

RETURN DATE: MARCH 16, 2021

----- X  
:  
MASHANTUCKET PEQUOT TRIBAL NATION, :  
Plaintiff, :  
v. :  
FACTORY MUTUAL INSURANCE COMPANY, :  
Defendant. :

SUPERIOR COURT  
JUDICIAL DISTRICT OF  
NEW LONDON

**JURY TRIAL DEMANDED**

JANUARY 25, 2021  
:  
:  
:  
:  
:  
:  
:  
:  
:  
:  
:  
X  
-----

**COMPLAINT**

Plaintiff Mashantucket Pequot Tribal Nation (the “Nation”) files this Complaint against Defendant Factory Mutual Insurance Company (“FM”) seeking declaratory and equitable relief and damages for breach of contract and bad faith, alleging the following:

**I. INTRODUCTION**

- 1. This action arises out of FM’s failure to meet its obligations under an “all risks” insurance policy number 1053126 that it sold to the Nation covering, among other things, business interruption losses.
- 2. The Nation paid millions of dollars in premiums to purchase an “all risks” insurance policy with limits of up to \$1,655,000,000 per occurrence. Due to the COVID-19 pandemic, the Nation

suffered business interruption, as defined under the policy, resulting in more than \$76 million in covered losses and expenses, which continue to accrue. Now that the Nation has suffered losses resulting from covered risks, FM has improperly denied the Nation the benefit of coverage that was previously bargained for and that the Nation reasonably expected.

3. Under established principles of insurance law, the Nation is entitled to payment under the policy for business income losses and expenses covered under the policy, but FM has breached its duties under the insurance contract and has refused to provide coverage in bad faith. This Court should enforce the promise that FM made and require it to provide the coverage that the Nation purchased.

## **II. PARTIES**

4. The Plaintiff Nation is a federally recognized Indian Tribe headquartered on the Mashantucket Pequot Reservation (“Reservation”) at 2 Matts Path, Mashantucket, CT 06338.

5. The Defendant FM is incorporated under the laws of the State of Rhode Island with its principal place of business in Johnston, RI.

## **III. JURISDICTION AND VENUE**

6. Jurisdiction is proper pursuant to Connecticut General Statute § 51-164s.

7. Under the insurance policy in dispute, “jurisdiction shall reside within the State Courts of Connecticut.” (Exhibit A, app. B.)

8. This Court may issue a declaratory judgment under Connecticut General Statute § 52-29.

9. Venue is proper in the Judicial District of New London under Connecticut General Statute § 51-345.

#### **IV. FACTUAL BACKGROUND**

##### **a. The Nation**

10. The Nation is a federally recognized Indian Tribe with a Reservation located within the geographical boundaries of Connecticut.

11. The governing body of the Nation is the Mashantucket Pequot Tribal Council (the “Tribal Council”).

12. On and around the Reservation, the Nation operates and has an interest in a variety of businesses, including a casino, multiple hotels, spas, health centers, golf courses, restaurants, theaters, and a museum.

13. Those businesses are unincorporated instrumentalities of the Nation or limited liability companies owned by the Nation.

14. One of those businesses is the Mashantucket Pequot Gaming Enterprise, doing business as Foxwoods Resort Casino, a resort and casino complex on the Reservation that includes multiple casinos, multiple hotels, theaters, and restaurants that range from fine dining to fast casual.

15. Another business is the Spa at Norwich Inn, a luxury hotel and spa set on 42 acres in Norwich, Connecticut that, in addition to spa services and hotel accommodations, provides dining, meeting space, events, and a wedding venue to guests.

16. Lake of Isles, a Nation-owned golf course located adjacent to the Reservation, is one of the top golf facilities in the country. In addition to the two 18-hole golf courses, Lake of Isles also includes a golf shop, academy, a wedding venue, and dining and event spaces.

17. Pequot Health Care includes PRXN Services and Pequot Plus, which provide pharmaceutical services and health care plans for Native American tribes and commercial enterprises, respectively.

18. The Pequot Outpost is a 5,000-square-foot convenience center on the Reservation that is open 24 hours a day, seven days a week and includes a gas station and a convenience store and, at the time of the shutdown, a fast food restaurant.
19. Two Trees Inn is a 220-room hotel located adjacent to Foxwoods Resort Casino that offers a 24-hour shuttle to attractions on the Reservation.
20. The Mashantucket Pequot Museum and Research Center is a 308,000-square-foot museum on the Reservation that explores the history of the Mashantucket Pequot Tribal Nation and indigenous cultures and societies of the United States and Canada.
21. Together, those entities make up the Tribal Businesses (and are referred to that way in this Complaint).

**b. The FM Policy**

22. FM sold an “all risk” insurance policy to the Nation (the “Policy”). A copy of the Policy is attached as Exhibit A.
23. The Policy covers the “Mashantucket Pequot Tribal Nation and any subsidiary, and Mashantucket Pequot Tribal Nation’s interest in any partnership or joint venture in which Mashantucket Pequot Tribal Nation 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.” (Exhibit A, Declarations § 1.)
24. The Policy states that all loss “will be adjusted with and payable to Mashantucket Pequot Tribal Nation, or as may be directed by Mashantucket Pequot Tribal Nation.” (*Id.*, Declarations § 6.)
25. The Tribal Businesses are insured locations of the Nation under the Policy. (*Id.*, Schedule of Locations, app. A.)
26. The Policy recognizes that the Nation is a sovereign government. (*Id.*)

27. The Policy covers “property . . . against ALL RISKS OF PHYSICAL LOSS OR DAMAGE.” (*Id.*, Declarations Preamble.)
28. As used in the Policy, the term “physical loss” is separate, distinct, and has an independent meaning from the term “damage.”
29. The Policy does not define the term “physical.”
30. The Policy does not define the term “physical loss.”
31. The Policy does not define the term “damage.”
32. The Policy does not define the phrase “physical loss or damage.”
33. The Policy insures all property described in Appendix A. (*Id.*, Schedule of Locations, app. A.)
34. The Policy also covers business interruption losses (referred to in the Policy as “Time Element” coverage) “directly resulting from physical loss or damage of the type insured.” (*Id.*, Time Element, Loss Insured § 1.A.)
35. The Policy provides up to \$1,655,000,000 of coverage per occurrence. (*Id.*, Declarations § 11.)
36. The Policy has a term date of July 1, 2019 through July 1, 2020. (*Id.*, Declarations Preamble.)
37. FM drafted the Policy.
38. The Nation paid a substantial premium to FM, including nearly \$2 million for the Policy and more than \$23.9 million over the last decade, for coverage provided by the Policy (and those policies that preceded and have since replaced it).

39. Upon information and belief, FM calculated the business interruption premiums based in material part on the revenue that FM expected the Tribal Businesses to generate as fully functioning and operational businesses.

40. The Nation has suffered direct physical loss and damage to the locations and properties insured under the Policy as well as business interruption and other losses covered under the Policy.

**c. COVID-19 Pandemic**

41. SARS-CoV-2 causes COVID-19, a disease that attacks the respiratory system and causes other harm to humans. SARS-CoV-2 and COVID-19 are collectively referred to in this Complaint as COVID-19.

42. COVID-19 is deadly and highly contagious.

43. On January 30, 2020, the World Health Organization (WHO) declared the COVID-19 outbreak a Public Health Emergency of International Concern.

44. On March 11, 2020, the WHO declared COVID-19 to be a pandemic.

45. A pandemic is an outbreak of a disease that affects a wide geographic area and infects an exceptionally high proportion of the population.

46. A pandemic is thus worldwide.

47. On March 13, 2020, the President of the United States declared a nationwide emergency in response to COVID-19.

48. According to the WHO, as of January 25, 2021, COVID-19 has infected more than 97,800,000 people and caused more than 2,100,000 deaths. *See* World Health Organization, WHO Coronavirus Disease (COVID-19) Dashboard, <https://covid19.who.int/> (last updated Jan. 25, 2021) (website updated regularly with new data).

49. According to the Centers for Disease Control and Prevention (CDC), as of January 25, 2021, COVID-19 has infected more than 24,875,000 people and caused more than 416,000 deaths

in the United States. *See* CDC, Coronavirus Disease 2019 (COVID-19): United States COVID-19 Cases and Deaths by State, [https://covid.cdc.gov/covid-data-tracker/#cases\\_casesper100klast7days](https://covid.cdc.gov/covid-data-tracker/#cases_casesper100klast7days) (last updated Jan. 24, 2021) (website updated regularly with new data).

50. The CDC has estimated that infection rates for COVID-19 were likely at least ten times higher than reported for March 2020 through May 2020.

**d. COVID-19 Is a Risk That Causes Physical Loss and Damage to Property**

51. COVID-19 causes a physical, tangible alteration to property, and the presence of COVID-19 amounts to physical loss and damage to property.

52. According to the CDC, COVID-19 can spread in several ways, including from person to person through respiratory droplets, through airborne transmission, and by contact with objects or surfaces.

53. The CDC has also noted that airborne transmission involves exposure to COVID-19 in small droplets and particles that can linger in the air for minutes to hours and can infect individuals who are further than six feet away from the person who is infected or after that person has left the space.

54. According to a CDC study published in July 2020, droplets were spread by air-conditioned ventilation and caused an outbreak among people who dined in the same air-conditioned restaurant.

55. The WHO has confirmed that COVID-19 can remain viable on objects or surfaces, which, once infected with COVID-19, are sometimes referred to as fomites.

56. Multiple studies, including studies from the National Institute of Health and various academic, scientific journals, have concluded that COVID-19 can remain viable on various objects, surfaces, or materials for a period of up to 28 days.

57. The Tribal Businesses contain those sorts of surfaces, objects, and materials, which they use in their ordinary course of business.
58. According to at least one study, during and after illness, COVID-19 particles are shed in large numbers in bodily secretions, including saliva, oral and nasal fluid, respiratory droplets, blood, feces, and urine particles.
59. That study noted that COVID-19 can be introduced to surfaces by direct physical contact with such surfaces; contact with soiled hands; contact with aerosolized COVID-19 (i.e., large droplet spread) released while breathing, talking, sneezing, or coughing; and contact with airborne COVID-19 that settles after disturbance of a surface damaged by COVID-19 (e.g., shaking a tablecloth at a restaurant).
60. The study also found that once an object or surface is detrimentally affected, impaired, altered, or damaged by COVID-19, transfer of COVID-19 may readily occur between inanimate and animate objects, or vice versa, and between two separate surfaces.
61. According to the CDC, individuals can become infected with COVID-19 by contacting surfaces or objects or through airborne transmission after an infected person was present.
62. The prospect of COVID-19 being present on property is a risk of direct physical loss or damage, and it causes physical loss or damage to property.
63. COVID-19 causes a physical, tangible alteration to property and seriously and detrimentally affects, impairs, damages, and alters its value, usefulness, or normal function, rendering the property nonfunctional.
64. The presence of COVID-19 physically alters property, and its existence on objects or surfaces renders them unsafe or unusable.



65. The presence of COVID-19 in the air at a property also renders the property unusable, uninhabitable, and unfit for its normal occupancy or use.

66. COVID-19 has caused physical loss or damage at the locations and properties insured under the Policy and is a risk of physical loss or damage to the locations and properties.

**e. COVID-19 Has Been Present at the Tribal Businesses**

67. The Tribal Businesses employed more than 5,400 individuals before COVID-19 began spreading in Connecticut and throughout the United States.

68. There have been at least 205 suspected or confirmed COVID-19 cases among those individuals that work on the premises of the Tribal Businesses.

69. It is likely that more of the Tribal Businesses' employees and guests have had COVID-19 in addition to those who have reported suspected or confirmed cases.

70. As referenced above, the CDC estimated that infection rates for COVID-19 were likely at least ten times higher than those reported for March 2020 through May 2020.

71. The Tribal Businesses are high-traffic locations, visited by hundreds of thousands of individuals monthly from various locations who have just spent hours in a confined location with many other individuals because they drove or flew to visit the Tribal Businesses.

72. At the end of March 2020, Connecticut reported that 2,571 people in Connecticut had tested positive for COVID-19. *See* Ct. State Dep't of Pub. Health, COVID-19 Update March 30, 2020, <https://portal.ct.gov/-/media/Coronavirus/CTDPHCOVID19summary3302020.pdf> (last visited Jan. 25, 2021).

73. Connecticut has a population of approximately 3,565,287. *See* U.S. Census Bureau, Quick Facts: Connecticut, <https://www.census.gov/quickfacts/CT> (last visited Jan. 25, 2021).

74. That means that, at a minimum, one in every 1,387 people in Connecticut had tested positive for COVID-19 by the end of March 2020.

75. Because the CDC has estimated that actual infection rates were likely ten times higher than reported rates, it is likely that one in every 139 people in Connecticut was infected with COVID-19 by the end of March 2020.

76. Approximately 4,000 individuals who work at the Tribal Businesses' locations and an estimated average of more than 17,000 guests visited the Tribal Businesses every day in the weeks leading up to the governmental orders discussed in the following paragraphs.

77. On this basis alone, it is more probable than not that COVID-19 was actually present at the Tribal Businesses by March 2020.

78. The ubiquitous nature of the pandemic also confirms that COVID-19 has been present at the Tribal Businesses.

79. COVID-19 has caused physical loss or damage to property at those locations and constitutes a risk of physical loss or damage to the Tribal Businesses and other Nation property.

80. Because of the physical loss or damage caused by COVID-19, the Tribal Businesses shut down or appropriately limited operations. The operations remained closed or appropriately limited until it was clear that it was safe to reopen for employees and guests, consistent with adherence to the Tribal Businesses' strict and rigorous protocols and health and safety guidelines in place to prevent the spread of COVID-19 on insured property and to reduce the likelihood of individuals' exposure to COVID-19 and affected property.

**f. In Response to the Physical Loss or Damage to Property Caused by COVID-19, Governments Issued Orders Restricting Activities**

81. COVID-19 physically affects the property on which it is present and can infect individuals who are exposed to that property.

82. Tribal and state governments issued orders restricting activities directly because of that physical loss or damage to property and to minimize the spread of COVID-19 by reducing the likelihood of an individual's exposure to damaged property.

83. On March 12, 2020, because of the physical loss or damage to property caused by COVID-19, the Governor of Connecticut issued Executive Order No. 7. That order prohibited social gatherings of 250 people or more for social and recreational activities.

84. On March 13, 2020, because of the physical loss or damage to property caused by COVID-19 and to protect the health and safety of the community, the Tribal Council ordered the temporary closure of certain governmental operations, including the Mashantucket Pequot Museum and Research Center, to begin at the end of the day of March 13, 2020 and to extend for two weeks.

85. On March 16, 2020, the Governor of Connecticut issued Executive Order No. 7D, which prohibited social and recreational gatherings of 50 or more people. The order also noted that the Governor was working with the federally recognized tribes on the temporary closure of their casino operations.

86. On March 16, 2020, because of the physical loss or damage caused by COVID-19 and to protect the health and safety of the residents of and visitors to the Nation, the Tribal Council ordered the temporary closure of the Mashantucket Pequot Gaming Enterprise (including Foxwoods Resort Casino and Two Trees Inn), effective 8:00 pm ET on March 17, 2020.

87. On March 19, 2020, the Tribal Council declared a State of Emergency throughout the Nation and confirmed the closure of the Tribal Businesses located on the Reservation.

88. On March 20, 2020, the Governor issued Executive Order No. 7H, which required businesses and not-for-profit organizations to implement work-from-home procedures to the

maximum extent possible and required all non-essential businesses to reduce their in-person workforces completely.

89. On March 27, 2020, the Tribal Council reaffirmed its closure of certain operations, including the Mashantucket Pequot Gaming Enterprise (including Foxwoods Resort Casino, Two Trees Inn, and all other businesses located therein), and the Mashantucket Pequot Museum and Research Center.

90. To mitigate losses and to comply with the government orders, the Tribal Businesses shut down or appropriately limited operations. The operations remained closed or appropriately limited until it was clear that it was safe to reopen for employees and guests, consistent with adherence to the Tribal Businesses' strict and rigorous protocols and to health and safety guidelines in place to prevent the spread of COVID-19 on insured property and to reduce the likelihood of individuals' exposure to COVID-19 and affected property.

**g. The "All Risks" Coverage is Triggered**

91. To insure against losses from unexpected and unprecedented circumstances like these, the Nation purchased business interruption coverage as part of the all-risk commercial property insurance Policy from FM.

92. The Policy covers property against "ALL RISKS OF PHYSICAL LOSS OR DAMAGE, except as hereinafter excluded." (Exhibit A, Declarations Preamble.)

93. The Policy includes, among other things, Time Element coverage, which insures against the loss of business income and extra expense sustained as a result of "physical loss or damage to" insured property. (*Id.*, Time Element Coverages § 2.C.-E.)

94. The Policy contains certain "ADDITIONAL COVERAGES." Specifically, the Property Damage sections of the Policy provide that it "includes the following Additional Coverages for insured physical loss or damage." (*Id.*, Property Damage § 6.)

95. One of the “Additional Coverages for insured physical loss or damage” is “COMMUNICABLE DISEASE RESPONSE.” (*Id.*, Other Additional Coverages § F.)

96. Under the “COMMUNICABLE DISEASE RESPONSE” coverage, the Policy expressly covers, among other things, “the reasonable and necessary costs incurred . . . for the: 1) cleanup, removal and disposal of . . . communicable diseases from insured property.” (*Id.*)

97. By including “COMMUNICABLE DISEASE RESPONSE” coverage as one of the “Additional Coverages for insured physical loss or damage,” the Policy expressly acknowledges that communicable disease causes “insured physical loss or damage.” (*Id.*, Property Damage § 6.)

98. Similarly, by providing for the “cleanup, removal and disposal of . . . communicable disease,” the Policy explicitly recognizes that communicable disease causes a physical, tangible alteration to the integrity of property. (*Id.*, Other Additional Coverages § F.)

99. Because the Policy specifically covers remediation of the damage caused by communicable disease, the physical damage to property caused by communicable disease is “physical damage of the type insured” under the Policy.

100. FM has acknowledged that COVID-19 met the definition of a communicable disease under the Policy.

101. The Policy contains numerous different coverage parts, many of which provide coverage for the Nation’s losses and expenses.

102. The majority of the coverage parts are not mutually exclusive, and where a particular coverage part is intended to be exclusive, the Policy states so explicitly.

103. Thus, a particular loss may trigger several different coverage parts, all of which provide multiple, independent pathways to coverage under the Policy.

104. Because the Nation paid a substantial premium for this broad, multi-pronged, “all risks” insurance coverage, it reasonably expected coverage for the losses described in this Complaint under every one of the coverage parts implicated.

105. The Nation and its Tribal Businesses have incurred substantial covered losses and expenses as a result of the risks of physical loss or damage identified above.

106. The coverages triggered include those described below.

**1. COVID-19 Triggered the Policy’s All Risks Coverage**

107. The presence of COVID-19 is a “risk of physical loss or damage,” triggering the Policy’s “all risks” coverage.

108. COVID-19 has caused physical loss and damage to the Tribal Business locations.

109. The Nation submitted a claim under the Policy as a result of suffering losses covered by the Policy.

110. In addition, or alternatively, various government orders concerning COVID-19 are a “risk of physical loss or damage” that is not excluded or limited, and they trigger the Policy’s Property Damage coverage.

111. Because those government orders resulted in damage to the Nation’s property and loss of use of that property, they are a “risk of physical loss or damage.”

112. FM denied or effectively denied coverage for that claim and did so in bad faith based on apparent systematic company practices designed to avoid or minimize payments for covered COVID-19 claims.

**2. COVID-19 Triggered the Policy’s Time Element Coverage**

113. The policy affords coverage for the Nation’s Time Element loss.

114. COVID-19 has caused the Nation to suffer Time Element loss as a direct result of physical loss and damage of the type insured under the Policy.

115. As shown above, the presence of COVID-19 is physical loss or damage of the type insured.

116. In the alternative, COVID-19 has caused the Nation to suffer Time Element loss due to the Connecticut state government orders (for properties located off Reservation) and the government orders issued by the Tribal Council (for properties located on Reservation) that limited, restricted, or prohibited access to the Tribal Businesses' locations as a direct result of physical damage of the type incurred under the Policy that occurred at or within five statute miles of an insured location.

117. This loss triggers coverage under the Policy's Time Element provisions including, without limitation, coverage for Gross Earnings loss, Gross Profits loss, Extra Expense, and Rental Income loss up to the Policy's applicable limits and sublimits. (*See* Exhibit A, Time Element.)

### **3. COVID-19 Triggered the Policy's Civil Authority Coverage**

118. The physical damage caused by the presence of COVID-19 at property located at or within five statute miles of the Tribal Businesses' locations has directly resulted in the issuance of orders from civil authorities including the Connecticut state government orders (for properties located off Reservation) and the government orders issued by the Tribal Council (for properties located on Reservation), restricting or prohibiting access to the Tribal Businesses.

119. The Nation has sustained and will continue to sustain Time Element loss and extra expense because of those orders, which trigger the Policy's "Civil or Military Authority" coverage, subject to the Policy's applicable limits. (*See id.*, Time Element § 5, Supply Chain Time Element Coverage Extensions § A.)

### **4. COVID-19 Triggered the Policy's Contingent Time Element Extended Coverage**

120. The presence of COVID-19 at the locations of the Tribal Businesses' direct and indirect customers, suppliers, contract manufacturers, or contract service providers has caused physical loss or damage to property at those locations.

121. The Nation has sustained and will continue to sustain Time Element loss as a result of the physical loss or damage to property at the locations described above, triggering the Policy's "Contingent Time Element Extended" coverage. (*See id.*, Time Element § 5, Supply Chain Time Element Coverage Extensions § B.)

**5. COVID-19 Triggered the Policy's Ingress/Egress Coverage**

122. The Nation has sustained loss and extra expense due to the necessary interruption of business because "physical loss or damage of the type insured" caused a "partial or total physical prevention of ingress to or egress from an insured location." (*Id.*, Time Element § 5, Supply Chain Time Element Coverage Extensions § C.)

123. That physical loss or damage caused by COVID-19 prevented physical ingress to the Tribal Businesses, triggering the Policy's "Ingress/Egress" coverage.

**6. COVID-19 Triggered the Policy's Attraction Property Coverage**

124. COVID-19 has caused and is continuing to cause physical loss or damage to property outside of the Tribal Businesses, including property located within one statute mile of the Tribal Businesses that attracts business to the Tribal Businesses.

125. The Nation has sustained and will continue to sustain loss and extra expenses directly resulting from physical loss and damage of the type insured to property that attracts business to the Tribal Businesses. These losses and extra expenses trigger the Policy's "Attraction Property" coverage, subject to the Policy's applicable limits. (*Id.*, Time Element § 5, Additional Time Element Coverage Extensions § A.)

**7. COVID-19 and the Resulting Governmental Orders Triggered the Policy's Interruption by Communicable Disease Coverage**

126. The actual presence of COVID-19 at the Tribal Businesses and elsewhere has resulted in the issuance of orders by authorized governmental agencies regulating communicable disease.



127. The actual presence of COVID-19 has existed at the Tribal Businesses' locations, despite the Tribal Businesses' strict and rigorous protocols in addition to adherence to health and safety guidelines in place to prevent the spread of COVID-19 on insured property and to reduce the likelihood of individuals' exposure to COVID-19 and affected property.

128. Access to those locations has been limited, restricted, or prohibited both because of the civil authority orders—the Connecticut state government orders (for properties located off Reservation) and the government orders issued by the Tribal Council (for properties located on Reservation)—and because of decisions by the Tribal Businesses as a result of the actual presence of COVID-19.

129. The Time Element loss and extra expenses that the Nation has incurred because of these civil authority orders and decisions by the Nation trigger the Policy's "Interruption by Communicable Disease" coverage. (*Id.*, Time Element § 5, Additional Time Element Coverage Extensions § E.)

130. The "Interruption by Communicable Disease" coverage, unlike other coverages in the Policy, is not exclusive.

131. As a result, the Nation's recovery up to the limit of that communicable disease coverage does not preclude or limit recovery under any other coverages to the extent that the Nation meets the requirements to trigger such other coverages.

**8. COVID-19 Triggered the Policy's Communicable Disease Response Coverage**

132. The actual presence of COVID-19 has existed at the Tribal Businesses' locations, despite the Tribal Businesses' strict and rigorous protocols and adherence to health and safety guidelines in place to prevent the spread of COVID-19 on insured property and to reduce the likelihood of individuals' exposure to COVID-19 and affected property.

133. Access to those locations has been limited, restricted, or prohibited both because of the civil authority orders—the Connecticut state government orders (for properties located off Reservation) and the government orders issued by the Tribal Council (for properties located on Reservation)—and because of decisions by the Tribal Businesses as a result of the actual presence of COVID-19.

134. The reasonable and necessary costs that the Nation has incurred because of these civil authority orders and decisions by the Nation trigger the Policy’s “Communicable Disease Response” coverage.

135. The “Communicable Disease Response” coverage, unlike other coverages in the Policy, is not exclusive. (*Id.*, Property Damage § 6.F.)

136. As a result, the Nation’s recovery up to the limit of that communicable disease coverage does not preclude or limit recovery under any other coverages to the extent that the Nation meets the requirements to trigger such other coverages.

**9. COVID-19 Triggered the Policy’s Protection and Preservation of Property Coverage**

137. COVID-19 has threatened and continues to threaten to cause physical loss or damage to insured property.

138. The actual and threatened physical loss or damage to insured property has caused the Nation to take action to temporarily protect or to preserve its property, triggering the Policy’s “Protection and Preservation of Property” coverage.

**10. COVID-19 Triggered the Policy’s Claims Preparation Costs Coverage**

139. The Policy covers Claims Preparation Costs, which it defines as the actual costs incurred by the Nation for producing and certifying any particulars or details contained in its books or

documents, or such other proofs, information, or evidence required by FM resulting from insured loss payable under the Policy for which FM has accepted liability.

140. The Nation has incurred actual costs to respond to FM's requests for additional information regarding the claim, thereby triggering the Policy's "Claims Preparation Costs" coverage.

**h. The Policy's Contamination Exclusion Does Not Apply**

141. The "Communicable Disease Response" coverage expressly covers, among other things, "the reasonable and necessary costs incurred . . . for the . . . cleanup, removal and disposal of . . . communicable diseases from insured property." (*Id.*, Other Additional Coverages § F.)

142. FM has acknowledged that COVID-19 is a communicable disease as that term is defined in the Policy.

143. FM contended in an October 30, 2020 letter that the contamination exclusion bars recovery here.

144. The Policy defines "contamination" as, among other things, a "virus." (*Id.*, General Provisions § 13, Definition of Contamination.)

145. Under the Policy, the term "communicable disease" has a defined meaning that is different from the broad and general term "virus." (*Id.*, General Provisions § 13, Definition of Communicable Disease.)

146. Thus, the Policy's "contamination" exclusion does not exclude coverage for loss caused by "communicable disease."

147. To the extent FM contends that the Policy's "contamination" exclusion bars coverage for loss caused by "communicable disease" or some other aspect of the Nation's claim, the Policy is, at best, ambiguous because it is susceptible to more than one reasonable interpretation and, therefore, must be construed in favor of coverage.

148. In addition, the risks associated with pandemics have been known to the insurance industry for more than a century and have been even more pronounced and evident to FM in recent decades through outbreaks and pandemics involving SARS, Ebola, MERS, H1N1, and Zika.

149. Because such risks are well known, there are exclusions in common usage in the insurance industry that specifically exclude losses caused by communicable diseases, viruses, and pandemics without also covering such risks in the policy.

150. However, FM did not include any such exclusion in the Policy it sold to the Nation. To the contrary, the Policy expressly states that losses from communicable disease are covered.

151. The terms of the Policy, coupled with the absence of any applicable exclusion (despite the existence of commonly used exclusions for losses caused by viruses, communicable diseases, or pandemics), demonstrate that the Policy provides insurance coverage for the Nation's business interruption losses at the Tribal Businesses.

152. In addition, the contamination exclusion is ambiguous because, among other reasons, it directly conflicts with other coverages in the Policy under which contamination is covered.

153. Because the contamination exclusion is ambiguous, it must be read in favor of the Nation.

**i. No Other Exclusions Bar Coverage**

154. The Nation's losses and expenses, and coverage for such losses and expenses, are not excluded by the Policy under the contamination exclusion discussed above nor any other exclusion.

155. If FM wanted to exclude coverage for physical loss or damage caused directly or indirectly by a novel disease that was transmissible from human to human, it could have used an exclusion that clearly and unambiguously did so, as other insurers have done in other policies for other novel diseases. It did not.

**j. FM's Bad Faith Denial, Delay, and Adjustment of the Claim**

156. Upon information and belief, most of the commercial property policies issued by FM afford coverage for the actual presence of communicable disease at insured locations and the resulting business interruption.

157. This coverage is found under two sections of the Policy titled "Communicable Disease Response" and "Interruption by Communicable Disease" (together, the "On-Site Sublimited Communicable Disease Coverages").

158. Aware that the Policy and others like it afford coverage for COVID-19 losses beyond the On-Site Sublimited Communicable Disease Coverages, FM devised a plan to improperly avoid paying covered losses to the detriment of its policyholders.

159. In particular, in responding to policyholders' claims, FM systemically steered its policyholders, including the Nation, into the On-Site Sublimited Communicable Disease Coverages for their COVID-19 losses, which improperly deprived its policyholders of the full extent of coverage available under the all-risk policies issued by FM.

160. FM executed that plan in response to the Nation's claim, consistently mischaracterizing the nature and scope of the claim.

161. The Nation turned to FM, reasonably expecting that FM would cover its losses and expenses as described in this Complaint.

162. On April 8, 2020, the Nation promptly submitted its initial claim for coverage under the Policy.

163. The Nation explained that it had suffered loss, expense, or damage in a number of forms covered under the Policy, including, but not limited to, cleanup, disposal and other remediation of property exposed to COVID-19, loss of earnings, loss of business income and profit, extra

expenses incurred to operate and return its business to normal, public relations expenses, and loss of rental income.

164. On April 23, 2020, FM responded through a claims manager providing a non-substantive acknowledgment of the notice.

165. Nearly two months later, on June 3, 2020, FM issued its first substantive letter, which improperly attempted to narrow the scope of the claim to the Policy's On-Site Sublimited Communicable Disease Coverages. It also included a dozen requests for information as part of FM's purported investigation.

166. On October 9, 2020, the Nation wrote another letter to FM, explaining that FM had inappropriately limited its claims to the On-Site Sublimited Communicable Disease Coverages, when in fact numerous other types of coverage were implicated.

167. FM responded on October 30, 2020, stating that the presence of COVID-19 at an insured location does not constitute "physical damage of the type insured" or "insured physical loss or damage" and that none of the provisions requiring physical loss or damage applied.

168. Despite that position, in its October 30, 2020 letter, FM persisted in seeking information that was neither reasonably required for nor material to the resolution of the Nation's claim in view of FM's coverage position.

169. In that letter, FM indicated it was neither admitting nor denying liability, yet it refused to confirm any applicable coverages, loss payables, and deductibles until the Nation responded to burdensome requests by FM not reasonably required for or material to the resolution of the Nation's claim in view of FM's coverage position.

170. Thus, after admitting that it had not yet completed its investigation and was not in a position to confirm any applicable coverages, FM both denied liability for any coverage that required a showing of physical loss or damage and claimed that it was not denying liability.

171. FM's adjustment of the claim and its coverage position letters were designed to confuse, mislead, or deceive the Nation and to delay resolution of the claim.

**k. FM's Bad Faith Conduct Pertaining to the Proof of Loss**

172. While it prepared to improperly deny or limit coverage, FM also failed to respond to questions from the Nation regarding whether a proof of loss was due under the Policy.

173. On August 4, 2020, FM extended a deadline for any proof of loss to November 1, 2020, but purported to reserve its rights under the Policy's proof-of-loss deadline, stating that, to the extent that extending the time to file a proof of loss was already barred by contract or any other time limitations as of the date of FM's response, the extension of time is not applicable.

174. On September 10, 2020, the Nation rejected FM's purported reservation of rights, explaining that the time period to file a proof of loss had not begun to run and asking for FM to clarify its unclear position and to confirm FM's unconditional agreement to extend any purported proof-of-loss deadline. The Nation stated that, if FM believed that, despite its agreement to extend the deadline to file a proof of loss, the proof-of-loss deadline is somehow barred, FM must immediately say so and provide the basis for that position.

175. FM did not promptly respond to that letter.

176. On September 21, 2020, the Nation sent a follow-up email to FM requesting FM's response and confirmation of an extension to file a proof of loss.

177. On October 21, 2020, the Nation sent another follow-up email to FM requesting FM's response and confirmation of an extension to file a proof of loss.

178. Having received no response or confirmation from FM concerning coverage or a further extension to any purported proof of loss deadline of November 1, 2020, the Nation devoted substantial manpower and economic resources to preparing a preliminary proof-of-loss statement, which it submitted under a full reservation of rights to FM by email on Friday, October 30, 2020 at 3:28 pm ET.

179. Having failed to respond promptly to numerous communications from the Nation, FM finally responded on Friday, October 30, 2020 at 9:45 pm ET, after it had already forced the Nation to incur time and resources to submit a preliminary proof of loss. FM's dilatory response stated, among other things, that the letter acknowledged FM's receipt of the Nation's Preliminary Proof of Loss via email by Mr. Trevor Robinson on October 30, 2020. FM said that it would review the submission and respond in due course, but yet again refused to confirm coverage under the Policy.

180. FM waited almost two more months, until December 21, 2020, to respond.

181. In its December 21, 2020 letter, FM stated that the Nation's proof of loss was incomplete because there were outstanding requests for information, but FM did not explain what those requests were and why they were relevant to its coverage evaluation, which further hampered the Nation's ability to clarify or supplement its prior submissions or to assist FM's purposed investigation.

182. Despite acknowledging that it did not possess all information that it deemed relevant to complete its investigation, FM stated definitively that the presence of COVID-19 at an insured location does not constitute physical damage of the type insured as required under the Policy provisions and, as a result, none of the Policy's coverages are available except with the possibility of communicable disease coverages, for which FM also refused to confirm coverage.



183. The Nation responded to that letter on January 25, 2021, confirming that FM had denied coverage for the Nation's claims.

184. As the Nation explained in that letter, in refusing to acknowledge coverage under the Policy for the Nation's claim, FM took the position that: (i) the presence of COVID-19 at an insured location does not constitute physical damage of the type insured or insured physical loss or damage, as used in the Policy; (ii) the presence of COVID-19 at such locations is a form of contamination, as defined in the Policy, which is excluded; and (iii) the only coverage that may be available for the Nation's claim is for communicable disease coverages, which FM disputes the Nation has established through its prior communications and sworn proof of loss.

185. In that letter, the Nation further explained that FM's refusal to confirm coverage under the applicable coverage parts identified in the parties' prior correspondence constitutes a breach of the Policy.

186. While the Nation is prepared to provide additional information in support of its claim for coverage, FM is not permitted to persist in seeking information not reasonably required for or material to the resolution of the Nation's claim for coverage, particularly when all along FM intended to deny the Nation's coverage. FM's dilatory, unfair, and misleading conduct to date in handling, purportedly investigating, and ultimately denying coverage with no reasonable basis to do so constitutes bad faith.

#### **I. FM's Bad Faith Talking Points**

187. Upon information and belief, FM's misleading conduct in its investigation, delay in providing written coverage positions or otherwise responding to policyholder communications, and repeated requests for voluminous information and documents are not by accident but rather are part of a systematic claims-handling practice and procedure that it has deployed across all COVID-19 claims.

188. FM's systematic practice is outlined in a set of "talking points" prepared for FM claim adjusters to use to ensure that the adjusters reach the same conclusion for all COVID-19 claims.
189. FM drafted the talking points.
190. FM provided the talking points to its personnel for use when adjusting claims based on COVID-19.
191. The talking points explicitly acknowledge that FM has a wide range of clients who may be affected in a variety of ways by COVID-19.
192. The talking points outline only a few of the many different coverages contained in FM's standard commercial property policies, including policies of the type FM sold to the Nation that specifically afford coverage for COVID-19 claims.
193. The talking points outline certain specific "triggers" of coverage that the adjuster should look for when investigating any COVID-19 claim.
194. Notably, the only "triggers" identified are those applicable to the On-Site Sublimited Communicable Disease Coverages.
195. Indeed, the talking points fail to include all of the different "triggers" of coverage that may be implicated by COVID-19 claims.
196. Among those "triggers" included by FM in its talking points is an employee of the insured who actually has the communicable disease.
197. At the same time, however, the talking points recognize that some insureds may be unable to disclose that an employee actually had COVID-19 due to medical privacy restrictions.
198. By including only the On-Site Sublimited Communicable Disease Coverages as coverages potentially applicable to a COVID-19 claim, the talking points steer adjusters to seek information that pertains only to the On-Site Sublimited Communicable Disease Coverages.

199. The talking points acknowledge that a virus can cause physical damage to property.
200. But the talking points foreclose the availability of the Policy's Civil or Military Authority coverage provision for such physical damage without regard to the particular facts or law involved in each claim.
201. The talking points specifically provide that the Civil and Military Authority coverage does not apply.
202. The talking points make similar statements with respect to certain of the Policy's Time Element coverages.
203. The talking points further instruct that the presence of a communicable disease does not constitute physical damage and is not of the type insured against because a virus falls within the definition of contamination, which is excluded.
204. As alleged above, however, the Policy that FM sold to the Nation expressly recognizes that the presence of communicable disease causes physical damage to property because it provides coverage for the resulting "cleanup, removal and disposal of . . . communicable disease." (Exhibit A, Other Additional Coverages § F.)
205. Not only that, FM has represented in court that loss of functionality or reliability of property constitutes physical loss or damage under an FM property insurance policy.
206. FM's talking points therefore contradict not only the coverage provided under the Policy but also what FM has represented in court regarding what constitutes physical loss or damage under a commercial property insurance policy.
207. Regardless, FM failed to conduct an investigation with respect to the Nation's claim to determine whether it had, in fact, sustained physical loss or for the purposes of establishing coverage under a commercial property insurance policy.

208. FM, through the relevant adjuster(s), relied on the talking points in adjusting the Nation's claim.

209. The talking points direct the claims adjuster to reach conclusions without considering the specific facts of the particular claim and without considering the applicable law that governs interpretation of the relevant insurance Policy.

210. Instead, the talking points coach the adjuster to steer the policyholder toward the On-Site Sublimited Communicable Disease Coverages, which provide only a fraction of the coverage limits otherwise available under the Policy.

211. FM followed the instructions of the talking points and denied coverage beyond the On-Site Sublimited Communicable Disease Coverages without fully considering the facts of the Nation's claim or the law controlling the interpretation of the Policy.

212. Upon information and belief, FM used the talking points, as a general business practice, in all COVID-19 related claims.

213. The talking points reflect a self-interested or sinister motive to defraud FM's policyholders from the coverage that each is contractually entitled to for the physical loss and damage to property caused by COVID-19.

214. Thus, FM refused to fulfill a contractual obligation for a dishonest, self-interested motive.

215. In improperly denying coverage without a reasonable basis, FM put its financial self-interest ahead of the Nation's interests.

216. FM's bad faith has compelled the Nation to institute this litigation to recover amounts of which it has been deprived due to FM's wrongful conduct.

217. Due to FM's bad faith, the Nation has suffered ascertainable losses and is continuing to suffer ascertainable losses.

**V. CAUSES OF ACTION**

**COUNT I  
(Declaratory Judgment)**

218. The Nation repeats and re-alleges the allegations in the preceding paragraphs.
219. The Nation seeks the Court's declaration of the parties' rights and duties under the Policy pursuant to Connecticut General Statute § 52-29.
220. A justiciable controversy exists between the Nation and FM concerning the availability and amount of coverage under the Policy for the Nation's claims.
221. The controversy between the Nation and FM is ripe for judicial review.
222. As a result, the Nation seeks a declaration from the Court that: (a) the various coverage provisions identified herein are triggered by the Nation's claims; (b) the Policy covers the Nation's claims; (c) the Nation sustained direct physical loss or damage from a covered cause of loss under the Policy; (d) FM waived or is estopped from asserting its positions, as described above, to bar or limit coverage; (e) no exclusion applies to bar or limit coverage for the Nation's claims; and (f) granting any other declaratory relief useful to resolving the dispute between the parties.

**COUNT II  
(Breach of Contract)**

223. The Nation repeats and re-alleges the allegations in the preceding paragraphs.
224. The Policy is a valid and enforceable contract between the Nation and FM.
225. The Nation complied with all applicable Policy provisions and any other requirements; or, FM waived those provisions or any such requirements or is estopped from asserting any purported non-compliance with those provisions or any such requirements.
226. FM breached the Policy by improperly denying coverage to the Nation or otherwise repudiating FM's obligation to cover the Nation's losses and expenses as expressly required under the Policy.

227. The Nation has sustained and continues to sustain damages as a result of FM's breach of the Policy.

228. The Nation is entitled to damages as a result of FM's breach in an amount to be determined at trial, including compensatory and consequential damages, pre-judgment and post-judgment interest, and any other costs and relief that this Court deems appropriate.

**COUNT III**  
**(Common Law Bad Faith)**

229. The Nation repeats and re-alleges the allegations in the preceding paragraphs.

230. FM acted in bad faith, both in its refusal to provide coverage and in its handling of the Nation's claims.

231. FM did not have a reasonable basis for denying coverage, and it knew or recklessly disregarded its lack of reasonable basis in denying the claim.

232. FM had a dishonest purpose, sinister motive, or malicious intent.

233. FM's reaction to the Nation's claims was to press the Nation to respond to premature or unnecessary information requests in an attempt to create time-consuming and costly work, to dissuade the Nation from pursuing its claim, and to paint an inaccurate picture that the Nation was somehow delaying FM's investigation or not cooperating and that FM was investigating the claim and evaluating coverage in good faith. The unreasonable nature of those tactics is further demonstrated by the fact that, because FM denies that the presence of COVID-19 amounts to physical loss or damage, FM always intended to deny coverage regardless of the Nation's responses to those inquiries.

234. The Nation has suffered and continues to suffer damages as a result of FM's bad faith.

235. The Nation is entitled to an award of damages as a result of FM's bad faith in an amount to be determined at trial, plus pre-judgment, post-judgment, and statutory interest, punitive and

exemplary damages, court costs, attorneys' fees, and any other costs and relief that this Court deems appropriate.

**COUNT IV**  
**(Bad Faith under Connecticut Unfair Trade Practices Act**  
**(CUTPA) Conn. Gen. Stat. § 42-110b)**

236. The Nation repeats and re-alleges the allegations in the preceding paragraphs.

237. FM has engaged in acts, omissions, and conduct that violated CUTPA Conn. Gen. Stat. § 42-110b, giving rise to a private right of action by the Nation against FM.

238. FM engaged in unfair or deceptive acts by engaging in the unfair practices discussed in the Connecticut Unfair Insurance Practices Act (CUIPA), Connecticut General Statute § 38a-816, including by: misrepresenting pertinent facts or insurance Policy provisions relating to coverages at issue; failing to acknowledge and act with reasonable promptness upon communications with respect to claims arising under insurance policies; failing to adopt and implement reasonable standards for the prompt investigation of claims arising under insurance policies; refusing to pay claims without conducting a reasonable investigation based upon all available information; failing to affirm or deny coverage of claims within a reasonable time after proof-of-loss statements have been completed; not attempting in good faith to effectuate prompt, fair, and equitable settlements of claims in which liability has become reasonably clear; delaying the investigation or payment of claims by requiring an insured to submit a preliminary claim report and then requiring the subsequent submission of formal proof-of-loss forms, both of which submissions contain substantially the same information; and failing to promptly settle claims, where liability has become reasonably clear under one portion of the Policy in order to influence settlements under other portions of the Policy; and failing to promptly provide a reasonable explanation of the basis in the Policy in relation to the facts or applicable law for denial of a claim.

239. FM engaged in unfair or deceptive acts faith by misrepresenting the Policy.
240. FM acted in bad faith by engaging in unfair claim settlement practices, including those discussed above.
241. Because of those unfair acts, the Nation lost money and the benefit of coverage that was previously bargained for and that the Nation reasonably expected.
242. The deceptive acts or practices of FM have a potential effect on the general consuming public, offend public policy, are immoral, unethical, oppressive, and unscrupulous and cause substantial injury to consumers.
243. FM has committed those acts with such frequency and with such prevalence and widespread use in handling COVID-19 claims as to indicate a general business practice.
244. Any applicable requirements for a private right of action under CUTPA Connecticut General Statute § 42-110b have been satisfied.
245. The Nation is entitled to damages as a result of FM's bad faith in an amount to be determined at trial, plus pre-judgment, post-judgment, statutory interest, punitive and exemplary damages, court costs and attorneys' fees, and any other costs and relief that this Court deems appropriate.

## **VI. PRAYER FOR RELIEF**

246. Wherefore, the Nation requests judgment against FM as follows:
- a. A declaration from the Court that: (a) the various coverage provisions identified above are triggered by the Nation's claims; (b) the Policy covers the Nation's claims; (c) the Nation sustained direct physical loss or damage from a covered cause of loss under the Policy; (d) FM waived or is estopped from asserting its positions, as described above, to bar or limit coverage; (e) no exclusion applies to bar or limit

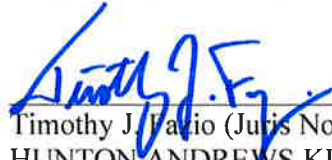


coverage for the Nation's claims; and (f) provides any other declaratory relief useful to resolving the dispute between the parties;

- b. An order requiring FM to provide coverage for the Nation's claims;
- c. For damages, including actual, compensatory, consequential, special, exemplary, and punitive damages, against FM in an amount to be proved at trial;
- d. Pre-judgment, post-judgment, and statutory interest;
- e. An award of attorneys' fees and costs of suit incurred; and
- f. For such other and further relief, including any equitable relief, as the Court deems just and proper.

Dated: January 25, 2021

Respectfully submitted,



---

Timothy J. Fazio (Juris No. 423149)  
HUNTON ANDREWS KURTH LLP  
60 State Street  
Suite 2400  
Boston, MA 02109  
(617) 648-2745  
tfazio@hunton.com

Sergio F. Oehninger (*pro hac vice* application to be filed)  
Geoffrey B. Fehling (*pro hac vice* application to be filed)  
HUNTON ANDREWS KURTH LLP  
2200 Pennsylvania Avenue NW  
Washington, DC 20037  
(202) 955-1500  
soehninger@huntonak.com  
gfehling@huntonak.com

William P. Sowers, Jr. (*pro hac vice* application to be filed)  
HUNTON ANDREWS KURTH LLP  
Riverfront Plaza, East Tower  
951 East Byrd Street  
Richmond, VA 23219  
(804) 344-7974  
wsowers@huntonak.com

*Counsel for Plaintiff Mashantucket Pequot Tribal Nation*

RETURN DATE: MARCH 16, 2021 X

-----

SUPERIOR COURT

MASHANTUCKET PEQUOT TRIBAL NATION, :

JUDICIAL DISTRICT OF  
NEW LONDON

Plaintiff,

v.

FACTORY MUTUAL INSURANCE COMPANY, :

**JURY TRIAL DEMANDED**

Defendant.

JANUARY 25, 2021

----- X

**STATEMENT OF AMOUNT IN DEMAND**

The amount in demand is greater than \$15,000, exclusive of interest, costs, and attorneys' fees.

Dated: January 25, 2021

  
\_\_\_\_\_  
Timothy J. Fazio (Juris No. 423149)  
HUNTON ANDREWS KURTH LLP  
60 State Street  
Suite 2400  
Boston, MA 02109  
(617) 648-2745  
tfazio@hunton.com

*Counsel for Plaintiff Mashantucket Pequot Tribal Nation*

# **EXHIBIT A**



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

# MUTUAL CORPORATION NON-ASSESSABLE POLICY

**DECLARATIONS**

<b>Policy No.</b> 1053126	<b>Previous Policy No.</b> 1040828	<b>DATE OF ISSUE</b> 28 June 2019
<b>Account No.</b> 1-17675	<b>Replaces Binder No.</b>	

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><b>INSURED:</b></p> <p>Mashantucket Pequot Tribal Nation</p> <p>(For Complete Title See Policy)</p>
--

The term of this Policy is from the 1st day of July 2019 to the 1st day of July 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 28th day of June 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.





**TABLE OF CONTENTS**  
**(Order In Which They Appear)**

**Page No.**

**DECLARATIONS PAGE**

**DECLARATIONS**

1.	NAMED INSURED AND MAILING ADDRESS .....	1
2.	POLICY DATES .....	1
3.	INSURANCE PROVIDED .....	1
4.	PREMIUM .....	1
5.	PREMIUM PAYABLE .....	1
6.	LOSS ADJUSTMENT/PAYABLE.....	2
7.	TERRITORY.....	2
8.	JURISDICTION .....	2
9.	CURRENCY .....	2
10.	PARTICIPATION.....	2
11.	LIMITS OF LIABILITY .....	2
12.	DEDUCTIBLES.....	5

**PROPERTY DAMAGE**

1.	INSURED PROPERTY .....	9
2.	EXCLUDED PROPERTY .....	9
3.	EXCLUSIONS .....	10
4.	APPLICATION OF POLICY TO DATE OR TIME RECOGNITION .....	14
5.	VALUATION.....	15
6.	ADDITIONAL COVERAGES .....	16
	CYBER ADDITIONAL COVERAGES .....	17
	A. DATA, PROGRAMS OR SOFTWARE.....	17
	B. OFF PREMISES DATA SERVICES PROPERTY DAMAGE .....	18
	OTHER ADDITIONAL COVERAGES .....	19
	A. ACCIDENTAL INTERRUPTION OF SERVICES .....	19
	B. ACCOUNTS RECEIVABLE .....	20
	C. AUTOMATIC COVERAGE.....	21
	D. BRANDS AND LABELS.....	21
	E. CLAIMS PREPARATION COSTS.....	21
	F. COMMUNICABLE DISEASE RESPONSE .....	22
	G. CONSEQUENTIAL REDUCTION IN VALUE.....	22
	H. CONTROL OF DAMAGED PROPERTY .....	23
	I. DEBRIS REMOVAL.....	23
	J. DECONTAMINATION COSTS .....	23
	K. ERRORS AND OMISSIONS .....	24
	L. EXPEDITING COSTS .....	24
	M. INSTALLMENT OR DEFERRED PAYMENTS .....	24
	N. LAND AND WATER CONTAMINANT CLEANUP, REMOVAL AND DISPOSAL .....	25
	O. LAW AND ORDINANCE .....	25
	P. LOSS PAYMENT INCREASED TAX LIABILITY .....	27
	Q. MACHINERY OR EQUIPMENT STARTUP OPTION.....	27
	R. MISCELLANEOUS PROPERTY .....	28



**TABLE OF CONTENTS**  
**(Order In Which They Appear)**

	<b>Page No.</b>
S. OPERATIONAL TESTING .....	29
T. PROTECTION AND PRESERVATION OF PROPERTY .....	29
U. SERVICE INTERRUPTION PROPERTY DAMAGE .....	29
V. TEMPORARY REMOVAL OF PROPERTY .....	30
W. TRANSPORTATION .....	31
X. VALUABLE PAPERS AND RECORDS .....	33
 <b>TIME ELEMENT</b>	
1. LOSS INSURED .....	35
2. TIME ELEMENT COVERAGES .....	36
A. INSURED OPTION .....	36
B. GROSS EARNINGS .....	36
C. GROSS PROFIT .....	37
D. EXTRA EXPENSE .....	39
E. LEASEHOLD INTEREST .....	40
F. RENTAL INSURANCE .....	41
3. PERIOD OF LIABILITY .....	41
4. TIME ELEMENT EXCLUSIONS .....	44
5. TIME ELEMENT COVERAGE EXTENSIONS .....	45
CYBER TIME ELEMENT COVERAGE EXTENSIONS .....	45
A. COMPUTER SYSTEMS NON PHYSICAL DAMAGE .....	45
B. OFF PREMISES DATA SERVICES TIME ELEMENT .....	46
SUPPLY CHAIN TIME ELEMENT COVERAGE EXTENSIONS .....	47
A. CIVIL OR MILITARY AUTHORITY .....	47
B. CONTINGENT TIME ELEMENT EXTENDED .....	48
C. INGRESS/EGRESS .....	48
D. LOGISTICS EXTRA COST .....	49
E. SERVICE INTERRUPTION TIME ELEMENT .....	50
ADDITIONAL TIME ELEMENT COVERAGE EXTENSIONS .....	51
A. ATTRACTION PROPERTY .....	51
B. CRISIS MANAGEMENT .....	52
C. DELAY IN STARTUP .....	52
D. EXTENDED PERIOD OF LIABILITY .....	53
E. INTERRUPTION BY COMMUNICABLE DISEASE .....	53
F. ON PREMISES SERVICES .....	54
G. PROTECTION AND PRESERVATION OF PROPERTY TIME ELEMENT .....	54
H. RELATED REPORTED VALUES .....	55
I. RESEARCH AND DEVELOPMENT .....	55
J. SOFT COSTS .....	55
 <b>LOSS ADJUSTMENT AND SETTLEMENT</b>	
1. REQUIREMENTS IN CASE OF LOSS .....	56
2. CURRENCY FOR LOSS PAYMENT .....	57
3. PARTIAL PAYMENT OF LOSS SETTLEMENT .....	57
4. COLLECTION FROM OTHERS .....	57



**TABLE OF CONTENTS**  
**(Order In Which They Appear)**

**Page No.**

5.	SUBROGATION .....	57
6.	COMPANY OPTION .....	57
7.	ABANDONMENT .....	57
8.	APPRAISAL .....	58
9.	SUIT AGAINST THE COMPANY .....	58
10.	SETTLEMENT OF CLAIMS .....	59

**GENERAL PROVISIONS**

1.	CANCELLATION/NON-RENEWAL.....	60
2.	INSPECTIONS.....	60
3.	PROVISIONS APPLICABLE TO SPECIFIC JURISDICTIONS .....	60
4.	LIBERALIZATION .....	61
5.	MISREPRESENTATION AND FRAUD .....	61
6.	LENDERS LOSS PAYEE AND MORTGAGEE INTERESTS AND OBLIGATIONS .....	61
7.	OTHER INSURANCE.....	63
8.	POLICY MODIFICATION .....	64
9.	REDUCTION BY LOSS.....	64
10.	SUSPENSION.....	64
11.	TITLES.....	64
12.	ASSIGNMENT .....	65
13.	DEFINITIONS .....	65

SCHEDULE OF LOCATIONS ..... Appendix A

JURISDICTION & GOVERNMENT ..... Appendix B

SOVEREIGN IMMUNITY ..... Appendix C

WIND EXPOSED LOCATIONS ..... Appendix D

SUPPLEMENTAL UNITED STATES CERTIFIED ACT OF TERRORISM ENDORSEMENT, Form  
FMG7308 (Jan 2015)

CYBER OPTIMAL RECOVERY ENDORSEMENT



## 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

Mashantucket Pequot Tribal Nation and any subsidiary, and Mashantucket Pequot Tribal Nation's interest in any partnership or joint venture in which Mashantucket Pequot Tribal Nation 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.

2 Matts Path  
P.O. Box 3060  
Mashantucket, CT 06338-3060

### 2. POLICY DATES

TERM: One Year

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

Mashantucket Pequot Tribal Nation pays the premium under this Policy, and any return of the paid premium accruing under this Policy will be paid to the account of Mashantucket Pequot Tribal Nation.



## 6. LOSS ADJUSTMENT/PAYABLE

Loss, if any, will be adjusted with and payable to Mashantucket Pequot Tribal Nation, or as may be directed by Mashantucket Pequot Tribal Nation.

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.

## 7. TERRITORY

Coverage as provided under this Policy applies in the United States of America.

## 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 United States of America jurisdiction.

## 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. PARTICIPATION

The Company's liability under this Policy will not exceed the percent interests as described in the LIMITS OF LIABILITY clause of any limits of liability as provided in the LIMITS OF LIABILITY clause in this section, nor the percent interests as described in the LIMITS OF LIABILITY clause of the recoverable loss in any one **occurrence**.

## 11. LIMITS OF LIABILITY

This Company's maximum limit of liability in an **occurrence**, including any insured TIME ELEMENT loss, will not exceed the Policy limit of liability of USD1,655,000,000 subject to the following provisions:

- A. Layer 1: 0% of the primary USD5,000,000. This Company's liability will not exceed 0% of the recoverable loss in any one **occurrence**,



- B. Layer 2: 100% of USD1,650,000,000 excess of USD5,000,000 (Layer 1) subject to Excess of Loss Provision in the OTHER INSURANCE clause. This Company's liability will not exceed 100% of the recoverable loss in any one **occurrence**.
- C. 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.
- D. 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 in the **aggregate during any policy year**, 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.
- E. Should an **occurrence** result in liability payable under more than one policy issued to the Named Insured by the Company, or its **representative companies**, 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:

property consisting of golf course land improvements including plants, trees, shrubs, lawns, fairways, greens, tee boxes and golf course vegetation located at Location No. 29, 1 Club House Road, North Stonington, CT 06359-1227	USD2,000,000 but not to exceed a USD5,000 limit per plant, tree or shrub
ATTRACTION PROPERTY	30 consecutive days
AUTOMATIC COVERAGE	90 day period but not to exceed a USD100,000,000 limit, per <b>location</b>
CIVIL OR MILITARY AUTHORITY	30 consecutive days
CLAIMS PREPARATION COSTS	USD250,000
COMMUNICABLE DISEASE RESPONSE	USD1,000,000 in the <b>aggregate during any policy year</b>  The Company's maximum limit of liability for

	INTERRUPTION BY COMMUNICABLE DISEASE and this coverage combined shall not exceed USD1,000,000 in the <b>aggregate during any policy year</b> regardless of the number of locations, coverages or <b>occurrences</b> involved.
COMPUTER SYSTEMS NON PHYSICAL DAMAGE and DATA, PROGRAMS OR SOFTWARE combined	USD10,000,000 in the <b>aggregate during any policy year</b>
CONTINGENT TIME ELEMENT EXTENDED	USD25,000,000
CRISIS MANAGEMENT	30 consecutive days
<b>earth movement</b>	USD200,000,000 in the <b>aggregate during any policy year</b>
ERRORS AND OMISSIONS	USD100,000,000
EXPEDITING COSTS and EXTRA EXPENSE combined	USD100,000,000 but not to exceed a USD200,000 limit to transport and lodge guests at other facilities within 100 statute miles of the damaged or destroyed property
EXTENDED PERIOD OF LIABILITY	180 day period
finer or penalties for breach of contract or for late or noncompletion of orders combined	USD100,000
<b>flood</b>	USD200,000,000
GROSS PROFIT	12 month period
INGRESS/EGRESS	30 day period
INTERRUPTION BY COMMUNICABLE DISEASE	12 month period but not to exceed a USD1,000,000 limit in the <b>aggregate during any policy year</b>  The Company's maximum limit of liability for COMMUNICABLE DISEASE RESPONSE and this coverage combined shall not exceed USD1,000,000 in the <b>aggregate during any policy year</b> regardless of the number of locations, coverages or <b>occurrences</b> involved.

LAND AND WATER CONTAMINANT CLEANUP, REMOVAL AND DISPOSAL	USD500,000 in the <b>aggregate during any policy year</b>
LOGISTICS EXTRA COST	180 day period but not to exceed 200% of the <b>normal cost</b>
MISCELLANEOUS PROPERTY	As respects property at a <b>location</b> : a) USD25,000,000 per <b>location</b>  As respects property not at a <b>location</b> : a) USD25,000,000
OFF PREMISES DATA SERVICES PROPERTY DAMAGE and OFF PREMISES DATA SERVICES TIME ELEMENT combined	USD5,000,000 in the <b>aggregate during any policy year</b>
SERVICE INTERRUPTION PROPERTY DAMAGE and SERVICE INTERRUPTION TIME ELEMENT combined	USD25,000,000
<b>valuable papers and records</b>	USD100,000,000 but not to exceed a USD10,000 limit per item for <b>irreplaceable valuable papers and records</b> not on a schedule on file with the Company

## 12. DEDUCTIBLES

Subject to the deductible general provisions stated below, in each case of loss covered by this Policy the following deductibles apply:

Location Nos. 01, Foxwoods Resort Casino, 350 Trolley Line Boulevard, Mashantucket, CT 06338-3830 and 26, Fox Tower, 240 MGM Grand Drive, Mashantucket, CT 06338-3819	Property Damage: USD100,000 per <b>occurrence</b>  Time Element: USD1,500,000 per <b>occurrence</b> , except as follows:  As respects the <b>combined heat and power cogeneration system</b> located at the Central Plant Building within Foxwoods Casino, the following deductible will apply:  Time Element: 22 <b>day equivalent</b> , per <b>occurrence</b> for all loss directly resulting from physical damage to the <b>combined heat and</b>
---	--





	<b>power cogeneration system</b> except for any time element loss from operations other than the <b>combined heat and power cogeneration system</b>
COMPUTER SYSTEMS NON PHYSICAL DAMAGE	USD250,000 per <b>occurrence</b> , except for Location Nos. 01, Foxwoods Resort Casino, 350 Trolley Line Boulevard, Mashantucket, CT 06338-3830 and 26, Fox Tower, 240 MGM Grand Drive, Mashantucket, CT 06338-3819
DATA, PROGRAMS OR SOFTWARE	USD250,000 as respects loss or damage caused by the malicious introduction of a machine code or instruction per <b>occurrence</b> , except for Location Nos. 01, Foxwoods Resort Casino, 350 Trolley Line Boulevard, Mashantucket, CT 06338-3830 and 26, Fox Tower, 240 MGM Grand Drive, Mashantucket, CT 06338-3819
<b>flood</b>	As respects Location No. 29, 1 Club House Road, North Stonington, CT 06359-1227:  USD500,000 combined all coverages, per <b>location</b>
LOGISTICS EXTRA COST	USD25,000 per <b>occurrence</b>
OFF PREMISES DATA SERVICES PROPERTY DAMAGE and OFF PREMISES DATA SERVICES TIME ELEMENT combined	USD250,000 per <b>occurrence</b> , except for Location Nos. 01, Foxwoods Resort Casino, 350 Trolley Line Boulevard, Mashantucket, CT 06338-3830 and 26, Fox Tower, 240 MGM Grand Drive, Mashantucket, CT 06338-3819
<b>wind</b>	As respects <b>wind</b> loss associated with or occurring in conjunction with a storm or weather disturbance identified by name by a meteorological authority, whether or not named prior to a loss:  1) As respects Location Nos. 01, Foxwoods Resort Casino, 350 Trolley Line Boulevard, Mashantucket, CT 06338-3830 and 26, Fox Tower, 240 MGM Grand Drive, Mashantucket, CT 06338-3819:  Property Damage: USD2,500,000, per <b>occurrence</b>

	<p>Time Element: USD1,500,000, per <b>occurrence</b></p> <p>2) As respects locations in the United States Northeast Wind Area as described on Appendix D, Wind Exposed Locations:</p> <p>USD25,000 combined all coverages, per <b>location</b></p>
All Other Loss	USD25,000 combined all coverages, per <b>occurrence</b>

**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 located at insured **locations**.
  - 2) car parks, parking lots, pavement, roadways, railways, transformer enclosures or walkways located at insured **locations**.
  - 3) fill beneath car parks, parking lots, pavement, roadways, railways, transformer enclosures, walkways, or buildings and structures located at insured **locations**.
- 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 they are stock in process, finished goods manufactured by the Insured, raw materials, supplies or other merchandise not manufactured by the Insured, or as otherwise provided by the **DATA, PROGRAMS OR SOFTWARE** coverage of this Policy.
- M. fine arts, including but not limited to Native American Artifacts.
- N. residential properties, except hotels.

### 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**. 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 SERVICE INTERRUPTION and OFF PREMISES DATA SERVICES 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.

- 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 or for 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 or supplies:
  - 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 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 and gaming machinery and 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, PROGRAMS OR SOFTWARE

This Policy covers insured **physical loss or damage to electronic data, programs or software**, including physical loss or damage caused by the malicious introduction of a machine code or instruction.

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.

With respect to destruction, distortion or corruption caused by the malicious introduction of machine code or instruction, this Additional Coverage will apply when the Period of Liability is in excess of 48 hours.

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 they are stock in process, finished goods manufactured by the Insured, raw materials, supplies or other merchandise not manufactured by the Insured.

DATA, PROGRAMS OR SOFTWARE Exclusions: As respects DATA, PROGRAMS OR SOFTWARE, the following applies:

- 1) the exclusions in the EXCLUSIONS clause of this section do not apply except for A1, A2, A6, B1, B2, B3a and B4.
- 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, PROGRAMS OR SOFTWARE 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. OFF PREMISES DATA SERVICES 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.

OFF PREMISES DATA SERVICES PROPERTY DAMAGE Exclusions: As respects OFF PREMISES DATA SERVICES 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 California, in the **New Madrid Seismic Zone** or in the **Pacific Northwest Seismic Zone**.

## 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, including **markers**, 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**.

#### **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 or for 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. 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.

#### **N. 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.

#### **O. 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.

**P. 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.

**Q. 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.

**R. 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 California, in the **New Madrid Seismic Zone** or in the **Pacific Northwest Seismic Zone**.

## **S. 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.

## **T. 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 is subject to the deductible provisions that would have applied had the physical loss or damage happened.

## **U. 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 12 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, 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 California, in the **New Madrid Seismic Zone** or in the **Pacific Northwest Seismic Zone**.

## V. 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.

## **W. 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 B4, 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, 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:
  - 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.

## X. VALUABLE PAPERS AND RECORDS

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

VALUABLE PAPERS AND RECORDS Exclusions: As respects 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, and B4.
- 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) **valuable papers and records** insured under Travelers Property Casualty Company of America Policy No. QT660-1714B427, or its replacement policy, hereafter referred to as the "Travelers Policy". It is agreed that during the terms of this Policy the Insured will not cancel or restrict the Travelers Policy without knowledge and



**Account No. 1-17675**  
**Policy No. 1053126**

consent of the Company. If the Travelers Policy is cancelled, restricted or allowed to expire and not renewed without the knowledge and consent of the Company, this exclusion will continue to apply as though the Travelers policy has been maintained in full force and effect.

**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.

## 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) plus all other earnings derived from the operation of the business.
- 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) It is hereby agreed that if a "partial" interruption to casino business occurs, the gaming segments will have their actual loss estimates based on using the average hold percentage for those segments interrupted. The average hold percentage would be based on the average hold percentages for the prior 12 months.
- 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 and b) 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) 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 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.

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.
  - 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.
- 5) It is hereby agreed that if a "partial" interruption to casino business occurs, the gaming segments will have their actual loss estimates based on using the average hold percentage for those segments interrupted. The average hold percentage would be based on the average hold percentage for the prior 12 months.

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, PROGRAMS OR SOFTWARE, the time to recreate or restore including the time for researching or engineering lost information.

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 or for 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. COMPUTER SYSTEMS NON PHYSICAL DAMAGE

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 malicious act 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 malicious act 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**.



## B. OFF PREMISES DATA SERVICES 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 COMPUTER SYSTEMS NON PHYSICAL DAMAGE coverage as provided in this section of the Policy.

OFF PREMISES DATA SERVICES TIME ELEMENT Exclusions: As respects OFF PREMISES DATA SERVICES 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 California, in the **New Madrid Seismic Zone** or in the **Pacific Northwest Seismic Zone**.

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).

## **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 or state or tribal gaming commission 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; but
- 2) not to exceed the time limit 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  
DELAY IN STARTUP  
EXTENDED PERIOD OF LIABILITY  
INGRESS/EGRESS  
OFF PREMISES DATA SERVICES TIME ELEMENT  
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 California, in the **New Madrid Seismic Zone** or in the **Pacific Northwest Seismic Zone**.

## C. INGRESS/EGRESS

This Policy covers the Actual Loss Sustained and EXTRA EXPENSE incurred by the Insured 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.

This Policy does not provide coverage under this Extension for more than the number of consecutive days shown in the LIMITS OF LIABILITY clause of the DECLARATIONS 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 loss or damage from **earth movement** in California, in the **New Madrid Seismic Zone** or in the **Pacific Northwest Seismic Zone**.
- 8) 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 12 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, 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 California, in the **New Madrid Seismic Zone** or in the **Pacific Northwest Seismic Zone**.

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**.

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; but
- 2) not to exceed the time limit 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 or state or tribal gaming commission 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.

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; but
- 2) not to exceed the time limit 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.

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 exclusion applies:

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**.

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; but
- 2) not to exceed the time limit 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 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 not to 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 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 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.
- C. 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.

Notwithstanding anything contained in this Policy to the contrary, this Policy provides coverage for direct physical loss or damage to insured property and any resulting TIME ELEMENT loss, as provided in the TIME ELEMENT section of this Policy, caused by or resulting from a Certified Act of Terrorism in accordance with the terms and conditions of the SUPPLEMENTAL UNITED STATES CERTIFIED ACT OF TERRORISM ENDORSEMENT(S) attached to 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. When this Policy includes property in more than one jurisdiction, separate policies underlying this Policy may be issued by the Company in compliance with jurisdictional requirements. Such underlying policies will not be considered as additional insurance, but as duplicate insurance only.
- G. Excess of Loss Provision:

As respects all coverages, this Policy shall apply excess of the amount(s) shown under the LIMITS OF LIABILITY clause in the DECLARATIONS section of this Policy only upon exhaustion of the underlying LIMITS OF LIABILITY after application of the deductibles applying in the underlying (primary) policy(ies), and only for such losses which are covered and not excluded by the terms and conditions of this Policy.

In the event loss or damage involves more than one coverage or peril, the coverage provided under any underlying policy(ies) shall apply first to the coverage(s) or peril(s) insured by

this Policy. Upon exhaustion of the limits of liability of the underlying policy(ies), this Policy shall then be liable for the loss uncollected from the coverage(s) or peril(s) insured hereunder, subject to the Limit(s) of Liability stated elsewhere in this Policy.

In the event of exhaustion of any annual aggregate limits of liability under such underlying policy(ies), this Policy shall not be considered primary insurance and will respond as though such limit(s) of liability and deductible(s) in the underlying policy(ies) were in full force and effect.

To the extent that the terms and conditions of this Policy are different or inconsistent with the terms and conditions of the underlying policy(ies) or any other policy issued by this Company or any other company, the terms and conditions of this Policy shall control, including the adjustment of any claims under this Policy.

The cancellation or non-renewal of any underlying policy and/or the insolvency or inability to pay of any underlying Insurance Company, of any underlying policy shall in no event increase this Company's liability under this Policy nor in any way result in this Company becoming liable for any underlying amount of insurance.

## 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 **aggregate during any policy year** 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.

**aggregate during any policy year:**

the Company's maximum amount payable during any policy year.

**combined heat and power cogeneration system:**

system consisting of the following:

- A. any gas turbine generator set including any:
- 1) driving turbine(s);
  - 2) combustor, precooler, intercooler, regenerator or heat exchanger of any gas turbine unit;
  - 3) electric generator, pump, compressor, fan, blower, wheel or gear on any shaft of the driving turbine or turbines or on a shaft which is directly connected to any of said turbines by any coupling, clutch or gear set, except the Object shall not extend beyond the first half of the coupling, immediately ahead of any second gear set;
  - 4) mechanical or hydraulic governing mechanism together with any electric motor used solely therewith;
  - 5) auxiliary apparatus mounted on the bed or frame of the unit;
  - 6) lubricating oil pump, and fuel pump or any pump for circulating a coolant, if used solely for the unit, together with any machine driving any such pump;
  - 7) auxiliary electric motor, steam turbine or other apparatus used solely to rotate the driving turbine or turbines for starting or maintenance purposes;
  - 8) apparatus used solely to scavenge any gas turbine unit;
  - 9) shaft which forms a part of the unit or which connects parts of the unit, together with any coupling, clutch, bearing, gear or gear set on said shaft; and
  - 10) interconnecting wiring, piping or ducts between parts of the unit and which are mounted on the unit;

but shall not include any:

- 1) electronic computer or electronics data processing equipment used to govern or control the unit;
- 2) machine or apparatus except as included in section 1-10 above;
- 3) wiring, fiber optics, piping or ducts leading to or from the unit;
- 4) condenser, its connecting pipe or adapter;
- 5) penstock or draft tube; nor
- 6) boiler utilizing exhaust gases from any gas turbine unit.

- B. heat recovery steam generator, exhaust gas environmental control system, duct burners, fuel gas compression system, transformers, generator and electrical switchgear, as associated

with the gas turbine generator set at the insured **location** including any interconnecting wiring, piping or ducts to each other or the gas turbine generator set:

but shall not include any:

- 1) wiring, fiber optics, piping or ducts leading to or from the rest of the insured **location** to the **combined heat and power cogeneration system**.

**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.

**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.

**day equivalent:**

an amount equivalent to the number of days stated times the following:

- A. the 100% daily Time Element value that would have been earned following the **occurrence** at the **location** where the physical damage happened, plus

- B. that proportion of the 100% daily Time Element value at all other **locations** where TIME ELEMENT loss ensues that was directly affected by use of such **location**.

**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.

**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.

**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.

**markers:**

negotiable credit documents issued at the pit for table game activity or at the cage for consolidation, partial payment and slot machine game activity.

**New Madrid Seismic Zone:**

Arkansas, United States of America, counties of:



Arkansas, Clay, Craighead, Crittenden, Cross, Fulton, Greene, Independence, Izaard, 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.



Account No. 1-17675

Policy No. 1053126

## SCHEDULE OF LOCATIONS APPENDIX A

Loc. No.	Index No.	Name	Street Address	City	County	State	Postal Code	Country
01	018243.76	Foxwoods Resort Casino	350 Trolley Line Boulevard	Mashantucket	New London	Connecticut	06338-3830	United States of America
23	018243.76	Co-Generation Power Plant	350 Trolley Line Boulevard	Mashantucket	New London	Connecticut	06338-3830	United States of America
10	018243.76	Water Well House	350 Trolley Line Boulevard	Mashantucket	New London	Connecticut	06338-3830	United States of America
02	018243.77	Two Trees Inn	240 Indiantown Road	Ledyard	New London	Connecticut	06339-1137	United States of America
03	018243.78	Community Center	2 Matts Path	Mashantucket	New London	Connecticut	06338-3804	United States of America
28	018243.78	Post Office	7 Matts Path	Mashantucket	New London	Connecticut	06338-9992	United States of America
35	018243.78	Community Center Sanitary Pump Station	6 Matts Path	Mashantucket	New London	Connecticut	06338-3804	United States of America
36	018243.78	Baseball Park Buildings	3 Matts Path	Mashantucket	New London	Connecticut	06338-3804	United States of America
04	001198.70	Water Filtration Plant	550 Trolley Line Boulevard	Mashantucket	New London	Connecticut	06338-3831	United States of America
05	018243.79	Museum & Research Center	110 Pequot Trail	Mashantucket	New London	Connecticut	06338-3823	United States of America
40	018243.79	Sewage Pump Station	120 Pequot Trail	Mashantucket	New London	Connecticut	06338-3823	United States of America
06	018243.80	Public Safety Building	101 Pequot Trail	Mashantucket	New London	Connecticut	06338-3823	United States of America
11	018243.80	Property Department Trailers	102 Pequot Trail	Mashantucket	New London	Connecticut	06338-3823	United States of America
38	018243.80	Emergency Power Generator	115 Pequot Trail	Mashantucket	New London	Connecticut	06338-3823	United States of America
39	018243.80	Public Works	103 Pequot Trail	Mashantucket	New London	Connecticut	06338-3823	United States of America



Account No. 1-17675

Policy No. 1053126

## SCHEDULE OF LOCATIONS APPENDIX A

Loc. No.	Index No.	Name	Street Address	City	County	State	Postal Code	Country
41	018243.80	Tall Pine House	107 Pequot Trail	Mashantucket	New London	Connecticut	06338-3823	United States of America
34	018243.80	Water Utility Booster Station	115 Pequot Trail	Mashantucket	New London	Connecticut	06338-3823	United States of America
07		Romanella Storage Facility	95A Pendleton Hill Road	North Stonington	New London	Connecticut	06359-1737	United States of America
08	017292.19	The Spa at Norwich Inn	607 West Thames Street	Norwich	New London	Connecticut	06360-7139	United States of America
09	017017.54	Eagle Park	25 Norwich Westerly Road	North Stonington	New London	Connecticut	06359-1713	United States of America
44	017017.54	Eagle Park	25 Norwich Westerly Road	Mashantucket	New London	Connecticut	06359	United States of America
14	000468.97	PRXN Building & Storage Trailer	1 Annie George Drive	Mashantucket	New London	Connecticut	06338-3801	United States of America
15	001277.38	Health Department	75 Norwich Westerly Road	Ledyard	New London	Connecticut	06339-1128	United States of America
16	018243.76	Wastewater Plant and Sludge Thickening Facility	500 Route 2	Mashantucket	New London	Connecticut	06338-3826	United States of America
18	000468.98	Norwich Inn Condos	Old Pond Road	Norwich	New London	Connecticut	06360-7025	United States of America
19		Phase VII Housing Sewer Pump Station	35 Fox Trail	Mashantucket	New London	Connecticut	06338-3811	United States of America
20		Underground Water Tank	240 MGM Grand Drive	Mashantucket	New London	Connecticut	06338-3819	United States of America
22		Phase VII Housing Water Booster Pump Station	8 Kate Swamp Road	Mashantucket	New London	Connecticut	06338-3818	United States of America
24	000468.99	Mercantile Building 1	55 Main Street	Norwich	New London	Connecticut	06360-5760	United States of America



Account No. 1-17675  
 Policy No. 1053126

## SCHEDULE OF LOCATIONS APPENDIX A

Loc. Id No.	Index No.	Name	Street Address	City	County	State	Postal Code	Country
25	000468.99	Mercantile Building 2	125 Chelsea Harbor Drive	Norwich	New London	Connecticut	06360-5717	United States of America
26	018243.76	Fox Tower	240 MGM Grand Drive	Mashantucket	New London	Connecticut	06338-3819	United States of America
33	018243.76	Fox Tower Sewer Pump Station	450 Trolley Line Boulevard	Mashantucket	New London	Connecticut	06338-3830	United States of America
27		Sanitary Booster Station	Rte 214 and Pequot Trail	Mashantucket	New London	Connecticut	06338	United States of America
29	000692.62	Lake of Isles Golf Course	1 Club House Road	North Stonington	New London	Connecticut	06359-1227	United States of America
30		Building	80 North Stonington Road	North Stonington	New London	Connecticut	06359	United States of America
42	018243.76	Pequot Outpost	101 Trolley Line Boulevard	Mashantucket	New London	Connecticut	06338-3830	United States of America
43	018243.76	Pequot Outpost, Gas Filling Station	101 Trolley Line Boulevard	Mashantucket	New London	Connecticut	06338-3830	United States of America
45		Octagon Building	161 Water Street	Norwich	New London	Connecticut	06360	United States of America



**Account No. 1-17675**  
**Policy No. 1053126**

## **JURISDICTION AND GOVERNMENT**

### **APPENDIX B**

Notwithstanding Appendix C of this Policy, this Policy shall be governed by the laws of the State of Connecticut and jurisdiction shall reside within the State Courts of Connecticut. Any disputes arising under this Policy will be exclusively subject to the courts of Connecticut.  
All other terms and conditions remain unchanged.

Attaches to and forming part of Policy No. 1053126 of the Factory Mutual Insurance Company.



**Account No. 1-17675**  
**Policy No. 1053126**

## **SOVERIGN IMMUNITY**

### **APPENDIX C**

It is hereby understood and agreed that this Policy recognizes that the Mashantucket Pequot Tribe is a sovereign government. The Mashantucket Pequot Tribe does not waive its sovereign immunity. It is agreed that the insurer shall not avail itself of the defense of sovereign immunity to which the insured may be entitled by reason of its being a government entity, unless the insured requests the company raise such defense by written request to the insurer not less than 10 days before the time to file an answer to every suit.

All other terms and conditions remain unchanged.

Attaches to and forming part of Policy No. 1053126 of the Factory Mutual Insurance Company.



Account No. 1-17675

Policy No. 1053126

## WIND EXPOSED LOCATIONS APPENDIX D

Loc. No.	Id	Index No.	Name	Street Address	City	County	State	Postal Code	Country
<b>Virginia and North Wind Areas</b>									
02	02	018243.77	Two Trees Inn	240 Indiantown Road	Ledyard	New London	Connecticut	06339-1137	United States of America
03	03	018243.78	Community Center	2 Matts Path	Mashantucket	New London	Connecticut	06338-3804	United States of America
28	28	018243.78	Post Office	7 Matts Path	Mashantucket	New London	Connecticut	06338-9992	United States of America
35	35	018243.78	Community Center Sanitary Pump Station	6 Matts Path	Mashantucket	New London	Connecticut	06338-3804	United States of America
36	36	018243.78	Baseball Park Buildings	3 Matts Path	Mashantucket	New London	Connecticut	06338-3804	United States of America
04	04	001198.70	Water Filtration Plant	550 Trolley Line Boulevard	Mashantucket	New London	Connecticut	06338-3831	United States of America
05	05	018243.79	Museum & Research Center	110 Pequot Trail	Mashantucket	New London	Connecticut	06338-3823	United States of America
40	40	018243.79	Sewage Pump Station	120 Pequot Trail	Mashantucket	New London	Connecticut	06338-3823	United States of America
06	06	018243.80	Public Safety Building	101 Pequot Trail	Mashantucket	New London	Connecticut	06338-3823	United States of America
11	11	018243.80	Property Department Trailers	102 Pequot Trail	Mashantucket	New London	Connecticut	06338-3823	United States of America
38	38	018243.80	Emergency Power Generator	115 Pequot Trail	Mashantucket	New London	Connecticut	06338-3823	United States of America
39	39	018243.80	Public Works	103 Pequot Trail	Mashantucket	New London	Connecticut	06338-3823	United States of America
41	41	018243.80	Tall Pine House	107 Pequot Trail	Mashantucket	New London	Connecticut	06338-3823	United States of America
34	34	018243.80	Water Utility Booster Station	115 Pequot Trail	Mashantucket	New London	Connecticut	06338-3823	United States of America
07	07		Romanella Storage Facility	95A Pendleton Hill Road	North Stonington	New London	Connecticut	06359-1737	United States of America



Account No. 1-17675

Policy No. 1053126

## WIND EXPOSED LOCATIONS APPENDIX D

Loc. No.	Id	Index No.	Name	Street Address	City	County	State	Postal Code	Country
08	08	017292.19	The Spa at Norwich Inn	607 West Thames Street	Norwich	New London	Connecticut	06360-7139	United States of America
09	09	017017.54	Eagle Park	25 Norwich Westerly Road	North Stonington	New London	Connecticut	06359-1713	United States of America
44	44	017017.54	Eagle Park	25 Norwich Westerly Road	Mashantucket	New London	Connecticut	06359	United States of America
14	14	000468.97	PRXN Building & Storage Trailer	1 Annie George Drive	Mashantucket	New London	Connecticut	06338-3801	United States of America
15	15	001277.38	Health Department	75 Norwich Westerly Road	Ledyard	New London	Connecticut	06339-1128	United States of America
16	16	018243.76	Wastewater Plant and Sludge Thickening Facility	500 Route 2	Mashantucket	New London	Connecticut	06338-3826	United States of America
18	18	000468.98	Norwich Inn Condos	Old Pond Road	Norwich	New London	Connecticut	06360-7025	United States of America
19	19		Phase VII Housing Sewer Pump Station	35 Fox Trail	Mashantucket	New London	Connecticut	06338-3811	United States of America
20	20		Underground Water Tank	240 MGM Grand Drive	Mashantucket	New London	Connecticut	06338-3819	United States of America
22	22		Phase VII Housing Water Booster Pump Station	8 Kate Swamp Road	Mashantucket	New London	Connecticut	06338-3818	United States of America
24	24	000468.99	Mercantile Building 1	55 Main Street	Norwich	New London	Connecticut	06360-5760	United States of America
25	25	000468.99	Mercantile Building 2	125 Chelsea Harbor Drive	Norwich	New London	Connecticut	06360-5717	United States of America
27	27		Sanitary Booster Station	Rte 214 and Pequot Trail	Mashantucket	New London	Connecticut	06338	United States of America
29	29	000692.62	Lake of Isles Golf Course	1 Club House Road	North Stonington	New London	Connecticut	06359-1227	United States of America





Account No. 1-17675  
 Policy No. 1053126

## WIND EXPOSED LOCATIONS APPENDIX D

Loc. No.	Id	Index No.	Name	Street Address	City	County	State	Postal Code	Country
30			Building	80 North Stonington Road	North Stonington	New London	Connecticut	06359	United States of America
42		018243.76	Pequot Outpost	101 Trolley Line Boulevard	Mashantucket	New London	Connecticut	06338-3830	United States of America
43		018243.76	Pequot Outpost, Gas Filling Station	101 Trolley Line Boulevard	Mashantucket	New London	Connecticut	06338-3830	United States of America
45			Octagon Building	161 Water Street	Norwich	New London	Connecticut	06360	United States of America

**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**296,400**, 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.



**Account No. 1-17675**  
**Policy No. 1053126**

## **CYBER OPTIMAL RECOVERY ENDORSEMENT**

It is agreed that this Endorsement is a part of the Policy and that the terms and conditions of the Policy are amended as described herein. All other terms and conditions of the Policy remain unchanged.

### **INSURED OPTION:**

The Insured acknowledges having purchased a cyber policy.

As respects loss or damage that is covered by both this Policy and the cyber policy, and notwithstanding anything contained in the OTHER INSURANCE clause in the GENERAL PROVISIONS section of this Policy, the Insured may elect, within 180 days of notifying this Company of the loss, to apportion the loss between this Policy and the cyber policy and to designate this Policy as primary, excess or contributing insurance to the cyber policy with respect to each portion of the loss, provided designating it as such is necessary to maximize the total indemnity available for the loss under both this Policy and the cyber policy.

This election option shall be subject to the following additional conditions:

### **ADDITIONAL CONDITIONS**

- 1) The Insured will provide this Company with a copy of any cyber policy in force at the time of loss.
- 2) Any coverage provided by the cyber policy that is not provided by this Policy does not extend to this Policy.
- 3) The insolvency, inability or unwillingness to pay of the company issuing the cyber policy shall in no event increase this Company's liability or delay settlement under this Policy.