating,
14 ventilation, and air conditioning (HVAC) systems through the absorption and then redistribution
15 of SARS-CoV-2 viral particles across entire buildings, with studies finding wide dispersion of the
16 SARS-CoV-2 virus and confirmed presence on ceiling vent openings, vent exhaust filters, ductwork
17 and other surfaces more than 160 feet away from the original human source.²⁹

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21 ²⁴ *Interim Clinical Guidance for Management of Patients with Confirmed Coronavirus Disease*
22 *(COVID-19)*, CTRS. DISEASE CONTROL & PREVENTION (updated Feb. 16, 2021),
<https://www.cdc.gov/coronavirus/2019-ncov/hcp/clinical-guidance-management-patients.html>.

23 ²⁵ Lydia Bourouiba, *Turbulent Gas Clouds and Respiratory Pathogen Emissions: Potential*
Implications for Reducing Transmission of COVID-19, JAMA INSIGHTS (Mar. 26, 2020),
<https://jamanetwork.com/journals/jama/fullarticle/2763852>.

24 ²⁶ *How COVID-19 Spreads*, CTRS. DISEASE CONTROL & PREVENTION (updated Oct. 28, 2020),
<https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-covid-spreads.html>.

25 ²⁷ See Ramananda Ningthoujam, *COVID 19 can spread through breathing, talking, study*
estimates, NCBI, (May 8, 2020), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7205645/>.

26 ²⁸ *COVID-19 basics: Symptoms, spread and other essential information about coronavirus and*
COVID-19, HARVARD HEALTH PUBL'G – HARVARD MED. SCH. (published Mar. 2020; updated
27 Mar. 9, 2021), <https://www.health.harvard.edu/diseases-and-conditions/covid-19-basics>.

28 ²⁹ Karolina Nissen et al., *Long-distance airborne dispersal of SARS-CoV-2 in COVID-19 wards*,
SCI. REPS. (Nov. 11, 2020), <https://www.nature.com/articles/s41598-020-76442-2#citeas>.

1 59. The airborne respiratory aerosols that spread SARS-CoV-2 and COVID-19 can also
2 persist for lengthy timeframes, and travel relatively far distances. In an October 2020 letter, six
3 scientists described that aerosols containing SARS-CoV-2 “can remain suspended in the air for
4 many seconds to hours, like smoke, and be inhaled.”³⁰ A study published by Tulane found that
5 SARS-CoV-2 can remain infectious in aerosol for up to 16 hours.³¹ As for the reach of those
6 materials, the New York Times has reported that “[e]ven without the launching power of a sneeze,
7 air currents could carry a flow of aerosol sized virus particles exhaled by an infected person 20 feet
8 or more away.”³²

9 60. Indoor spaces, especially when crowded, present particularly heightened risks of
10 spread. The CDC advises that such “[i]ndoor spaces are more risky than outdoor spaces where it
11 might be harder to keep people apart and there’s less ventilation.”³³ In line with that guidance, a
12 July 2020 study reviewed transmission of SARS-CoV-2 amongst three family clusters within an
13 air-conditioned restaurant; the study concluded that the most likely cause of the outbreak amongst
14 the separate families was droplet transmission prompted by strong airflow from the air
15 conditioner.³⁴ Similarly, a recent study analyzed transmission of SARS-CoV-2 between two
16 people who spent five minutes in the same restaurant—all while twenty feet apart; researchers
17 concluded that SARS-CoV-2 spread via droplets carried in direct air flow from the infected
18 person.³⁵

19 _____
20 ³⁰ Kimberly A. Prather et al., *Airborne transmission of SARS-CoV-2*, SCIENCE (Oct. 16, 2020),
<https://science.sciencemag.org/content/370/6514/303.2>.

21 ³¹ Leslie Tate, *Tulane researchers find that coronavirus can survive in air for hours*, TULANE
22 NEWS (July 6, 2020), [https://news.tulane.edu/pr/tulane-researchers-find-coronavirus-can-](https://news.tulane.edu/pr/tulane-researchers-find-coronavirus-can-survive-air-hours)
[survive-air-hours](https://news.tulane.edu/pr/tulane-researchers-find-coronavirus-can-survive-air-hours); Alyssa C. Fears et al., *Persistence of Severe Acute Respiratory Syndrome*
23 *Coronavirus 2 in Aerosol Suspensions*, CTRS. DISEASE CONTROL & PREVENTION (Sept. 2020),
https://wwwnc.cdc.gov/eid/article/26/9/20-1806_article.

24 ³² Knuvel Sheikh, James Gorman & Kenneth Chang, *Stay 6 Feet Apart, We’re Told. But How*
Far Can Air Carry Coronavirus?, N.Y. TIMES (published Apr. 14, 2020, updated Apr. 20,
2020), <https://www.nytimes.com/2020/04/14/health/coronavirus-six-feet.html>.

25 ³³ *Coronavirus Disease 2019 (COVID-19) – Deciding to Go Out*, CTRS. DISEASE CONTROL &
26 PREVENTION (updated Oct. 28, 2020), [https://www.cdc.gov/coronavirus/2019-ncov/daily-life-](https://www.cdc.gov/coronavirus/2019-ncov/daily-life-coping/deciding-to-go-out.html)
[coping/deciding-to-go-out.html](https://www.cdc.gov/coronavirus/2019-ncov/daily-life-coping/deciding-to-go-out.html).

27 ³⁴ Jianyun Lu et al., *COVID-19 Outbreak Associated with Air Conditioning in Restaurant,*
Guangzhou, China, 2020, EMERGING INFECTIOUS DISEASES (July 2020),
https://wwwnc.cdc.gov/eid/article/26/7/20-0764_article.

28 ³⁵ Keun-Sang Kwon et al., *Evidence of Long-Distance Droplet Transmission of SARS-CoV-2 by*
Direct Air Flow in a Restaurant in Korea, J. KOREAN MED. SCI. (Nov. 23, 2020),

1 61. SARS-CoV-2 and COVID-19 can thus be transmitted by human-to-human contact,
2 airborne viral particles, and contact with affected surfaces or objects. The suspended particles can
3 then themselves collide with the surface and nonspecifically adsorb to it (i.e., form a noncovalent
4 chemical bond with the surface).³⁶

5 62. If left undisturbed, the chemical bond will persist. Some studies suggest that SARS-
6 CoV-2 can be detected on certain surfaces and/or remains capable of being transmitted and active
7 on inert physical surfaces for extended periods of time after infected persons have departed. For
8 example, a study published in *The New England Journal of Medicine* found that SARS-CoV-2 was
9 detectable for up to four hours on copper, up to 24 hours on cardboard, and two to three days on
10 plastic and stainless steel.³⁷ Of note, SARS-CoV-2 was reportedly found within the *Diamond*
11 *Princess* cruise ship on a “variety of surfaces in cabins of both symptomatic and asymptomatic
12 infected passengers” up to seventeen days after the cabins were vacated.³⁸ A recent study by
13 Australia’s national science agency even found that under certain conditions, SARS-CoV-2 can
14 remain infectious on glass, steel, vinyl, and paper banknotes for up to twenty-eight days.³⁹

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18 <https://jkms.org/DOIx.php?id=10.3346/jkms.2020.35.e415>; see Victoria Kim, *Infected after 5*
19 *minutes, from 20 feet away: South Korea study shows coronavirus’ spread indoors*, L.A.
20 *TIMES* (Dec. 9, 2020), [https://www.latimes.com/world-nation/story/2020-12-09/five-minutes-](https://www.latimes.com/world-nation/story/2020-12-09/five-minutes-from-20-feet-away-south-korean-study-shows-perils-of-indoor-dining-for-covid-19)
21 [from-20-feet-away-south-korean-study-shows-perils-of-indoor-dining-for-covid-19](https://www.latimes.com/world-nation/story/2020-12-09/five-minutes-from-20-feet-away-south-korean-study-shows-perils-of-indoor-dining-for-covid-19).

22 ³⁶ See Edris Joonaki, et al., *Surface Chemistry Can Unlock Drivers of Surface Stability of SARS-*
23 *CoV-2 in a Variety of Environmental Conditions*, *CHEM* (Sept. 10, 2020),
24 [https://www.cell.com/chem/pdf/S2451-9294\(20\)30411-3.pdf](https://www.cell.com/chem/pdf/S2451-9294(20)30411-3.pdf).

25 ³⁷ *New coronavirus stable for hours on surfaces*, NAT’L INST. OF HEALTH (Mar. 17, 2020),
26 <https://www.nih.gov/news-events/news-releases/new-coronavirus-stable-hours-surfaces>;
27 *Aerosol and Surface Stability of SARS-CoV-2 as Compared with SARS-CoV-1*, *N. ENGL. J.*
28 *MED.* (Apr. 16, 2020),
29 https://www.nejm.org/doi/full/10.1056/NEJMc2004973?query=featured_home.

30 ³⁸ Leah F. Moriarty et al., *Public Health Responses to COVID-19 Outbreaks on Cruise Ships —*
31 *Worldwide, February–March 2020*, *CTRS. DISEASE CONTROL & PREVENTION* (Mar. 27, 2020),
32 https://www.cdc.gov/mmwr/volumes/69/wr/mm6912e3.htm?s_cid=mm6912e3_w.

33 ³⁹ *CSIRO scientists publish new research on SARS-COV-2 virus ‘survivability’*,
34 *COMMONWEALTH SCI. AND INDUS. RSCH. ORG.* (Oct. 12, 2020),
35 [https://www.csiro.au/en/News/News-releases/2020/CSIRO-scientists-publish-new-research-](https://www.csiro.au/en/News/News-releases/2020/CSIRO-scientists-publish-new-research-on-SARS-COV-2-virus-survivability)
36 [on-SARS-COV-2-virus-survivability](https://www.csiro.au/en/News/News-releases/2020/CSIRO-scientists-publish-new-research-on-SARS-COV-2-virus-survivability); Shane Riddell et al., *The effect of temperature on*
37 *persistence of SARS-CoV-2 on common surfaces*, *VIROLOGY J.* (Oct. 7, 2020),
38 <https://virologyj.biomedcentral.com/articles/10.1186/s12985-020-01418-7>.

1 63. Physical objects that have been altered through this bonding formation with SARS-
2 CoV-2 particles are dangerous. Both the CDC and WHO warn of transmission of SARS-CoV-2
3 and COVID-19 via surfaces and objects. The CDC has observed the possibility “that a person
4 could get COVID-19 by touching a surface or object that has the virus on it and then touching their
5 own mouth, nose, or eyes.”⁴⁰

6 64. By bonding with, and becoming part of, the property that it comes in contact with,
7 SARS-CoV-2 causes physical loss and/or damage by attaching to, corrupting, and adversely
8 altering that property, including the air contained in buildings and various common surfaces and
9 fixtures. This transforms the altered property and renders it dangerous, unusable, and unfit for its
10 intended function, and indeed, potentially deadly. In short, the property is physically damaged.
11 And even the owners of personal property or buildings (or operators thereof) that are potentially
12 infected or under threat of infection if used or occupied during a pandemic have incurred a loss to
13 property because the personal property or buildings are no longer safe, habitable, or fit for their
14 intended purpose until the pandemic conditions have been determined, controlled, and mitigated.

15 65. Finally, the All Risk Policy written by FM Global expressly recognizes that
16 “communicable disease” is a form of “property damage” of the type insured under the policy terms.
17 The Additional Coverage for Communicable Disease Response falls under the All Risk Policy’s
18 neatly categorized “Property Damage” section, specifies that it provides coverage for “insured
19 physical loss or damage,” and does not fall within any applicable exclusion.

20 **E. Government Orders**

21 **1. Government Leaders Recognize That SARS-CoV-2 and COVID-19**
22 **Cause Physical Loss or Damage to Property**

23 66. In light of the high risk of spread through person-to-person interaction, as well as
24 through the physical droplets residing in the air and on surfaces and objects, local, state, and federal
25 governmental authorities have sought to limit transmission by seeking to outright eliminate or in
26 other cases reduce indoor person-to-person and person-to-surface contact. These various orders,

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28 ⁴⁰ *How COVID-19 Spreads*, CTRS. DISEASE CONTROL & PREVENTION (updated Oct. 28, 2020),
<https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-covid-spreads.html>.

1 summarized in greater depth herein, reflect the threat to property posed by SARS-CoV-2 and
2 COVID-19, including the heightened risks that flow from publicly accessible commercial
3 properties where person-to-person and person-to-property-to-person transmission is unavoidable.
4 The damage to property, *i.e.*, the transformation and alteration of that property which rendered it
5 dangerous for people to touch surfaces and fixtures and breath the air, were the very risks that led
6 these authorities to close Golden’s Covered Properties for several months at the onset of the
7 pandemic (from mid-March to June, 2020).

8 67. Beginning in early March 2020, states, counties, and cities where Golden’s Covered
9 Properties and Contingent Time Element Locations are located declared states of emergency to
10 address the spread of SARS-CoV-2 and/or COVID-19.

11 68. By mid-March 2020, state and local governments also began issuing Closure Orders
12 suspending or severely curtailing the operations of all “non-essential” businesses in response to
13 SARS-CoV-2 and/or COVID-19, including Casinos and Taverns such as those owned, operated,
14 or managed by Golden, and prohibiting large gatherings.

15 69. Numerous civil authorities, including the Nevada Governor, have issued orders
16 recognizing the threat SARS-CoV-2 and COVID-19 pose to property in places where Golden
17 operates. *See, e.g.*, Nevada Emergency Directive 016 (Apr. 29, 2020) (“[T]he ability of the novel
18 coronavirus that causes COVID-19 to survive on surfaces for indeterminate periods of time renders
19 some property unusable and contributes to . . . damage, and property loss.”).

20 70. Although the ability of SARS-CoV-2 to attach onto surfaces is accepted in the
21 research community, there is not yet a generally recognized, reliable, and available method to test
22 for the presence of SARS-CoV-2 on property (although researchers in the biotechnology field have
23 begun to develop this technology).

24 71. However, over six hundred Golden employees have tested positive for COVID-19,
25 indicating that SARS-CoV-2 and COVID-19 have been physically present at Golden’s Covered
26 Properties and Contingent Time Element Locations, *i.e.* physically present on surfaces and fixtures
27 and in the composition of the air. Likewise, state and local authorities have confirmed COVID-19
28 cases in the vicinity of each of Golden’s Covered Properties. Thus, physical loss and/or damage

1 (in addition to the threat of such loss and damage) existed at Golden’s Covered Properties,
2 Contingent Time Element Locations, and surrounding properties within five miles of those
3 locations.

4 72. Golden’s Covered Properties and Contingent Time Element Locations are intended
5 to be used as venues for multiple persons to gather, most often indoors, for purposes of gaming,
6 entertainment, and dining. As already acknowledged by courts and governmental authorities
7 throughout the nation, SARS-CoV-2 caused loss and damage to property by physically altering
8 property, including its surfaces as well as the air within the property.

9 73. Beginning in mid-March, this rendered Golden’s Covered Properties and
10 Contingent Time Element Locations unusable for human occupancy and use, impairing the
11 property’s utility and usefulness. While Golden (and other owners and operators of similar venues)
12 learned more during the shut-down regarding potential mitigation measures and then implemented
13 such tools (which remain ongoing) upon a gradual and cautious reopening, its Covered Properties
14 and Contingent Time Element Locations are still unsuitable for their intended purposes at normal
15 capacity, and thus have occasioned loss.

16 74. The Closure Orders recognize that without limiting or suspending the operations of
17 non-essential businesses (such as casinos, bars, and restaurants), SARS-CoV-2 and COVID-19 will
18 continue to spread.

19 2. Nevada Covered Properties

20 75. On March 5, 2020, Clark County reported its first known case of COVID-19 in
21 Nevada.⁴¹

22 76. On March 11, 2020, MGM Resorts International issued a press release informing
23 guests and employees that the Southern Nevada Health District had confirmed a case of COVID-
24 19 involving a guest at The Mirage, who attended a conference from March 5-8.⁴² Shortly

25
26 ⁴¹ *Southern Nevada Health District announces positive case of COVID-19 in a Clark County*
resident, S. NEV. HEALTH DIST. (Mar. 5, 2020),
27 <https://www.southernnevadahealthdistrict.org/news-release/southern-nevada-health-district-announces-positive-case-of-covid-19-in-a-clark-county-resident/>.

28 ⁴² *MGM Resorts International Statement on COVID-19 Case Involving Guest at the Mirage*,
MGM RESORTS INT’L (Mar. 11, 2020), <https://investors.mgmresorts.com/investors/news->

1 thereafter, MGM Resorts International reported that “several” employees had tested positive,
2 including another employee at the Luxor Hotel & Casino.⁴³

3 77. On March 12, 2020, Nevada Governor Steve Sisolak (“Governor Sisolak”)
4 “declare[d] an emergency and direct[ed] all state agencies to supplement the efforts of all impacted
5 and threatened counties to save lives, **protect property**, and protect the health and safety of persons
6 in this state.” (emphasis added.) By that time, Clark County had reported 8 cases of COVID-19.⁴⁴

7 78. By March 17, 2020, Nevada had 65 cases of COVID-19.⁴⁵ Meanwhile, Clark
8 County had 42 confirmed cases of COVID-19, including one confirmed death.⁴⁶ On March 17,
9 2020, Governor Sisolak verbally ordered that all casinos, bars, and restaurants close, and signed
10 Declaration of Emergency Directive 002 on March 18, 2020.⁴⁷

11 79. Within a day of these casino closures, on March 18, 2020, Nye County, Nevada, the
12 county in which Golden’s Pahrump casinos are located, announced its first confirmed positive case
13 of COVID-19.⁴⁸

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17 [releases/press-release-details/2020/MGM-Resorts-International-Statement-On-COVID-19-Case-Involving-Guest-At-The-Mirage/default.aspx](#).

18 ⁴³ Carolyn Williams, *MGM Resorts letter says ‘several’ employees tested presumptive positive for COVID-19; layoffs, closures addressed*, LAS VEGAS 8 NEWS NOW (Mar. 13, 2020), <https://www.8newsnow.com/coronavirus/mgm-resorts-letter-says-several-employees-test-presumptive-positive-for-covid-19-addresses-layoffs/>.

19
20 ⁴⁴ *Update: Clark County case numbers for March 12, 2020*, S. NEV. HEALTH DIST. (Mar. 12, 2020), <https://www.southernnevadahealthdistrict.org/news-release/update-clark-county-case-numbers-for-march-12-2020/>.

21 ⁴⁵ John Sadler, *Sisolak orders statewide shutdown of casinos, other nonessential business*, LAS VEGAS SUN (Mar. 17, 2020), <https://lasvegassun.com/news/2020/mar/17/visoak-to-announce-statewide-shutdown-of-casinos-n/>.

22 ⁴⁶ *March 17, 2020 – COVID-19 Update*, S. NEV. HEALTH DIST. (Mar. 17, 2020), <https://www.southernnevadahealthdistrict.org/news-release/march-17-2020-covid-19-update/>.

23 ⁴⁷ Melissa Etehad & Lucas Kwan Peterson, *Nevada orders all casinos, bars, restaurants closed as U.S. coronavirus cases surge*, L.A. TIMES (Mar. 17, 2020), <https://www.latimes.com/world-nation/story/2020-03-17/las-vegas-to-close-all-casinos-at-midnight>; *Declaration of Emergency Directive 002*, NEV. EXEC. DEP’T (Mar. 8, 2020), https://gov.nv.gov/News/Emergency_Orders/2020/2020-03-18_-_COVID-19_Declaration_of_Emergency_Directive_002/.

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27 ⁴⁸ Jeffrey Meehan, *Beatty resident first Nye County positive COVID-19 case*, PAHRUMP VALLEY TIMES (Mar. 18, 2020), <https://pvtimes.com/news/beatty-resident-first-nye-county-positive-covid-19-case-82546/>.

1 80. From March 17, 2020 to May 15, 2020, Governor Sisolak’s orders requiring the
2 closure of all Nevada gaming operations were in effect. The Nevada Gaming Control Board also
3 ordered all gaming operations to close.

4 81. On March 31, 2020, Governor Sisolak issued the COVID-19 Declaration of
5 Emergency Directive 010, ordering all individuals in Nevada to stay at home.⁴⁹

6 82. On April 29, 2020 Governor Sisolak’s Declaration of Emergency Directive 016
7 specifically recognized that “the ability of the novel coronavirus that causes COVID-19 to survive
8 on surfaces for indeterminate periods of time **renders some property unusable and contributes**
9 **to . . . damage, and property loss.**” (emphasis added.) In addition, Governor Sisolak ordered that
10 “[g]aming operations, not including licensed online gaming or mobile wagering operations, shall
11 remain closed until the Gaming Control Board determines that operations may safely resume.”⁵⁰

12 83. On May 7, 2020, Governor Sisolak issued COVID-19 Declaration of Emergency
13 Directive 018: Phase One Reopening. This directive excluded gaming operations from the Phase
14 One reopening and ordered the Gaming Control Board to promulgate guidance for a phased and
15 incremental resumption of gaming operations.⁵¹

16 84. On May 28, 2020, Governor Sisolak issued COVID-19 Declaration of Emergency
17 Directive 021 – Phase Two Reopening Plan, which reiterated that the Nevada Gaming Control
18 Board would provide guidance for gaming reopening, and stated that such a reopening would be
19 prohibited until at least June 4, 2020.⁵²

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22 ⁴⁹ *Declaration of Emergency Directive 010 Stay at Home Order*, NEV. EXEC. DEP’T (Mar. 31,
2020), [https://gov.nv.gov/News/Emergency_Orders/2020/2020-03-31_-_COVID-19_Declaration_of_Emergency_Directive_010_-_Stay_at_Home_Order_\(Attachments\)/](https://gov.nv.gov/News/Emergency_Orders/2020/2020-03-31_-_COVID-19_Declaration_of_Emergency_Directive_010_-_Stay_at_Home_Order_(Attachments)/).

23 ⁵⁰ *Declaration of Emergency Directive 016*, NEV. EXEC. DEP’T (Apr. 29, 2020),
24 [https://gov.nv.gov/News/Emergency_Orders/2020/2020-04-29_-_COVID-19_Declaration_of_Emergency_Directive_016_\(Attachments\)/](https://gov.nv.gov/News/Emergency_Orders/2020/2020-04-29_-_COVID-19_Declaration_of_Emergency_Directive_016_(Attachments)/).

25 ⁵¹ *Declaration of Emergency Directive 018*, NEV. EXEC. DEP’T (May 7, 2020),
26 [https://gov.nv.gov/News/Emergency_Orders/2020/2020-05-07_-_COVID-19_Declaration_of_Emergency_Directive_018_-_Phase_One_Reopening_\(Attachments\)/](https://gov.nv.gov/News/Emergency_Orders/2020/2020-05-07_-_COVID-19_Declaration_of_Emergency_Directive_018_-_Phase_One_Reopening_(Attachments)/).

27 ⁵² *Declaration of Emergency Directive 021 – Phase Two Reopening Plan*, NEV. EXEC. DEP’T
28 (May 28, 2020), [https://gov.nv.gov/News/Emergency_Orders/2020/2020-05-28_-_COVID-19_Declaration_of_Emergency_Directive_021_-_Phase_Two_Reopening_Plan_\(Attachments\)/](https://gov.nv.gov/News/Emergency_Orders/2020/2020-05-28_-_COVID-19_Declaration_of_Emergency_Directive_021_-_Phase_Two_Reopening_Plan_(Attachments)/).

1 85. Casino reopenings are subject to the Gaming Control Board’s Health and Safety
2 Policy for Resumption of Gaming Operations, as amended, which was originally issued on April
3 21, 2020 (together with amendments, the “NGCB Policy”). That NGCB Policy includes many
4 restrictions, including a fifty percent gaming area occupancy cap and limits on players per table
5 game.

6 86. Prior to reopening its Nevada casino resorts, Golden submitted detailed plans for
7 combatting the spread of SARS-CoV-2 and COVID-19 at its properties to the Gaming Control
8 Board, which included (among others): cleaning, disinfecting, and sanitizing guidelines; providing
9 face coverings for guests; adding touchless hand sanitizer dispensers and wipes; educating
10 employees on proper cleaning and disinfection procedures in the CDC guidelines; monitoring
11 building occupancy; physical distancing; and installing Plexiglass dividers between bar gaming
12 machines.

13 87. On July 10, 2020, Governor Sisolak issued Declaration of Emergency Directive 027,
14 which again shuttered bars, pubs, taverns, breweries, distilleries, and wineries in seven counties,
15 including Clark County (the location of most of Golden’s branded Taverns), in response to the
16 continued spread of SARS-CoV-2 and COVID-19.⁵³ As a result, Golden closed most of its
17 Taverns. In the interim, Golden modified its gaming areas, which allowed it to start reopening
18 some of its Taverns in late July 2020. The Closure Order remained in effect until September 20,
19 2020, and all of Golden’s Taverns re-opened (with significant restrictions) by the end of
20 September.⁵⁴

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25 ⁵³ *Declaration of Emergency Directive 027*, NEV. EXEC. DEP’T (July 10, 2020),
[https://gov.nv.gov/News/Emergency_Orders/2020/2020-07-10 - COVID-19 Declaration of Emergency Directive 027 \(Attachments\)/](https://gov.nv.gov/News/Emergency_Orders/2020/2020-07-10_-_COVID-19_Declaration_of_Emergency_Directive_027_(Attachments)/).

26 ⁵⁴ *COVID-19 Mitigation and Management Task Force approves Clark County and Elko County*
27 *plans to reopen bars due to improved data and mitigation efforts*, NEV. HEALTH RESPONSE
(Sept. 17, 2020), [https://gov.nv.gov/News/Press/2020/COVID-19 Mitigation and Management Task Force approves Clark County and Elko County plans to reopen bars due to improved data and mitigation efforts/](https://gov.nv.gov/News/Press/2020/COVID-19_Mitigation_and_Management_Task_Force_approves_Clark_County_and_Elko_County_plans_to_reopen_bars_due_to_improved_data_and_mitigation_efforts/).

1 88. On November 23, 2020, Governor Sisolak issued Declaration of Emergency
2 Directive 035, limiting gaming areas, retail stores, restaurants and bars, non-retail venues, pools
3 and aquatic facilities, and other establishments to twenty-five percent occupancy.⁵⁵

4 89. On February 14, 2021, Governor Sisolak issued Declaration of Emergency Directive
5 037, which slightly eased Emergency Directive 035’s restrictions on gaming floors and indoor food
6 and beverage establishments (including restaurants, bars, pubs, and breweries within gaming
7 properties) to allow for thirty-five percent occupancy beginning February 15, 2021. Pursuant to
8 this same order, occupancy at retail stores, pools and aquatic facilities also increased to fifty
9 percent.⁵⁶

10 90. In February 2021, Nevada’s Roadmap to Recovery was published, providing plans
11 for reopening various businesses, places of worship, and recreational activities. Under the plans
12 set forth in Nevada’s Roadmap to Recovery, starting March 15, 2021, Nevada will increase
13 occupancy to fifty percent at casinos and indoor food and beverage establishments. Thereafter,
14 beginning May 1, 2021, gaming will be subject to any additional restrictions imposed by the
15 Gaming Control Board. However, Nevada still has yet to announce a timeline for gaming floors
16 operations to resume at full capacity.

17 3. Rocky Gap in Maryland

18 91. Rocky Gap is a Covered Property located in Flintstone, Maryland, a city in Allegany
19 County near the border of Pennsylvania. Rocky Gap has numerous attractions onsite, including a
20 casino, hotel, golf course, spa, restaurants, and live entertainment.

21 92. On March 5, 2020, Maryland Governor Lawrence J. Hogan, Jr. (“Governor Hogan”)
22 declared a state of emergency and catastrophic health emergency in the State of Maryland.⁵⁷

23
24 ⁵⁵ *Declaration of Emergency for Directive 035*, NEV. EXEC. DEP’T (Nov. 23, 2020),
25 [https://gov.nv.gov/News/Emergency_Orders/2020/2020-11-24 -
COVID19 Emergency Declaration Directive 035/](https://gov.nv.gov/News/Emergency_Orders/2020/2020-11-24_-_COVID19_Emergency_Declaration_Directive_035/).

26 ⁵⁶ *Declaration of Emergency for Directive 037*, NEV. EXEC. DEP’T (Feb. 14, 2021),
27 [https://gov.nv.gov/News/Emergency_Orders/2021/2021-02-14 - COVID-
19 Emergency Declaration Directive 037 \(Attachments\)/](https://gov.nv.gov/News/Emergency_Orders/2021/2021-02-14_-_COVID-19_Emergency_Declaration_Directive_037_(Attachments)/).

28 ⁵⁷ *Proclamation: Declaration of State of Emergency and Existence of Catastrophic Health
Emergency – COVID-19*, MD. (Mar. 5, 2020), [https://governor.maryland.gov/wp-
content/uploads/2020/03/Proclamation-COVID-19.pdf](https://governor.maryland.gov/wp-content/uploads/2020/03/Proclamation-COVID-19.pdf).

1 93. Starting on March 12, Governor Hogan issued a series of orders prohibiting
2 gatherings and closing restaurants, bars, senior centers, fitness centers, theaters, malls, recreational
3 establishments, government buildings, and facilities with large occupancy or attendance.

4 94. By March 15, the state of Maryland had reported 37 confirmed cases of COVID-
5 19.58 And in nearby Pennsylvania, where many of Rocky Gap’s out-of-state patrons are drawn,
6 there were another 63 confirmed cases of COVID-19.59 On March 15, 2020, Governor Hogan
7 issued an Order Closing Casinos, Racetracks and Simulcast Betting Facilities, effective March 16,
8 2020. It specifically identified Rocky Gap as a gaming facility covered by the Closure Order.

9 95. On March 30, 2020, Governor Hogan issued Order No. 20-03-30-01, which further
10 prohibited large gatherings and closed non-essential businesses, and required all persons generally
11 to stay at home.60

12 96. Although Rocky Gap’s golf course was able to reopen on May 14, 2020 subject to
13 certain restrictions, most indoor operations onsite remained closed for roughly another month.

14 97. Governor Hogan’s March 15, 2020 Closure Order ultimately remained in effect for
15 casinos, racetracks, and simulcast betting facilities until June 19, 2020. On that date, gaming
16 facilities were allowed to re-open at fifty percent capacity, subject to applicable local orders and
17 other directives. Subsequent orders have kept the fifty percent occupancy limitation in place,
18 including the most recent order issued on March 9, 2021.61

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22 ⁵⁸ *Trends in Number of COVID-19 Cases and Deaths in the US Reported to CDC*, by
23 State/Territory, CTRS. DISEASE CONTROL & PREVENTION, https://covid.cdc.gov/covid-data-tracker/?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fcases-updates%2Fcases-in-us.html#trends_dailytrendscases (last visited Mar. 9,
24 2021).

25 ⁵⁹ *PA Coronavirus (COVID-19) Update March 2020*, PA. DEP’T HEALTH (Mar. 31, 2020),
<https://www.health.pa.gov/topics/disease/coronavirus/Pages/March-Archive.aspx>.

26 ⁶⁰ *Order of the Governor of the State of Maryland, Number 20-03-30-01*, MD. EXEC. DEP’T (Mar.
27 30, 2020), <https://governor.maryland.gov/wp-content/uploads/2020/03/Gatherings-FOURTH-AMENDED-3.30.20.pdf>.

28 ⁶¹ *Order of the Governor of the State of Maryland, Number 21-03-09-01*, MD. EXEC. DEP’T (Mar.
9, 2021), <https://governor.maryland.gov/wp-content/uploads/2021/03/Gatherings-20th-AMENDED-3.9.21.pdf>.

1 98. On November 17, 2020 Governor Hogan issued Order No. 20-11-17-01, which
2 regulated certain businesses and facilities, including Rocky Gap. That order prohibited foodservice
3 establishments from exceeding 50% of its maximum occupancy and provided an onsite dining
4 curfew from 10:00 p.m. – 6:00 a.m.⁶²

5 99. Although Allegany County is one of the most rural counties in Maryland, it has also
6 been identified as one of the hardest hit by COVID-19.⁶³ As of March 8, 2021, Allegany County
7 has confirmed 6,422 cases.⁶⁴

8 4. Montana Route Operations

9 100. On March 11, 2020, the first COVID-19 case was reported in Montana. By March
10 17, 2020, Montana had reported 11 positive COVID-19 cases.⁶⁵

11 101. Effective March 17, 2020, the health officer in Yellowstone County, a county in
12 which Golden has significant Route Operations, ordered bars and restaurants to close. Because
13 Montana law requires that non-casino locations with slot machines have an on-site liquor license,
14 Golden shuttered its Route Operations in response to the Closure Order.

15 102. By March 20, 2020, Montana had reported 21 positive COVID-19 cases. ⁶⁶ On
16 March 20, 2020, Governor Steve Bullock (“Governor Bullock”) issued a Directive Implementing
17 Executive Orders 2-2020 and 3-2020 and providing for measures to combat the spread of COVID-
18 19 via food and beverage services or casinos.⁶⁷ Specifically, the order closed to ingress, egress,

19 _____
20 ⁶² *Order of the Governor of the State of Maryland, Number 20-11-17-01*, MD. EXEC. DEP’T (Nov.
17, 2020), <https://governor.maryland.gov/wp-content/uploads/2020/11/Order-20-11-17-01.pdf>.

21 ⁶³ *One of Maryland’s counties hardest hit by coronavirus is among the most rural*, WBAL-TV 11
(Nov. 18, 2020), <https://www.wbaltv.com/article/allegany-county-maryland-sees-coronavirus-cases-spike/34715999#>.

22 ⁶⁴ *Maryland COVID-19 Data Dashboard*, MD. DEP’T. HEALTH, [https://coronavirus.maryland.gov/](https://coronavirus.maryland.gov/(last%20visited%20Mar.%209,%202021))
(last visited Mar. 9, 2021).

23 ⁶⁵ *COVID Data Tracker: Montana*, CTRS. DISEASE CONTROL & PREVENTION,
24 [https://covid.cdc.gov/covid-data-](https://covid.cdc.gov/covid-data-tracker/?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fcases-updates%2Fcases-in-us.html#trends_dailytrendscases)
25 [tracker/?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-](https://covid.cdc.gov/covid-data-tracker/?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fcases-updates%2Fcases-in-us.html#trends_dailytrendscases)
26 [ncov%2Fcases-updates%2Fcases-in-us.html#trends_dailytrendscases](https://covid.cdc.gov/covid-data-tracker/?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fcases-updates%2Fcases-in-us.html#trends_dailytrendscases) (last visited Mar. 9,
27 2021).

28 ⁶⁶ *COVID Data Tracker: Montana*, CTRS. DISEASE CONTROL & PREVENTION,
[https://covid.cdc.gov/covid-data-](https://covid.cdc.gov/covid-data-tracker/?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fcases-updates%2Fcases-in-us.html#trends_dailytrendscases)
[tracker/?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-](https://covid.cdc.gov/covid-data-tracker/?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fcases-updates%2Fcases-in-us.html#trends_dailytrendscases)
[ncov%2Fcases-updates%2Fcases-in-us.html#trends_dailytrendscases](https://covid.cdc.gov/covid-data-tracker/?CDC_AA_refVal=https%3A%2F%2Fwww.cdc.gov%2Fcoronavirus%2F2019-ncov%2Fcases-updates%2Fcases-in-us.html#trends_dailytrendscases) (last visited Mar. 9,
2021).

⁶⁷ *Directive Implementing Executive Orders 2-2020 and 3-2020 and providing for measures to*

1 use, and occupancy by members of the public any alcoholic beverage service businesses, including
2 bars, taverns, brew pubs, breweries, restaurants offering food or beverage for on-premises
3 consumption, and casinos. Governor Bullock repeatedly extended these closures until May 4, 2020.

4 103. On March 26, 2020, Governor Bullock issued an order requiring individuals in
5 Montana to stay at their home or residence unless engaged in essential business and operations, and
6 ordering closure all non-essential business and operations, which was extended until April 26, 2020
7 for individuals and April 27, 2020 for businesses.⁶⁸

8 104. On November 19, 2020, in response to COVID-19 spikes, Governor Bullock
9 announced a directive to limit operations of restaurants, bars, breweries, distilleries, and casinos to
10 a maximum of fifty percent capacity and instituted a curfew for these businesses from 10:00 p.m.
11 to 4:00 a.m., effective November 20, 2020.⁶⁹ This directive—which impacted Golden’s Route
12 Operations at Contingent Time Element Locations—remained in place until the new Montana
13 Governor, Greg Gianforte, announced on January 13, 2021 that he was removing the existing health
14 mandates issued by his predecessor.⁷⁰

15 **F. Impact to Golden’s Covered Properties and Route Operations**

16 105. Each of Golden’s Covered Properties and Contingent Time Element Locations is
17 subject to extensive regulation under the laws, rules and regulations of the jurisdiction where it is
18 located.

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21
22 *combat the spread of COVID-19 via food and beverage services or casinos*, OFF. GOVERNOR
23 MONT. (Mar. 20, 2020), [https://co.sanders.mt.us/wp-](https://co.sanders.mt.us/wp-content/uploads/2020/03/GovernorsDirective_032020-002.pdf)
[content/uploads/2020/03/GovernorsDirective_032020-002.pdf](https://co.sanders.mt.us/wp-content/uploads/2020/03/GovernorsDirective_032020-002.pdf).

24 ⁶⁸ *Directive Implementing Executive Orders 2-2020 and 3-2020 providing measures to stay at*
home and designating certain essential functions, OFF. GOVERNOR MONT. (Mar. 26, 2020),
25 <https://dphhs.mt.gov/Portals/85/Documents/Coronavirus/StayatHomeDirective.pdf>.

26 ⁶⁹ *Governor Bullock Announces New Public Health Measures to Curb COVID-19 Cases*, MONT.
(Nov. 19, 2020), [https://news.mt.gov/governor-bullock-announces-new-public-health-](https://news.mt.gov/governor-bullock-announces-new-public-health-measures-to-curb-covid-19-cases#:~:text=Governor%20Steve%20Bullock%20today%20announced,case%20count%20beginning%20on%20Friday)
[measures-to-curb-covid-19-](https://news.mt.gov/governor-bullock-announces-new-public-health-measures-to-curb-covid-19-cases#:~:text=Governor%20Steve%20Bullock%20today%20announced,case%20count%20beginning%20on%20Friday)
27 [cases#:~:text=Governor%20Steve%20Bullock%20today%20announced,case%20count%20be-](https://news.mt.gov/governor-bullock-announces-new-public-health-measures-to-curb-covid-19-cases#:~:text=Governor%20Steve%20Bullock%20today%20announced,case%20count%20beginning%20on%20Friday)
[ginning%20on%20Friday](https://news.mt.gov/governor-bullock-announces-new-public-health-measures-to-curb-covid-19-cases#:~:text=Governor%20Steve%20Bullock%20today%20announced,case%20count%20beginning%20on%20Friday).

28 ⁷⁰ *Directive Implementing Executive Order 2-2021*, OFF. GOVERNOR MONT. (Jan. 13, 2021),
https://covid19.mt.gov/docs/Directive_on_2-2021.pdf.

1 106. Typically, a state’s gaming regulatory environment is established by statute and is
2 administered by a regulatory body with broad discretion to regulate the owners and managers of
3 gaming operations. Among other responsibilities, gaming authorities or their equivalents in the
4 various jurisdictions in which Golden operates, adopt, interpret, and enforce gaming laws, rules
5 and regulations. Gaming laws are generally designed to protect gaming consumers and the viability
6 and integrity of the gaming industry. Thus, Golden must satisfy the requirements of gaming control
7 boards and comply with their orders, such as the Closure Orders at issue in this case, in order to
8 maintain the licenses, registrations, permits and approvals necessary to continue Golden’s
9 operations.

10 107. As described supra, each of Golden’s Covered Properties, Contingent Time Element
11 Locations, nearby Attraction Properties, and other non-Golden properties in the five-mile vicinity
12 thereof were damaged by SARS-CoV-2 and/or COVID-19, which made surfaces unsafe to touch
13 and the air inside these properties unsafe to breathe. This caused all of these areas to be unsafe and
14 unusable for normal human occupancy and use, thereby damaging the Covered Properties and
15 impairing their value and usefulness.

16 108. The damage and loss caused by SARS-CoV-2 and/or COVID-19 and the threat of
17 further loss, as well as the Closure Orders and the loss of Golden’s Covered Properties and
18 Contingent Time Element Locations caused by those orders, have had a severely detrimental effect
19 on Golden’s business.

20 109. The presence of SARS-CoV-2 and/or COVID-19 and the announcement of the
21 Closure Orders, together with similar orders issued by government officials, caused a total
22 prohibition of access to Golden’s Covered Properties, resulting in an immediate business income
23 loss.

24 110. As a consequence of the global pandemic, Golden has undertaken the activities
25 identified in Paragraphs 8-9, at substantial cost.

26 111. Golden has incurred substantial loss—including but not limited to, loss or damage
27 to property, Time Element losses, Extra Expenses, Expediting Costs, Logistics Costs, and Claims
28 Preparation Expenses—as a result of the presence of SARS-CoV-2 and/or COVID-19 at various of

1 its facilities.

2 112. Numerous Golden facilities have incurred covered loss or damage to property, Time
3 Element losses due to government or private closures or suspensions of business, loss of ingress or
4 egress, losses due to Communicable Disease, Extra Expenses, Expediting Costs, Logistics Costs,
5 and Claims Preparation Expenses.

6 113. Additionally, Golden has incurred substantial loss—including but not limited to,
7 physical loss or damage to property, Time Element losses, Extra Expenses, Expediting Costs,
8 Logistics Costs, and Claims Preparation Expenses—even in cases where SARS-CoV-2 and/or
9 COVID-19 was not confirmed to be present at Golden’s Covered Properties or Contingent Time
10 Element Locations, due to pandemic conditions and the threat posed by SARS-CoV-2 and/or
11 COVID-19 in their general geographic proximity (i.e., within five miles/eight kilometers).

12 114. Golden has incurred an ongoing estimated loss in excess of \$130 million through
13 December 31, 2020 and is continuing to gather information and quantify its ongoing COVID-19-
14 related business interruption losses, which will accrue until Golden can resume normal operations.

15 **The All Risk Policy Covers Golden’s Losses and Expenses**

16 115. Due to the physical changes, alterations and transformation of the surfaces and air
17 contained in Golden’s Covered Properties caused by SARS-CoV-2 and/or COVID-19, Golden
18 suffered actual physical loss and damage to each property that is insured by the All Risk Policy.

19 116. Other Contingent Time Element Locations at which Golden maintains its slot and
20 amusement devices in Nevada and Montana also suffered actual physical loss and damage to
21 property of the type insured due to the presence of SARS-CoV-2 and/or COVID-19 on the
22 premises.

23 117. Golden is entitled to coverage under a number of provisions in the All Risk Policy,
24 many of which overlap. There is no provision in the All Risk Policy governing the manner in which
25 Golden may structure its claim when multiple coverage provisions apply. Accordingly, Golden is
26 entitled to structure its claim, to order its recovery, and to “stack” applicable coverages to maximize
27 its recovery.

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1 118. Certain of the All Risk Policy’s ADDITIONAL COVERAGES specify that “[c]osts
2 recoverable under this Additional Coverage are excluded from coverage elsewhere in this Policy.”
3 All Risk Policy at p. 18. However, the “Communicable Disease Response” Additional Coverage
4 does not specify that any costs recoverable under it are excluded elsewhere in the All Risk Policy.
5 *Id.* at p. 23. Accordingly, the All Risk Policy recognizes that losses caused by the physical loss or
6 damage to property that results from a communicable disease (discussed in further detail below)
7 may also be insured under other provisions.

8 119. Under the All Risk Policy, an “occurrence” is “the sum total of all loss or damage
9 of the type insured, including any insured TIME ELEMENT loss, arising out of or caused by one
10 discrete event of physical loss or damage.” *Id.* at 73.

11 120. Golden has satisfied all conditions precedent to bringing this action and obtaining
12 coverage for its losses under the All Risk Policy. Golden gave timely notice of its claims and has
13 satisfied, is excused from performing, or FM Global has waived or is estopped from insistence upon
14 performance of, all conditions of the All Risk Policy, including but not limited to payment of
15 required premiums, provision of timely notice of claim, and submission of a Proof of Loss.

16 121. The All Risk Policy provides several different types of coverages applicable or
17 potentially applicable to Golden’s past, current and future COVID-19 pandemic losses, including
18 the following.

19 **A. Coverage Provisions**

20 • **Loss or Damage to Property and Direct Time Element Losses**

21 122. The All Risk Policy provides coverage of up to \$1.1 billion per occurrence for
22 physical loss or damage to Real Property and/or Personal Property (as defined in the All Risk
23 Policy), unless such property is excluded or results from an excluded cause of loss. This coverage
24 extends to physical loss or damage to covered property caused by the presence of SARS-CoV-2
25 and/or incidences of COVID-19 at specific Golden’s Covered Properties.

26 123. Golden has incurred substantial covered losses as a consequence of loss or damage
27 to its Covered Properties as a result of direct exposure to, and actual adverse physical alteration
28 of, its covered Real Property and Personal Property due to SARS-CoV-2 and/or COVID-19,

1 requiring remediation, disposal and replacement, or other mitigation measures.

2 124. This coverage **also** extends to physical loss or damage as a result of the nearby
3 presence of SARS-CoV-2 and/or COVID-19 threatening Golden’s Covered Properties, and the
4 resulting danger posed by such Covered Properties becoming a disease vector for COVID-19. Such
5 **threat of SARS-CoV-2 and/or COVID-19** has caused covered loss at Golden Covered Properties.

6 125. The All Risk Policy covers “Time Element” loss as a result of SARS-CoV-2-related
7 physical loss or damage described above. Under those Time Element coverages, the All Risk
8 Policy permits Golden to elect to make a claim based on either: “a) GROSS EARNINGS and
9 EXTENDED PERIOD OF LIABILITY; or b) GROSS PROFIT[.]” *Id.* at 39. There is a per
10 occurrence sublimit of 12 months of losses for Gross Profit coverage under the All Risk Policy with
11 a sublimit of 60 days for Ordinary Payroll. There is no aggregate limit. *Id.* at p. 5.

12 126. Golden is entitled to recover its covered losses with respect to physical loss or
13 damage to its Covered Properties, and resulting Time Element losses, up to the limits provided in
14 the All Risk Policy.

15 127. FM Global has not paid Golden for any of its covered Property Damage or Time
16 Element losses.

17 2. Losses Due to Orders of Civil Authority

18 128. The Civil or Military Authority coverage FM Global sold Golden provides coverage
19 for losses resulting from the temporary closure or suspension of activities at Golden’s Covered
20 Properties and Contingent Time Element Locations as a result of orders of civil or military authority
21 occasioned by SARS-CoV-2 and/or COVID-19.

22 129. The applicable language of the All Risk Policy describing this coverage includes the
23 following:

24 A. CIVIL OR MILITARY AUTHORITY

25 This Policy covers the Actual Loss Sustained and EXTRA EXPENSE incurred
26 by the Insured during the PERIOD OF LIABILITY if an order of civil or military
27 authority limits, restricts or prohibits partial or total access to an insured
28 **location** provided such order is the direct result of physical damage of the
type insured at the insured **location** or within five statute miles/eight
kilometres of it.

1 *Id.* at 51.

2 130. There is a per occurrence sublimit of 30 days for Civil or Military Authority
3 coverage in the All Risk Policy. There is no aggregate limit. *Id.* at 3.

4 131. Golden has incurred substantial covered losses due to Closure Orders that were the
5 direct result of covered “physical damage of the type insured”—that is, the presence of SARS-
6 CoV-2 and/or COVID-19 on property (*i.e.*, in the air, on fixtures and surfaces throughout the
7 Covered Properties and Contingent Time Element Locations) and the continued transmission of
8 SARS-CoV-2 from persons to property—either at or within five miles of Golden’s Covered
9 Properties.

10 132. For example, both The Mirage and The Luxor Hotel & Casino announced that
11 employees had tested positive for COVID-19 before Governor Sisolak issued the initial Closure
12 Order in Nevada. Both properties are located within five miles of The Strat.

13 133. Likewise, the ability of customers and potential customers to access and patronize
14 Covered Properties and Contingent Time Element Locations has been prohibited by the Closure
15 Orders that required Golden’s Covered Properties and Route Operations to close. Still other orders
16 prohibited customers and potential customers from accessing and patronizing Covered Properties
17 and Contingent Time Element Locations by requiring them to shelter in place or prohibiting them
18 from going to non-essential businesses.

19 134. These orders were a direct result of physical damage from SARS-CoV-2 and/or
20 COVID-19 either at or within five miles of Covered Properties and Contingent Time Element
21 Locations.

22 135. Golden’s business income losses and its sustained Extra Expenses are thus covered
23 under the All Risk Policy’s Civil or Military Authority coverages.

24 136. Golden is entitled to recover its covered Civil or Military Authority losses, up to the
25 limits provided in the All Risk Policy.

26 137. FM Global has not paid Golden for any of its covered Civil or Military Authority
27 losses.

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1 **3. Losses Due to Impairment of Ingress/Egress**

2 138. The All Risk Policy provides up to \$250 million per occurrence for Time Element
3 losses due to the partial or total prevention of ingress to or egress from covered locations. Due to
4 restrictions on travel or movement occasioned by SARS-CoV-2 and/or COVID-19, which reflect
5 physical damage to property of the type insured under the All Risk Policy, Time Element losses
6 have been incurred.

7 139. The applicable language of the All Risk Policy describing this coverage includes the
8 following:

9 **C. INGRESS/EGRESS**

10 This Policy covers the Actual Loss Sustained and EXTRA EXPENSE
11 incurred by the Insured during the PERIOD OF LIABILITY due to the
12 necessary interruption of the Insured's business due to partial or
13 total physical prevention of ingress to or egress from an insured
14 **location**, whether or not the premises or property of the Insured is
15 damaged, provided that such prevention is a direct result of physical
16 damage of the type insured to property of the type insured.

15 *Id.* at 53.

16 140. There is a per occurrence sublimit of 30 days for Ingress/Egress coverage in the All
17 Risk Policy. There is no aggregate limit. *Id.* at 5.

18 141. Golden has suffered business interruption loss as a direct result of a lack of partial
19 or total ingress to or egress from Covered Properties due to loss or damage to Covered Properties
20 or loss or damage to properties within five miles of Covered Properties—as a consequence of
21 SARS-CoV-2 and COVID-19.

22 142. Golden is entitled to recover its covered Ingress/Egress losses, up to the limits
23 provided in the All Risk Policy.

24 143. FM Global has not paid Golden for any of its covered Ingress-Egress Losses.

25 **4. Contingent Time Element Losses**

26 144. The All Risk Policy provides coverage for Time Element losses resulting from
27 physical loss or damage of the type insured to property of Golden's direct customers, suppliers,
28 contract manufacturers, contract service provider (and the direct or indirect customers, suppliers,

1 contract manufacturers or service providers of the foregoing), and companies under a royalty,
2 licensing fee or commission agreement with Golden.

3 145. The applicable language of the All Risk Policy describing this coverage includes the
4 following:

5 **B. CONTINGENT TIME ELEMENT EXTENDED**

6 This Policy covers the Actual Loss Sustained and EXTRA EXPENSE
7 incurred by the Insured during the PERIOD OF LIABILITY directly
8 resulting from physical loss or damage of the type insured to
9 property of the type insured at **contingent time element locations**
10 located within the TERRITORY of this Policy.

11 As respects CONTINGENT TIME ELEMENT EXTENDED:

12 1) Time element loss recoverable under this Extension is
13 extended to include the following TIME ELEMENT
14 COVERAGE EXTENSIONS:

- 15 CIVIL OR MILITARY AUTHORITY
- 16 CONTINGENT TIME ELEMENT EXTENDED
- 17 DATA SERVICE PROVIDER TIME ELEMENT
- 18 DELAY IN STARTUP
- 19 EXTENDED PERIOD OF LIABILITY
- 20 INGRESS/EGRESS
- 21 ON PREMISES SERVICES
- 22 SERVICE INTERRUPTION TIME ELEMENT

23 *Id.* at p. 52.

24 146. A **contingent time element location** is defined in the All Risk Policy as:

25 A. any **location**:

- 26 1) of a direct customer, supplier, contract manufacturer
27 or contract service provider to the Insured;
- 28 2) of any company under a royalty, licensing fee or
commission agreement with the Insured;

B. any **location** of a company that is a direct or indirect customer,
supplier, contract manufacturer or contract service provider to a
location described in A1 above

29 *Id.* at 71.

30 147. There is a per occurrence sublimit of \$25,000,000 for Contingent Time Element
31 Extended coverage. There is no aggregate. *Id.* at 3.

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1 148. Numerous of Golden’s direct customers, suppliers, contract manufacturers, contract
2 service providers (and/or the direct or indirect customers, suppliers, contract manufacturers or
3 service providers of the foregoing), and/or companies under a royalty, licensing fee or commission
4 agreement with Golden—including but not limited to its third party distributed gaming customers
5 at non-casino locations—have experienced physical loss and damage of the type insured at their
6 respective Contingent Time Element Locations.

7 149. The physical loss and damage from the presence of SARS-CoV-2 and/or COVID-
8 19 at these Contingent Time Element Locations and government orders restricting gaming has
9 prevented access to the slot machines and amusement devices of Golden’s Route Operations at
10 Contingent Time Element Locations.

11 150. Golden has sustained loss of business income and incurred extra expense resulting
12 from Golden’s customers’ inability to accept Golden’s goods and services or access Golden’s slot
13 machines and amusement devices at Contingent Time Element Locations.

14 151. Golden is entitled to recover its covered Contingent Time Element Losses, up to the
15 limits provided in the All Risk Policy.

16 152. FM Global has not paid Golden for any of its covered Contingent Time Element
17 Losses.

18 **5. Response Costs Due to Communicable Disease Confirmed at Golden**
19 **Locations**

20 153. The All Risk Policy sets forth specifically enumerated “ADDITIONAL
21 COVERAGES” under the “PROPERTY DAMAGE” section, describing these as “Additional
22 Coverages *for insured physical loss or damage.*” All Risk Policy at 17 (emphasis added). In other
23 words, FM Global expressly acknowledges that each of the Additional Coverages reflect “insured
24 physical loss or damage” to property.

25 154. One of the All Risk Policy’s “ADDITIONAL COVERAGES” for “PROPERTY
26 DAMAGE” is “COMMUNICABLE DISEASE RESPONSE COVERAGE.” By its express terms,
27 the All Risk Policy equates the presence of a “communicable disease” at property with physical
28 loss or damage of the type insured under the All Risk Policy.

1 155. The All Risk Policy provides coverage for property damage incurred as a result of
2 the actual presence of communicable disease such as COVID-19.

3 156. Importantly, unlike other Additional Coverages, the All Risk Policy does *not*
4 provide that costs recoverable under the Communicable Disease Response Coverage are “excluded
5 from coverage elsewhere in this Policy.” In other words, the All Risk Policy expressly recognizes
6 that the physical loss or damage caused by communicable disease may also be insured by other
7 coverage parts in the Policy.

8 157. The applicable language of the All Risk Policy describing this Additional Coverage
9 includes the following:

10 **G. COMMUNICABLE DISEASE RESPONSE**

11 If a **location** owned, leased or rented by the Insured has the actual
12 not suspected presence of **communicable disease** and access to
13 such **location** is limited, restricted or prohibited by:

- 14 1) an order of an authorized governmental agency regulating
15 the actual not suspected presence of **communicable**
16 **disease**; or
- 17 2) a decision of an Officer of the Insured as a result of the actual
18 not suspected presence of **communicable disease**,

19 this Policy covers the reasonable and necessary costs incurred by
20 the Insured at such **location** with the actual not suspected presence
21 of **communicable disease** for the:

- 22 1) cleanup, removal and disposal of the actual not suspected
23 presence of **communicable diseases** from insured property;
24 and
- 25 2) actual costs of fees payable to public relations services or
26 actual costs of using the Insured’s employees for reputation
27 management resulting from the actual not suspected
28 presence of **communicable diseases** on insured property.

Id. at 22-23.

24 158. By providing for the “cleanup, removal and disposal of ... **communicable**
25 **diseases**,” the All Risk Policy explicitly recognizes that communicable disease physically damages
26 property. *Id.*

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1 159. The All Risk Policy, which has an exclusion for “contamination” and “cost” “due”
2 to “contamination,” defines “communicable disease” differently from “contamination.”
3 “Communicable disease” is a “disease which is . . . transmissible from human to human by direct
4 or indirect contact with an affected individual or the individual’s discharges” *Id.* at 71. By
5 contrast, “contamination” is “any condition of property due to the actual or suspected presence of
6 any foreign substance, impurity, pollutant, hazardous material, poison, toxin, pathogen or
7 pathogenic organism, bacteria, virus, disease causing or illness causing agent, fungus, mold or
8 mildew.” *Id.*

9 160. The All Risk Policy does not include in the definition of “contamination” “any
10 condition of property due to the actual or suspected presence of . . . communicable disease” (which
11 includes “disease . . . transmissible from . . . [an] individual’s discharges”). *Id.* Indeed, the All
12 Risk Policy not only separately defines “communicable disease” differently from “contamination,”
13 it also expressly equates the presence of “communicable disease” with “physical loss or damage”
14 to property expressly of the type insured under the All Risk Policy. Put simply, the “contamination”
15 exclusion does not reach “communicable disease” type of property damage because the All Risk
16 Policy covers losses resulting from “communicable disease.”

17 161. COVID-19 is a disease that is “transmissible from human to human by direct or
18 indirect contact with an affected individual or the individual’s discharges.” *Id.* Therefore, COVID-
19 19 is a “communicable disease” under the All Risk Policy.

20 162. The actual presence of COVID-19 at Golden’s Covered Properties has been
21 confirmed, as numerous Golden employees have tested positive for COVID-19.

22 163. The actual presence of COVID-19 has caused physical damage to property at these
23 Covered Properties resulting in the issuance of orders by an authorized governmental agency
24 regulating communicable disease or an Officer of Golden, and access to these Covered Properties
25 was limited, restricted, and prohibited for more than 48 hours, thereby triggering coverage under
26 the All Risk Policy’s Communicable Disease Response coverage, among other coverages.

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1 164. The costs incurred by Golden to cleanup, remove and dispose of COVID-19 at a
2 location owned, leased, or rented by the Golden are covered under the All Risk Policy, up to the
3 limits of the Onsite Communicable Disease Coverage.

4 165. FM Global has not paid Golden for these costs resulting from the actual presence of
5 COVID-19 at Golden’s Covered Properties.

6 **6. Interruption Costs Due to Communicable Disease Confirmed at**
7 **Golden’s Covered Properties**

8 166. The All Risk Policy describes the coverage provided by the “ADDITIONAL TIME
9 ELEMENT COVERAGE EXTENSIONS” as being for losses insured “as provided in the TIME
10 ELEMENT COVERAGES, directly resulting *from physical loss or damage of the type insured . .*
11 *. to property* described elsewhere in this Policy and not otherwise excluded by this Policy or
12 otherwise limited in the TIME ELEMENT COVERAGES below. . . .” *Id.* at 38 (emphases added).
13 In other words, FM Global expressly acknowledges that the losses and/or costs insured under each
14 of the Time Element coverages arises from “insured physical loss or damage” to property.

15 167. One of the All Risk Policy’s “ADDITIONAL TIME ELEMENT COVERAGE
16 EXTENSIONS” is “INTERRUPTION BY COMMUNICABLE DISEASE” which covers lost
17 earnings or lost profits and extra expenses resulting from “the actual not suspected presence of
18 communicable disease.” *Id.* at 59. In other words, the All Risk Policy again acknowledges that the
19 presence of a “communicable disease” is a physical loss or damage of the type insured under the
20 All Risk Policy.

21 168. The All Risk Policy provides coverage for interruption/Time Element losses
22 incurred as a result of the actual presence of communicable disease such as COVID-19.

23 169. Importantly, in contrast to other Additional Coverages, the All Risk Policy does **not**
24 provide that costs recoverable under the Interruption by Communicable Disease Coverage are
25 “excluded from coverage elsewhere in this Policy.” In other words, the All Risk Policy expressly
26 recognizes that the physical loss or damage caused by communicable disease may also be insured
27 by other coverage parts in the Policy.

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1 170. The applicable language of the All Risk Policy describing this coverage includes the
2 following:

3 **E. INTERRUPTION BY COMMUNICABLE DISEASE**

4 If a **location** owned, leased or rented by the Insured has the actual
5 not suspected presence of **communicable disease** and access to
6 such **location** is limited, restricted or prohibited by:

- 7 1) an order of an authorized governmental agency regulating
8 the actual not suspected presence of **communicable**
9 **disease**; or
- 10 2) a decision of an Officer of the Insured as a result of the
11 actual not suspected presence of **communicable disease**,

12 this Policy covers the Actual Loss Sustained and EXTRA
13 EXPENSE incurred by the Insured during the PERIOD OF
14 LIABILITY at such **location** with the actual not suspected presence
15 of **communicable disease**.

16 This Extension will apply when access to such **location** is limited,
17 restricted, or prohibited in excess of 48 hours.

18 **INTERRUPTION BY COMMUNICABLE DISEASE Exclusions:**
19 As respects **INTERRUPTION BY COMMUNICABLE DISEASE**,
20 the following additional exclusions apply:

21 This Policy does not insure loss resulting from:

- 22 1) the enforcement of any law or ordinance with which the
23 Insured was legally obligated to comply prior to the time of
24 the actual spread of **communicable disease**.
- 25 2) loss or damage caused by or resulting from **terrorism**,
26 regardless of any other cause or event, whether or not
27 insured under this Policy, contributing concurrently or in
28 any sequence of loss.

The PERIOD OF LIABILITY for this TIME ELEMENT
COVERAGE EXTENSION will be:

The period of time:

- 1) starting at the time of the order of the authorized
governmental agency or the Officer of the Insured; and
- 2) ending not later than the number of consecutive days shown
in the LIMITS OF LIABILITY clause in the
DECLARATIONS section,

this period of time is part of and not in addition to any PERIOD OF
LIABILITY applying to any coverage provided in the TIME
ELEMENT section.

1 *Id.* at 59.

2 171. Golden’s Covered Properties have incurred interruption/Time Element losses as a
3 result of the actual not suspected presence of COVID-19.

4 172. These interruption/Time Element losses are covered under the All Risk Policy, up
5 to the limits of such Communicable Disease Coverage, among other coverages.

6 173. FM Global has not paid Golden for these interruption/Time Element losses resulting
7 from the actual presence of COVID-19 at Golden’s Covered Properties.

8 **7. Expediting Costs & Extra Expenses**

9 174. The All Risk Policy provides coverage for Expediting Costs and Extra Expenses
10 incurred by Golden to minimize covered losses as follows:

11 **L. EXPEDITING COSTS**

12 This Policy covers the reasonable and necessary costs incurred:

- 13 1) for the temporary repair of insured physical damage to
14 insured property;
- 15 2) for the temporary replacement of insured equipment
16 suffering insured physical damage; and
- 17 3) to expedite the permanent repair or replacement of such
18 damaged property.

19 This Additional Coverage does not cover costs recoverable
20 elsewhere in this Policy, including the cost of permanent repair or
21 replacement of damaged property.

22 *Id.* at 25.

23 **D. Extra Expense**

24 Measurement of Loss:

25 The recoverable EXTRA EXPENSE loss will be the reasonable and
26 necessary extra costs incurred by the Insured of the following during
27 the PERIOD OF LIABILITY:

- 28 1) extra expenses to temporarily continue as nearly **normal** as
practicable the conduct of the Insured’s business;
- 2) extra costs of temporarily using property or facilities of the
Insured or others; and

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3) costs to purchase finished goods from third parties to fulfill orders when such orders cannot be met due to physical loss or damage to the Insured's finished goods, less payment received for the sale of such finished goods.

less any value remaining at the end of the PERIOD OF LIABILITY for property obtained in connection with the above.

Id. at 43-44.

175. There is a \$100 million limit for Expediting Costs and Extra Expense combined.

176. Golden is entitled to the All Risk Policy's Expediting Costs and Extra Expense coverage for the reasonable and necessary extra costs Golden incurred in order to minimize covered losses relating to SARS-CoV-2 and/or COVID-19.

177. For example, Golden has incurred certain remediation and mitigation costs related to activities, including providing patrons and employees with face coverings and hand sanitizer, and erecting Plexiglass barriers between machines and throughout other areas on its Covered Properties and Contingent Time Element Locations, in order to minimize the suspension of Golden's business. These remediation and mitigation efforts are continuing.

8. Attraction Property

178. The Attraction Property coverage that FM Global sold to Golden provides:

A. ATTRACTION PROPERTY

This Policy covers the Actual Loss Sustained and EXTRA EXPENSE incurred by the Insured during the PERIOD OF LIABILITY directly resulting from physical loss or damage of the type insured to property of the type insured that attracts business to an insured **location** and is within 1 statute mile/1.6 kilometres of the insured **location**.

All Risk Policy at 56.

179. There is a sublimit of liability for Attraction Property coverage of 30 days. *Id.* at 3.

180. Golden has suffered business interruption losses directly resulting from loss or damage caused by SARS-CoV-2 and/or COVID-19 to real and personal properties that attract business and trade within the vicinity of Golden's Covered Properties.

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1 181. For example, SARS-CoV-2 and/or COVID-19 caused physical loss or damage at
2 nearby casinos and venues on the Las Vegas Strip that attract business to Golden's Covered
3 Properties, including The Strat.

4 **9. Leasehold Interest**

5 182. The Leasehold Interest coverage FM Global sold to Golden provides:

6 **E. Leasehold Interest**

7 Measurement of Loss:

8 The recoverable LEASEHOLD INTEREST incurred by the Insured
9 of the following:

- 10 1) If the lease agreement requires continuation of rent; and if the
11 property is wholly untenable or unusable, the actual rent
12 payable for the unexpired term of the lease; or if the property
13 is partially untenable or unusable, the proportion of the
14 rent payable for the unexpired term of the lease.
- 15 2) If the lease is cancelled by the lessor pursuant to the lease
16 agreement or by the operation of law; the Lease Interest for
17 the first three months following the loss; and the Net Lease
18 Interest for the remaining unexpired term of the lease.

19 *Id.* at 44.

20 183. There is no sublimit for Leasehold Interest coverage.

21 184. Because certain lease agreements of Golden and Golden's Covered Properties have
22 required continuation of rent payments despite the presence of SARS-CoV-2 and/or COVID-19
23 rendering the Covered Properties unusable, Golden is entitled to the All Risk Policy's Leasehold
24 Interest coverage.

25 185. The Rental Insurance coverage FM sold to Golden provides:

26 **F. Rental Insurance**

27 Measurement of Loss:

28 The recoverable RENTAL INSURANCE loss is the Actual Loss
Sustained by the Insured of the following during the PERIOD OF
LIABILITY:

- 1) the fair rental value of any portion of the property occupied
by the Insured;
- 2) the income reasonably expected from rentals of unoccupied
or unrented portions of such property; and

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3) the rental income from the rented portions of such property according to bona fide leases, contracts or agreements in force at the time of loss,

all not to include noncontinuing charges and expenses.

RENTAL INSURANCE Exclusions: As respects RENTAL INSURANCE, TIME ELEMENT EXCLUSIONS A does not apply and the following applies instead:

This Policy does not insure any loss of rental income during any period in which the insured property would not have been tenantable for any reason other than an insured loss.

Id. at 45.

186. There is no sublimit for the Rental Insurance coverage.

187. Because Golden has not received rental income from certain of its lessees due to the presence of SARS-CoV-2 and/or COVID-19 rendering the Covered Properties unusable, Golden is entitled to the All Risk Policy’s Rental Insurance coverage.

10. Logistics Extra Costs

188. The All Risk Policy also provides up to 200% of normal costs to cover the extra logistics costs incurred by Golden as a result of SARS-CoV-2 and/or COVID-19 disrupting the movement of goods and materials between its locations and/or to the locations of its suppliers, customers or other business partners.

189. The applicable policy language describing this Logistics Costs coverage includes the language contained in the “Logistics Extra Costs” section of the All Risk Policy, which is found at pages 54-55 of the All Risk Policy but, due to its length, is set forth only in part here:

D. LOGISTICS EXTRA COST

This Policy covers the extra cost incurred by the Insured during the PERIOD OF LIABILITY due to the disruption of the **normal** movement of goods or materials:

- 1) directly between insured **locations**; or
- 2) directly between an insured **location** and a **location** of a direct customer, supplier, contract manufacturer or contract service provider to the Insured,

1 provided that such disruption is a direct result of physical loss or
2 damage of the type insured to property of the type insured located
within the TERRITORY of this Policy.

3 Measurement of Loss:

4 The recoverable extra cost loss will be the reasonable and necessary
5 extra costs incurred by the Insured of the following:

6 1) extra costs to temporarily continue as nearly **normal** as practicable
the movement of goods or materials.

7 This Extension will apply when the PERIOD OF LIABILITY is in
8 excess of 48 hours except 168 hours applies for **earth movement**
and/or **flood** and/or **wind**.

9 *Id.* at 54.

10 190. Golden has incurred substantial covered Logistics Extra Costs as a consequence of
11 SARS-CoV-2 and/or COVID-19.

12 191. Golden is entitled to recover its covered Logistics Extra Costs, up to the limits
13 provided in the All Risk Policy.

14 192. FM Global has not paid Golden for any of its covered Logistics Extra Costs.

15 **11. Claims Preparation Costs Coverage**

16 193. The All Risk Policy provides up to \$500,000 incurred by Golden to investigate,
17 calculate and document its loss for purposes of submission of its claim to FM Global.

18 194. The applicable policy language describing this Claims Preparation Costs coverage
19 includes the following language:

20 **E. CLAIMS PREPARATION COSTS**

21 This Policy covers the actual costs incurred by the Insured:

22 1) of reasonable fees payable to the Insured's: accountants,
23 architects, auditors, engineers, or other professionals; and

24 2) the cost of using the Insured's employees,

25 for producing and certifying any particulars or details contained in
26 the Insured's books or documents, or such other proofs, information
or evidence required by the Company resulting from insured loss
27 payable under this Policy for which the Company has accepted
liability.

28 This Additional Coverage will not cover the fees and costs of:

- 1 1) attorneys, public adjusters, and loss appraisers, all including
2 any of their subsidiary, related or associated entities either
3 partially or wholly owned by them or retained by them for the
4 purpose of assisting them,
5 2) loss consultants who provide consultation on coverage or
6 negotiate claims.

7 This Additional Coverage is subject to the deductible that applies to
8 the loss.

9 *Id.* at 22.

10 195. Golden has incurred substantial covered Claims Preparation Costs in connection
11 with its SARS-CoV-2 and/or COVID-19 losses.

12 196. Golden is entitled to recover its covered Claims Preparation Costs, up to the limits
13 provided in the All Risk Policy.

14 **12. Other Available Coverages**

15 197. While Golden has identified the foregoing coverages as ones that are applicable to
16 the losses it has suffered to date, the foregoing is not intended to be an exhaustive list of the various
17 coverages, and Golden’s losses may also trigger additional coverages under the All Risk Policy as
18 the loss is continuing and causing Golden to suffer additional damages.

19 **B. No Exclusions Bar Coverage**

20 198. The All Risk Policy contains a so-called “Contamination Exclusion” that provides
21 as follows:

22 D. This Policy excludes the following unless directly resulting from
23 other physical damage not excluded by this Policy:

- 24 1) **contamination**, and any cost due to **contamination**
25 including the inability to use or occupy property or any cost
26 of making property safe or suitable for use or occupancy. If
27 **contamination** due only to the actual not suspected presence
28 of **contaminant(s)** directly results from other physical
 damage not excluded by this Policy, then only physical
 damage caused by such **contamination** may be insured. This
 exclusion D1 does not apply to radioactive contamination
 which is excluded elsewhere in this Policy.

Id. at 14.

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1 199. The All Risk Policy in turn defines “contaminant” as “anything that causes
2 “contamination” and defines “contamination” as:

3 any condition of property due to the actual or suspected presence of
4 any foreign substance, impurity, pollutant, hazardous material,
5 poison, toxin, pathogen or pathogenic organism, bacteria, virus,
6 disease causing or illness causing agent, fungus, mold or mildew.

7 All Risk Policy at 71.

8 200. The Contamination Exclusion does not apply to Golden’s losses caused by the
9 pandemic, for numerous reasons, including but not limited to the following:

- 10 a. **“Contamination” Exclusions apply to traditional pollution, not to natural**
11 **catastrophes such as disease outbreaks:** To the extent SARS-CoV-2 is actually
12 present or suspected of being present at pertinent locations, its presence would be
13 the result of a natural process, as opposed to an act of pollution or contamination.
14 So-called “contamination” exclusions, such as the form of Contamination
15 Exclusion in the All Risk Policy, apply only to situations that reasonable
16 policyholders would understand to constitute polluting activities, as opposed to
17 natural catastrophes such as the COVID-19 pandemic. *See JGB Vegas Retail*
18 *Lessee, LLC v. Starr Surplus Lines Ins. Co.*, No. A-20-816628-B, 2020 WL
19 7190023, at *3 (Nev. Dist. Ct. Nov. 30, 2020) (“[Insurer] has not shown that it is
20 unreasonable to interpret the Pollution and Contamination Exclusion to apply only
21 to instances of traditional environmental and industrial pollution and
22 contamination that is not at issue here, where [insured’s] losses are alleged to be
23 the result of a naturally-occurring, communicable disease. This is the case, even
24 though the Exclusion contains the word ‘virus.’”); *London Bridge Resort LLC v.*
25 *Illinois Union Ins. Co. Inc.*, No. CV-20-08109-PCT-GMS, 2020 WL 7123024, at
26 *3 (D. Ariz. Dec. 4, 2020) (“[N]o plausible interpretation of ‘traditional
27 environmental pollution’ includes a virus outbreak”).
- 28 b. **The Contamination Exclusion does not apply to “Physical Damage” resulting**
from viruses that cause “Communicable Disease”: The Contamination
Exclusion contains an important exception providing that coverage is *available* if
“the actual not suspected presence of **contaminant(s)** *directly results from other*
physical damage not excluded by this Policy.” *Id.* at 14 (italics added). Critically,
the All Risk Policy expressly provides that the presence of a “communicable
disease” is a “physical loss or damage” to property of the type insured under the
All Risk Policy, and the All Risk Policy’s definition of contamination does not
include within it a “condition of property” due to the presence of “communicable
disease” (defined as including “disease . . . transmissible from . . . [an] individual’s
discharges”). Persons who contract the Communicable Disease of COVID-19 did
so as a consequence of being exposed to others and to property that was adversely
impacted by an “individual’s discharges” or respiratory droplets. Accordingly, to
the extent loss results from infected persons bringing SARS-CoV-2 onto Golden’s
Covered Properties and Contingent Time Element Locations and “discharging” the

1 transmissible disease, any resulting impact to Golden’s Covered Properties and
2 Contingent Time Element Locations results from “other physical damage not
3 excluded by this Policy” and therefore is not subject to the Contamination
4 Exclusion.

- 5 c. **Inapplicable to loss or damage to property caused by the “threat” of virus
6 becoming present at a location:** The exclusion applies only the “actual or
7 suspected presence” of specified substances at a location. *Id.* at 14, 71. By its
8 express terms, the Contamination Exclusion does not apply to losses caused by
9 closures and other measures responding to the “threat” of exposure to or presence
10 of virus.
- 11 d. The permissive language of the so-called Contamination Exclusion stands in stark
12 contrast with broader exclusions within the All Risk Policy for other excluded
13 property damage (for example, with respect to the exclusion for “loss or damage
14 directly or indirectly caused by or resulting from [nuclear contamination] . . .
15 contributing concurrently or in any other sequence to the loss) as well as standard-
16 form “virus exclusions” that are found in many other, less generous policy forms
17 issued throughout the insurance industry. Indeed, as a means of collecting higher
18 premiums from and attracting desired customers such as Golden, FM Global
19 eschewed using the standard-form virus exclusions that have been widely available
20 since 2006, when the Insurance Services Office published and circulated an
21 explicit virus exclusion (the “ISO Virus Exclusion”). Unlike the narrow
22 Contamination Exclusion, the broad ISO Virus Exclusion likely applies to
23 pandemic circumstances, stating “We will not pay for loss or damage caused by or
24 resulting from any virus, bacterium or other microorganism that induces or is
25 capable of inducing physical distress, illness or disease” and making clear that this
26 exclusion applies to “all coverage.” Rather than using an explicit and broad virus
27 exclusion, FM Global instead opted for an exclusion that barred only damage that
28 could fairly be described as resulting from an act of “contamination” or
“pollution”; and even then, FM Global further limited the scope of the
Contamination Exclusion by also permitting coverage if the “contamination” is not
actually at or suspected to be at Covered Properties, or if the contamination itself
resulted from an otherwise covered type of loss or damage to property.
- e. **Inapplicable to losses covered under Civil or Military Authority and
Ingress/Egress coverages:** The Contamination Exclusion is directed solely at
“conditions of property” and thus does not address, *e.g.*, Time Element losses due
to civil authority orders or impairment of ingress or egress triggered by the
presence of SARS-CoV-2 and/or COVID-19 within five miles. Thus, any
resulting impact to Golden’s Covered Properties and Contingent Time Element
Locations results from “other physical damage not excluded by this Policy” and
therefore is not subject to the Contamination Exclusion.
- f. The Contamination Exclusion excludes only “contamination, and any *cost* due to
contamination,” *Id.* at 14 (*italics added*), but makes no mention of “losses” and
does not purport to exclude “loss or damage to property” resulting from
Contamination. Thus, the Contamination Exclusion is expressly directed solely at

1 any costs incurred to remove the contamination from Covered Property, but not to
2 consequential economic losses such as, *e.g.*, Time Element losses or extra
3 expenses.

4 201. In short, the All Risk Policy reflects FM Global’s deliberate decisions to exclude
5 only virus contamination resulting from acts of pollution (such as inadvertent or deliberate releases
6 of waste streams from a lab, water-treatment plants, or other facilities), and to provide coverage for
7 viruses that cause “disease which is transmissible from human to human by direct or indirect
8 contact with an affected individual or the individual’s discharges.” The Contamination Exclusion
9 is inapplicable to any of the SARS-CoV-2-related losses that Golden incurred as a consequence of
10 the COVID-19 pandemic.

11 202. To the extent FM Global contends that the All Risk Policy’s Contamination
12 Exclusion bars coverage for loss caused by communicable disease or some other aspect of Golden’s
13 claim, the All-Risk Policy is at a minimum ambiguous, and therefore, must be construed in favor
14 of coverage. Because ambiguity must be interpreted in favor of coverage, this Contamination
15 Exclusion does not apply to bar Golden’s claims. *See Benchmark Ins. Co. v. Sparks*, 254 P.3d 617,
16 621 (Nev. 2011).

17 C. **The All Risk Policy’s Communicable Disease Sublimit Does Not Cap Golden’s
18 Losses**

19 203. As discussed *supra* at ¶¶153-173, the All Risk Policy affords coverage to Golden
20 for the actual presence of communicable disease at a Covered Property through the Onsite
21 Communicable Disease Coverage.

22 204. The Communicable Disease Response provision expressly provides that it is an
23 “Additional Coverage” for “cleanup, removal and disposal . . . of communicable disease” and “fees
24 payable to public relations services . . . or costs . . . for reputation management” for which coverage
25 is not otherwise afforded in the All Risk Policy.

26 205. The Interruption by Communicable Disease provision expressly provides that it is a
27 coverage “Extension” that allows for triggering of coverage based on “a decision of an Officer of
28 the Insured” not otherwise recognized in the All Risk Policy, and which provides for an extended

1 365 days of possible coverage.

2 206. Certain of the All Risk Policy’s ADDITIONAL COVERAGES, such as “DATA
3 RESTORATION,” specify that “[c]osts recoverable under this Additional Coverage are excluded
4 from coverage elsewhere in this Policy.” *Id.* at p. 18. However, the “Communicable Disease
5 Response” Additional Coverage does not specify that any costs recoverable under it are excluded
6 elsewhere in the All Risk Policy. *Id.* at p. 23. Accordingly, the All Risk Policy recognizes that
7 losses caused by the physical loss or damage to property that results from a communicable disease
8 may also be insured under other provisions.

9 207. The Onsite Communicable Disease Coverage, including any sublimits, do not apply
10 to limit any other coverage under the All Risk Policy, including physical damage resulting from or
11 caused by communicable disease in proximity to Covered Properties or Contingent Time Element
12 Locations.

13 208. Rather, coverage for physical loss and damage and/or resulting Time Element loss,
14 from or caused by communicable disease away from Covered Properties or Contingent Time
15 Element Locations, is subject to the policy limits associated with the coverage or coverages
16 implicated.

17 **FM Global Improperly Refuses to Provide Coverage in Bad Faith**

18 209. Aware that its All Risk Policy broadly affords coverage for losses arising from the
19 COVID-19 pandemic, FM Global devised a plan to steer its policyholders, including Golden, into
20 sublimited coverages that would not fully address the insured losses suffered.

21 210. FM Global executed that plan in response to Golden’s claim.

22 211. Golden provided timely notice to FM Global that it was presenting a claim for
23 coverage of its Losses under the All Risk Policy.

24 212. On or about March 29, 2020, Golden’s insurance broker, Marsh & McLennan
25 Agency, tendered Golden’s loss to FM Global, stating:

26 We write to provide you, under the above-captioned Policy and any
27 other insurance policies you issued, with notice of a new claim being
28 filed by your Insured(s). . . .

1 Closures and economic shutdown pursuant to government and
2 agency directives and orders resulting from the COVID-19 pandemic
3 and related events. These events have caused physical damage or
4 loss, affecting all aspects of business property and business personal
5 property impacting the ability to operate, resulting catastrophic loss
6 to the Insured(s). This claim and loss facts are unfolding hourly and
7 the Insured is developing additional facts and information to support
8 this claim to be submitted to the adjuster.

9 213. FM Global sent Golden a letter on April 20, 2020 acknowledging that COVID-19 is
10 a communicable disease, but reserving rights and failing to pay any portion of Golden's claim.

11 214. On June 6, 2020, Golden wrote to FM Global requesting Golden's position on the
12 applicability of various policy provisions, and asking for a formal coverage position. Golden
13 explained that its claim was based on the physical loss and/or physical damage to property caused
14 by, among other things, the presence of SARS-CoV-2 and/or COVID-19 at Golden's Covered
15 Properties and elsewhere, as well as related Closure Orders.

16 215. FM Global responded that COVID-19 does not constitute or cause physical loss or
17 damage such that the vast majority of Golden's losses would not be recoverable under the All Risk
18 Policy. FM Global ignored Golden's statements and, instead, focused on whether any employees
19 of Golden or other persons at Golden's Covered Properties had tested positive for COVID-19.

20 216. Golden has requested on multiple occasions that FM Global reconsider its coverage
21 position in light of the direct physical loss and damage it experienced and provided a preliminary
22 ongoing loss estimate. Yet FM Global has consistently stonewalled, reiterating its position that the
23 "threshold requirement for coverage has not been supported by Golden."

24 217. Most recently, on March 3, 2021, Golden responded to FM Global, providing a
25 Sworn Interim Proof of Loss pertaining to its ongoing losses and providing evidence of hundreds
26 of positive COVID-19 tests amongst its employees.

27 218. FM Global still has yet to acknowledge Golden's entitlement to coverage under the
28 All Risk Policy.

219. FM Global's response is part of a systematic claims-handling practice and procedure
that FM Global has deployed across all COVID-19 pandemic-related claims.

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1 220. FM Global’s systematic practice is outlined in a set of “Talking Points” (the “FM
2 Global Talking Points”), a copy of which is attached as Exhibit 2, which were prepared for FM
3 Global claim adjusters to use to ensure that they reach the same conclusion for all pandemic claims.

4 221. The FM Global Talking Points explicitly acknowledge that FM Global “ha[s] a wide
5 range of clients who may be affected in a variety of ways” by the COVID-19 pandemic. (FM
6 Global Talking Points, Ex. 2 at 1.)

7 222. The FM Global Talking Points outline only a few of the many different coverages
8 contained in its standard commercial property policies, including policies of the type FM Global
9 sold to Golden, that specifically afford coverage for COVID-19 pandemic claims.

10 223. The FM Global Talking Points outline certain specific “triggers” of coverage that
11 the adjuster should look for when investigating any COVID-19 pandemic claim. But the FM Global
12 Talking Points fail to include all of the different “triggers” of coverage that may be implicated by
13 COVID-19 pandemic claims.

14 224. The FM Global Talking Points expressly and unequivocally refuse to acknowledge
15 coverage under the All Risk Policy’s Civil or Military Authority coverage provision, despite the
16 fact that the FM Global policy form recognizes that “communicable disease” is a form of “Property
17 Damage” of the type insured. Specifically, the FM Global Talking Points state:

18 Q. Does coverage under Civil or Military Authority apply?

19 A. No

20 *Id.*

21 225. The FM Global Talking Points make similar statements with respect to the All Risk
22 Policy’s Contingent Time Element Extended coverage.

23 226. FM Global failed to conduct an investigation with respect to Golden’s claim to
24 determine whether Golden had in fact sustained physical loss or damage as a result of covered
25 losses. Instead, following the global practices outlined in the FM Global Talking Points, FM Global
26 has refused to consider the specific facts of Golden’s claim or the applicable law that governs
27 interpretation of the relevant insurance policy.

28 ///

1 227. As Golden has experienced firsthand, the FM Global Talking Points coach adjusters
2 to suggestively steer the policyholder toward the sublimited Onsite Communicable Disease
3 Coverage, which FM Global will then argue provides only a fraction of the coverage limits
4 otherwise available under the All Risk Policy.

5 228. As a result, it does not matter what facts and information Golden provides or
6 whether it conducts the burdensome and expensive diligence FM Global repeatedly requests in
7 order to “evaluate” Golden’s claims: FM Global has already made the strategic decision to deny
8 coverage requests made by insureds such as Golden.

9 229. The FM Global Talking Points contradict the accepted practices of good faith
10 insurance claim handling.

11 230. FM Global’s practice and procedure constitutes an unfair or deceptive act or practice
12 in the business of insurance.

13 231. FM Global’s use of the FM Global Talking Points reflects a conscious disregard of
14 the policyholder’s rights under the All Risk Policy.

15 232. FM Global continues to refuse to pay Golden’s claim and, therefore, has effectively
16 denied its claim.

17 233. FM Global knowingly or recklessly failed to conduct a reasonable investigation of
18 Golden’s claim and, therefore, the basis for FM Global’s conduct is unreasonable.

19 234. In refusing to acknowledge coverage for Golden’s claimed losses, FM Global knew
20 or recklessly disregarded the fact that it lacked any reasonable basis for its coverage position.

21 235. FM Global failed to faithfully apply its own All Risk Policy language, failed to
22 conduct a reasonable investigation, and failed to consider the facts relevant to Golden’s claim
23 against the All Risk Policy language as interpreted by Nevada law.

24 236. Because of FM Global’s bad faith conduct, including its wrongful refusal to
25 acknowledge coverage and inadequate claim investigation, Golden has suffered and continues to
26 suffer significant damages.

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1 **CAUSES OF ACTION**

2 **FIRST CAUSE OF ACTION**

3 **(Declaratory Judgment)**

4 237. Golden incorporates by reference the foregoing paragraphs.

5 238. Pursuant to the terms of the All Risk Policy, FM Global is obligated to pay up to
6 the applicable limit of liability for property damage or Time Element losses covered under the All
7 Risk Policy.

8 239. As detailed above, Golden's losses are covered under multiple coverages of the All
9 Risk Policy and are not excluded from coverage.

10 240. The All Risk Policy is a valid and enforceable contract between Golden and FM
11 Global.

12 241. An actual controversy presently exists between Golden and FM Global regarding
13 the obligations to Golden under the All Risk Policy for expenses or losses arising out of the
14 COVID-19 pandemic.

15 242. Pursuant to the Nevada Uniform Declaratory Judgment Act (NRS 30.010 *et seq.*),
16 Golden seeks an order declaring the parties' rights and duties under the All Risk Policy.

17 243. Golden has timely performed all conditions required under the All Risk Policy
18 including by providing prompt notice of its losses associated with SARS-CoV-2 and COVID-19.

19 244. Golden's losses associated with SARS-CoV-2 and/or COVID-19 are covered
20 under the All Risk Policy. Nevertheless, FM Global contends it is not obligated to pay Golden
21 for those losses.

22 245. Pursuant to the Nevada Uniform Declaratory Judgment Act, this Court should
23 enter a declaratory judgment in favor of Golden and against FM, declaring that Golden's losses
24 resulting from the physical loss or damage, either at or within five miles of the Covered
25 Properties and Contingent Time Element Locations, associated with SARS-CoV-2 and/or
26 COVID-19 are covered under the All Risk Policy and that FM Global is obligated to pay for such
27 losses under implicated coverages including, but not limited to:

28 ///

- 1 i. Loss or Damage to Property and Time Element Expenses;
- 2 ii. Civil or Military Authority;
- 3 iii. Ingress/Egress;
- 4 iv. Contingent Time Element Extended;
- 5 v. Response to Communicable Disease;
- 6 vi. Interruption by Communicable Disease;
- 7 vii. Expediting Costs & Extra Expenses;
- 8 viii. Attraction Property
- 9 ix. Leasehold Interest & Rental Insurance
- 10 x. Logistics Extra Cost
- 11 xi. Claims Preparation Costs
- 12 xii. Any other coverages the Court deems appropriate.

SECOND CAUSE OF ACTION

(Breach of Contract)

15 246. Golden incorporates by reference the foregoing paragraphs.

16 247. The All Risk Policy is a valid and enforceable contract between Golden and FM
17 Global.

18 248. Golden has timely performed all conditions required under the All Risk Policy,
19 including by providing prompt notice of its losses associated with SARS-CoV-2 and COVID-19.

20 249. FM Global has materially breached its obligations under the All Risk Policy by
21 refusing to pay for Golden's losses associated with SARS-CoV-2 and COVID-19.

22 250. As a direct and proximate result of FM Global's breach, Golden has sustained losses,
23 including interest thereon, and reasonable attorneys' fees and costs that Golden will continue to
24 incur. To date, these amounts total more than approximately \$130 million, with the exact amount
25 to be proven at trial.

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1 **THIRD CAUSE OF ACTION**

2 **(Violations of the Nevada Unfair Claims Practices Act, NRS 686A.310)**

3 251. Golden repeats and realleges the allegations set forth in the foregoing paragraphs of
4 this Complaint as if fully set forth herein.

5 252. It is an improper and unfair claims practice for an insurer transacting business in
6 Nevada to engage in certain activities in violation of NRS 686A.310, also known as the Nevada
7 Unfair Claims Practices Act (the "Act").

8 253. FM Global violated the Act by, among other things, failing to adopt and implement
9 reasonable standards for the prompt investigation and processing of claims.

10 254. FM Global violated the Act by, among other things, failing to effectuate prompt,
11 fair and equitable settlements of claims in which its liability has become reasonably clear.

12 255. FM Global violated the Act by, among other things, misrepresenting and failing to
13 disclose all pertinent benefits, coverages and other provisions of the insurance policy, and indeed,
14 advising Golden that its claim for coverage was unsupported.

15 256. FM Global's conduct constitutes oppression, fraud, and/or malice. Specifically, FM
16 Global, by acting as alleged above, consciously and without cause disregarded Golden's rights in
17 bad faith during a time of crisis as Golden sustained substantial losses.

18 257. As a direct and proximate result of FM Global's conduct, Plaintiff has suffered and
19 will continue to suffer damages in excess of \$15,000.00, in an amount to be determined at trial,
20 plus consequential damages, attorneys' fees, and pre- and post-judgment interest to the extent
21 permitted by law.

22 **FOURTH CAUSE OF ACTION**

23 **(Tortious Breach of the Covenant of Good Faith and Fair Dealing)**

24 258. Golden repeats and realleges the allegations set forth in the foregoing paragraphs of
25 this Complaint as if fully set forth herein.

26 259. The All Risk Policy is a valid contract between Golden and FM Global.

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1 260. Every contract imposes upon the contracting parties the duty of good faith and fair
2 dealing, which requires that one party refrain from conduct that would prevent the other party from
3 achieving its benefit of the bargain.

4 261. Golden justifiably expected that FM Global would compensate it for covered losses
5 and expenses pursuant to its All Risk Policy.

6 262. In tortious breach of the implied covenant of good faith and fair dealing, FM Global
7 committed the acts alleged above for the purpose of consciously withholding from Golden the rights
8 and benefits to which it is entitled under the All Risk Policy and without consideration of the interest
9 of Golden at least to the same as it considered its own interest. In doing so, FM Global breached
10 the spirit of the contract between it and Golden.

11 263. FM Global has a special fiduciary relationship with Golden by virtue of its status as
12 an insurer to Golden.

13 264. FM Global has breached the implied covenant of good faith and fair dealing by,
14 among other things (i) making burdensome requests for information with no intention of confirming
15 coverage under the All Risk Policy; (ii) refusing to confirm that it will pay for any of the covered
16 losses; (iii) misrepresenting facts in an attempt to explain its untenable position with respect to
17 coverage; and (iv) willfully ignoring facts that are contrary to its position in rejecting Golden's
18 claim.

19 265. FM Global's conduct constitutes oppression, fraud, and/or malice. Specifically, FM
20 Global, by acting as alleged above, consciously and without cause disregarded Golden's rights in
21 bad faith during a time of crisis as Golden sustained substantial losses. FM Global, by its conduct,
22 has rejected Golden's claim without any reasonable basis and with knowledge, or reckless disregard
23 of the fact, that no reasonable basis supports withholding payment for the claim. FM Global's acts
24 are inconsistent with the reasonable expectations of its insured and are contrary to established
25 claims practices and legal requirements and constitute bad faith.

26 266. As a direct and proximate result of FM Global's bad faith conduct, Golden has
27 suffered and will continue to suffer damages in an amount in excess of \$15,000, in an amount to be
28 determined at trial, plus consequential damages, punitive damages, attorneys' fees, and pre- and

1 post-judgment interest to the extent permitted by law.

2 **PRAYER**

3 WHEREFORE, Golden prays for judgment against FM Global as follows:

4 1. On the First Cause of Action, Golden prays:

- 5 a. for an order declaring that Golden's losses associated with SARS-CoV-2
6 and/or COVID-19 are covered under the All Risk Policy, and FM Global is
7 obligated to pay for those losses under the All Risk Policy; and
8 b. for attorneys' fees and costs, and such other relief as the Court deems just
9 and proper.

10 2. On the Second Cause of Action, Golden prays:

- 11 a. for an order declaring that FM Global has breached its obligations under
12 the All Risk Policy; and
13 b. for compensatory damages in excess of \$15,000 in an amount to be proven
14 at trial, including interest thereon, and attorneys' fees, costs and expenses;
15 and
16 c. for such other and further relief the Court deems just and proper.

17 3. On the Third Cause of Action, Golden prays:

- 18 a. for an order declaring that FM Global's conduct violates the Nevada Unfair
19 Claims Practices Act, NRS 686A.310;
20 b. for damages in an amount in excess of \$15,000, in an amount to be
21 determined at trial, plus consequential damages, attorneys' fees, punitive
22 damages, and pre- and post-judgment interest to the extent permitted by
23 law.

24 4. On the Fourth Cause of Action, Golden prays:

- 25 a. for an order declaring that FM Global has violated the implied covenant of
26 good faith and fair dealing;
27 b. for damages in an amount in excess of \$15,000, in an amount to be
28 determined at trial, plus consequential damages, punitive damages,

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attorneys' fees, punitive damages, and pre- and post-judgment interest to the extent permitted by law.

5. For all Causes of Action, all pre-judgment and post-judgment interest as allowed by law and all of Golden's costs incurred as a consequence of having to prosecute this lawsuit, including attorneys' fees and such other and further relief as the Court deems just and proper.

JURY DEMAND

In accordance with NRCP 38(b) Plaintiff demands a trial by jury on all issues so triable.

Dated this 10th day of March, 2021.

BROWNSTEIN HYATT FARBER
SCHRECK, LLP

By: /s/ Frank M. Flansburg III

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Co-Attorneys for Plaintiff

EXHIBIT 1



Factory Mutual Insurance Company
 P.O. Box 7500
 Johnston, Rhode Island 02919
 1-800-343-7722

MUTUAL CORPORATION NON-ASSESSABLE POLICY

DECLARATIONS

Policy No. 1062764	Previous Policy No. 1046034	DATE OF ISSUE 27 November 2019
Account No. 1-59645	Replaces Binder No.	

In consideration of this Policy's Provisions, Conditions, Stipulations, Exclusions and Limits of Liability, and of premium charged, Factory Mutual Insurance Company, hereafter referred to as the Company, does insure:

<p>INSURED:</p> <p>Golden Entertainment, Inc.</p> <p>(For Complete Title See Policy)</p>
--

The term of this Policy is from the 1st day of December, 2019 to the 1st day of December, 2020 at 12:01 a.m., Standard Time, at the Locations of property involved as provided in this Policy.

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

By virtue of this Policy and any other policies purchased from the Company being in force, the Insured becomes a member of the Company, subject to the provisions of its charter and by-laws, and is entitled to one vote either in person or by proxy at any and all meetings of said Company.

Assignment of this Policy will not be valid except with the written consent of the Company.

This Policy is made and accepted subject to the above provisions and those hereinafter stated, which are made a part of this Policy, together with such other provisions and agreements as may be added to this Policy.

In Witness, this Company has issued this Policy at its office in the city of Johnston, R. I. this 27th day of November, 2019.

Authorized Signature

Secretary

President

Countersigned (if required) this _____ day of _____ Agent



Factory Mutual Insurance Company
Johnston, Rhode Island
A Mutual Corporation

This policy is Non-Assessable.

It is important that the written portions of all policies covering the same property read exactly alike. If they do not, they should be made uniform at once.

In case of loss notify the company or its local agent at once in writing.

This policy is issued by a mutual company having special regulations lawfully applicable to its organization, membership, policies, or contracts of insurance of which the following shall apply to and form a part of this policy.

EXTRACTS FROM CHARTER OF THIS COMPANY
Granted by the General Assembly of the State of Rhode Island

SECTION 5: Except as hereinafter specifically provided, each natural person, partnership, association, corporation or legal entity insured on the mutual plan by the Corporation shall be a member of the Corporation during the term of its policy but no longer, and at all meetings of the members shall be entitled to one vote either in person or by proxy, provided, however, that where there is more than one insured under any policy, such insureds shall nevertheless be deemed to be a single member of the Corporation for all purposes. The Corporation may issue policies which do not entitle the insured to membership in the Corporation nor to participate in its surplus.

SECTION 10: Upon the termination of the membership of any member, all his or its right and interest in the surplus, reserves and other assets of the Corporation shall forthwith cease.

EXTRACTS FROM THE BY-LAWS OF THIS COMPANY
Adopted July 13, 2000

ARTICLE 1 - MEETINGS OF THE MEMBERS

SECTION 1. Annual Meeting

The annual meeting of the members shall be held at the principal offices of the Company, or at such other place as may be stated in the notice of the meeting, at 9:00 a.m. on the second Thursday of April in each year, for the election of directors and the transaction of such other business as may be brought before the meeting. If the annual meeting is omitted on the day herein provided therefor, a special meeting may be held in place thereof; and any business transacted or elections held at such special meeting shall be as effective as if transacted or held at the annual meeting.



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SCHEDULE OF LOCATIONS..... APPENDIX A
SUPPLEMENTAL UNITED STATES CERTIFIED ACT OF TERRORISM ENDORSEMENT, FORM
FMG7308



DECLARATIONS

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

1. NAMED INSURED AND MAILING ADDRESS

Golden Entertainment, Inc. and any subsidiary, and Golden Entertainment, Inc.'s interest in any partnership or joint venture in which Golden Entertainment, Inc. has management control or ownership as now constituted or hereafter is acquired, as the respective interest of each may appear; all hereafter referred to as the "Insured," including legal representatives.

6595 South Jones Boulevard
Las Vegas, NV 89118

2. POLICY DATES

The term of this Policy is:

FROM: 01 December, 2019 at 12:01 a.m., Standard Time;
TO: 01 December, 2020 at 12:01 a.m., Standard Time,

at the **location** of property involved as provided in this Policy.

3. INSURANCE PROVIDED

The coverage under this Policy applies to property described on the Schedule of Locations or covered under the terms and conditions of the AUTOMATIC COVERAGE, ERRORS AND OMISSIONS or MISCELLANEOUS PROPERTY provisions, unless otherwise provided.

Schedule of Locations are as listed on the Schedule of Locations attached to this Policy.

4. PREMIUM

This Policy is issued in consideration of an initial premium.

5. PREMIUM PAYABLE

Marsh & McLennan Insurance Agency LLC pays the premium under this Policy, and any return of the paid premium accruing under this Policy will be paid to the account of Marsh & McLennan Insurance Agency LLC.

6. LOSS ADJUSTMENT/PAYABLE

Loss, if any, will be adjusted with and payable to Golden Entertainment, Inc., or as may be directed by Golden Entertainment, Inc.



Additional insured interests will also be included in loss payment as their interests may appear when named as additional named insured, lender, mortgagee and/or loss payee either on a Certificate of Insurance or other evidence of insurance on file with the Company or named below.

When named on a Certificate of Insurance or other evidence of insurance, such additional interests are automatically added to this Policy as their interests may appear as of the effective date shown on the Certificate of Insurance or other evidence of insurance. The Certificate of Insurance or other evidence of insurance will not amend, extend or alter the terms, conditions, provisions and limits of this Policy.

The following additional interest is added to the Policy as Mortgagee as their interests may appear.

US Bank
ATTN: Corporation Loan Servicing Center
Commercial Collateral
P.O. Box 5308
Portland, OR 97228-5308
Loan No. 6517569118

As respects their interest in loss of rents, per the lease contract, at the following:

<u>Location No.</u>	<u>Location Description</u>
00001	347 North Nellis Boulevard Las Vegas, Nevada, 89110-5323

Adding such additional interest(s) does not amend, extend or alter the terms, conditions or provisions of this Policy.

7. TERRITORY

Coverage as provided under this Policy applies in Canada, the United States of America and the Commonwealth of Puerto Rico.

8. JURISDICTION

This Policy will be governed by the laws of the United States of America.

Any disputes arising hereunder will be exclusively subject to the jurisdiction of the United States of America.

9. CURRENCY

All amounts, including deductibles, premiums and limits of liability, indicated in this Policy shall be in the currency represented by the three letter currency designation shown. This three letter currency designator is defined in Table A.1-Currency and funds code list, International Organization for Standardization (ISO) 4217, edition in effect at the inception of this Policy.

10. LIMITS OF LIABILITY

The Company’s maximum limit of liability in an **occurrence**, including any insured TIME ELEMENT loss, will not exceed the Policy limit of liability of USD 1,100,000,000, not to exceed USD 250,000,000 for TIME ELEMENT loss, subject to the following provisions:

- A. Limits of liability and time limits stated below or elsewhere in this Policy are part of, and not in addition to, the Policy limit of liability.
- B. Limits of liability apply per **occurrence**, unless otherwise stated.
- C. Limits of liability in an **occurrence** apply to the total loss or damage at all **locations** and for all coverages involved, including any insured TIME ELEMENT loss, subject to the following provisions:
 - 1) when a limit of liability applies as an **annual aggregate**, the Company’s maximum amount payable will not exceed such limit of liability during any policy year.
 - 2) when a limit of liability applies to a **location** or other specified property, such limit of liability will be the maximum amount payable for all loss or damage at all **locations** arising from physical loss or damage at such **location** or to such other specified property.
- D. Should an **occurrence** result in liability payable under more than one policy issued to the Named Insured by the Company, or its **representative company(ies)**, the maximum amount payable in the aggregate under all such policies will be the applicable limit(s) of liability indicated in this Policy.

Applicable Limits of Liability/Time Limits:

ATTRACTION PROPERTY	30 days
AUTOMATIC COVERAGE	90 days, not to exceed USD 100,000,000 per location
CIVIL OR MILITARY AUTHORITY	30 days
CLAIMS PREPARATION COSTS	USD 500,000
COMMUNICABLE DISEASE RESPONSE	USD 1,000,000 annual aggregate The Company’s maximum limit of liability for INTERRUPTION BY COMMUNICABLE DISEASE and this coverage combined shall not exceed USD 1,000,000 annual aggregate .
CONTINGENT TIME ELEMENT EXTENDED	USD 25,000,000

CRISIS MANAGEMENT	30 days
cyber event	<ol style="list-style-type: none"> 1. USD 1,000,000 annual aggregate for DATA RESTORATION and OWNED NETWORK INTERRUPTION combined 2. USD 1,000,000 annual aggregate for DATA SERVICE PROVIDER PROPERTY DAMAGE and DATA SERVICE PROVIDER TIME ELEMENT combined 3. USD 25,000,000 annual aggregate for physical loss or damage to stock in process or finished goods manufactured by or for the Insured caused by or resulting from a cyber event that impacts the processing, manufacturing, or testing of such property or while it is otherwise being worked on
DATA RESTORATION	USD 10,000,000 annual aggregate
DATA SERVICE PROVIDER PROPERTY DAMAGE and DATA SERVICE PROVIDER TIME ELEMENT combined	USD 5,000,000 annual aggregate
earth movement	<p>USD 100,000,000 annual aggregate, not to exceed the following:</p> <ol style="list-style-type: none"> 1. USD 20,000,000 annual aggregate for Location No. 00024 and 00040 as described on the Schedule of Locations combined
ERRORS AND OMISSIONS	USD 100,000,000
EXPEDITING COSTS and EXTRA EXPENSE combined	USD 100,000,000
EXTENDED PERIOD OF LIABILITY	365 days
fine arts	USD 100,000,000, not to exceed USD 10,000 per item for irreplaceable fine arts not on a schedule on file with the Company
finances or penalties for breach of contract or for late or noncompletion of orders combined	USD 100,000

fairways, putting greens, tee boxes and amending soil	USD 1,000,000
flood	USD 100,000,000
GROSS PROFIT	12 months, not to exceed 60 days for Ordinary Payroll
INGRESS/EGRESS	30 days
INTERRUPTION BY COMMUNICABLE DISEASE	365 days, not to exceed USD 1,000,000 annual aggregate The Company's maximum limit of liability for COMMUNICABLE DISEASE RESPONSE and this coverage combined shall not exceed USD 1,000,000 annual aggregate .
LAND AND WATER CONTAMINANT CLEANUP, REMOVAL AND DISPOSAL	USD 250,000 annual aggregate
LOCKS AND KEYS	USD 500,000
LOGISTICS EXTRA COST	180 days, not to exceed 200% of the normal cost
MISCELLANEOUS PROPERTY	1. USD 10,000,000 per location for property at a location 2. USD 10,000,000 for property not at a location
Ordinary Payroll	60 days
SERVICE INTERRUPTION PROPERTY DAMAGE and SERVICE INTERRUPTION TIME ELEMENT combined	USD 20,000,000
TENANT'S LEGAL LIABILITY	USD 500,000
TERRORISM	USD 5,000,000 annual aggregate , not to exceed the following: 1. USD 5,000,000 annual aggregate for AUTOMATIC COVERAGE, ERRORS AND OMISSIONS, MISCELLANEOUS PROPERTY and TEMPORARY REMOVAL OF PROPERTY combined

	<p>2. USD 5,000,000 annual aggregate for flood when caused by or resulting from terrorism</p> <p>The limits for TERRORISM shall not include the actual cash value portion of fire damage caused by terrorism.</p> <p>The limits for TERRORISM do not apply to the SUPPLEMENTAL UNITED STATES CERTIFIED ACT OF TERRORISM ENDORSEMENT(S).</p>
valuable papers and records	USD 100,000,000, not to exceed USD 10,000 per item for irreplaceable valuable papers and records not on a schedule on file with the Company

11. DEDUCTIBLES

Subject to the deductible general provisions stated below, in each case of loss covered by this Policy the following deductibles apply per **occurrence**, for all coverages involved, unless otherwise stated:

Location No. 00092 as described on the Schedule of Locations	USD 500,000
Location No. 00093 as described on the Schedule of Locations	USD 500,000
Location No. 00094 as described on the Schedule of Locations	USD 500,000
Location No. 00095 as described on the Schedule of Locations	USD 500,000
Location No. 00105 as described on the Schedule of Locations	USD 250,000
Location No. 00106 as described on the Schedule of Locations	USD 250,000
earthquake	<p>USD 100,000 per location except for the following:</p> <p>For property located at Location No. 00024 and 00040 as described on the Schedule of Locations:</p> <p>Property Damage: 5% per location Time Element: 5% per location</p>

	<p>The above are subject to a minimum of USD 100,000 for Property Damage and Time Element combined per location.</p> <p>For property located at Location No. 00092, 00093, 00094, and 00095 as described on the Schedule of Locations:</p> <p>USD 500,000 per location</p>
flood	<p>USD 100,000 per location except for the following:</p> <p>USD 500,000 per location for Location No. 00093 as described on the Schedule of Locations subject to the National Flood Insurance Program provision in the OTHER INSURANCE clause of this Policy</p> <p>USD 500,000 per location for Location No. 00092, 00094, 00095, 00105 and 00106 as described on the Schedule of Locations</p>
LOGISTICS EXTRA COST	USD 10,000
All Other Loss	USD 10,000

Deductible General Provisions:

In each case of loss covered by this Policy, the Company will be liable only if the Insured sustains a loss, including any insured TIME ELEMENT loss, in a single **occurrence** greater than the applicable deductible specified above, and only for its share of that greater amount.

- A. For SERVICE INTERRUPTION loss, when a deductible is not specifically stated as applying to SERVICE INTERRUPTION, the deductible applied to the SERVICE INTERRUPTION loss will be the deductible that would apply if the cause of the interruption happened at the insured **location** that sustains the interruption of the specified services.
- B. For CONTINGENT TIME ELEMENT EXTENDED loss, when a deductible is not specifically stated as applying to CONTINGENT TIME ELEMENT EXTENDED, the deductible for CONTINGENT TIME ELEMENT EXTENDED loss will be determined as though the **contingent time element location** was an insured **location** under this Policy.
- C. The stated earthquake deductible will be applied to earthquake loss. The stated **flood** deductible will be applied to **flood** loss. The stated **wind** deductible will be applied to **wind** loss. The provisions of item E below will also be applied to each.

- D. When this Policy insures more than one **location**, the deductible will apply against the total loss covered by this Policy in an **occurrence** except that a deductible that applies on a per **location** basis, if specified, will apply separately to each **location** where the physical damage happened regardless of the number of **locations** involved in the **occurrence**.
- E. Unless stated otherwise, if two or more deductibles apply to an **occurrence**, the total to be deducted will not exceed the largest deductible applicable. For the purposes of this provision, when a separate Property Damage and a separate Time Element deductible apply, the sum of the two deductibles will be considered a single deductible. If two or more deductibles apply on a per **location** basis in an **occurrence**, the largest deductible applying to each **location** will be applied separately to each such **location**.
- F. When a % deductible is stated above, whether separately or combined, the deductible is calculated as follows:

Property Damage – % of the value, per the Valuation clause(s) of the PROPERTY DAMAGE section, of the property insured at the **location** where the physical damage happened.

Time Element – % of the full Time Element values that would have been earned in the 12 month period following the **occurrence** by use of the facilities at the **location** where the physical damage happened, plus that proportion of the full Time Element values at all other **locations** where TIME ELEMENT loss ensues that was directly affected by use of such facilities and that would have been earned in the 12 month period following the **occurrence**.

- G. For insured physical loss or damage:
- 1) to insured fire protection equipment; or
 - 2) from water or other substance discharged from fire protection equipment of the type insured,

the applicable deductible applying to items 1 or 2 above only will be reduced by fifty percent (50%), per **occurrence**. However, this provision will not apply to loss or damage resulting from fire or **earth movement** regardless of whether claim is made for such fire or **earth movement**.

PROPERTY DAMAGE

1. INSURED PROPERTY

This Policy insures the following property, unless otherwise excluded elsewhere in this Policy, as described in the INSURANCE PROVIDED provision or within 1,000 feet/300 metres thereof, to the extent of the interest of the Insured in such property:

- A. Real Property, including new buildings and additions under construction, in which the Insured has an insurable interest.
- B. Personal Property:
 - 1) owned by the Insured.
 - 2) consisting of the Insured's interest as a tenant in improvements and betterments. In the event of physical loss or damage, the Company agrees to accept and consider the Insured as sole and unconditional owner of improvements and betterments, notwithstanding any contract or lease to the contrary.
 - 3) of officers and employees of the Insured.
 - 4) of others in the Insured's custody to the extent the Insured is under obligation to keep insured for physical loss or damage insured by this Policy.
 - 5) of others in the Insured's custody to the extent of the Insured's legal liability for insured physical loss or damage to Personal Property. The Company will defend that portion of any suit against the Insured that alleges such liability and seeks damages for such insured physical loss or damage. The Company may, without prejudice, investigate, negotiate and settle any claim or suit as the Company deems expedient.

This Policy also insures the interest of contractors and subcontractors in insured property during construction at an insured **location** or within 1,000 feet/300 metres thereof, to the extent of the Insured's legal liability for insured physical loss or damage to such property. Such interest of contractors and subcontractors is limited to the property for which they have been hired to perform work and such interest will not extend to any TIME ELEMENT coverage provided under this Policy.

2. EXCLUDED PROPERTY

The following exclusions apply unless otherwise stated in this Policy:

This Policy excludes:

- A. currency, money, notes or securities.
- B. precious metal in bullion form.

- C. land and any substance in or on land. However, this exclusion does not apply to:
 - 1) landscape gardening.
 - 2) car parks, parking lots, pavement, roadways, railways, transformer enclosures or walkways.
 - 3) fill beneath car parks, parking lots, pavement, roadways, railways, transformer enclosures, walkways, or buildings and structures.
- D. water. However, this exclusion does not apply to:
 - 1) water that is contained within any enclosed tank, piping system or any other processing equipment.
- E. animals, standing timber or growing crops.
- F. watercraft or aircraft, except when unfueled and manufactured by the Insured.
- G. vehicles of officers or employees of the Insured or vehicles otherwise insured for physical loss or damage.
- H. underground mines or mine shafts or any property within such mine or shaft.
- I. dams or dikes.
- J. property in transit, except as otherwise provided by this Policy.
- K. property sold by the Insured under conditional sale, trust agreement, installment plan or other deferred payment plan after delivery to customers, except as provided by the INSTALLMENT OR DEFERRED PAYMENTS coverage of this Policy.
- L. electronic data, programs or software, except when incorporated into physical goods intended to be sold as:
 - 1) finished goods manufactured by the Insured; or
 - 2) other merchandise not manufactured by the Insured,or as otherwise provided by the DATA RESTORATION coverage of this Policy.

3. EXCLUSIONS

In addition to the exclusions elsewhere in this Policy, the following exclusions apply unless otherwise stated:

- A. This Policy excludes:
 - 1) indirect or remote loss or damage.

- 2) interruption of business, except to the extent provided by this Policy.
- 3) loss of market or loss of use.
- 4) loss or damage or deterioration arising from any delay.
- 5) mysterious disappearance, loss or shortage disclosed on taking inventory, or any unexplained loss.
- 6) loss from enforcement of any law or ordinance:
 - a) regulating the construction, repair, replacement, use or removal, including debris removal, of any property; or
 - b) requiring the demolition of any property, including the cost in removing its debris;

except as provided by the DECONTAMINATION COSTS and LAW AND ORDINANCE coverages of this Policy.
- 7) loss resulting from the voluntary parting with title or possession of property if induced by any fraudulent act or by false pretence.

B. This Policy excludes loss or damage directly or indirectly caused by or resulting from any of the following regardless of any other cause or event, whether or not insured under this Policy, contributing concurrently or in any other sequence to the loss:

- 1) nuclear reaction or nuclear radiation or radioactive contamination. However:
 - a) if physical damage by fire or sprinkler leakage results, then only that resulting damage is insured; but not including any loss or damage due to nuclear reaction, radiation or radioactive contamination.
 - b) this Policy does insure physical damage directly caused by sudden and accidental radioactive contamination, including resultant radiation damage, from material used or stored or from processes conducted on the insured **location**, provided that on the date of loss, there is neither a nuclear reactor nor any new or used nuclear fuel on the insured **location**. This coverage does not apply to any act, loss or damage excluded in item B2f of this EXCLUSIONS clause.

This exclusion B1 and the exceptions in B1a and B1b do not apply to any act, loss or damage which also comes within the terms of exclusion B2b of this EXCLUSIONS clause.

- 2) 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 by any:
 - (i) government or sovereign power (de jure or de facto);

- (ii) military, naval or air force; or
- (iii) agent or authority of any party specified in i or ii above.
- b) discharge, explosion or use of any nuclear device, weapon or material employing or involving nuclear fission, fusion or radioactive force, whether in time of peace or war and regardless of who commits the act.
- c) insurrection, rebellion, revolution, civil war, usurped power, or action taken by governmental authority in hindering, combating or defending against such an event.
- d) seizure or destruction under quarantine or custom regulation, or confiscation by order of any governmental or public authority.
- e) risks of contraband, or illegal transportation or trade.
- f) **terrorism**, including action taken to prevent, defend against, respond to or retaliate against **terrorism** or suspected **terrorism**, except to the extent provided in the **TERRORISM** coverage of the Policy. However, if direct loss or damage by fire results from any of these acts (unless committed by or on behalf of the Insured), then this Policy covers only to the extent of the **actual cash value** of the resulting direct loss or damage by fire to property insured. This coverage exception for such resulting fire loss or damage does not apply to:
 - (i) direct loss or damage by fire which results from any other applicable exclusion in the Policy, including the discharge, explosion or use of any nuclear device, weapon or material employing or involving nuclear fission, fusion or radioactive force, whether in time of peace or war and regardless of who commits the act.
 - (ii) any coverage provided in the **TIME ELEMENT** section of this Policy or to any other coverages provided in this Policy.

Any act which satisfies the definition of **terrorism** shall not be considered to be vandalism, malicious mischief, riot, civil commotion, or any other risk of physical loss or damage covered elsewhere in this Policy.

If any act which satisfies the definition of **terrorism** also comes within the terms of item B2a of this **EXCLUSIONS** clause then item B2a applies in place of this item B2f exclusion.

If any act which satisfies the definition of **terrorism** also comes within the terms of item B2b of this **EXCLUSIONS** clause then item B2b applies in place of this item B2f exclusion.

If any act which satisfies the definition of **terrorism** also comes within the terms of item B2c of this **EXCLUSIONS** clause then item B2c applies in place of this item B2f exclusion.

If any act excluded herein involves nuclear reaction, nuclear radiation or radioactive contamination, this item B2f exclusion applies in place of item B1 of this EXCLUSIONS clause.

- 3) any dishonest act, including but not limited to theft, committed alone or in collusion with others, at any time:
 - a) by an Insured or any proprietor, partner, director, trustee, officer, or employee of an Insured; or
 - b) by any proprietor, partner, director, trustee, or officer of any business or entity (other than a common carrier) engaged by an Insured to do anything in connection with property insured under this Policy.

This Policy does insure acts of direct insured physical damage intentionally caused by an employee of an Insured or any individual specified in b above, and done without the knowledge of the Insured. This coverage does not apply to any act excluded in B2f of this EXCLUSIONS clause. In no event does this Policy cover loss by theft by any individual specified in a or b above.

- 4) lack of the following services:
 - a) incoming electricity, fuel, water, gas, steam or refrigerant;
 - b) outgoing sewerage;
 - c) incoming or outgoing voice, data or video,

all when caused by an event off the insured **location**, except as provided in the DATA SERVICE PROVIDER and SERVICE INTERRUPTION coverages of this Policy. But, if the lack of such a service directly causes insured physical damage on the insured **location**, then only that resulting damage is insured.

- 5) **earth movement** for property located in **high hazard zones for earth movement**.

C. This Policy excludes the following, but, if physical damage not excluded by this Policy results, then only that resulting damage is insured:

- 1) faulty workmanship, material, construction or design from any cause.
- 2) loss or damage to stock or material attributable to manufacturing or processing operations while such stock or material is being processed, manufactured, tested, or otherwise worked on.
- 3) deterioration, depletion, rust, corrosion or erosion, wear and tear, inherent vice or latent defect.

- 4) settling, cracking, shrinking, bulging, or expansion of:
 - a) foundations (including any pedestal, pad, platform or other property supporting machinery).
 - b) floors.
 - c) pavements.
 - d) walls.
 - e) ceilings.
 - f) roofs.
- 5) a) changes of temperature damage (except to machinery or equipment); or
b) changes in relative humidity damage,
all whether atmospheric or not.
- 6) insect, animal or vermin damage.
- 7) loss or damage to the interior portion of buildings under construction from rain, sleet or snow, whether or not driven by wind, when the installation of the roof, walls or windows of such buildings has not been completed.

- D. This Policy excludes the following unless directly resulting from other physical damage not excluded by this Policy:
- 1) **contamination**, and any cost due to **contamination** including the inability to use or occupy property or any cost of making property safe or suitable for use or occupancy. If **contamination** due only to the actual not suspected presence of **contaminant(s)** directly results from other physical damage not excluded by this Policy, then only physical damage caused by such **contamination** may be insured. This exclusion D1 does not apply to radioactive contamination which is excluded elsewhere in this Policy.
 - 2) shrinkage.
 - 3) changes in color, flavor, texture or finish.

4. APPLICATION OF POLICY TO DATE OR TIME RECOGNITION

With respect to situations caused by any **date or time recognition** problem by **electronic data processing equipment or media** (such as the so-called Year 2000 problem), this Policy applies as follows.

- A. This Policy does not pay for remediation, change, correction, repair or assessment of any **date or time recognition** problem, including the Year 2000 problem, in any **electronic data processing equipment or media**, whether preventative or remedial, and whether before or after a loss, including temporary protection and preservation of property. This Policy does not pay for any TIME ELEMENT loss resulting from the foregoing remediation, change, correction, repair or assessment.
- B. Failure of **electronic data processing equipment or media** to correctly recognize, interpret, calculate, compare, differentiate, sequence, access or process data involving one or more dates or times, including the Year 2000, is not insured physical loss or damage. This Policy does not pay for any such incident or for any TIME ELEMENT loss resulting from any such incident.

Subject to all of its terms and conditions, this Policy does pay for physical loss or damage not excluded by this Policy that results from a failure of **electronic data processing equipment or media** to correctly recognize, interpret, calculate, compare, differentiate, sequence, access or process data involving one or more dates or times, including the Year 2000. Such covered resulting physical loss or damage does not include any loss, cost or expense described in A or B above. If such covered resulting physical loss or damage happens, and if this Policy provides TIME ELEMENT coverage, then, subject to all of its terms and conditions, this Policy also covers any insured Time Element loss directly resulting therefrom.

5. VALUATION

Adjustment of the physical loss amount under this Policy will be computed as of the date of loss at the place of the loss, and for no more than the interest of the Insured.

Unless stated otherwise in an Additional Coverage, adjustment of physical loss to property will be subject to the following:

- A. On stock in process, the value of raw materials and labor expended plus the proper proportion of overhead charges.
- B. On finished goods manufactured by the Insured, the regular cash selling price, less all discounts and charges to which the finished goods would have been subject had no loss happened.
- C. On raw materials, supplies or other merchandise not manufactured by the Insured:
 - 1) if repaired or replaced, the actual expenditure incurred in repairing or replacing the damaged or destroyed property; or
 - 2) if not repaired or replaced, the **actual cash value**.
- D. On exposed films, records, manuscripts and drawings that are not **valuable papers and records**, the value blank plus the cost of copying information from back-up or from originals of a previous generation. These costs will not include research, engineering or any costs of restoring or recreating lost information.

- E. On property that is damaged by fire and such fire is the result of **terrorism**, the **actual cash value** of the fire damage loss. Any remaining fire damage loss shall be adjusted according to the terms and conditions of the Valuation clause(s) in this section of the Policy and shall be subject to the limit(s) of liability for **TERRORISM**, and if stated the limit of liability for **SUPPLEMENTAL UNITED STATES CERTIFIED ACT OF TERRORISM ENDORSEMENT(S)**, as shown in the **LIMITS OF LIABILITY** clause in the **DECLARATIONS** section.
- F. On all other property, the lesser of the following:
- 1) The cost to repair.
 - 2) The cost to rebuild or replace on the same site with new materials of like size, kind and quality.
 - 3) The cost in rebuilding, repairing or replacing on the same or another site, but not to exceed the size and operating capacity that existed on the date of loss.
 - 4) The selling price of real property or machinery and equipment, other than stock, offered for sale on the date of loss.
 - 5) The cost to replace unrepairable electrical or mechanical equipment, including computer equipment, with equipment that is the most functionally equivalent to that damaged or destroyed, even if such equipment has technological advantages and/or represents an improvement in function and/or forms part of a program of system enhancement.
 - 6) The increased cost of demolition, if any, directly resulting from insured loss, if such property is scheduled for demolition.
 - 7) The unamortized value of improvements and betterments, if such property is not repaired or replaced at the Insured's expense.
 - 8) The **actual cash value** if such property is:
 - a) useless to the Insured; or
 - b) not repaired, replaced or rebuilt on the same or another site within two years from the date of loss, unless such time is extended by the Company.

The Insured may elect not to repair or replace the insured real or personal property lost, damaged or destroyed. Loss settlement may be elected on the lesser of repair or replacement cost basis if the proceeds of such loss settlement are expended on other capital expenditures related to the Insured's operations within two years from the date of loss. As a condition of collecting under this item, such expenditure must be unplanned as of the date of loss and be made at an insured **location** under this Policy. This item does not extend to **LAW AND ORDINANCE**.

6. ADDITIONAL COVERAGES

This Policy includes the following Additional Coverages for insured physical loss or damage.

These Additional Coverages:

- 1) are subject to the applicable limit of liability;
 - 2) will not increase the Policy limit of liability; and
 - 3) are subject to the Policy provisions, including applicable exclusions and deductibles,
- all as shown in this section and elsewhere in this Policy.

CYBER ADDITIONAL COVERAGES

A. DATA RESTORATION

This Policy covers insured **physical loss or damage to electronic data, programs or software**.

With respect to **physical loss or damage to electronic data, programs or software** caused by or resulting from a **cyber event**, this Additional Coverage will apply when the time to recreate or restore such data, programs or software with due diligence and dispatch is in excess of 48 hours.

For the purposes of this Additional Coverage, insured data, programs or software can be anywhere worldwide, including while in transit, except in Cuba, Iran, North Korea, Sudan, Syria or Crimea Region of Ukraine.

This Additional Coverage also covers:

- 1) the cost of the following reasonable and necessary actions taken by the Insured provided such actions are taken due to actual insured **physical loss or damage to electronic data, programs or software**:
 - a) actions to temporarily protect and preserve insured electronic data, programs or software.
 - b) actions taken for the temporary repair of insured **physical loss or damage to electronic data, programs or software**.
 - c) actions taken to expedite the permanent repair or replacement of such damaged property.
- 2) the reasonable and necessary costs incurred by the Insured to temporarily protect or preserve insured electronic data, programs or software against immediately impending insured **physical loss or damage to electronic data, programs or software**. In the event that there is no physical loss or damage, the costs covered under this item will be

subject to the deductible that would have applied had there been such physical loss or damage.

Costs recoverable under this Additional Coverage are excluded from coverage elsewhere in this Policy.

This Additional Coverage excludes loss or damage to data, programs or software when incorporated into physical goods intended to be sold as:

- 1) finished goods manufactured by the Insured; or
- 2) other merchandise not manufactured by the Insured.

DATA RESTORATION Exclusions: As respects DATA RESTORATION, the following applies:

- 1) the exclusions in the EXCLUSIONS clause of this section do not apply except for A1, A2, A6, B1, B2, B3a, B4 and B5.
- 2) the following additional exclusions apply:

This Policy excludes the following, but, if physical damage not excluded by this Policy results, then only that resulting damage is insured:

- a) errors or omissions in processing or copying.
- b) loss or damage to data, programs or software from errors or omissions in programming or machine instructions.
- c) deterioration, inherent vice, vermin or wear and tear.

DATA RESTORATION Valuation: On property covered under this Additional Coverage the loss amount will not exceed:

- 1) the cost to repair, replace or restore data, programs or software including the costs to recreate, research and engineer;
- 2) if not repaired, replaced or restored within two years from the date of loss, the blank value of the media.

B. DATA SERVICE PROVIDER PROPERTY DAMAGE

This Policy covers insured physical loss or damage to insured property at an insured **location** when such physical loss or damage results from the interruption of **off-premises data processing or data transmission services** by reason of any accidental event at the facilities of the provider of such services that immediately prevents in whole or in part the delivery of such provided services.

For the purposes of this Additional Coverage:

- 1) facilities of the provider of **off-premises data processing or data transmission services** can be located worldwide except in Cuba, Iran, North Korea, Sudan, Syria or Crimea Region of Ukraine, and
- 2) an accidental event to satellites will be considered an accidental event at the facilities of the provider.

This Additional Coverage will apply when the period of interruption of **off-premises data processing or data transmission services** as described below is in excess of 24 hours.

The period of interruption of **off-premises data processing or data transmission services** is the period starting with the time when an interruption of provided services happens; and ending when with due diligence and dispatch the service could be wholly restored.

Additional General Provisions:

- 1) The Insured will immediately notify the company providing **off-premises data processing or data transmission services** of any interruption of such services.
- 2) The Company will not be liable if the interruption of such services is caused directly or indirectly by the failure of the Insured to comply with the terms and conditions of any contracts the Insured has entered into for such specified services.

DATA SERVICE PROVIDER PROPERTY DAMAGE Exclusions: As respects DATA SERVICE PROVIDER PROPERTY DAMAGE, the following applies:

- 1) Items B4 and C5 of the EXCLUSIONS clause in this section do not apply except for B4 with respect to:
 - a) incoming electricity, fuel, water, gas, steam or refrigerant; and
 - b) outgoing sewerage.
- 2) The following additional exclusions apply:

This Policy excludes loss or damage directly or indirectly caused by or resulting from the following regardless of any other cause or event, whether or not insured under this Policy, contributing concurrently or in any other sequence to the loss:

- a) **earth movement** for property located in the **New Madrid Seismic Zone** or in the **Pacific Northwest Seismic Zone**.
- b) **terrorism**.

OTHER ADDITIONAL COVERAGES

A. ACCIDENTAL INTERRUPTION OF SERVICES

This Policy covers physical damage resulting from changes in temperature or relative humidity to insured property at an insured **location** when such changes in temperature or relative humidity result from the interruption of services consisting of electricity, gas, fuel, steam, water or refrigeration by reason of any accidental event, other than insured physical loss or damage, at the insured **location**.

This Additional Coverage will apply when the period of service interruption as described below is in excess of 24 hours.

The period of service interruption is the period starting with the time when an interruption of specified services happens; and ending when with due diligence and dispatch the service could be wholly restored.

B. ACCOUNTS RECEIVABLE

This Policy covers the following directly resulting from insured physical loss or damage to accounts receivable records while anywhere within this Policy's TERRITORY, including while in transit:

- 1) any shortage in the collection of accounts receivable.
- 2) the interest charges on any loan to offset such impaired collection pending repayment of such uncollectible sum. Unearned interest and service charges on deferred payment accounts and normal credit losses on bad debts will be deducted in determining the amount recoverable.
- 3) the reasonable and necessary cost incurred for material and time required to re-establish or reconstruct accounts receivable records excluding any costs covered by any other insurance.
- 4) any other necessary and reasonable costs incurred to reduce the loss, to the extent the losses are reduced.

Accounts receivable records will include accounts receivable records stored as electronic data.

In the event of loss, the Insured will:

- 1) use all reasonable efforts, including legal action, if necessary, to effect collection of outstanding accounts receivable.
- 2) reduce loss by use of any suitable property or service:
 - a) owned or controlled by the Insured; or

- b) obtainable from other sources.
- 3) reconstruct, if possible, accounts receivable records so that no shortage is sustained.

The settlement of loss will be made within 90 days from the date of physical loss or damage. All amounts recovered by the Insured on outstanding accounts receivable on the date of loss will belong and be paid to the Company up to the amount of loss paid by the Company. All recoveries exceeding the amount paid will belong to the Insured.

ACCOUNTS RECEIVABLE Exclusions: As respects ACCOUNTS RECEIVABLE, the following additional exclusions apply:

This Policy does not insure against shortage resulting from:

- 1) bookkeeping, accounting or billing errors or omissions; or
- 2) a) alteration, falsification, manipulation; or
- b) concealment, destruction or disposal,

of accounts receivable records committed to conceal the wrongful giving, taking, obtaining or withholding of money, securities or other property; but only to the extent of such wrongful giving, taking, obtaining or withholding.

C. AUTOMATIC COVERAGE

This Policy covers insured physical loss or damage to insured property at any **location** purchased, leased or rented by the Insured after the inception date of this Policy.

This Additional Coverage applies:

- 1) from the date of purchase, lease or rental,
- 2) until the first of the following:
 - a) the **location** is bound by the Company.
 - b) agreement is reached that the **location** will not be insured under this Policy.
 - c) the time limit shown in the LIMITS OF LIABILITY clause in the DECLARATIONS section has been reached. The time limit begins on the date of purchase, lease or rental.

D. BRANDS AND LABELS

If branded or labeled insured property is physically damaged and the Company elects to take all or any part of that property, the Insured may at the Company's expense:

- 1) stamp "salvage" on the property or its containers; or

- 2) remove or obliterate the brands or labels,

if doing so will not damage the property.

The Insured must relabel such property or its containers to be in compliance with any applicable law.

E. CLAIMS PREPARATION COSTS

This Policy covers the actual costs incurred by the Insured:

- 1) of reasonable fees payable to the Insured's: accountants, architects, auditors, engineers, or other professionals; and
- 2) the cost of using the Insured's employees,

for producing and certifying any particulars or details contained in the Insured's books or documents, or such other proofs, information or evidence required by the Company resulting from insured loss payable under this Policy for which the Company has accepted liability.

This Additional Coverage will not cover the fees and costs of:

- 1) attorneys, public adjusters, and loss appraisers, all including any of their subsidiary, related or associated entities either partially or wholly owned by them or retained by them for the purpose of assisting them,
- 2) loss consultants who provide consultation on coverage or negotiate claims.

This Additional Coverage is subject to the deductible that applies to the loss.

F. COMMUNICABLE DISEASE RESPONSE

If a **location** owned, leased or rented by the Insured has the actual not suspected presence of **communicable disease** and access to such **location** is limited, restricted or prohibited by:

- 1) an order of an authorized governmental agency regulating the actual not suspected presence of **communicable disease**; or
- 2) a decision of an Officer of the Insured as a result of the actual not suspected presence of **communicable disease**,

this Policy covers the reasonable and necessary costs incurred by the Insured at such **location** with the actual not suspected presence of **communicable disease** for the:

- 1) cleanup, removal and disposal of the actual not suspected presence of **communicable diseases** from insured property; and

- 2) actual costs of fees payable to public relations services or actual costs of using the Insured's employees for reputation management resulting from the actual not suspected presence of **communicable diseases** on insured property.

This Additional Coverage will apply when access to such **location** is limited, restricted or prohibited in excess of 48 hours.

This Additional Coverage does not cover any costs incurred due to any law or ordinance with which the Insured was legally obligated to comply prior to the actual not suspected presence of **communicable disease**.

COMMUNICABLE DISEASE RESPONSE Exclusions: As respects COMMUNICABLE DISEASE RESPONSE, the following additional exclusion applies:

This Policy excludes loss or damage directly or indirectly caused by or resulting from the following regardless of any other cause or event, whether or not insured under this Policy, contributing concurrently or in any other sequence to the loss:

- 1) **terrorism**.

G. CONSEQUENTIAL REDUCTION IN VALUE

This Policy covers the reduction in value of insured merchandise that is a part of pairs, sets, or components, directly resulting from insured physical loss or damage to other insured parts of pairs, sets or components of such merchandise. If settlement is based on a constructive total loss, the Insured will surrender the undamaged parts of such merchandise to the Company.

H. CONTROL OF DAMAGED PROPERTY

This Policy gives control of physically damaged property consisting of finished goods manufactured by the insured as follows:

- 1) the Insured will have full rights to the possession and control of damaged property in the event of insured physical damage to such property provided proper testing is done to show which property is physically damaged.
- 2) the Insured using reasonable judgment will decide if the physically damaged property can be reprocessed or sold.
- 3) property so judged by the Insured to be unfit for reprocessing or selling will not be sold or disposed of except by the Insured, or with the Insured's consent.
- 4) any salvage proceeds received will go to the:
 - a) Company at the time of loss settlement; or
 - b) Insured if received prior to loss settlement and such proceeds will reduce the amount of loss payable accordingly.

I. DEBRIS REMOVAL

This Policy covers the reasonable and necessary costs incurred to remove debris from an insured **location** that remains as a direct result of insured physical loss or damage.

This Additional Coverage does not cover the costs of removal of:

- 1) contaminated uninsured property; or
- 2) the **contaminant** in or on uninsured property,

whether or not the **contamination** results from insured physical loss or damage. This Additional Coverage covers the costs of removal of contaminated insured property or the **contaminant** in or on insured property only if the **contamination**, due to the actual not suspected presence of **contaminant(s)**, of the debris resulted directly from other physical damage not excluded by the Policy.

J. DECONTAMINATION COSTS

If insured property is contaminated as a direct result of insured physical damage and there is in force at the time of the loss any law or ordinance regulating **contamination** due to the actual not suspected presence of **contaminant(s)**, then this Policy covers, as a direct result of enforcement of such law or ordinance, the increased cost of decontamination and/or removal of such contaminated insured property in a manner to satisfy such law or ordinance. This Additional Coverage applies only to that part of insured property so contaminated due to the actual not suspected presence of **contaminant(s)** as a direct result of insured physical damage.

The Company is not liable for the costs required for removing contaminated uninsured property or the **contaminant** therein or thereon, whether or not the **contamination** results from an insured event.

K. ERRORS AND OMISSIONS

If physical loss or damage is not payable under this Policy solely due to an error or unintentional omission:

- 1) in the description of where insured property is physically located;
- 2) to include any **location**:
 - a) owned, leased or rented by the Insured on the effective date of this Policy; or
 - b) purchased, leased or rented by the Insured during the term of this Policy; or
- 3) that results in cancellation of the property insured under this Policy;

this Policy covers such physical loss or damage, to the extent it would have provided coverage had such error or unintentional omission not been made.

It is a condition of this Additional Coverage that any error or unintentional omission be reported by the Insured to the Company when discovered and corrected.

L. EXPEDITING COSTS

This Policy covers the reasonable and necessary costs incurred:

- 1) for the temporary repair of insured physical damage to insured property;
- 2) for the temporary replacement of insured equipment suffering insured physical damage; and
- 3) to expedite the permanent repair or replacement of such damaged property.

This Additional Coverage does not cover costs recoverable elsewhere in this Policy, including the cost of permanent repair or replacement of damaged property.

M. FINE ARTS AND VALUABLE PAPERS AND RECORDS

This Policy covers insured physical loss or damage to **fine arts** and **valuable papers and records** while anywhere within this Policy's TERRITORY, including while in transit.

FINE ARTS AND VALUABLE PAPERS AND RECORDS Exclusions: As respects FINE ARTS AND VALUABLE PAPERS AND RECORDS, the following applies:

- 1) the exclusions in the EXCLUSIONS clause of this section do not apply except for A1, A2, A6, A7, B1, B2, B3a, B4 and B5.
- 2) the following additional exclusions apply:

This Policy excludes:

- a) currency, money, securities.
- b) errors or omissions in processing or copying of **valuable papers and records**, but, if physical damage not excluded by this Policy results, then only that resulting damage is insured.
- c) deterioration, inherent vice, or wear and tear, but, if physical damage not excluded by this Policy results, then only that resulting damage is insured.
- d) fungus, mold or mildew unless directly resulting from other physical damage not excluded by this Policy.
- e) loss or damage to **fine arts** from any repairing, restoration or retouching process.

FINE ARTS AND VALUABLE PAPERS AND RECORDS Valuation: On property covered under this Additional Coverage the loss amount will not exceed the lesser of the following:

- 1) the cost to repair or restore such property to the physical condition that existed on the date of loss.
- 2) the cost to replace.
- 3) the value, if any, designated for the item on the schedule on file with the Company.

If a **fine arts** article is part of a pair or set, and a physically damaged article cannot be replaced, or repaired or restored to the condition that existed immediately prior to the loss, the Company will be liable for the lesser of the full value of such pair or set or the amount designated on the schedule. The Insured agrees to surrender the pair or set to the Company.

N. INSTALLMENT OR DEFERRED PAYMENTS

This Policy covers insured physical loss or damage to personal property of the type insured sold by the Insured under a conditional sale or trust agreement or any installment or deferred payment plan and after such property has been delivered to the buyer. Coverage is limited to the unpaid balance for such property.

In the event of loss to property sold under deferred payment plans, the Insured will use all reasonable efforts, including legal action, if necessary, to effect collection of outstanding amounts due or to regain possession of the property.

There is no liability under this Policy for loss:

- 1) pertaining to products recalled including, but not limited to, the costs to recall, test or to advertise such recall by the Insured.
- 2) from theft or conversion by the buyer of the property after the buyer has taken possession of such property.
- 3) to the extent the buyer continues payments.
- 4) not within the TERRITORY of this Policy.

INSTALLMENT OR DEFERRED PAYMENTS Valuation: On property covered under this Additional Coverage the loss amount will not exceed the lesser of the following:

- 1) total amount of unpaid installments less finance charges.
- 2) **actual cash value** of the property at the time of loss.
- 3) cost to repair or replace with material of like size, kind and quality.

O. LAND AND WATER CONTAMINANT CLEANUP, REMOVAL AND DISPOSAL

This Policy covers the reasonable and necessary cost for the cleanup, removal and disposal of the actual not suspected presence of **contaminant(s)** from uninsured property consisting of land, water or any other substance in or on land at the insured **location** if the release, discharge or dispersal of such **contaminant(s)** is a direct result of insured physical loss or damage to insured property.

This Policy does not cover the cost to cleanup, remove and dispose of **contamination** from such property:

- 1) at any **location** insured for Personal Property only.
- 2) at any property insured under AUTOMATIC COVERAGE, ERRORS AND OMISSIONS or MISCELLANEOUS PROPERTY coverage provided by this Policy.
- 3) when the Insured fails to give written notice of loss to the Company within 180 days after inception of the loss.

P. LAW AND ORDINANCE

This Policy covers the costs as described herein resulting from the Insured's obligation to comply with a law or ordinance, provided that:

- 1) such law or ordinance is enforced as a direct result of insured physical loss or damage at an insured **location**;
- 2) such law or ordinance is in force at the time of such loss or damage; and
- 3) such **location** was not required to be in compliance with such law or ordinance prior to the happening of the insured physical loss or damage.

Coverage A:

The reasonable and necessary costs incurred by the Insured to comply with the enforcement of the minimum requirements of any law or ordinance that regulates the demolition, construction, repair, replacement or use of buildings, structures, machinery or equipment.

As respects insured property, this Coverage A covers the reasonable and necessary costs to:

- 1) demolish any physically damaged and undamaged portions of the insured buildings, structures, machinery or equipment.
- 2) repair or rebuild the physically damaged and undamaged portions, whether or not demolition is required, of such insured buildings, structures, machinery or equipment.

The Company's maximum liability for this Coverage A at each insured **location** in any **occurrence** will not exceed the actual costs incurred in demolishing the physically damaged and undamaged portions of the insured property plus the lesser of:

- 1) the reasonable and necessary cost, excluding the cost of land, to rebuild on another site;
or
- 2) the cost to rebuild on the same site.

Coverage B:

The reasonable estimated cost to repair, replace or rebuild insured property consisting of buildings, structures, machinery or equipment that the Insured is legally prohibited from repairing, replacing or rebuilding to the same height, floor area, number of units, configuration, occupancy or operating capacity, because of the enforcement of any law or ordinance that regulates the construction, repair, replacement or use of buildings, structures, machinery or equipment.

LAW AND ORDINANCE Coverage B Valuation: On property covered under this Coverage B that cannot legally be repaired or replaced, the loss amount will be the difference between:

- 1) the **actual cash value**; and
- 2) the cost that would have been incurred to repair, replace or rebuild such lost or damaged property had such law or ordinance not been enforced at the time of loss.

LAW AND ORDINANCE Exclusions: As respects LAW AND ORDINANCE, the following additional exclusions apply:

This Policy does not cover:

- 1) any cost incurred as a direct or indirect result of enforcement of any law or ordinance regulating any form of **contamination**.
- 2) any machinery or equipment manufactured by or for the Insured, unless used by the Insured in its operation at the **location** suffering the physical loss or damage.

Q. LOCKS AND KEYS

This Policy covers the reasonable and necessary cost incurred by the Insured to replace undamaged keys and to replace, adjust or reprogram undamaged locks to accept new keys or entry codes as a direct result of insured physical loss or damage.

R. LOSS PAYMENT INCREASED TAX LIABILITY

This Policy covers the increase in tax liability as described herein incurred by the Insured.

Coverage A:

The increase in tax liability from an insured loss at an insured **location** if the tax treatment of:

- 1) the profit portion of a loss payment under this Policy involving finished stock manufactured by the Insured; and/or
- 2) the profit portion of a TIME ELEMENT loss payment under this Policy;

is greater than the tax treatment of profits that would have been incurred had no loss happened.

S. MACHINERY OR EQUIPMENT STARTUP OPTION

After insured machinery or equipment that has sustained insured physical loss or damage is repaired or replaced and such machinery or equipment is undergoing startup, the following applies:

If physical loss or damage of the type insured directly results to such machinery or equipment from such startup, the Insured shall have the option of claiming such resulting insured damage as part of the original event of physical loss or damage or as a separate **occurrence**.

This Additional Coverage applies only:

- 1) to the first startup event after the original repair or replacement; and
- 2) when the first startup event happens during the term of this Policy or its renewal issued by the Company.

For the purposes of this Additional Coverage, startup means:

- 1) the introduction into machinery or equipment of feedstock or other materials for processing or handling;
- 2) the commencement of fuel or energy supply to machinery or equipment.

T. MISCELLANEOUS PROPERTY

This Policy covers insured physical loss or damage to:

- 1) insured property;
- 2) property of the type insured that is under contract to be used in a construction project at an insured **location**;

- a) from the time such property is delivered to the Insured or their contractor (with respect to the property under construction) by the manufacturer or supplier;
- b) while such property is located at a storage site; and
- c) while such property is in transit from a storage site to another storage site or to a construction project at an insured **location**,

that does not include any such property owned or rented by the contractor;

while anywhere within this Policy's TERRITORY, including while in transit.

This Additional Coverage excludes property covered elsewhere in this Policy.

MISCELLANEOUS PROPERTY Exclusions: As respects MISCELLANEOUS PROPERTY, the following additional exclusions apply:

- 1) This Policy excludes:
 - a) **transmission and distribution systems** not at a **location**.
 - b) property insured under import or export ocean marine insurance.
 - c) property shipped between continents.
 - d) airborne shipments unless by regularly scheduled passenger airlines or air freight carriers.
 - e) property of others, including the Insured's legal liability for it, hauled on vehicles owned, leased or operated by the Insured when acting as a common or contract carrier.
- 2) This Policy excludes loss or damage directly or indirectly caused by or resulting from the following regardless of any other cause or event, whether or not insured under this Policy, contributing concurrently or in any other sequence to the loss:
 - a) **earth movement** for property located in the **New Madrid Seismic Zone** or in the **Pacific Northwest Seismic Zone**.

U. OPERATIONAL TESTING

This Policy covers insured physical loss or damage to insured property during the **period of operational testing**.

This Additional Coverage excludes property, including stock or material, manufactured or processed by the Insured.

V. PROTECTION AND PRESERVATION OF PROPERTY

This Policy covers:

- 1) reasonable and necessary costs incurred for actions to temporarily protect or preserve insured property; provided such actions are necessary due to actual, or to prevent immediately impending, insured physical loss or damage to such insured property.
- 2) reasonable and necessary:
 - a) fire department firefighting charges imposed as a result of responding to a fire in, on or exposing the insured property.
 - b) costs incurred of restoring and recharging fire protection systems following an insured loss.
 - c) costs incurred for the water used for fighting a fire in, on or exposing the insured property.

This Additional Coverage does not cover costs incurred for actions to temporarily protect or preserve insured property from actual, or to prevent immediately impending, physical loss or damage covered by TERRORISM coverage as provided in this section of the Policy.

This Additional Coverage is subject to the deductible provisions that would have applied had the physical loss or damage happened.

W. SERVICE INTERRUPTION PROPERTY DAMAGE

This Policy covers insured physical loss or damage to insured property at an insured **location** when such physical loss or damage results from the interruption of incoming services consisting of electricity, gas, fuel, steam, water, refrigeration or from the lack of outgoing sewerage service by reason of any accidental event at the facilities of the supplier of such service located within this Policy's TERRITORY, that immediately prevents in whole or in part the delivery of such usable service.

This Additional Coverage will apply when the period of service interruption as described below is in excess of 24 hours.

The period of service interruption is the period starting with the time when an interruption of specified services happens; and ending when with due diligence and dispatch the service could be wholly restored.

Additional General Provisions:

- 1) The Insured will immediately notify the suppliers of services of any interruption of such services.

- 2) The Company will not be liable if the interruption of such services is caused directly or indirectly by the failure of the Insured to comply with the terms and conditions of any contracts the Insured has for the supply of such specified services.

SERVICE INTERRUPTION PROPERTY DAMAGE Exclusions: As respects SERVICE INTERRUPTION PROPERTY DAMAGE, the following applies:

- 1) The exclusions in the EXCLUSIONS clause in this section do not apply except for:
 - a) A1, A2, A3, A6, B1, B2, B5 and
 - b) B4 with respect to incoming or outgoing voice, data or video, and
 - c) D1 except with respect to fungus, mold or mildew.

- 2) The following additional exclusions apply:

This Policy excludes loss or damage directly or indirectly caused by or resulting from the following regardless of any other cause or event, whether or not insured under this Policy, contributing concurrently or in any other sequence to the loss:

- a) **earth movement** for property located in the **New Madrid Seismic Zone** or in the **Pacific Northwest Seismic Zone**.
- b) **terrorism**.

X. TEMPORARY REMOVAL OF PROPERTY

When insured property is removed from an insured **location** for the purpose of being repaired or serviced or in order to avoid threatened physical loss or damage of the type insured by this Policy, this Policy covers such property:

- 1) while at the premises to which such property has been moved; and
- 2) for physical loss or damage as provided at the insured **location** from which such property was removed.

This Additional Coverage does not apply to property:

- 1) insured, in whole or in part, elsewhere in this Policy.
- 2) insured, in whole or in part, by any other insurance policy.
- 3) removed for normal storage, processing or preparation for sale or delivery.

Y. TENANT'S LEGAL LIABILITY

This Policy covers direct physical loss or damage to that part of buildings of others, including permanently attached building fixtures, leased to and occupied by the Insured at

locations as specified in the Schedule of Locations to the extent of the Insured's legal liability for such loss or damage caused by or resulting from the following:

- 1) fire, explosion, smoke or sprinkler leakage;
- 2) **wind**, hail and lightning;
- 3) strike, riot, civil commotion, vandalism, theft or attempted theft;
- 4) impact from aircraft or vehicles or objects falling from aircraft;
- 5) collapse of buildings.

This Additional Coverage also covers:

- 1) the reasonable and necessary costs of defending the Insured against only that part of any suit alleging the Insured's legal liability for such physical loss or damage;
- 2) the reasonable expenses incurred by this Company, this Company's proportionate share of costs taxed against the Insured in any such suit, and this Company's proportionate share of interest accruing after entry of judgment until this Company has paid, tendered or deposited into court its proportionate share of such judgment; and
- 3) the reasonable expenses, other than loss of earnings, incurred at this Company's request

This Additional Coverage will not cover:

- 1) that part of any settlement by the Insured to which this Company has not given its prior written consent; or
- 2) any legal liability for loss or damage assumed by the Insured under any contract or agreement, whether oral or written, expressed or implied.

Additional General Provision:

- 1) The Company may without prejudice, investigate, negotiate and settle any claim or suit as this Company deems expedient.
- 2) The Company may pay, tender or deposit into court the Company's applicable limit of liability, less any expenses incurred by the Company, in full satisfaction of its liability under this Additional Coverage, and thereby terminate any further liability for any expense amount described above.

TENANT'S LEGAL LIABILITY Exclusion: As respects TENANT'S LEGAL LIABILITY, the following additional exclusion applies:

This Policy excludes loss or damage directly or indirectly caused by or resulting from the following regardless of any other cause or event, whether or not insured under this Policy, contributing concurrently or in any other sequence to the loss:

- 1) **terrorism.**

Z. TERRORISM

This Policy covers physical loss or damage to property as described in the INSURANCE PROVIDED provision caused by or resulting from **terrorism.**

Any act which satisfies the definition of **terrorism** shall not be considered to be vandalism, malicious mischief, riot, civil commotion, or any other risk of physical loss or damage covered elsewhere in this Policy.

Amounts recoverable under this Additional Coverage are excluded from coverage elsewhere in this Policy.

This Additional Coverage does not cover loss or damage which also comes within the terms of either item B2a or B2c of the EXCLUSIONS clause in this section of the Policy.

This Additional Coverage does not in any event cover loss or damage directly or indirectly caused by or resulting from any of the following, regardless of any other cause or event, whether or not insured under this Policy contributing concurrently or in any other sequence to the loss:

- 1) that involves the use, release or escape of nuclear materials, or that directly or indirectly results in nuclear reaction or radiation or radioactive contamination or that involves the discharge, explosion or use of any nuclear device, weapon or material employing or involving nuclear fission, fusion, or radioactive force, whether in time of peace or war and regardless of who commits the act; or
- 2) that is carried out by means of the dispersal or application of pathogenic or poisonous biological or chemical materials; or
- 3) in which pathogenic or poisonous biological or chemical materials are released, and it appears that one purpose of the terrorism was to release such materials; or
- 4) that involves action taken to prevent, defend against, respond to or retaliate against **terrorism** or suspected **terrorism.**

AA. TRANSPORTATION

This Policy covers the following personal property, except as excluded by this Policy, while in transit within the TERRITORY of this Policy:

- 1) owned by the Insured.

- 2) shipped to customers under F.O.B., C & F or similar terms. The Insured's contingent interest in such shipments is admitted.
- 3) of others in the actual or constructive custody of the Insured to the extent of the Insured's interest or legal liability.
- 4) of others sold by the Insured, that the Insured has agreed prior to the loss to insure during course of delivery including:
 - a) when shipped by the Insured's direct contract service provider or by the Insured's direct contract manufacturer to the Insured or to the Insured's customer.
 - b) when shipped by the Insured's customer to the Insured or to the Insured's contract service provider or to the Insured's contract manufacturer.

Coverage Attachment and Duration:

- 1) This Additional Coverage covers from the time the property leaves the original point of shipment for transit until the property arrives at the destination.
- 2) However, coverage on export shipments not insured under ocean cargo policies ends when the property is loaded on board overseas vessels or aircraft. Coverage on import shipments not insured under ocean cargo policies begins after discharge from overseas vessels or aircraft.

This Additional Coverage:

- 1) covers general average and salvage charges on shipments covered while waterborne.
- 2) insures physical loss or damage caused by or resulting from:
 - a) unintentional acceptance of fraudulent bills of lading, shipping or messenger receipts.
 - b) improper parties having gained possession of property through fraud or deceit.

Additional General Provisions:

- 1) This Additional Coverage will not inure directly or indirectly to the benefit of any carrier or bailee.
- 2) The Insured has permission, without prejudicing this insurance, to accept:
 - a) ordinary bills of lading used by carriers;
 - b) released bills of lading;
 - c) undervalued bills of lading; and

- d) shipping or messenger receipts.
- 3) The Insured may waive subrogation against railroads under side track agreements.

Except as otherwise stated, the Insured will not enter into any special agreement with carriers releasing them from their common law or statutory liability.

TRANSPORTATION Exclusions: As respects TRANSPORTATION, the following applies:

- 1) the exclusions in the EXCLUSIONS clause of this section do not apply except for A1 through A4, B1 through B5, C1, C3, C5, C6, D1 through D3.
- 2) the following additional exclusions apply:

This Policy excludes:

- a) samples in the custody of salespeople or selling agents.
- b) property insured under import or export ocean marine insurance.
- c) waterborne shipments, unless:
 - (i) by inland water; or
 - (ii) by coastal shipments.
- d) waterborne shipments via Panama Canal or to and from Alaska, the Commonwealth of Puerto Rico, and Hawaii.
- e) airborne shipments unless by regularly scheduled passenger airlines or air freight carriers.
- f) property of others, including the Insured's legal liability for it, hauled on vehicles owned, leased or operated by the Insured when acting as a common or contract carrier.
- g) any transporting vehicle.

TRANSPORTATION Valuation: On property covered under this Additional Coverage the loss amount will not exceed:

- 1) Property shipped to or for the account of the Insured will be valued at actual invoice to the Insured. Included in the value are accrued costs and charges legally due. Charges may include the Insured's commission as selling agent.
- 2) Property sold by the Insured and shipped to or for the purchaser's account will be valued at the Insured's selling invoice amount. Prepaid or advanced freight costs are included.
- 3) Property not under invoice will be valued:



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- a) for property of the Insured, at the valuation provisions of this Policy applying at the place from which the property is being transported; or
- b) for other property, at the actual cash market value at the destination point on the date of loss,

less any charges saved which would have become due and payable upon arrival at destination.

TIME ELEMENT

TIME ELEMENT loss as provided in the TIME ELEMENT COVERAGES and TIME ELEMENT COVERAGE EXTENSIONS of this section of the Policy:

- A. is subject to the applicable limit of liability that applies to the insured physical loss or damage but in no event for more than any limit of liability that is stated as applying to the specific TIME ELEMENT COVERAGE and/or TIME ELEMENT COVERAGE EXTENSION; and
 - B. will not increase the Policy limit of liability; and
 - C. is subject to the Policy provisions, including applicable exclusions and deductibles,
- all as shown in this section and elsewhere in this Policy.

1. LOSS INSURED

- A. This Policy insures TIME ELEMENT loss, as provided in the TIME ELEMENT COVERAGES, directly resulting from physical loss or damage of the type insured:
 - 1) to property described elsewhere in this Policy and not otherwise excluded by this Policy or otherwise limited in the TIME ELEMENT COVERAGES below;
 - 2) used by the Insured, or for which the Insured has contracted use;
 - 3) while located as described in the INSURANCE PROVIDED provision or within 1,000 feet/300 metres thereof, or as described in the TEMPORARY REMOVAL OF PROPERTY provision; or
 - 4) while in transit as provided by this Policy, and
 - 5) during the Periods of Liability described in this section,

provided such loss or damage is not at a **contingent time element location**.
- B. This Policy insures TIME ELEMENT loss only to the extent it cannot be reduced through:
 - 1) the use of any property or service owned or controlled by the Insured;
 - 2) the use of any property or service obtainable from other sources;
 - 3) working extra time or overtime; or
 - 4) the use of inventory,

all whether at an insured **location** or at any other premises. The Company reserves the right to take into consideration the combined operating results of all associated, affiliated or subsidiary companies of the Insured in determining the TIME ELEMENT loss.

- C. This Policy covers expenses reasonably and necessarily incurred by the Insured to reduce the loss otherwise payable under this section of this Policy. The amount of such recoverable expenses will not exceed the amount by which the loss has been reduced.
- D. In determining the amount of loss payable, the Company will consider the experience of the business before and after and the probable experience during the PERIOD OF LIABILITY. The probable experience will consider any increase or decrease in demand for the Insured's goods or services during the PERIOD OF LIABILITY, even if such increase or decrease is from the same event that caused physical loss or damage starting the PERIOD OF LIABILITY.

2. TIME ELEMENT COVERAGES

A. INSURED OPTION

The Insured has the option to make claim based on either

- a) GROSS EARNINGS and EXTENDED PERIOD OF LIABILITY; or
- b) GROSS PROFIT,

as described in the TIME ELEMENT section of this Policy and subject to the applicable terms and conditions as may be shown elsewhere.

Such option may be exercised at any time prior to the conditions set forth in the SETTLEMENT OF CLAIMS clause in the LOSS ADJUSTMENT AND SETTLEMENT section of this Policy.

If such claim involves more than one insured **location**, including interdependency at one or more insured **locations**, such claim will be adjusted by using the single coverage option chosen above.

B. GROSS EARNINGS

Measurement of Loss:

- 1) The recoverable GROSS EARNINGS loss is the Actual Loss Sustained by the Insured of the following during the PERIOD OF LIABILITY:
 - a) Gross Earnings;
 - b) less all charges and expenses that do not necessarily continue during the interruption of production or suspension of business operations or services;
 - c) less ordinary payroll; and
 - d) plus all other earnings derived from the operation of the business.

- e) Ordinary Payroll, including taxes and charges dependent on the payment of wages:
- (i) for a period of time of not more than the number of consecutive days shown in the LIMITS OF LIABILITY clause of the DECLARATIONS section immediately following the interruption of production or suspension of business operations or services, and
 - (ii) only to the extent such payroll continues following the loss and would have been earned had no such interruption happened.

However, if an Insured reduces the daily loss payable under Ordinary Payroll, either by:

- (i) providing gainful employment for, or
- (ii) paying less than the normal salary rate to,

all or part of its employees, then the number of consecutive days of Ordinary Payroll may be extended. However, this provision will not increase the total liability of this Company beyond the amount it would have been liable for Ordinary Payroll costs without this provision. Ordinary Payroll does not cover any portion of salaries or wages included in Gross Earnings.

- 2) For the purposes of the Measurement of Loss, Gross Earnings is:

for manufacturing operations: the net sales value of production less the cost of all raw stock, materials and supplies used in such production; or

for mercantile or non-manufacturing operations: the total net sales less cost of merchandise sold, materials and supplies consumed in the operations or services rendered by the Insured.

Any amount recovered under property damage coverage at selling price will be considered to have been sold to the Insured's regular customers and will be credited against net sales.

- 3) In determining the indemnity payable as the Actual Loss Sustained, the Company will consider the continuation of only those normal charges and expenses that would have been earned had there been no interruption of production or suspension of business operations or services.
- 4) If the Insured would have operated at a deficit had no interruption of production or suspension of business operations or services happened, the following applies:
 - a) for Gross Earnings, the extent to which charges and expenses would have been earned will be determined by subtracting the operating deficits from the charges and expenses that necessarily continue.

- b) for Ordinary Payroll, the extent payroll would have been earned will be determined by subtracting the excess, if any, of the operating deficit over the fixed charges that need to continue from such payroll.
- 5) There is recovery hereunder to the extent that the Insured is:
- a) wholly or partially prevented from producing goods or continuing business operations or services;
 - b) unable to make up lost production within a reasonable period of time, not limited to the period during which production is interrupted;
 - c) unable to continue such operations or services during the PERIOD OF LIABILITY; and
 - d) able to demonstrate a loss of sales for the operations, services or production prevented.

C. GROSS PROFIT

Measurement of Loss:

- 1) The recoverable GROSS PROFIT loss is the Actual Loss Sustained by the Insured of the following due to the necessary interruption of business during the PERIOD OF LIABILITY: a) Reduction in Sales, b) Ordinary Payroll and c) Increase in Cost of Doing Business. The amount payable as indemnity hereunder will be:
- a) with respect to Reduction in Sales: The sum produced by applying the Rate of Gross Profit to the amount by which the sales during the PERIOD OF LIABILITY will fall short of the Standard Sales. In determining the Reduction in Sales, any amount recovered under property damage coverage at selling price will be credited against lost sales.
 - b) Ordinary Payroll, including taxes and charges dependent on the payment of wages, during the PERIOD OF LIABILITY only to the extent such payroll would have been earned had such loss not happened.

However, if an Insured reduces the daily loss payable under Ordinary Payroll, either by:

- (i) providing gainful employment for, or
- (ii) paying less than the normal salary rate to,

all or part of its employees, the number of consecutive days of Ordinary Payroll may be extended. This provision will not increase the total liability of this Company beyond the amount it would have been liable for Ordinary Payroll costs without this provision. Ordinary Payroll does not cover any portion of salaries or wages included in Net Profit or fixed charges.

- c) with respect to Increase in Cost of Doing Business:
- (i) the additional expenditure necessarily and reasonably incurred for the sole purpose of avoiding or diminishing the reduction in sales and a loss of Ordinary Payroll which, but for that expenditure, would have taken place during the PERIOD OF LIABILITY; but
 - (ii) not exceeding the sum produced by applying the Rate of Gross Profit to the amount of the reduction thereby avoided,

all less any sum saved during the PERIOD OF LIABILITY with respect to such of the Insured Fixed Charges as may cease or be reduced because of such interruption of business.

2) For the purposes of the Measurement of Loss:

Gross Profit is:

The amount produced by adding to the Net Profit the amount of the Insured Fixed Charges, or if there be no Net Profit the amount of the Insured Fixed Charges less that proportion of any loss from business operations as the amount of the Insured Fixed Charges bears to all fixed charges.

Net Profit is:

The net operating profit (exclusive of all capital receipts and accruals and all outlay properly chargeable to capital) resulting from the business of the Insured at the insured **locations** after due provision has been made for all fixed charges and other expenses including depreciation but before the deduction of any taxes on profits.

Insured Fixed Charges is:

All fixed charges unless specifically excluded herein. Ordinary Payroll is not an Insured Fixed Charge.

Sales is:

The money paid or payable to the Insured for goods sold and delivered and for services rendered in the conduct of the business at an insured **location**.

Rate of Gross Profit is:

The rate of Gross Profit earned on the sales during the twelve full calendar months immediately before the date of the physical loss or damage to the described property.

Standard Sales is:

The sales during that period in the twelve months immediately before the date of the physical loss or damage to the described property which corresponds with the PERIOD OF LIABILITY.

- 3) In determining the indemnity payable as the Actual Loss Sustained:
 - a) if any fixed charges of the business are not insured hereunder, then, in computing the amount recoverable hereunder as Increase in Cost of Doing Business, that proportion only of the additional expenditure will be recoverable hereunder which the sum of the Net Profit and the Insured Fixed Charges bears to the sum of the Net Profit and all the fixed charges excluding Ordinary Payroll.
 - b) if during the PERIOD OF LIABILITY goods will be sold or services will be rendered elsewhere than at the insured **locations** for the benefit of the business, either by the Insured or by others on the Insured's behalf, the money paid or payable in respect of such sales or services will be included in arriving at the amount of sales during the PERIOD OF LIABILITY.
- 4) The Insured will act with due diligence and dispatch in repairing or replacing physically damaged buildings and equipment to the same or equivalent physical and operating conditions that existed prior to the damage; and take whatever actions are necessary and reasonable to minimize the loss payable hereunder.

GROSS PROFIT Exclusions: As respects GROSS PROFIT, the TIME ELEMENT EXCLUSIONS B and C of this section do not apply and the following applies instead:

This Policy does not insure against any increase in loss due to damages for breach of contract or for late or noncompletion of orders, or fines or penalties of any nature except fines or penalties for breach of contract or for late or noncompletion of orders.

Coverage under GROSS PROFIT for the reduction in sales due to contract cancellation will include only those sales that would have been earned under the contract during the PERIOD OF LIABILITY.

D. EXTRA EXPENSE

Measurement of Loss:

The recoverable EXTRA EXPENSE loss will be the reasonable and necessary extra costs incurred by the Insured of the following during the PERIOD OF LIABILITY:

- 1) extra expenses to temporarily continue as nearly **normal** as practicable the conduct of the Insured's business;
- 2) extra costs of temporarily using property or facilities of the Insured or others; and



- 3) costs to purchase finished goods from third parties to fulfill orders when such orders cannot be met due to physical loss or damage to the Insured's finished goods, less payment received for the sale of such finished goods.

less any value remaining at the end of the PERIOD OF LIABILITY for property obtained in connection with the above.

If the Insured makes claim in accordance with the terms and conditions of the INSURED OPTION clause, the PERIOD OF LIABILITY for EXTRA EXPENSE coverage will be the PERIOD OF LIABILITY applicable to the Time Element coverage option selected.

EXTRA EXPENSE Exclusions: As respects EXTRA EXPENSE, the following applies:

- 1) TIME ELEMENT EXCLUSIONS C does not apply to item 3 above.
- 2) The following additional exclusions apply:

This Policy does not insure:

- a) any loss of income.
- b) costs that usually would have been incurred in conducting the business during the same period had no physical loss or damage happened.
- c) costs of permanent repair or replacement of property that has been damaged or destroyed. However, this exclusion does not apply to item 3 above.
- d) any expense recoverable elsewhere in this Policy.

E. LEASEHOLD INTEREST

Measurement of Loss:

The recoverable LEASEHOLD INTEREST incurred by the Insured of the following:

- 1) If the lease agreement requires continuation of rent; and if the property is wholly untenable or unusable, the actual rent payable for the unexpired term of the lease; or if the property is partially untenable or unusable, the proportion of the rent payable for the unexpired term of the lease.
- 2) If the lease is cancelled by the lessor pursuant to the lease agreement or by the operation of law; the Lease Interest for the first three months following the loss; and the Net Lease Interest for the remaining unexpired term of the lease.
- 3) As used above, the following terms mean:

Net Lease Interest:

That sum which placed at 6% interest rate compounded annually would equal the Lease Interest (less any amounts otherwise payable hereunder).

Lease Interest:

The excess rent paid for the same or similar replacement property over actual rent payable plus cash bonuses or advance rent paid (including maintenance or operating charges) for each month during the unexpired term of the Insured's lease.

LEASEHOLD INTEREST Exclusions: As respects LEASEHOLD INTEREST, the following applies:

- 1) This Policy does not insure loss directly resulting from physical loss or damage to Personal Property.
- 2) TIME ELEMENT EXCLUSIONS A, B and C do not apply and the following applies instead:

This Policy does not insure any increase in loss resulting from the suspension, lapse or cancellation of any license, or from the Insured exercising an option to cancel the lease; or from any act or omission of the Insured that constitutes a default under the lease.

F. RENTAL INSURANCE

Measurement of Loss:

The recoverable RENTAL INSURANCE loss is the Actual Loss Sustained by the Insured of the following during the PERIOD OF LIABILITY:

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

all not to include noncontinuing charges and expenses.

RENTAL INSURANCE Exclusions: As respects RENTAL INSURANCE, TIME ELEMENT EXCLUSIONS A does not apply and the following applies instead:

This Policy does not insure any loss of rental income during any period in which the insured property would not have been tenantable for any reason other than an insured loss.

3. PERIOD OF LIABILITY

- A. The PERIOD OF LIABILITY applying to all TIME ELEMENT COVERAGES, except GROSS PROFIT and LEASEHOLD INTEREST and as shown below or if otherwise provided under any TIME ELEMENT COVERAGE EXTENSION, and subject to any Time Limit provided in the LIMITS OF LIABILITY clause in the DECLARATIONS section, is as follows:

- 1) For building and equipment, the period:
 - a) starting from the time of physical loss or damage of the type insured; and
 - b) ending when with due diligence and dispatch the building and equipment could be:
 - (i) repaired or replaced; and
 - (ii) made ready for operations,

under the same or equivalent physical and operating conditions that existed prior to the damage.
 - c) not to be limited by the expiration of this Policy.
- 2) For building and equipment under construction:
 - a) the equivalent of the above period of time will be applied to the level of business that would have been reasonably achieved after construction and startup would have been completed had no physical damage happened; and
 - b) due consideration will be given to the actual experience of the business compiled after completion of the construction and startup.
- 3) For stock-in-process and mercantile stock, including finished goods not manufactured by the Insured, the time required with the exercise of due diligence and dispatch:
 - a) to restore stock in process to the same state of manufacture in which it stood at the inception of the interruption of production or suspension of business operations or services; and
 - b) to replace physically damaged mercantile stock.

This item does not apply to RENTAL INSURANCE.
- 4) For raw materials and supplies, the period of time:
 - a) of actual interruption of production or suspension of operations or services resulting from the inability to get suitable raw materials and supplies to replace similar ones damaged; but
 - b) limited to that period for which the damaged raw materials and supplies would have supplied operating needs.
- 5) If water:
 - a) used for any manufacturing purpose, including but not limited to as a raw material or for power;

- b) stored behind dams or in reservoirs; and
- c) on any insured **location**,

is released as the result of physical damage of the type insured to such dam, reservoir or connected equipment, the Company's liability for the actual interruption of production or suspension of operations or services due to inadequate water supply will not extend beyond 30 consecutive days after the damaged dam, reservoir or connected equipment has been repaired or replaced.

This item does not apply to RENTAL INSURANCE.

- 6) For physically damaged exposed films, records, manuscripts and drawings, the time required to copy from backups or from originals of a previous generation. This time does not include research, engineering or any other time necessary to restore or recreate lost information.

This item does not apply to RENTAL INSURANCE.

- 7) For physically damaged or destroyed property covered under DATA RESTORATION, the period:
 - a) starting from the time of **physical loss or damage to electronic data, programs or software**; and
 - b) ending when with due diligence and dispatch the electronic data, programs or software could have been recreated or restored under the same or equivalent physical and operating conditions that existed prior to the physical loss or damage.

This item does not apply to RENTAL INSURANCE.

B. The PERIOD OF LIABILITY applying to GROSS PROFIT is as follows:

- 1) The period:
 - a) starting from the time of physical loss or damage of the type insured; and
 - b) ending not later than the period of time shown in the LIMITS OF LIABILITY clause of the DECLARATIONS section,during which period the results of the business shall be directly affected by such damage.
 - c) not to be limited by the expiration of this Policy.

- 2) For property under construction, the period:
 - a) starting on the date that production, business operation or service would have commenced if physical damage of the type insured had not happened; and
 - b) ending not later than the period of time shown in the LIMITS OF LIABILITY clause of the DECLARATIONS section,

during which period the results of the business shall be directly affected by such damage.

- c) not to be limited by the expiration of this Policy.

The Rate of Gross Profit and Standard Sales will be based on the experience of the business after construction is completed and the probable experience during the PERIOD OF LIABILITY.

- C. The PERIOD OF LIABILITY does not include any additional time due to the Insured's inability to resume operations for any reason, including but not limited to:
 - 1) making changes to the buildings, structures, machinery or equipment except as provided in the LAW AND ORDINANCE clause in the PROPERTY DAMAGE section.
 - 2) restaffing or retraining employees. However, this item does not apply to additional time needed to train staff to use new machinery or equipment that replaces machinery or equipment that suffered insured physical loss or damage, provided such training is completed within 90 consecutive days after the new machinery or equipment has been installed.

If two or more Periods of Liability apply such periods will not be cumulative.

4. TIME ELEMENT EXCLUSIONS

In addition to the exclusions elsewhere in this Policy, the following exclusions apply to TIME ELEMENT loss:

This Policy does not insure:

- A. Any loss during any idle period, including but not limited to when production, operation, service or delivery or receipt of goods would cease, or would not have taken place or would have been prevented due to:
 - 1) physical loss or damage not insured by this Policy on or off of the insured **location**.
 - 2) planned or rescheduled shutdown.
 - 3) strikes or other work stoppage.

- 4) any other reason other than physical loss or damage insured under this Policy.
- B. Any increase in loss due to:
- 1) suspension, cancellation or lapse of any lease, contract, license or orders.
 - 2) damages for breach of contract or for late or noncompletion of orders.
 - 3) fines or penalties of any nature except fines or penalties for breach of contract or for late or noncompletion of orders.
 - 4) any other consequential or remote loss.
- C. Any loss resulting from physical loss or damage to finished goods manufactured by the Insured, or the time required for their reproduction.
- D. Any loss resulting from the **actual cash value** portion of direct physical loss or damage by fire caused by or resulting from **terrorism**.

5. TIME ELEMENT COVERAGE EXTENSIONS

This Policy also insures TIME ELEMENT loss, as provided by the TIME ELEMENT COVERAGES of this Policy, for the TIME ELEMENT COVERAGE EXTENSIONS described below.

CYBER TIME ELEMENT COVERAGE EXTENSIONS

A. DATA SERVICE PROVIDER TIME ELEMENT

This Policy covers the Actual Loss Sustained and EXTRA EXPENSE incurred by the Insured during the period of interruption at an insured **location of off-premises data processing or data transmission services**, when the interruption is caused by any accidental event at the facilities of the provider of such services that immediately prevents in whole or in part the delivery of such provided services.

For the purposes of this Extension:

- 1) facilities of the provider of **off-premises data processing or data transmission services** can be located worldwide except in Cuba, Iran, North Korea, Sudan, Syria or Crimea Region of Ukraine, and
- 2) an accidental event to satellites will be considered an accidental event at the facilities of the provider.

This Extension will apply when the period of interruption of **off-premises data processing or data transmission services** is in excess of 24 hours.

Additional General Provisions:

- 1) The Insured will immediately notify the company providing **off-premises data processing or data transmission services** of any interruption of such services.
- 2) The Company will not be liable if the interruption of such services is caused directly or indirectly by the failure of the Insured to comply with the terms and conditions of any contracts the Insured has entered into for such specified services.

Coverage provided in this Extension is excluded from coverage elsewhere in this Policy.

This Extension does not cover Actual Loss Sustained and EXTRA EXPENSE incurred by the Insured covered by OWNED NETWORK INTERRUPTION coverage as provided in this section of the Policy.

DATA SERVICE PROVIDER TIME ELEMENT Exclusions: As respects DATA SERVICE PROVIDER TIME ELEMENT, the following applies:

- 1) Item B4 of the EXCLUSIONS clause in the PROPERTY DAMAGE section does not apply except for B4 with respect to:
 - a) incoming electricity, fuel, water, gas, steam or refrigerant; and
 - b) outgoing sewerage.
- 2) The following additional exclusions apply:

This Policy excludes loss or damage directly or indirectly caused by or resulting from the following regardless of any other cause or event, whether or not insured under this Policy, contributing concurrently or in any other sequence to the loss:

- a) **earth movement** for property located in the **New Madrid Seismic Zone** or in the **Pacific Northwest Seismic Zone**.
- b) **terrorism**.

As used above, the period of interruption of **off-premises data processing or data transmission services**:

- 1) is the period starting with the time when an interruption of provided services happens; and ending when with due diligence and dispatch the service could be wholly restored and the **location** receiving the service could or would have resumed normal operations following the restorations of service under the same or equivalent physical and operating conditions as provided by the PERIOD OF LIABILITY clause in this section.
- 2) is limited to only those hours during which the Insured would or could have used service(s) if it had been available.

- 3) does not extend to include the interruption of operations caused by any reason other than interruption of the provided service(s).

B. OWNED NETWORK INTERRUPTION

This Policy covers the Actual Loss Sustained and EXTRA EXPENSE incurred by the Insured during the period of interruption directly resulting from:

- 1) the failure of the Insured's **electronic data processing equipment or media** to operate, provided that such failure is the direct result of a **cyber event** directed at the NAMED INSURED; or
- 2) the Insured's reasonable action to temporarily protect the Insured's **electronic data processing equipment or media** against an actual or immediately impending **cyber event** directed at the NAMED INSURED, provided such action is necessary to prevent failure of the Insured's **electronic data processing equipment or media** to operate.

For the purposes of this Extension, the Insured's **electronic data processing equipment or media** can be located worldwide except in Cuba, Iran, North Korea, Sudan, Syria or Crimea Region of Ukraine.

As respects item 1 above, this Extension will apply when the period of interruption is in excess of 48 hours.

As used above, the period of interruption:

- 1) is the period starting when the Insured's **electronic data processing equipment or media** fails to operate and ending when with due diligence and dispatch, the Insured's **electronic data processing equipment or media** could be restored to the same or equivalent operating condition that existed prior to the failure.
- 2) does not include the additional time to make changes to the Insured's **electronic data processing equipment or media**.

SUPPLY CHAIN TIME ELEMENT COVERAGE EXTENSIONS

A. CIVIL OR MILITARY AUTHORITY

This Policy covers the Actual Loss Sustained and EXTRA EXPENSE incurred by the Insured during the PERIOD OF LIABILITY if an order of civil or military authority limits, restricts or prohibits partial or total access to an insured **location** provided such order is the direct result of physical damage of the type insured at the insured **location** or within five statute miles/eight kilometres of it.



This Extension does not apply to LEASEHOLD INTEREST.

The PERIOD OF LIABILITY for this TIME ELEMENT COVERAGE EXTENSION will be:

The period of time:

- 1) starting at the time of such physical damage; and
- 2) ending not later than the number of consecutive days shown in the LIMITS OF LIABILITY clause in the DECLARATIONS section,

this period of time is part of and not in addition to any PERIOD OF LIABILITY applying to any coverage provided in the TIME ELEMENT section.

B. CONTINGENT TIME ELEMENT EXTENDED

This Policy covers the Actual Loss Sustained and EXTRA EXPENSE incurred by the Insured during the PERIOD OF LIABILITY directly resulting from physical loss or damage of the type insured to property of the type insured at **contingent time element locations** located within the TERRITORY of this Policy.

As respects CONTINGENT TIME ELEMENT EXTENDED:

- 1) Time Element loss recoverable under this Extension is extended to include the following TIME ELEMENT COVERAGE EXTENSIONS:

CIVIL OR MILITARY AUTHORITY
CONTINGENT TIME ELEMENT EXTENDED
DATA SERVICE PROVIDER TIME ELEMENT
DELAY IN STARTUP
EXTENDED PERIOD OF LIABILITY
INGRESS/EGRESS
ON PREMISES SERVICES
SERVICE INTERRUPTION TIME ELEMENT

- 2) The Insured will influence and cooperate with the **contingent time element location** in every way and take any reasonable and necessary action to mitigate the loss payable hereunder.
- 3) TIME ELEMENT EXCLUSIONS C does not apply.

CONTINGENT TIME ELEMENT EXTENDED Exclusions: As respects CONTINGENT TIME ELEMENT EXTENDED, the following additional exclusions apply:

This Policy does not insure loss resulting from:

- 1) lack of incoming or outgoing transmission of voice, data or video.

- 2) **earth movement** as respects a direct or indirect customer, supplier, contract manufacturer or contract service provider located in the **New Madrid Seismic Zone** or in the **Pacific Northwest Seismic Zone**.
- 3) physical loss or damage caused by or resulting from **terrorism**, regardless of any other cause or event, whether or not insured under this Policy, contributing concurrently or in any other sequence of loss.

C. INGRESS/EGRESS

This Policy covers the Actual Loss Sustained and EXTRA EXPENSE incurred by the Insured during the PERIOD OF LIABILITY due to the necessary interruption of the Insured's business due to partial or total physical prevention of ingress to or egress from an insured **location**, whether or not the premises or property of the Insured is damaged, provided that such prevention is a direct result of physical damage of the type insured to property of the type insured.

INGRESS/EGRESS Exclusions: As respects INGRESS/EGRESS, the following additional exclusions apply:

This Policy does not insure loss resulting from:

- 1) lack of incoming or outgoing service consisting of electric, fuel, gas, water, steam, refrigerant, sewerage and voice, data or video.
- 2) picketing or other action by strikers except for physical damage not excluded by this Policy.
- 3) physical loss or damage caused by or resulting from **terrorism**, regardless of any other cause or event, whether or not insured under this Policy, contributing concurrently or in any other sequence to the loss.

The PERIOD OF LIABILITY for this TIME ELEMENT COVERAGE EXTENSION will be:

The period of time:

- 1) starting at the time of such physical damage; and
- 2) ending not later than the number of consecutive days shown in the LIMITS OF LIABILITY clause in the DECLARATIONS section,

this period of time is part of and not in addition to any PERIOD OF LIABILITY applying to any coverage provided in the TIME ELEMENT section.

D. LOGISTICS EXTRA COST

This Policy covers the extra cost incurred by the Insured during the PERIOD OF LIABILITY due to the disruption of the **normal** movement of goods or materials:

- 1) directly between insured **locations**; or
- 2) directly between an insured **location** and a **location** of a direct customer, supplier, contract manufacturer or contract service provider to the Insured,

provided that such disruption is a direct result of physical loss or damage of the type insured to property of the type insured located within the TERRITORY of this Policy.

Measurement of Loss:

The recoverable extra cost loss will be the reasonable and necessary extra costs incurred by the Insured of the following:

- 1) extra costs to temporarily continue as nearly **normal** as practicable the movement of goods or materials.

This Extension will apply when the PERIOD OF LIABILITY is in excess of 48 hours except 168 hours applies for **earth movement** and/or **flood** and/or **wind**.

LOGISTICS EXTRA COST Exclusions: As respects LOGISTICS EXTRA COST, the following additional exclusions apply:

This Policy does not insure:

- 1) any loss resulting from disruption in the movement of goods or materials between **contingent time element locations**.
- 2) any loss resulting from disruption of incoming or outgoing services consisting of electricity, gas, fuel, steam, water, refrigeration, sewerage and voice, data or video.
- 3) any loss of income.
- 4) costs that usually would have been incurred in conducting the business during the same period had there been no disruption of **normal** movement of goods or materials.
- 5) costs of permanent repair or replacement of property that has been damaged or destroyed.
- 6) any expense recoverable elsewhere in this Policy.
- 7) any loss resulting from disruption caused by or resulting from **terrorism**, regardless of any other cause or event, whether or not insured under this Policy, contributing concurrently or in any other sequence to the loss.

- 8) any loss resulting from disruption caused by loss or damage from **earth movement** in the **New Madrid Seismic Zone** or in the **Pacific Northwest Seismic Zone**.
- 9) any loss resulting from disruption caused by physical loss or damage to personal property of the Insured while in transit.

The PERIOD OF LIABILITY for this TIME ELEMENT COVERAGE EXTENSION will be:

The period of time:

- 1) starting at the time of physical loss or damage causing the disruption of the **normal** movement of goods or materials directly between insured **locations**; or directly between the insured **location** and the **location** of the direct customer, supplier, contract manufacturer or contract service provider to the Insured, and
- 2) ending not later than:
 - a) when with due diligence and dispatch the **normal** movement of goods or materials directly between insured **locations**; or directly between the insured **location** and the **location** of the direct customer, supplier, contract manufacturer or contract service provider to the Insured could be resumed; or
 - b) the number of consecutive days shown in the LIMITS OF LIABILITY clause of the DECLARATIONS section.

E. SERVICE INTERRUPTION TIME ELEMENT

This Policy covers the Actual Loss Sustained and EXTRA EXPENSE incurred by the Insured during the period of service interruption at an insured **location** when the loss is caused by the interruption of incoming services consisting of electricity, gas, fuel, steam, water, refrigeration or from the lack of outgoing sewerage service by reason of any accidental event at the facilities of the supplier of such service located within this Policy's TERRITORY, that immediately prevents in whole or in part the delivery of such usable services.

This Extension will apply when the period of service interruption is in excess of 24 hours.

Additional General Provisions:

- 1) The Insured will immediately notify the suppliers of services of any interruption of such services.
- 2) The Company will not be liable if the interruption of such services is caused directly or indirectly by the failure of the Insured to comply with the terms and conditions of any contracts the Insured has for the supply of such specified services.

SERVICE INTERRUPTION TIME ELEMENT Exclusions: As respects SERVICE INTERRUPTION TIME ELEMENT, the following applies:

- 1) The exclusions in the EXCLUSIONS clause in the PROPERTY DAMAGE section do not apply except for:
 - a) A1, A2, A3, A6, B1, B2, B5 and
 - b) B4 with respect to incoming or outgoing voice, data or video, and
 - c) D1 except with respect to fungus, mold or mildew.
- 2) The following additional exclusions apply:

This Policy excludes loss or damage directly or indirectly caused by or resulting from the following regardless of any other cause or event, whether or not insured under this Policy, contributing concurrently or in any other sequence to the loss:

- a) **earth movement** for property located in the **New Madrid Seismic Zone** or in the **Pacific Northwest Seismic Zone**.
- b) **terrorism**.

As used above, the period of service interruption:

- 1) is the period starting with the time when an interruption of specified services happens; and ending when with due diligence and dispatch the service could be wholly restored and the **location** receiving the service could or would have resumed normal operations following the restorations of service under the same or equivalent physical and operating conditions as provided by the PERIOD OF LIABILITY clause in this section.
- 2) is limited to only those hours during which the Insured would or could have used service(s) if it had been available.
- 3) does not extend to include the interruption of operations caused by any reason other than interruption of the specified service(s).

ADDITIONAL TIME ELEMENT COVERAGE EXTENSIONS

A. ATTRACTION PROPERTY

This Policy covers the Actual Loss Sustained and EXTRA EXPENSE incurred by the Insured during the PERIOD OF LIABILITY directly resulting from physical loss or damage of the type insured to property of the type insured that attracts business to an insured **location** and is within 1 statute mile/1.6 kilometres of the insured **location**.

ATTRACTION PROPERTY Exclusions: As respects ATTRACTION PROPERTY, the following additional exclusion applies:

This Policy does not insure loss resulting from:

- 1) physical loss or damage caused by or resulting from **terrorism**, regardless of any other cause or event, whether or not insured under this Policy, contributing concurrently or in any other sequence to the loss.

The PERIOD OF LIABILITY for this TIME ELEMENT COVERAGE EXTENSION will be:

The period of time:

- 1) starting at the time of such physical damage; and
- 2) ending not later than the number of consecutive days shown in the LIMITS OF LIABILITY clause in the DECLARATIONS section.

B. CRISIS MANAGEMENT

This Policy covers the Actual Loss Sustained and EXTRA EXPENSE incurred by the Insured during the PERIOD OF LIABILITY if an order of civil or military authority limits, restricts or prohibits partial or total access to an insured **location**, provided such order is a direct result of:

- 1) a violent crime, suicide, attempted suicide, or armed robbery; or
- 2) a death or bodily injury caused by a workplace accident;

at such insured **location**.

For the purposes of this Extension only, a workplace accident shall be considered a sudden, fortuitous event that happens during working hours and arises out of work performed in the course and the scope of employment.

This Extension of coverage will apply when the PERIOD OF LIABILITY is in excess of 4 hours.

CRISIS MANAGEMENT Exclusions: As respects CRISIS MANAGEMENT, the following additional exclusion applies:

This Policy excludes loss or damage directly or indirectly caused by or resulting from the following regardless of any other cause or event, whether or not insured under this Policy, contributing concurrently or in any other sequence to the loss:

- 1) **terrorism**.

The PERIOD OF LIABILITY for this TIME ELEMENT COVERAGE EXTENSION will be:

The period of time:

- 1) starting with the time the civil or military authority prohibits access; and
- 2) ending not later than the number of consecutive days shown in the LIMITS OF LIABILITY clause in the DECLARATIONS section.

C. DELAY IN STARTUP

GROSS EARNINGS or GROSS PROFIT and EXTRA EXPENSE are extended to cover the Actual Loss Sustained incurred by the Insured during the PERIOD OF LIABILITY due to the reasonable and necessary delay in startup of business operations directly resulting from physical loss or damage of the type insured to insured property under construction at an insured **location**.

D. EXTENDED PERIOD OF LIABILITY

The GROSS EARNINGS coverage is extended to cover the reduction in sales resulting from:

- 1) the interruption of business as covered by GROSS EARNINGS;
- 2) for such additional length of time as would be required with the exercise of due diligence and dispatch to restore the Insured's business to the condition that would have existed had no loss happened; and
- 3) commencing with the date on which the liability of the Company for loss resulting from interruption of business would terminate if this Extension had not been included in this Policy.

However, this Extension does not apply to GROSS EARNINGS loss resulting from physical loss or damage caused by or resulting from **terrorism**.

EXTENDED PERIOD OF LIABILITY Exclusions: As respects EXTENDED PERIOD OF LIABILITY, the TIME ELEMENT EXCLUSIONS B of this section does not apply and the following applies instead:

This Policy does not insure against any increase in loss due to damages for breach of contract or for late or noncompletion of orders, or fines or penalties of any nature except fines or penalties for breach of contract or for late or noncompletion of orders.

Coverage under this Extension for the reduction in sales due to contract cancellation will include only those sales that would have been earned under the contract during the extended period of liability.

Coverage under this Extension does not apply for more than the number of consecutive days shown in the LIMITS OF LIABILITY clause of the DECLARATIONS section.

E. INTERRUPTION BY COMMUNICABLE DISEASE

If a **location** owned, leased or rented by the Insured has the actual not suspected presence of **communicable disease** and access to such **location** is limited, restricted or prohibited by:

- 1) an order of an authorized governmental agency regulating the actual not suspected presence of **communicable disease**; or
- 2) a decision of an Officer of the Insured as a result of the actual not suspected presence of **communicable disease**,

this Policy covers the Actual Loss Sustained and EXTRA EXPENSE incurred by the Insured during the PERIOD OF LIABILITY at such **location** with the actual not suspected presence of **communicable disease**.

This Extension will apply when access to such **location** is limited, restricted, or prohibited in excess of 48 hours.

INTERRUPTION BY COMMUNICABLE DISEASE Exclusions: As respects INTERRUPTION BY COMMUNICABLE DISEASE, the following additional exclusions apply:

This Policy does not insure loss resulting from:

- 1) the enforcement of any law or ordinance with which the Insured was legally obligated to comply prior to the time of the actual spread of **communicable disease**.
- 2) loss or damage caused by or resulting from **terrorism**, regardless of any other cause or event, whether or not insured under this Policy, contributing concurrently or in any sequence of loss.

The PERIOD OF LIABILITY for this TIME ELEMENT COVERAGE EXTENSION will be:

The period of time:

- 1) starting at the time of the order of the authorized governmental agency or the Officer of the Insured; and
- 2) ending not later than the number of consecutive days shown in the LIMITS OF LIABILITY clause in the DECLARATIONS section,

this period of time is part of and not in addition to any PERIOD OF LIABILITY applying to any coverage provided in the TIME ELEMENT section.

F. ON PREMISES SERVICES

This Policy covers the Actual Loss Sustained and EXTRA EXPENSE incurred by the Insured during the PERIOD OF LIABILITY directly resulting from physical loss or damage

of the type insured to the following property located within 1,000 feet/300 metres of the insured **location**:

- 1) Electrical equipment and equipment used for the transmission of voice, data or video.
- 2) Electrical, fuel, gas, water, steam, refrigeration, sewerage, voice, data or video transmission lines.

G. PROTECTION AND PRESERVATION OF PROPERTY TIME ELEMENT

This Policy covers the Actual Loss Sustained by the Insured for a period of time not to exceed 48 hours prior to and 48 hours after the Insured first taking reasonable action for the temporary protection and preservation of property insured by this Policy provided such action is necessary to prevent immediately impending insured physical loss or damage to such insured property.

This Extension does not cover the Actual Loss Sustained by the Insured to temporarily protect or preserve insured property from actual, or to prevent immediately impending, physical loss or damage covered by TERRORISM coverage as provided in the PROPERTY DAMAGE section.

This Extension is subject to the deductible provisions that would have applied had the physical loss or damage happened.

H. RELATED REPORTED VALUES

If reported TIME ELEMENT values include:

- 1) **locations** used by the Insured (such as branch stores, sales outlets and other plants) but not listed on a schedule under this Policy; and
- 2) a TIME ELEMENT loss would result at such **locations**,
- 3) from insured physical loss or damage at an insured **location**,

then this Policy provides coverage for such resulting TIME ELEMENT loss in accordance with the coverage applicable at such insured **location**.

I. RESEARCH AND DEVELOPMENT

The GROSS EARNINGS and GROSS PROFIT coverages are extended to insure the Actual Loss Sustained by the Insured of continuing fixed charges and Ordinary Payroll directly attributable to the interruption of research and development activities that in themselves would not have produced income during the PERIOD OF LIABILITY.

The PERIOD OF LIABILITY for this Extension will be the period from the time of direct physical loss or damage of the type insured to the time when the property could be repaired or replaced and made ready for operations, but as respects GROSS PROFIT and Ordinary Payroll such period of time shall not exceed the period of time shown in the LIMITS OF



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LIABILITY clause of the DECLARATIONS section. Such period of time shall not be limited by the date of expiration of this Policy.

J. SOFT COSTS

This Policy covers the Actual Loss Sustained incurred by the Insured of **soft costs** during the PERIOD OF LIABILITY arising out of the delay of completion of buildings and additions under construction directly resulting from physical loss or damage of the type insured to insured property under construction at an insured **location**.

LOSS ADJUSTMENT AND SETTLEMENT

1. REQUIREMENTS IN CASE OF LOSS

The Insured will:

- 1) give immediate written notice to the Company of any loss.
- 2) protect the property from further loss or damage.
- 3) promptly separate the damaged and undamaged property; put it in the best possible order; and furnish a complete inventory of the lost, destroyed, damaged and undamaged property showing in detail the quantities, costs, **actual cash value**, replacement value and amount of loss claimed.
- 4) give a signed and sworn proof of loss to the Company within 90 days after the loss, unless that time is extended in writing by the Company. The proof of loss must state the knowledge and belief of the Insured as to:
 - a) the time and origin of the loss.
 - b) the Insured's interest and that of all others in the property.
 - c) the **actual cash value** and replacement value of each item and the amount of loss to each item; all encumbrances; and all other contracts of insurance, whether valid or not, covering any of the property.
 - d) any changes in the title, use, occupation, location, possession or exposures of the property since the effective date of this Policy.
 - e) by whom and for what purpose any **location** insured by this Policy was occupied on the date of loss, and whether or not it then stood on leased ground.
- 5) include a copy of all the descriptions and schedules in all policies and, if required, provide verified plans and specifications of any buildings, fixtures, machinery or equipment destroyed or damaged.
- 6) further, the Insured, will as often as may be reasonably required:
 - a) exhibit to any person designated by the Company all that remains of any property;
 - b) submit to examination under oath by any person designated by the Company and sign the written records of examinations; and
 - c) produce for examination at the request of the Company:
 - (i) all books of accounts, business records, bills, invoices and other vouchers; or
 - (ii) certified copies if originals are lost,

at such reasonable times and places that may be designated by the Company or its representative and permit extracts and machine copies to be made.

2. CURRENCY FOR LOSS PAYMENT

Losses will be adjusted and paid in the currency of the United States of America, except in Canada where losses will be paid in Canadian currency, unless directed otherwise by the Insured.

3. PARTIAL PAYMENT OF LOSS SETTLEMENT

In the event of insured physical loss or damage determined by the Company's representatives to be in excess of the applicable Policy deductible, the Company will advance mutually agreed upon partial payment(s), subject to the Policy's provisions. To obtain such partial payments, the Insured will submit a signed and sworn Proof of Loss as described in this Policy, with adequate supporting documentation.

4. COLLECTION FROM OTHERS

The Company will not be liable for any loss to the extent that the Insured has collected for such loss from others.

5. SUBROGATION

The Insured is required to cooperate in any subrogation proceedings. The Company may require from the Insured an assignment or other transfer of all rights of recovery against any party for loss to the extent of the Company's payment.

The Company will not acquire any rights of recovery that the Insured has expressly waived prior to a loss, nor will such waiver affect the Insured's rights under this Policy.

Any recovery from subrogation proceedings, less costs incurred by the Company in such proceedings, will be payable to the Insured in the proportion that the amount of:

- 1) any applicable deductible; and/or
- 2) any provable uninsured loss,

bears to the entire provable loss amount.

6. COMPANY OPTION

The Company has the option to take all or any part of damaged property at the agreed or appraised value. The Company must give notice to the Insured of its intention to do so within 30 days after receipt of Proof of Loss.

7. ABANDONMENT

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

8. APPRAISAL

If the Insured and the Company fail to agree on the amount of loss, each will, on the written demand of either, select a competent and disinterested appraiser after:

- 1) the Insured has fully complied with all provisions of this Policy, including REQUIREMENTS IN CASE OF LOSS; and
- 2) the Company has received a signed and sworn Proof of Loss from the Insured.

Each will notify the other of the appraiser selected within 20 days of such demand.

The appraisers will first select a competent and disinterested umpire. If the appraisers fail to agree upon an umpire within 30 days then, on the request of the Insured or the Company, the umpire will be selected by a judge of a court of record in the jurisdiction in which the appraisal is pending. The appraisers will then appraise the amount of loss, stating separately the **actual cash value** and replacement cost value as of the date of loss and the amount of loss, for each item of physical loss or damage or if, for TIME ELEMENT loss, the amount of loss for each TIME ELEMENT coverage of this Policy.

If the appraisers fail to agree, they will submit their differences to the umpire. An award agreed to in writing by any two will determine the amount of loss.

The Insured and the Company will each:

- 1) pay its chosen appraiser; and
- 2) bear equally the other expenses of the appraisal and umpire.

A demand for APPRAISAL shall not relieve the Insured of its continuing obligation to comply with the terms and conditions of this Policy, including as provided under REQUIREMENTS IN CASE OF LOSS.

The Company will not be held to have waived any of its rights by any act relating to appraisal.

9. SUIT AGAINST THE COMPANY

No suit, action or proceeding for the recovery of any claim will be sustained in any court of law or equity unless:

- 1) the Insured has fully complied with all the provisions of this Policy; and
- 2) legal action is started within twelve months after inception of the loss.

If under the insurance laws of the jurisdiction in which the property is located, such twelve months' limitation is invalid, then any such legal action must be started within the shortest limit of time permitted by such laws.



10. SETTLEMENT OF CLAIMS

The amount of loss for which the Company may be liable will be paid within 30 days after:

- A. proof of loss as described in this Policy is received by the Company; and
- B. when a resolution of the amount of loss is made either by:
 - 1) written agreement between the Insured and the Company; or
 - 2) the filing with the Company of an award as provided in the APPRAISAL clause of this section.

GENERAL PROVISIONS

1. CANCELLATION/NON-RENEWAL

This Policy may be:

- A. cancelled at any time at the request of the Insured by surrendering this Policy to the Company or by giving written notice to the Company stating when such cancellation will take effect; or
- B. cancelled by the Company by giving the Insured not less than:
 - 1) 60 days' written notice of cancellation; or
 - 2) 10 days' written notice of cancellation if the Insured fails to remit, when due, payment of premium for this Policy; or
- C. non-renewed by the Company by giving the Insured not less than 60 days' written notice of non-renewal.

Return of any unearned premium will be calculated on the customary short rate basis if the Insured cancels and on a pro-rata basis if the Company cancels this Policy. Return of any unearned premium will be made by the Company as soon as practicable.

2. INSPECTIONS

The Company, at all reasonable times, will be permitted, but will not have the duty, to inspect insured property. The Company does not address life, safety or health issues.

The Company's:

- A. right to make inspections;
- B. making of inspections; or
- C. providing recommendations or other information in connection with any inspections,

will not constitute an undertaking, on behalf of or for the benefit of the Insured or others. The Company will have no liability to the Insured or any other person because of any inspection or failure to inspect.

When the Company is not providing jurisdictional inspections, the Owner/Operator has the responsibility to assure that jurisdictional inspections are performed as required, and to assure that required jurisdictional Operating Certificates are current for their pressure equipment.

3. PROVISIONS APPLICABLE TO SPECIFIC JURISDICTIONS

- A. If the provisions of this Policy conflict with the laws of any jurisdictions in which this Policy applies, and if certain provisions are required by law to be stated in this Policy, this Policy

will be read so as to eliminate such conflict or deemed to include such provisions for insured **locations** within such jurisdictions.

- B. The Company will provide to the Insured copies of endorsements mandated for use by the laws of provinces in Canada. The endorsements modify this Policy with respect to any insured property located in the province in which the endorsement applies.
- C. The Company will provide to the Insured copies of endorsements mandated for use by the laws of states in the United States of America. The endorsements modify this Policy with respect to any insured property located in the state in which the endorsement applies.
- D. As respects the United States, its territories and possessions and the Commonwealth of Puerto Rico, the definition of **terrorism** is declared null and void and it is agreed that an event defined as a Certified Act of Terrorism under the terms of the SUPPLEMENTAL UNITED STATES CERTIFIED ACT OF TERRORISM ENDORSEMENT(S) attached to this Policy shall be considered an act of **terrorism** within the terms of this Policy. Coverage recoverable under the SUPPLEMENTAL UNITED STATES CERTIFIED ACT OF TERRORISM ENDORSEMENT(S) is excluded from any other coverage under this Policy. Any difference in limit between loss recoverable under the SUPPLEMENTAL UNITED STATES CERTIFIED ACT OF TERRORISM ENDORSEMENT(S) and this Policy is not recoverable under this Policy.

4. LIBERALIZATION

If during the period that insurance is in force under this Policy, any filed rules or regulations affecting the same are revised by statute so as to broaden the insurance without additional premium charge, such extended or broadened insurance will inure to the benefit of the Insured within such jurisdiction, effective the date of the change specified in such statute.

5. MISREPRESENTATION AND FRAUD

This entire Policy will be void if, whether before or after a loss, an Insured has:

- A. willfully concealed or misrepresented any material fact or circumstance concerning this insurance, the subject thereof, any insurance claim, or the interest of an Insured.
- B. made any attempt to defraud the Company.
- C. made any false swearing.

6. LENDERS LOSS PAYEE AND MORTGAGEE INTERESTS AND OBLIGATIONS

- A. The Company will pay for loss to specified property insured under this Policy to each specified Lender Loss Payee (hereinafter referred to as Lender) as its interest may appear, and to each specified Mortgagee as its interest may appear, under all present or future mortgages upon such property, in order of precedence of the mortgages.

B. The interest of the Lender or Mortgagee (as the case may be) in property insured under this Policy will not be invalidated by:

- 1) any act or neglect of the debtor, mortgagor, or owner (as the case may be) of the property.
- 2) foreclosure, notice of sale, or similar proceedings with respect to the property.
- 3) change in the title or ownership of the property.
- 4) change to a more hazardous occupancy.

The Lender or Mortgagee will notify the Company of any known change in ownership, occupancy, or hazard and, within 10 days of written request by the Company, may pay the increased premium associated with such known change. If the Lender or Mortgagee fails to pay the increased premium, all coverage under this Policy will cease.

C. If this Policy is cancelled at the request of the Insured or its agent, the coverage for the interest of the Lender or Mortgagee will terminate 10 days after the Company sends to the Lender or Mortgagee written notice of cancellation, unless:

- 1) sooner terminated by authorization, consent, approval, acceptance, or ratification of the Insured's action by the Lender or Mortgagee, or its agent.
- 2) this Policy is replaced by the Insured, with a policy providing coverage for the interest of the Lender or Mortgagee, in which event coverage under this Policy with respect to such interest will terminate as of the effective date of the replacement policy, notwithstanding any other provision of this Policy.

D. The Company may cancel this Policy and/or the interest of the Lender or Mortgagee under this Policy, by giving the Lender or Mortgagee written notice 60 days prior to the effective date of cancellation, if cancellation is for any reason other than non-payment. If the debtor, mortgagor, or owner has failed to pay any premium due under this Policy, the Company may cancel this Policy for such non-payment, but will give the Lender or Mortgagee written notice 10 days prior to the effective date of cancellation. If the Lender or Mortgagee fails to pay the premium due by the specified cancellation date, all coverage under this Policy will cease.

E. The Company has the right to invoke this Policy's SUSPENSION clause. The suspension of insurance will apply to the interest of the Lender or Mortgagee in any machine, vessel, or part of any machine or vessel, subject to the suspension. The Company will provide the Lender or Mortgagee at the last known address a copy of the suspension notice.

F. If the Company pays the Lender or Mortgagee for any loss, and denies payment to the debtor, mortgagor or owner, the Company will, to the extent of the payment made to the Lender or Mortgagee be subrogated to the rights of the Lender or Mortgagee under all securities held as collateral to the debt or mortgage. No subrogation will impair the right of the Lender or Mortgagee to sue or recover the full amount of its claim. At its option, the Company may pay to the Lender or Mortgagee the whole principal due on the debt or

mortgage plus any accrued interest. In this event, all rights and securities will be assigned and transferred from the Lender or Mortgagee to the Company, and the remaining debt or mortgage will be paid to the Company.

- G. If the Insured fails to render proof of loss, the Lender or Mortgagee, upon notice of the Insured's failure to do so, will render proof of loss within 60 days of notice and will be subject to the provisions of this Policy relating to APPRAISAL, SETTLEMENT OF CLAIMS, and SUIT AGAINST THE COMPANY.
- H. Other provisions relating to the interests and obligations of the Lender or Mortgagee may be added to this Policy by agreement in writing.

7. OTHER INSURANCE

- A. If there is any other insurance that would apply in the absence of this Policy, this Policy will apply only after such insurance whether collectible or not.
- B. In no event will this Policy apply as contributing insurance.
- C. The Insured is permitted to have other insurance over any limits or sublimits of liability specified elsewhere in this Policy without prejudice to this Policy. The existence of any such insurance will not reduce any limit or sublimit of liability in this Policy. Any other insurance that would have provided primary coverage in the absence of this Policy will not be considered excess.
- D. The Insured is permitted to have other insurance for all, or any part, of any deductible in this Policy. The existence of such other insurance will not prejudice recovery under this Policy. If the limits of liability of such other insurance are greater than this Policy's applicable deductible, this Policy's insurance will apply only after such other insurance has been exhausted.
- E. If this Policy is deemed to contribute with other insurance, the limit of liability applicable at each **location**, for the purposes of such contribution with other insurers, will be the latest amount described in this Policy or the latest **location** value on file with the Company.
- F. National Flood Insurance Program: This Policy shall respond as excess over those terms and conditions concurrent with the Standard Flood Insurance Policy issued to the Insured, its renewal or replacement thereof.

The **flood** deductible for Location No. 00093 as described on the Schedule of Locations will be reduced by one dollar for each dollar recovered under the Standard Flood Insurance Policy until no deductible applies.

It is agreed that the Insured will purchase **flood** insurance for Location No. 00093 as described on the Schedule of Locations from the National Flood Insurance Program and will maintain the maximum amount of available flood insurance for building and contents under the National Flood Insurance Program.



If for any reason the National Flood Insurance Program Standard Flood Insurance Policy should not be in force at the time of loss, this Policy will respond as if the terms and conditions of the Standard Flood Insurance policy were in force and the maximum amount of available flood insurance for building and contents coverage had been purchased from the National Flood Insurance Program.

8. POLICY MODIFICATION

This Policy contains all of the agreements between the Insured and the Company concerning this insurance. The Insured and the Company may request changes to this Policy. This Policy can be changed only by endorsements issued by the Company and made a part of this Policy.

Notice to any agent or knowledge possessed by any agent or by any other person will not:

- A. create a waiver, or change any part of this Policy; or
- B. prevent the Company from asserting any rights under the provisions of this Policy.

9. REDUCTION BY LOSS

Claims paid under this Policy will not reduce its limit of liability, except claims paid will reduce any **annual aggregate** limit.

10. SUSPENSION

On discovery of a dangerous condition, the Company may immediately suspend this insurance on any machine, vessel or part thereof by giving written notice to the Insured. The suspended insurance may be reinstated by the Company. Any unearned premium resulting from such suspension will be returned by the Company.

11. TITLES

The titles in this Policy are only for reference. The titles do not in any way affect the provisions of this Policy.

12. ASSIGNMENT

Assignment of this Policy will not be valid except with the written consent of the Company.

13. DEFINITIONS

The following terms when appearing in **boldface** in this Policy mean:

actual cash value:

the amount it would cost to repair or replace insured property, on the date of loss, with material of like kind and quality, with proper deduction for obsolescence and physical depreciation.

annual aggregate:

the Company's maximum amount payable during any policy year.

communicable disease:

disease which is:

- A. transmissible from human to human by direct or indirect contact with an affected individual or the individual's discharges, or
- B. Legionellosis.

contaminant:

anything that causes **contamination**.

contamination:

any condition of property due to the actual or suspected presence of any foreign substance, impurity, pollutant, hazardous material, poison, toxin, pathogen or pathogenic organism, bacteria, virus, disease causing or illness causing agent, fungus, mold or mildew.

contingent time element location:

- A. any **location**:
 - 1) of a direct customer, supplier, contract manufacturer or contract service provider to the Insured;
 - 2) of any company under a royalty, licensing fee or commission agreement with the Insured;
- B. any **location** of a company that is a direct or indirect customer, supplier, contract manufacturer or contract service provider to a **location** described in A1 above,

not including **locations** of any company directly or indirectly supplying to, or receiving from, the Insured, electricity, fuel, gas, water, steam, refrigeration, sewage, voice, data or video.

cyber event:

any act involving the malicious or unauthorized access to, operation of, or use of **electronic data processing equipment or media**, regardless of any other cause or event contributing concurrently or in any other sequence of loss. However, physical loss or damage by fire, explosion or sprinkler leakage resulting from **cyber event** will not be considered to be loss by **cyber event** within the terms and conditions of this Policy.

date or time recognition:

the recognition, interpretation, calculation, comparison, differentiation, sequencing, accessing or processing of data involving one or more dates or times, including the Year 2000.

earth movement:

any natural or man-made earth movement including, but not limited to earthquake or landslide, regardless of any other cause or event contributing concurrently or in any other sequence of loss. However, physical loss or damage by fire, explosion, sprinkler leakage, or **flood** resulting from **earth movement** will not be considered to be loss by **earth movement** within the terms and conditions of this Policy.

electronic data processing equipment or media:

any computer, computer system or component, hardware, network, microprocessor, microchip, integrated circuit or similar devices or components in computer or non-computer equipment, operating systems, data, programs or other software stored on electronic, electro-mechanical, electro-magnetic data processing or production equipment, whether the property of the Insured or not.

fine arts:

paintings; etchings; pictures; tapestries; rare or art glass; art glass windows; valuable rugs; statuary; sculptures; antique furniture; antique jewelry; bric-a-brac; porcelains; and similar property of rarity, historical value, or artistic merit excluding automobiles, coins, stamps, furs, jewelry, precious stones, precious metals, watercraft, aircraft, money, securities.

flood:

flood; surface waters; rising waters; storm surge, sea surge, wave wash; waves; tsunami; tide or tidal water; the release of water, the rising, overflowing or breaking of boundaries of natural or man-made bodies of water; or the spray therefrom; all whether driven by wind or not; or sewer back-up resulting from any of the foregoing; regardless of any other cause or event, whether natural or man-made, contributing concurrently or in any other sequence of loss. Physical loss or damage from **flood** associated with a storm or weather disturbance whether or not identified by name by any meteorological authority, is considered to be **flood** within the terms of this Policy. However, physical loss or damage by fire, explosion or sprinkler leakage resulting from **flood** is not considered to be loss by **flood** within the terms and conditions of this Policy.

high hazard zones for earth movement:

Alaska, California, the Commonwealth of Puerto Rico, Hawaii

irreplaceable:

an item which cannot be replaced with other of like kind and quality.

location:

- A. as specified in the Schedule of Locations, or
- B. if not so specified in the Schedule of Locations:
 - 1) a building, yard, dock, wharf, pier or bulkhead (or any group of the foregoing),
 - a) bounded on all sides by public streets, clear land space or open waterways, each not less than 50 feet/15 metres wide. Any bridge or tunnel crossing such street, space or waterway will render such separation inoperative for the purpose of this definition.

New Madrid Seismic Zone:

Arkansas, United States of America, counties of:

Arkansas, Clay, Craighead, Crittenden, Cross, Fulton, Greene, Independence, Izard, Jackson, Lawrence, Lee, Lonoke, Mississippi, Monroe, Phillips, Poinsett, Prairie, Randolph, Sharp, St. Francis, White, Woodruff

Illinois, United States of America, counties of:

Alexander, Bond, Clay, Clinton, Crawford, Edwards, Effingham, Fayette, Franklin, Gallatin, Hamilton, Hardin, Jackson, Jasper, Jefferson, Johnson, Lawrence, Madison, Marion, Massac, Monroe, Perry, Pope, Pulaski, Randolph, Richland, Saline, St. Clair, Union, Wabash, Washington, Wayne, White, Williamson

Indiana, United States of America, counties of:

Gibson, Knox, Pike, Posey, Spencer, Vanderburgh, Warrick

Kentucky, United States of America, counties of:

Ballard, Caldwell, Calloway, Carlisle, Christian, Crittenden, Daviess, Fulton, Graves, Henderson, Hickman, Hopkins, Livingston, Lyon, Marshall, McCracken, McLean, Muhlenberg, Todd, Trigg, Union, Webster

Mississippi, United States of America, counties of:

Alcorn, Benton, Coahoma, De Soto, Lafayette, Marshall, Panola, Quitman, Tate, Tippah, Tunica

Missouri, United States of America, counties of:

Bollinger, Butler, Cape Girardeau, Carter, Dunklin, Iron, Jefferson, Madison, Mississippi, New Madrid, Oregon, Pemiscot, Perry, Reynolds, Ripley, Scott, Shannon, St. Francois, St. Louis, City of St. Louis, Ste. Genevieve, Stoddard, Washington, Wayne

Tennessee, United States of America, counties of:

Benton, Carroll, Chester, Crockett, Decatur, Dyer, Fayette, Gibson, Hardeman, Hardin, Haywood, Henderson, Henry, Houston, Humphreys, Lake, Lauderdale, Madison, McNairy, Montgomery, Obion, Perry, Shelby, Stewart, Tipton, Weakley

normal:

the condition that would have existed had no physical loss or damage happened.

normal cost:

the cost associated with the movement of goods or materials suffering the disruption that the Insured would have incurred had no physical loss or damage causing disruption happened.

occurrence:

the sum total of all loss or damage of the type insured, including any insured TIME ELEMENT loss, arising out of or caused by one discrete event of physical loss or damage, except as respects the following:

- A. **terrorism: occurrence** shall mean the sum total of all loss or damage of the type insured, including any insured TIME ELEMENT loss, arising out of or caused by all acts of **terrorism** during a continuous period of seventy-two (72) hours.
- B. **earth movement: occurrence** shall mean the sum total of all loss or damage of the type insured, including any insured TIME ELEMENT loss, arising out of or caused by all **earth movement(s)** during a continuous period of seventy-two (72) hours.

off-premises data processing or data transmission services:

the storage or processing of data performed off-premises of the Insured's property, including the transmission of voice, data or video over a single, or combination of, computer or communication networks.

Pacific Northwest Seismic Zone:

Oregon, United States of America, counties of:

Benton, Clackamas, Clatsop, Columbia, Coos, Curry, Douglas, Hood River, Jackson, Josephine, Klamath, Lane, Lincoln, Linn, Marion, Multnomah, Polk, Tillamook, Washington, Yamhill

Washington, United States of America, counties of:

Chelan, Clallam, Clark, Cowlitz, Grays Harbor, Island, Jefferson, King, Kitsap, Kittitas, Lewis, Mason, Pacific, Pierce, San Juan, Skagit, Skamania, Snohomish, Thurston, Wahkiakum, Whatcom

British Columbia (includes Vancouver Island), Canada:

South of 50° N latitude and west of 120° W longitude

period of operational testing:

the period of time beginning 24 hours prior to the earlier of the following:

- A. introduction, into a system, of feedstock or other materials for processing or handling;
- B. commencement of fuel or energy supply to a system,

and ending with the earlier of the following:

- A. the expiration date or cancellation date of this Policy.
- B. if specified, the number of consecutive days shown in the LIMITS OF LIABILITY clause in the DECLARATIONS section.

physical loss or damage to electronic data, programs or software:

the destruction, distortion or corruption of electronic data, programs or software.

representative company(ies):

Factory Mutual Insurance Company, FM Insurance Company Limited or FM Insurance Europe S.A.; Affiliated FM Insurance Company; Appalachian Insurance Company or any other company issuing a local policy at the direction of the Company.

soft costs:

costs over and above those that are **normal** at an insured **location** undergoing renovation or in the course of construction, limited to the following:

- A. construction loan fees - the additional cost incurred to rearrange loans necessary for the completion of construction, repairs or reconstruction including; the cost to arrange refinancing, accounting work necessary to restructure financing, legal work necessary to prepare new documents, charges by the lenders for the extension or renewal of loans necessary.

- B. commitment fees, leasing and marketing expenses - the cost of returning any commitment fees received from prospective tenant(s) or purchaser(s), the cost of re-leasing and marketing due to loss of tenant(s) or purchaser(s).
- C. additional fees for architects, engineers, consultants, attorneys and accountants needed for the completion of construction, repairs or reconstruction.
- D. property taxes, building permits, additional interest on loans, realty taxes and insurance premiums.

terrorism:

any act, involving the use or threat of: force, violence, dangerous conduct, interference with the operations of any business, government or other organization or institution, or any similar act,

when the effect or apparent purpose is:

- A. to influence or instill fear in any government (de jure or de facto) or the public, or any segment of either; or
- B. to further or to express support for, or opposition to, any political, religious, social, ideological or similar type of objective or position.

transmission and distribution systems:

transmission and distribution systems including but not limited to electricity, gas, fuel, steam, water, refrigeration, sewerage, voice, data, and video. Such systems shall include poles, towers and fixtures, overhead conductors and devices, underground and underwater conduit, underground and underwater conductors and devices, line transformers, service meters, street lighting and signal systems.

valuable papers and records:

written, printed or otherwise inscribed documents and records, including books, maps, films, drawings, abstracts, deeds, mortgages and manuscripts, all of which must be of value to the Insured.

wind:

direct action of wind including substance driven by wind. **Wind** does not mean or include anything defined as **flood** in this Policy.



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Policy No. 1062764

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00001		347 North Nellis Boulevard Las Vegas, Nevada, 89110-5323 United States of America Clark Carrier Loc. #101
00002		2875 South Nellis Boulevard Las Vegas, Nevada, 89121-2086 United States of America Clark Carrier Loc. #102
00003		8584 West Lake Mead Boulevard Las Vegas, Nevada, 89128-7630 United States of America Clark Carrier Loc. #103
00004		4424 Spring Mountain Road Las Vegas, Nevada, 89102-8720 United States of America Clark Carrier Loc. #104
00005		4604 West Sahara Avenue Las Vegas, Nevada, 89102-3618 United States of America Clark Carrier Loc. #105
00006		4825 West Flamingo Road Las Vegas, Nevada, 89103-3732 United States of America Clark Carrier Loc. #106



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00007		1089 East Tropicana Avenue Las Vegas, Nevada, 89119-6614 United States of America Clark Carrier Loc. #107
00008		739 South Rainbow Boulevard Las Vegas, Nevada, 89145-6241 United States of America Clark Carrier Loc. #108
00009		532 East Sahara Avenue Las Vegas, Nevada, 89104-2725 United States of America Clark Carrier Loc. #109
00010		3470 East Sunset Road Las Vegas, Nevada, 89120-3234 United States of America Clark Carrier Loc. #110
00011		310 East Warm Springs Road Las Vegas, Nevada, 89119-4245 United States of America Clark Carrier Loc. #111
00012		4310 East Tropicana Avenue Las Vegas, Nevada, 89121-6756 United States of America Clark Carrier Loc. #112



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00013		2280 South Nellis Boulevard Las Vegas, Nevada, 89104-6234 United States of America Clark Carrier Loc. #113
00014		5355 South Decatur Boulevard Las Vegas, Nevada, 89118-6238 United States of America Clark Carrier Loc. #114
00015		1661 East Sunset Road Las Vegas, Nevada, 89119-4925 United States of America Clark Carrier Loc. #115
00016		3935 South Durango Drive Las Vegas, Nevada, 89147-4170 United States of America Clark Carrier Loc. #116
00017		1383 East Silverado Ranch Boulevard Las Vegas, Nevada, 89183-5925 United States of America Clark Carrier Loc. #117
00018		6235 South Decatur Boulevard Las Vegas, Nevada, 89118-4316 United States of America Clark Carrier Loc. #118



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00019		582 East Silverado Ranch Boulevard Las Vegas, Nevada, 89183-6284 United States of America Clark Carrier Loc. #119
00020		3770 South Hualapai Way Las Vegas, Nevada, 89147-5715 United States of America Clark Carrier Loc. #120
00021		6055 East Lake Mead Boulevard Las Vegas, Nevada, 89156-7801 United States of America Clark Carrier Loc. #121
00022		1281 South Decatur Boulevard Las Vegas, Nevada, 89102-5515 United States of America Clark Carrier Loc. #122
00023		3085 North Rainbow Boulevard Las Vegas, Nevada, 89108-4577 United States of America Clark Carrier Loc. #123
00024		680 South Meadows Parkway Reno, Nevada, 89521-4876 United States of America Washoe Carrier Loc. #124



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00025		812 West Ann Drive Las Vegas, Nevada, 89107-2003 United States of America Clark Carrier Loc. #125
00026		61 West Horizon Ridge Parkway Henderson, Nevada, 89012-5307 United States of America Clark Carrier Loc. #126
00027	002509.58	6515 South Jones Boulevard Las Vegas, Nevada, 89118-3337 United States of America Clark Carrier Loc. #127
00028	002509.58	6595 South Jones Boulevard Las Vegas, Nevada, 89118-3337 United States of America Clark Corporate - Carrier Loc. #128
00029		10940 South Eastern Avenue Henderson, Nevada, 89052-4967 United States of America Clark Carrier Loc. #129
00030		10075 South Eastern Avenue Henderson, Nevada, 89052-3974 United States of America Clark Carrier Loc. #130



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00031		6610 South Fort Apache Road Las Vegas, Nevada, 89148-4866 United States of America Clark Carrier Loc. #131
00032		2135 East Centennial Parkway North Las Vegas, Nevada, 89081-5600 United States of America Clark Carrier Loc. #132
00033		5630 South Hualapai Way Las Vegas, Nevada, 89148-6411 United States of America Clark Carrier Loc. #133
00034		2890 Bicentennial Parkway Henderson, Nevada, 89044-4476 United States of America Clark Carrier Loc. #134
00035		1341 West Warm Springs Road Henderson, Nevada, 89014-8811 United States of America Clark Carrier Loc. #135
00036		6929 Aliante Parkway North Las Vegas, Nevada, 89084-3192 United States of America Clark Carrier Loc. #136



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00037		6570 South Buffalo Drive Las Vegas, Nevada, 89113-2162 United States of America Clark Carrier Loc. #137
00038		4420 North Decatur Boulevard Las Vegas, Nevada, 89130-5286 United States of America Clark Carrier Loc. #138
00039		2300 East Desert Inn Road, Suite J Las Vegas, Nevada, 89169-3298 United States of America Clark Carrier Loc. #139
00040		1050 Terminal Way Reno, Nevada, 89502 United States of America Washoe Corporate - Carrier Loc. #140
00041		2400 North Buffalo Drive Las Vegas, Nevada, 89128 United States of America Clark Carrier Loc. #142
00042		2430 East Pebble Road Henderson, Nevada, 89074 United States of America Clark Carrier Loc. #144



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00043		10430 South Eastern Avenue Henderson, Nevada, 89052 United States of America Clark Carrier Loc. #145
00044		9050 West Post Road Las Vegas, Nevada, 89148 United States of America Clark Carrier Loc. #146
00045		1331 South Boulder Highway Space 1331A Henderson, Nevada, 89015 United States of America Clark Carrier Loc. #147
00046		9435 West Tropicana Avenue Suite 108 Las Vegas, Nevada, 89147 United States of America Clark Carrier Loc. #148
00047		8560 Las Vegas Boulevard South Las Vegas, Nevada, 89123-1608 United States of America Clark Carrier Loc. #149
00048		11930 Southern Highlands Parkway Las Vegas, Nevada, 89141 United States of America Clark Carrier Loc. #150



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00049		8255 West Flamingo Road Las Vegas, Nevada, 89147 United States of America Clark Carrier Loc. #151
00050		6788 North 5th Street North Las Vegas, Nevada, 89084-1390 United States of America Clark Carrier Loc. #152
00051		3290 West Ann Road North Las Vegas, Nevada, 89031-3524 United States of America Clark Carrier Loc. #153
00052		3720 West Tropicana Avenue Las Vegas, Nevada, 89103-5610 United States of America Clark Carrier Loc. #156
00053		6450 South Durango Drive Las Vegas, Nevada, 89113-7100 United States of America Clark Carrier Loc. #157
00054		1540 West Sunset Road Henderson, Nevada, 89014 United States of America Clark Carrier Loc. #158



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00055		3101 North Tenaya Way Las Vegas, Nevada, 89128 United States of America Clark Carrier Loc. #159
00056		9580 West Flamingo Road Las Vegas, Nevada, 89147 United States of America Clark Carrier Loc. #160
00057		7200 West Lake Mead Boulevard Las Vegas, Nevada, 89128 United States of America Clark Carrier Loc. #161
00058		7155 North Durango Drive Las Vegas, Nevada, 89149 United States of America Clark Carrier Loc. #162
00059		200 South 5th Street Miles City, Montana, 59301-4004 United States of America Custer Carrier Loc. #163
00060	003296.73	6461 West Post Road Las Vegas, Nevada, 89118 United States of America Clark Carrier Loc. #164



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00061		3835 West Martin Avenue Las Vegas, Nevada, 89118 United States of America Clark Carrier Loc. #165
00062		4880 Silverado Ranch Las Vegas, Nevada, 89139 United States of America Clark Carrier Loc. #167
00063	003632.16	7550 Oso Blanca Road Las Vegas, Nevada, 89149 United States of America Clark Carrier Loc. #168
00064		7355 South Buffalo Avenue, Suite C Las Vegas, Nevada, 89113-4087 United States of America Clark Carrier Loc. #169
00065		9722 West Maule Avenue Las Vegas, Nevada, 89148-4299 United States of America Clark Carrier Loc. #170
00066		8275 South Fort Apache Road Las Vegas, Nevada, 89178-3233 United States of America Clark Carrier Loc. #171



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00067		690 S. Green Valley Parkway Henderson, Nevada, 89052 United States of America Clark Carrier Loc. #172
00068		8985 Blue Diamond Road Las Vegas, Nevada, 89178 United States of America Clark Carrier Loc. #173
00069	000672.04	771 South Frontage Road Pahrump, Nevada, 89048 United States of America Nye Gold Town Casino - Carrier Loc. #201
00070	000672.05	5870 Homestead Road #211 Pahrump, Nevada, 89048 United States of America Nye Lakeside Casino - Carrier Loc. #202
00071	002509.59	681 South Highway 160 Pahrump, Nevada, 89048 United States of America Nye Pahrump Nugget Hotel - Carrier Loc. #204
00072		801 South Highway 160 Pahrump, Nevada, 89048-4748 United States of America Nye Carrier Loc. #205



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00073		1101 South Highway 160 Pahrump, Nevada, 89048 United States of America Nye Carrier Loc. #210
00074		2275 West Koch Street Bozeman, Montana, 59718 United States of America Gallatin Carrier Loc. #301
00075		709 North Nowlan Avenue Glendive, Montana, 59330 United States of America Dawson Carrier Loc. #302
00076	003632.15	5604 Interstate Avenue Billings, Montana, 59101 United States of America Yellowstone Goldent Route Operation-Montana LLC - Carrier Loc. #303
00077		424 West Broadway Street Lewistown, Montana, 59457 United States of America Fergus Carrier Loc. #304
00078		18 Business Park Road Livingston, Montana, 59047 United States of America Park Carrier Loc. #305



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00079		70 West Custer Avenue Helena, Montana, 59602-0101 United States of America Lewis and Clark Carrier Loc. #306
00080	003223.97	16701 Lakeview Road Northeast Flintstone, Maryland, 21530 United States of America Allegany Rocky Gap Resort - Carrier Loc. #401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412
00092	079307.51	2000-2005 & 2121 Las Vegas Boulevard South Las Vegas, Nevada, 89104-2522 United States of America Clark Stratosphere Gaming LLC - Carrier Loc. #501, 502, 503, 504, 505, 506 & 510
00093	079309.56	1900 South Casino Drive Laughlin, Nevada, 89029-1513 United States of America Clark Aquarius Gaming LLC - Carrier Loc. #507
00094	079313.70	740 Decatur Boulevard Las Vegas, Nevada, 89107-3907 United States of America Clark Arizona Charlie's LLC - Carrier Loc. #508
00095	000413.92	4575 Boulder Highway Las Vegas, Nevada, 89121-3011 United States of America Clark Fresca LLC - Carrier Loc. #509



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00096		10520 South Las Vegas Boulevard Las Vegas, Nevada, 89183-4013 United States of America Clark Golden PT's LV Cactus 75 LLC - Carrier Loc. #178
00097		1785 East Cactus Avenue Las Vegas, Nevada, 89183-7705 United States of America Clark Carrier Loc. #154
00098		1442 East Lake Mead Parkway Henderson, Nevada, 89015 United States of America Clark Carrier Loc. #155
00099		8780 Lindell Road Las Vegas, Nevada, 89139-6914 United States of America Clark Carrier Loc. #174
00100		6560 West Warm Springs Road Las Vegas, Nevada, 89118-4626 United States of America Clark Carrier Loc.#175
00101		9465 South Eastern Avenue Las Vegas, Nevada, 89123-3988 United States of America Clark Carrier Loc. #176



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00102		7770 Ann Road Las Vegas, Nevada, 89149-5107 United States of America Clark Golden-PT's Ann 77LLC - Carrier Loc. #177
00105	079312.10	2020 South Casino Drive Laughlin, Nevada, 89029-1518 United States of America Clark Edgewater
00106	079312.10	2100 South Casino Drive Laughlin, Nevada, 89029-1514 United States of America Clark Colorado Belle
00107		150 East Bruce Woodbury Drive Laughlin, Nevada, 89029-1805 United States of America Clark Medical Building
00108		500 East Bruce Woodbury Drive Laughlin, Nevada, 89029-1805 United States of America Clark LEC - Carrier Loc. #6
00109		4935 West Warm Springs Road Las Vegas, Nevada, 89118-4626 United States of America Clark Golden-PT's Decatur 73, LLC - Carrier Loc. #179



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00110		9363 South Buffalo Drive Las Vegas, Nevada, 89178-8300 United States of America Clark Carrier Loc. #180

**SUPPLEMENTAL UNITED STATES
CERTIFIED ACT OF TERRORISM ENDORSEMENT**

This Endorsement is applicable to all insured Locations in the United States, its territories and possessions and the Commonwealth of Puerto Rico.

Coverage for “Certified Act of Terrorism” Under The Terrorism Risk Insurance Act of 2002, as amended.

In consideration of a premium charged of USD**43,569**, this Policy, subject to the terms and conditions therein and in this Endorsement, covers direct physical loss or damage to insured property and any resulting TIME ELEMENT loss, as provided in the TIME ELEMENT section of the Policy, caused by or resulting from a Certified Act of Terrorism as defined herein.

Notwithstanding anything contained elsewhere in this Policy, any exclusion or limitation of terrorism in this Policy and any endorsement attached to and made a part of this Policy, is hereby amended to the effect that such exclusion or limitation does not apply to a “Certified Act of Terrorism” as defined herein. This amendment does not apply to any limit of liability for a Certified Act of Terrorism, if any, stated under the LIMITS OF LIABILITY clause of the DECLARATIONS section of this Policy.

With respect to any one or more Certified Act(s) of Terrorism, this Company will not pay any amounts for which the Company is not responsible under the terms of the Terrorism Risk Insurance Act of 2002 (including subsequent action of Congress pursuant to the Act) which includes a provision stating that if the aggregate insured losses exceed USD100,000,000,000 during any calendar year, neither the United States Government nor any insurer that has met its insurer deductible shall be liable for the payment of any portion of the amount of such losses that exceed USD100,000,000,000. If the aggregate insured losses for all insurers exceed USD100,000,000,000, your coverage may be reduced.

The coverage provided under this Endorsement for “Certified” losses caused by acts of terrorism will be partially reimbursed by the United States Government under a formula established by Federal Law. Under this formula, the United States pays 85% (and beginning on January 1, 2016, shall then decrease by 1 percentage point per calendar year until equal to 80 percent) of covered terrorism losses exceeding a statutorily established retention by the insurer referenced in this Policy. The premium charged for this coverage is provided above.

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 Endorsement or the Policy.

The coverage provided by this Endorsement only applies to a Certified Act of Terrorism.

Reference and Application: The following term(s) means:

Certified Act of Terrorism:

A “Certified Act of Terrorism” means any act that is certified by the Secretary of the Treasury, in consultation with the Secretary of Homeland Security, and the Attorney General of the United States, to be an act of terrorism pursuant to the federal Terrorism Risk Insurance Act of 2002 as amended and

extended in 2005, 2007, and in 2015. The criteria contained in that Act for a “Certified Act of Terrorism” include the following:

- a. The act resulted in aggregate losses in excess of USD5,000,000; and
- b. 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.

EXHIBIT 2

Talking Points on the 2019 Novel Coronavirus (2019-nCoV)

“2019 Novel Coronavirus (2019-nCoV) is a virus (more specifically, a [coronavirus](#)) identified as the cause of an outbreak of respiratory illness first detected in Wuhan, China. Early on, many of the patients in the outbreak in Wuhan, China reportedly had some link to a large seafood and animal market, suggesting animal-to-person spread. However, a growing number of patients reportedly have not had exposure to animal markets, indicating person-to-person spread is occurring. At this time, it’s unclear how easily or sustainably this virus is spreading between people. The latest situation summary updates are available on CDC’s web page [2019 Novel Coronavirus, Wuhan, China.](#)”¹

Several of our clients have inquired as to whether there is coverage for losses they have or expect to incur as a result of the virus, which has spread outside of China. As one might expect, we have a wide range of clients who may be affected in a variety of ways by this outbreak. This document will not deal with all the issues associated with this matter, but will be helpful in providing responses to basic questions as it relates to the coverage provided by our policies.

The standard FM Global Advantage and AFM proVision forms provide a specific coverage for Communicable Disease. The Advantage policy provides Communicable Disease Response under Property Damage and Interruption by Communicable Disease under Time Element. The proVision policy provides coverage for Communicable Disease – Property Damage and Communicable Disease – Business Interruption. This memo addresses the standard policy language (cited below).

Lead in policy language policy language is noted below:

Property Damage

The 2019 Advantage Policy states in part:

If a **location** owned, leased or rented by the Insured has the actual not suspected presence of **communicable disease** and access to such location is limited, restricted or prohibited by:

- 1) an order of an authorized governmental agency regulating the actual not suspected presence of communicable disease; or
- 2) a decision of an Officer of the Insured as a result of the actual not suspected presence of **communicable disease**,

The proVision states:

If a **described location** owned, leased or rented by the Insured has the actual not suspected presence of **communicable disease** and access to such **described location** is limited, restricted or prohibited by:

- a) An order of an authorized governmental agency regulating or as result of such presence of **communicable disease**; or
- b) A decision of an Officer of the Insured as a result of such presence of **communicable disease**

This same initial lead in language also appears under the Advantage Time Element coverage and the proVision Business Interruption coverage.

Q. What is the trigger of coverage for Property Damage?

A. Under each policy there must be the actual presence of a **communicable disease** at a location owned, leased or rented by the Insured and the access must be limited by either 1) or 2) under the Advantage, or a) or b) under proVision

Q. When does this coverage apply?

- A. Advantage Policy – under both Property Damage and Time Element each state:
 - This Additional Coverage will apply when access to such location is limited, restricted or prohibited in excess of 48 hours
- A. AFM proVision Policy - under both Property Damage and Business Interruption each state:
 - This coverage is subject to the Qualifying Period in the Declarations section of this Policy

Q. Would an employee at a **location** who is affected with the **communicable disease** be considered the “actual presence” of a **communicable disease**?

¹ <https://www.cdc.gov/coronavirus/2019-ncov/about/index.html>

A. Yes - if it can be confirmed the employee actually has the **communicable disease** and that the presence of the **communicable disease** is the basis for the decision limiting access as noted in sub-sections 1) and 2) under the Advantage Policy or a) and b) under proVision Policy.

Q. How can we determine whether an employee has the **communicable disease**

A. In some jurisdictions, access to medical records is not possible without employee consent. However, the Insured can ask the employee for the necessary medical diagnosis.

Q. If an Insured closes one or more locations because they suspect the presence of the **communicable disease** or does so in an abundance of caution, would that trigger coverage.

A. No. Coverage is only triggered if there is the actual presence of a **communicable disease**.

Q. What deductible would apply in the event of a covered loss?

A. If a coverage-specific deductible is not specified, the largest applicable deductible would apply. For example, if the location deductible is \$1,000,000 combined and the All Other Loss deductible is \$250,000, the \$1,000,000 would apply.

Q. Would an outbreak of a different virus be considered part of the same occurrence?

A. No

Q. Does coverage under Civil or Military Authority apply?

A. No

The Advantage form states:

“This Policy covers the Actual Loss Sustained and **EXTRA EXPENSE** incurred by the Insured during the **PERIOD OF LIABILITY** if an order of civil or military authority limits, restricts or prohibits partial or total access to the insured **location** provided such order is the direct result of physical damage of the type insured at the insured **location** or within five statute miles/eight kilometres of it...”

The proVision form states:

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

A virus will typically not cause physical damage. Under either policy, the presence of a communicable disease does not constitute physical damage and is not of the type insured against as a virus falls within the definition of **contamination**, which is excluded.

Q. Does coverage under Contingent Time Element Extended (Advantage) or Supply Chain (ProVision) or Ingress/Egress apply?

A. No

These coverages require physical loss or damage to property of the type insured under either policy. The presence of a communicable disease does not constitute physical damage and is not of the type insured against as a virus falls within the definition of **contamination**, which is excluded.

Q. Is there any activity to consider prior to confirming coverage or issuing a payment?

A. Yes - keep in mind that most policies issued have a specific limit for this coverage and an annual aggregate applies. Check with the Claims Manager Written as well as the DSGA Written prior to confirming coverage and prior to issuing any payment to determine the status of the annual aggregate.

While the FM Global Advantage offers some of the broadest property coverage available, there are still events for which there may be no coverage. The Advantage and AFM policies insure against physical damage and require that there be insured physical loss or damage to property before its coverages become available. The Communicable Disease coverage provides for a specific trigger of coverage under these Additional Coverages. If there is a report of loss, FM Global stands ready to provide all the coverage available under the terms and conditions of its policies.