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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

MAR 09 2021

BY *D. Board*
DEILONZO BOARD, DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO

SAN MANUEL BAND OF MISSION
INDIANS;
SAN MANUEL ENTERTAINMENT
AUTHORITY,

Plaintiffs,

v.

WESTPORT INSURANCE
CORPORATION;
CRUM & FORSTER SPECIALTY
INSURANCE COMPANY;
WESTERN WORLD INSURANCE
COMPANY;
IRONSHORE SPECIALTY INSURANCE
COMPANY;
QBE SPECIALTY INSURANCE
COMPANY;
STARR SURPLUS LINES INSURANCE
COMPANY;
ATEGRITY SPECIALTY INSURANCE
COMPANY;
TOKIO MARINE AMERICA INSURANCE
COMPANY;
LANDMARK AMERICAN INSURANCE
COMPANY;
THE PRINCETON EXCESS AND
SURPLUS LINES INSURANCE
COMPANY;
HOMELAND INSURANCE COMPANY OF
NEW YORK;
ALLIED WORLD NATIONAL
ASSURANCE COMPANY;
EMPIRE INDEMNITY INSURANCE

CASE NO. **CIV SB 2106759**
**COMPLAINT FOR DECLARATORY
RELIEF AND BREACH OF CONTRACT**

Jury Trial Demanded

SC-2021-17859 08
\$435.00

1 COMPANY;
2 CERTAIN UNDERWRITERS AT
3 LLOYD'S, LONDON AS SUBSCRIBED TO
4 POLICY NUMBERS PTNAM1903486,
5 PTNAM1901045, PTNAM1903490,
6 PTNAM1902551, AND PTNAM1901055—
7 PTNAM1903491;
8 SYNDICATE NO. 1414 ASC;
9 SYNDICATE NO. 1919 APL;
10 SYNDICATE NO. 2623 AFB;
11 SYNDICATE NO. 2988 BRIT;
12 SYNDICATE NO. 4444 CNP;
13 LIRMA H5100;
14 SYNDICATE NO. 0510 KLN;
15 SYNDICATE NO. 2003 XLC;
16 SYNDICATE NO. 1200 AMA;
17 SYNDICATE NO. 1183 TAL;
18 SYNDICATE NO. 0609 AUW;
19 SYNDICATE NO. 0382 HDU;
20 SYNDICATE NO. 2015 CHN;
21 SYNDICATE NO. 4020 ARK;
22 SYNDICATE NO. 1886 QBE;
23 SYNDICATE NO. 3902 NOA;
24 DOES 1 THROUGH 100,

Defendants.

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1 This suit concerns the refusal by certain insurance companies to comply with their
2 obligations to Plaintiffs the San Manuel Band of Mission Indians (the “Tribe”) and the San Manuel
3 Entertainment Authority (“SMEA” and, collectively, the “Plaintiffs”). In exchange for substantial
4 premiums, the Defendant All Risk Insurers (as defined below) issued insurance policies that
5 provided “*all risk*” coverage for the Tribe and its insured locations, including the San Manuel
6 Casino (“the Casino”). This is the broadest form of first-party insurance coverage available in the
7 marketplace. Under these all risk policies, the insurers pledged to cover risks “except those
8 excluded under the terms of the insuring contract.” *Vardanyan v. AMCO Ins. Co.*, 243 Cal. App.
9 4th 779, 792 n.3 (2015). Put differently, “the limits of coverage are defined by the exclusions.”
10 *Id.*

11 Repudiating the broad coverage promised to the Tribe, the Defendant All Risk Insurers
12 have refused to pay for the business interruption at the Casino caused by the imminent or actual
13 property damage from the ubiquitous presence of the novel coronavirus formally known as SARS-
14 CoV-2 and the disease it causes: COVID-19. While damage from the spread of SARS-CoV-2 and
15 the COVID-19 pandemic have ravaged every aspect of the economy, perhaps no sector has been
16 hit harder than gaming and hospitality, which requires the very type of indoor, in-person
17 congregation and interaction that closure orders and other limitations prohibit. As a result, the
18 Tribe has suffered significant business interruption losses at the Casino and its related properties,
19 which through the course of the pandemic have mounted to more than \$300 million and are
20 continuing. Yet despite the Tribe paying more than \$6 million in premiums to secure a top of the
21 line, all-risk policy portfolio affording more than \$1.6 billion in coverage limits, the Defendant All
22 Risk Insurers refused to honor their obligations when the Tribe needed its insurers the most. To
23 date, the insurers have not paid a single penny of the Tribe’s losses. This failure has had significant
24 financial ramifications for the Tribe, as Casino gaming revenue represents the Tribe’s most
25 valuable business asset and the primary means to meet the objectives for the tribal government and
26 its citizens.

27 Accordingly, for their causes of action against the defendant insurers, Plaintiffs allege as
28 follows:

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INTRODUCTION AND PRELIMINARY STATEMENT

1. Plaintiffs bring this complaint to redress their insurers’ denial of claims for business interruption losses covered by the “all risk” insurance policies Plaintiffs purchased. “All risk” property insurance policies are broad policies that cover all risks of direct physical loss or damage to insured property, unless particular risks are specifically excluded. For that reason, unless an insurance company expressly excludes a particular risk, the policy is designed and written to cover any peril that causes loss or damage.

2. The San Manuel Casino is a tribal government economic development project wholly owned and operated by SMEA for the benefit of the Tribe. The Casino includes thousands of the latest slot machines, live Vegas-style table games, high-limit gaming, unique shopping, and award-winning dining, and the Tribe also owns, directly or indirectly, other businesses such as the Bear Springs Hotel. Casino operations are located on tribal land at the San Manuel Reservation near the city of Highland, in San Bernardino County.

3. Despite Plaintiffs’ best efforts to safely navigate its gaming operations amid the unprecedented challenges presented by the pandemic, their businesses have suffered physical loss or damage caused by the SARS-CoV-2 virus and COVID-19, including substantial losses resulting from the related suspensions and interruptions to the business.

4. In this regard, the Casino gaming and hospitality operations were shut down in March 2020 pursuant to orders from the Tribe’s duly authorized governing body and guidance from the San Manuel Tribal Gaming Commission (the “SMTGC”), which regulates all gaming activities within the Tribe’s jurisdiction consistent with tribal, federal, and state regulations. The closure resulted from imminent or actual property damage or loss from the ubiquitous presence of SARS-CoV-2 and COVID-19. To help mitigate these impacts and ensure the Casino did not become a vector for the spread of SARS-CoV-2, the Casino remained closed for three months until June 9, 2020 (opening to the general public on June 15), during which time the property was unfit for its intended purposes until safe occupancy and limited operation could be assured through the undertaking of extraordinary remedial and preventive measures.

1 5. Plaintiffs did not, however, stand idle during this shutdown period, working instead
2 to create a reopening plan for operations at the Casino during the COVID-19 pandemic to mitigate
3 the physical loss or damage to its property and maintain the health and safety of its employees and
4 patrons. These guidelines—including reduced capacity, cleaning and sanitation protocols, health
5 screenings, social distancing and face covering, and other safety procedures—have been in place
6 at the Casino since it reopened for limited operations in June 2020, and are continually updated
7 with modifications as new information arises about SARS-CoV-2 and its impacts to the Casino’s
8 intended use and purpose.

9 6. Indeed, the Casino’s reopening has received significant praise in the industry for
10 being “top to bottom” one of the best and safest for entertainment venues nationwide.¹ The Casino
11 became Sharecare Health Security VERIFIED® with Forbes Travel Guide based on the property’s
12 compliance with expert-validated best practices that minimize the risk and impact of SARS-CoV-
13 2 and COVID-19.²

14 7. The Casino continues to take a vigilant stance on providing a safe physical
15 environment for its guests and team members by implementing health checks, incorporating a team
16 of hundreds of health screeners, and employing guest safety concierges to enforce mask wearing
17 and social distancing. Other steps, including closing restaurants for in service dining (or altogether
18 in some cases), closing or reducing occupancy in retail stores, converting the Casino to a non-
19 smoking facility, reducing the number of available gaming spaces in both slots and table games,
20 and reducing overall occupancy of the Casino, greatly affected Casino operations. Yet even
21 operating with these significant limitations and adopting world-class mitigation techniques, the
22 risk and impact of SARS-CoV-2 and COVID-19 persists.

23 8. As of this filing, Plaintiffs’ estimated losses stemming from the presence of SARS-
24 CoV-2 and COVID-19—first from the compulsory closure of the Casino and then the subsequent
25 implementation of restricted and limited operations—exceed \$300 million (along with related
26

27 ¹ See [https://www.reviewjournal.com/business/casinos-gaming/is-nevada-the-gold-standard-
for-casino-coronavirus-response-2068397/](https://www.reviewjournal.com/business/casinos-gaming/is-nevada-the-gold-standard-for-casino-coronavirus-response-2068397/)

28 ² http://content.sanmanuel.com/sites/default/files/2021-01/forbes_verified_hotelpr_011121.pdf

1 mitigation expenses), and will continue to mount until the Casino can resume its normal business
2 activity.

3 9. To protect itself from these very types of catastrophic business interruption losses,
4 the Tribe bought insurance from several companies (the “All Risk Insurers”) that provide the Tribe
5 and its affiliates with \$1.6 billion in total coverage under a group of similar, but not identical, “all
6 risk” policies (the “All Risk Policies”) that specifically cover the Casino and other properties.
7 Coverage at this amount and under such a broad policy is very expensive: the Tribe paid over \$6
8 million in premiums for the policy year of April 1, 2019 to April 1, 2020, and over \$43 million for
9 coverage over the last ten years.³

10 10. The purpose and nature of the business interruption coverage provided in “all risk”
11 property policies is to protect policyholders (like the Tribe) against losses arising from an inability
12 to continue normal business operations due to circumstances precisely like those presented by the
13 COVID-19 pandemic, unless this type of peril is expressly excluded. *See Leslie Salt Co. v. St.*
14 *Paul Mercury Ins. Co.*, 637 F.2d 657, 660 (9th Cir. 1981) (“[R]ecovery under an ‘all risk’ policy
15 will be allowed for all fortuitous losses not resulting from misconduct or fraud, unless the policy
16 contains a specific provision expressly excluding the loss from coverage.”). When the Tribe
17 sustains physical loss or damage to its properties causing business interruption losses, the All Risk
18 Policies pay up to the respective policy limits to preserve the continuity of the Tribe’s business.
19 Yet defendants (collectively, the “Defendant All Risk Insurers”) have steadfastly refused to pay
20 for these devastating losses.

21 11. Plaintiffs are entitled to indemnification under many of the All Risk Policies’ broad
22 and overlapping coverages because SARS-CoV-2 and COVID-19 cause physical loss or damage
23 of the type insured. It is widely accepted by the scientific community that two of the primary ways
24 COVID-19 spreads involve transmission from an infected person to tangible objects to another
25 person, or from infected persons to other persons through the air, with particular susceptibility for
26 transmission occurring in indoor spaces where large numbers of people are present. The presence
27

28 ³ In April 2020, the Tribe renewed its insurance at a comparable level of policy limits for
approximately \$8.7 million in premiums, an increase of 15% from the previous policy period.

1 or suspected presence of SARS-CoV-2 and COVID-19 causes physical loss and damage because,
2 among other things, physical droplets containing the SARS-CoV-2 reside in (and attach to) the air
3 and on the fixtures and surfaces of the Casino and other properties, thus altering, damaging, and
4 rendering the physical property unfit and unsafe for its intended use if not mitigated.

5 12. These risks associated with viruses, communicable diseases, and pandemics have
6 been known to the insurance industry for a century and have been evident in recent decades through
7 outbreaks and pandemics involving SARS, MERS, H1N1 and Zika. Because these risks are well
8 known, there are exclusions in common usage in the insurance industry that specifically reference
9 losses caused by viruses, communicable diseases and pandemics. In fact, many of the most
10 common “boilerplate” insurance policies covering businesses include this exclusionary language,
11 which largely prevent recovery due to losses incurred by pandemics such as the one caused by
12 SARS-CoV-2.

13 13. Here, however, the Tribe’s “all risk” policy wording is a unique or “manuscripted”
14 program designed specifically for the risks associated with the Tribe’s property (the “Policy
15 Form”). The Policy Form includes no such virus or communicable disease exclusion. All of the
16 highly sophisticated insurance companies issuing the All Risk Policies had multiple opportunities
17 to review the Policy Form. Each insurance company could either sign on to cover Plaintiffs under
18 the Policy Form wording or make changes, including carving out coverage through exclusions,
19 creating policy sublimits, or adding, editing, or eliminating endorsements.

20 14. Indeed, anticipating the type of risk, loss, and damages posed by a virus such as
21 SARS-CoV-2 or the COVID-19 pandemic, two of the Tribe’s All Risk Insurers added
22 endorsements—modifying the Policy Form—to exclude losses caused by a virus or communicable
23 disease. Those two All Risk Insurers are not named here as defendants. All of the Tribe’s other
24 All Risk Insurers did not include such exclusions and, therefore, expressly agreed to cover such
25 losses as part of their insurance policies.

26 15. The Tribe bought \$1.6 billion of insurance for business income losses precisely to
27 cover catastrophic situations at its properties. Despite the obvious purpose and intent of the All
28 Risk Policies and the unique coverages for lost income in those policies, Defendant All Risk

1 Insurers have refused to honor their obligations and pay for the Tribe's devastating losses. This
2 ongoing failure has compelled Plaintiffs to commence this Lawsuit.

3
4 **THE PARTIES**

5 16. Plaintiff San Manuel Band of Mission Indians is a federally recognized Indian tribe
6 located on the San Manuel Indian Reservation near Highland, California. The Tribe exercises its
7 inherent sovereign right of self-governance and provides essential services for its citizens by
8 building infrastructure, maintaining civil services; and promoting social, economic and cultural
9 development. As Indigenous people of the San Bernardino highlands, passes, valleys, mountains
10 and high deserts, the Tribe has called this area home since time immemorial and is committed to
11 remaining a productive community partner in the San Bernardino region.

12 17. Plaintiff San Manuel Entertainment Authority is an unincorporated instrumentality
13 of the Tribe. Under the San Manuel Entertainment Authority Act, the SMEA exercises the Tribe's
14 ownership and management of the San Manuel Casino and related businesses.

15 18. Upon information and belief, Defendant Westport Insurance Corporation
16 ("Westport") is an insurance company organized and existing under the laws of the State of
17 Missouri with its principal place of business in Missouri. Defendant Westport issued an all-risk
18 insurance policy covering Plaintiffs and at issue in this lawsuit, policy number NAP 0452276 09.

19 19. Upon information and belief, Defendant Crum & Forster Specialty Insurance
20 Company ("C&F") is an insurance company organized and existing under the laws of the State of
21 Delaware with its principal place of business in New Jersey. Defendant C&F issued an all-risk
22 insurance policy covering Plaintiffs and at issue in this lawsuit, policy number SRS-100102.

23 20. Upon information and belief, Defendant Western World Insurance Company
24 ("Western World") is an insurance company organized and existing under the laws of the State of
25 New Hampshire with its principal place of business in New Jersey. Defendant Western World
26 issued an all-risk insurance policy covering Plaintiffs and at issue in this lawsuit, policy number
27 SSC0000093.

28 21. Upon information and belief, Defendant Ironshore Specialty Insurance Company

1 (“Ironshore”) is an insurance company organized and existing under the laws of the State of
2 Arizona with its principal place of business in Massachusetts. Defendant Ironshore issued an all-
3 risk insurance policy covering Plaintiffs and at issue in this lawsuit, policy number 001965605—
4 001965705.

5 22. Upon information and belief, Defendant QBE Specialty Insurance Company
6 (“QBE”) is an insurance company organized and existing under the laws of the State of North
7 Dakota with its principal place of business in Wisconsin. Defendant QBE issued an all-risk
8 insurance policy covering Plaintiffs and at issue in this lawsuit, policy number CFE0933521.

9 23. Upon information and belief, Defendant Starr Surplus Lines Insurance Company
10 (“Starr”) is an insurance company organized and existing under the laws of the State of Texas with
11 its principal place of business in New York. Defendant Starr issued an all-risk insurance policy
12 covering Plaintiffs and at issue in this lawsuit, policy number SLSTPTY11159019.

13 24. Upon information and belief, Defendant Ategrity Specialty Insurance Company
14 (“Ategrity”) is an insurance company organized and existing under the laws of the State of
15 Delaware with its principal place of business in Arizona. Defendant Ategrity issued an all-risk
16 insurance policy covering Plaintiffs and at issue in this lawsuit, policy number 01-B-XP-
17 P00000187-0.

18 25. Upon information and belief, Defendant Tokio Marine America Insurance
19 Company (“Tokio Marine”) is an insurance company organized and existing under the laws of the
20 State of New York with its principal place of business in New York. Defendant Tokio Marine
21 issued an all-risk insurance policy covering Plaintiffs and at issue in this lawsuit, policy number
22 LCP6480538-07.

23 26. Upon information and belief, Defendant Landmark American Insurance Company
24 (“Landmark”) is an insurance company organized and existing under the laws of the State of New
25 Hampshire with its principal place of business in Georgia. Defendant Landmark issued an all-risk
26 insurance policy covering Plaintiffs and at issue in this lawsuit, policy number LHD424346.

27 27. Upon information and belief, Defendant The Princeton Excess and Surplus Lines
28 Insurance Company (“Princeton”) is an insurance company organized and existing under the laws

1 of the State of Delaware with its principal place of business in New Jersey. Defendant Princeton
2 issued an all-risk insurance policy covering Plaintiffs and at issue in this lawsuit, policy number
3 78-A3-XP-0000455-02.

4 28. Upon information and belief, Defendant Homeland Insurance Company of New
5 York (“OneBeacon”) is an insurance company organized and existing under the laws of the State
6 of New York with its principal place of business in Minnesota. Defendant OneBeacon issued an
7 all-risk insurance policy covering Plaintiffs and at issue in this lawsuit, policy number 795009536-
8 0000.

9 29. Upon information and belief, Defendant Allied World National Assurance
10 Company (“Allied World”) is an insurance company organized and existing under the laws of the
11 State of New Hampshire with its principal place of business in New York. Defendant Allied World
12 issued an all-risk insurance policy covering Plaintiffs and at issue in this lawsuit, policy number
13 0307-4360-1N.

14 30. Upon information and belief, Defendant Empire Indemnity Insurance Company
15 (“Arrowhead”) is an insurance company organized and existing under the laws of the State of
16 Oklahoma with its principal place of business in Oklahoma. Defendant Arrowhead issued an all-
17 risk insurance policy covering Plaintiffs and at issue in this lawsuit, policy number XPP0153073.

18 31. Upon information and belief, Defendant Certain Underwriters at Lloyd’s, London
19 (“Lloyd’s”) is an unincorporated association organized under the laws of Great Britain for
20 providing infrastructure for the international insurance market.

21 32. Upon information and belief, Lloyd’s itself does not insure any risk, but rather, it
22 consists of individual underwriters known as “members” or “syndicates” that assume all or a
23 portion of the risk underwritten. Upon information and belief, the members are either individuals
24 or corporations, with different or multiple residences or principal places of business.

25 33. Seventeen syndicates at Lloyd’s have subscribed to the All Risk Policies at issue in
26 this case. These syndicates have subscribed to policy numbers PTNAM1903486,
27 PTNAM1901045, PTNAM1903490, PTNAM1902551, and PTNAM1901055—
28 PTNAM1903491. All have given the following address for service of suit in the United States:

1 Lloyd's America, Inc., Attn: Legal Department, 280 Park Ave., East Tower, 25th Floor, New York,
2 NY 10017

3 34. Upon information and belief, Certain Underwriters at Lloyd's, London, known as
4 Syndicate No. 1414 ASC ("Ascot") is a syndicate member of Lloyd's.

5 35. Upon information and belief, Certain Underwriters at Lloyd's, London, known as
6 Syndicate No. 1919 APL ("Apollo") is a syndicate member of Lloyd's.

7 36. Upon information and belief, Certain Underwriters at Lloyd's, London, known as
8 Syndicate No. 2623 AFB ("Beazley") is a syndicate member of Lloyd's.

9 37. Upon information and belief, Certain Underwriters at Lloyd's, London, known as
10 Syndicate No. 2988 BRIT ("Brit") is a syndicate member of Lloyd's.

11 38. Upon information and belief, Certain Underwriters at Lloyd's, London, known as
12 Syndicate No. 4444 CNP ("Canopus") is a syndicate member of Lloyd's.

13 39. Upon information and belief, Certain Underwriters at Lloyd's, London, known as
14 LIRMA H5100 ("HCC") is a syndicate member of Lloyd's.

15 40. Upon information and belief, Certain Underwriters at Lloyd's, London, known as
16 Syndicate No. 0510 KLN ("Tokio") is a syndicate member of Lloyd's.

17 41. Upon information and belief, Certain Underwriters at Lloyd's, London, known as
18 Syndicate No. 2003 XLC ("XL") is a syndicate member of Lloyd's.

19 42. Upon information and belief, Certain Underwriters at Lloyd's, London, known as
20 Syndicate No. 1200 AMA ("Argo") is a syndicate member of Lloyd's.

21 43. Upon information and belief, Certain Underwriters at Lloyd's, London, known as
22 Syndicate No. 1183 TAL ("Talbot") is a syndicate member of Lloyd's.

23 44. Upon information and belief, Certain Underwriters at Lloyd's, London, known as
24 Syndicate No. 0609 AUW ("Atrium") is a syndicate member of Lloyd's.

25 45. Upon information and belief, Certain Underwriters at Lloyd's, London, known as
26 Syndicate No. 0382 HDU ("CNA") is a syndicate member of Lloyd's.

27 46. Upon information and belief, Certain Underwriters at Lloyd's, London, known as
28 Syndicate No. 2015 CHN ("Channel") is a syndicate member of Lloyd's.

1 Health Organization (“WHO”) declared COVID-19 a global pandemic in March 2020.⁴ Days
2 later, the President of the United States declared a national public health emergency, citing the
3 “need[] to successfully contain and combat the virus in the United States.”⁵ As explained further,
4 a succession of governmental orders followed at every level in response to COVID-19.

5 57. The rapid spread of COVID-19, and concurrent governmental measures taken in
6 attempts to contain it, are due in part to the highly contagious and transmissible nature of SARS-
7 CoV-2 and COVID-19. As of the filing of this complaint, there were more than 116 million
8 reported cases globally, with over 29 million confirmed cases within the United States, more than
9 3.5 million of which are in California. Those numbers spiked during November 2020 through
10 January 2021 as community spread and conditions worsened — the death toll from COVID-19 has
11 claimed a staggering 531,398 lives within the United States of which more than 3,176 reported
12 deaths were in San Bernardino County.

13 58. According to the Centers for Disease Control and Prevention (“CDC”), “[e]veryone
14 is at risk for getting COVID-19 if they are exposed to the virus.”⁶ The CDC states that the time
15 between exposure to SARS-CoV-2 and symptom onset extends up to fourteen days.⁷ SARS-CoV-
16 2 and COVID-19 can also be spread by symptomatic, presymptomatic, and asymptomatic carriers.⁸
17 That is to say, even individuals who are unaware that they are carriers and who do not present
18

19 ⁴ *WHO Director-General’s opening remarks at the media briefing on COVID-19 - 11 March*
20 *2020*, WORLD HEALTH ORGANIZATION (Mar. 11, 2020),
21 <https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020>

22 ⁵ *Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus*
Disease (COVID-19) Outbreak, THE WHITE HOUSE (issued Mar. 13, 2020),
23 <https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/>.

24 ⁶ *Coronavirus Disease 2019 (COVID-19) – People Who Are at Increased Risk for Severe*
Illness, CDC (updated Sept. 11, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-increased-risk.html>.

25 ⁷ *Interim Clinical Guidance for Management of Patients with Confirmed Coronavirus Disease*
(COVID-19), CDC (updated December 8, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/hcp/clinical-guidance-management-patients.html>

26 ⁸ *See Apoorva Mandavilli, Even Asymptomatic People Carry the Coronavirus in High*
Amounts, THE NEW YORK TIMES (Aug. 6, 2020),
27 <https://www.nytimes.com/2020/08/06/health/coronavirus-asymptomatic-transmission.html>.
28

1 symptoms, can spread SARS-CoV-2 and COVID-19 by touching common objects or surfaces, or
2 by simply breathing. Studies estimate that “silent” asymptomatic and presymptomatic spread is
3 responsible for more than half of the transmission risk in COVID-19 outbreaks.⁹ The CDC’s
4 current public health recommendations stem from the “growing evidence of transmission risk from
5 infected people without symptoms (asymptomatic) or before the onset of recognized symptoms
6 (presymptomatic).”¹⁰ According to the CDC, these asymptomatic and presymptomatic carriers are
7 also more likely to carry and spread large viral loads of the coronavirus.¹¹

8 59. More specifically, when a person infected with COVID-19 (symptomatic or not)
9 coughs, sneezes, or talks, respiratory droplets containing SARS-CoV-2 are deposited onto physical
10 surfaces and/or dispersed throughout the air.¹² An infected person reportedly can even spread
11 coronavirus through the simple act of breathing, which in turn emits aerosols that infect other
12 persons when inhaled.¹³

13 60. SARS-CoV-2 is a physical substance and can be present outside the human body
14 in viral fluid particles. These fluid particles can physically attach both to air molecules and to
15 surfaces.

16 61. With respect to transmission of SARS-CoV-2 via surfaces and objects, both the
17 CDC and WHO warn that these mechanisms spread SARS-CoV-2 and COVID-19. The CDC has
18 observed the possibility “that a person can get COVID-19 by touching a surface or object that has
19

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21 ⁹ *See The implications of silent transmission for control of COVID-19 outbreaks*, Proceedings
22 of the National Academy of Sciences (July 28 2020),
<https://www.pnas.org/content/117/30/17513>.

23 ¹⁰ *Public Health Guidance for Community-Related Exposure*, CDC (updated Dec. 3, 2020),
<https://www.cdc.gov/coronavirus/2019-ncov/php/public-health-recommendations.html>.

24 ¹¹ *Interim Clinical Guidance for Management of Patients with Confirmed Coronavirus Disease*
25 *(COVID-19)*, CDC (updated December 8, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/hcp/clinical-guidance-management-patients.html>

26 ¹² *How COVID-19 Spreads*, CDC (updated Oct. 28, 2020),
<https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-covid-spreads.html>.

27 ¹³ *COVID-19 basics: Symptoms, spread and other essential information about the new*
28 *coronavirus and COVID-19*, HARVARD HEALTH PUBLISHING – HARVARD MEDICAL SCHOOL
(published Mar. 2020; updated Aug. 21, 2020), <https://www.health.harvard.edu/diseases-and-conditions/covid-19-basics>

1 the virus on it and then touching their own mouth, nose, or possibly their eyes.”¹⁴ WHO similarly
2 explains that SARS-CoV-2 and COVID-19 can “spread after infected people sneeze, cough on, or
3 touch surfaces, or objects, such as tables, doorknobs and handrails. Other people may become
4 infected by touching these contaminated surfaces, then touching their eyes, noses or mouths
5 without having cleaned their hands first.”¹⁵

6 62. Reports likewise confirm that SARS-CoV-2 and COVID-19 live on and/or remain
7 able to be transmitted and active on inert physical surfaces for extended periods. For example, a
8 study published in *The New England Journal of Medicine* found that SARS-CoV-2 was detectable
9 for up to four hours on copper, up to 24 hours on cardboard, and two to three days on plastic and
10 stainless steel.¹⁶ A study by Australia’s national science agency even found that SARS-CoV-2
11 was “extremely robust,” surviving for up to 28 days on smooth surfaces (such as glass, steel, vinyl,
12 and paper banknotes) when kept at approximately room temperature.¹⁷

13 63. The airborne respiratory droplets that spread SARS-CoV-2 and COVID-19 can also
14 persist in the air for long timeframes. In an October 2020 letter, six scientists described that viruses
15 in aerosols, such as SARS-CoV-2, “can remain suspended in the air for many seconds to hours,
16 like smoke, and be inhaled.”¹⁸ For instance, a study published by Tulane University found that
17

18 ¹⁴ *How COVID-19 Spreads*, CDC (updated June 16, 2020),
19 <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-covid-spreads.html>.

20 ¹⁵ *Coronavirus disease (COVID-19): How is it transmitted?*, WORLD HEALTH ORGANIZATION
21 (published July 9, 2020; updated Oct. 20, 2020),
<https://www.who.int/emergencies/diseases/novel-coronavirus-2019/question-and-answers-hub/q-a-detail/coronavirus-disease-covid-19-how-is-it-transmitted>.

22 ¹⁶ *New coronavirus stable for hours on surfaces*, NATIONAL INSTITUTES OF HEALTH (Mar. 17,
23 2020), [https://www.nih.gov/news-events/news-releases/new-coronavirus-stable-hours-](https://www.nih.gov/news-events/news-releases/new-coronavirus-stable-hours-surfaces)
surfaces; Aerosol and Surface Stability of SARS-CoV-2 as Compared with SARS-CoV-1, N.
24 ENGL. J. MED. 2020 (Apr. 16, 2020),
https://www.nejm.org/doi/full/10.1056/NEJMc2004973?query=featured_home.

25 ¹⁷ *CSIRO scientists publish new research on SARS-COV-2 virus ‘survivability’*, Commonwealth
26 Scientific and industrial research Organisation (Oct. 12, 2020),
[https://www.csiro.au/en/News/News-releases/2020/CSIRO-scientists-publish-new-research-](https://www.csiro.au/en/News/News-releases/2020/CSIRO-scientists-publish-new-research-on-SARS-COV-2-virus-survivability)
on-SARS-COV-2-virus-survivability; The effect of temperature on persistence of SARS-CoV-
27 *2 on common surfaces*, *Virology Journal* 2020 (Oct. 7, 2020),
<https://virologyj.biomedcentral.com/articles/10.1186/s12985-020-01418-7>.

28 ¹⁸ *Airborne transmission of SARS-CoV-2*, SCIENCE (Oct. 16, 2020),
<https://science.sciencemag.org/content/370/6514/303.2>.

1 SARS-CoV-2 can remain infectious in aerosol for up to 16 hours.¹⁹ As for the reach of those
2 materials, the New York Times has reported that “[e]ven without the launching power of a sneeze,
3 air currents could carry a flow of aerosol sized virus particles exhaled by an infected person 20
4 feet or more away.”²⁰ Respiratory droplets emitted via a sneeze can travel even further, potentially
5 23- to 27-feet, at a speed of 33- to 100-feet per second.²¹

6 64. After facing pressure from scientists about airborne transmission of SARS-CoV-
7 2,²² the CDC updated its guidance in October 2020 to reflect the risk that “COVID-19 can
8 sometimes be spread by airborne transmission” because under certain circumstances, such as being
9 in an enclosed space, “scientists believe that the amount of infectious smaller droplet and particles
10 produced by the people with COVID-19 became concentrated enough to spread the virus to other
11 people.”²³ To reduce the risk of airborne transmission, the Environmental Protection Agency
12 (EPA) recommends making certain physical changes, such as improving a building’s HVAC
13 system.²⁴

14 65. Indoor spaces, especially when crowded, present particularly heightened risks of
15 spread. The CDC advises that such “[i]ndoor spaces are more risky than outdoor spaces where it
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19 ¹⁹ *Tulane researchers find that coronavirus can survive in air for hours*, TULANE NEWS (July 6,
20 2020), <https://news.tulane.edu/pr/tulane-researchers-find-coronavirus-can-survive-air-hours> ;
https://wwwnc.cdc.gov/eid/article/26/9/20-1806_article.

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

23 ²¹ Lydia Bourouiba, *Turbulent Gas Clouds and Respiratory Pathogen Emissions: Potential*
Implications for Reducing Transmission of COVID-19, JAMA INSIGHTS (Mar. 26, 2020),
24 <https://jamanetwork.com/journals/jama/fullarticle/2763852>.

25 ²² *It Is Time to Address Airborne Transmission of Coronavirus Disease 2019 (COVID-2019)*,
CLINICAL INFECTIOUS DISEASES (July 6, 2020), <https://doi.org/10.1093/cid/ciaa939>.

26 ²³ *How COVID-19 Spreads*, CDC (updated Oct. 28, 2020),
<https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/how-covid-spreads.html>;
27 *see Scientific Brief: SARS-CoV-2 and Potential Airborne Transmission*, CDC (updated Oct. 5,
2020), <https://www.cdc.gov/coronavirus/2019-ncov/more/scientific-brief-sars-cov-2.html>.

28 ²⁴ *Indoor Air and Coronavirus (COVID-19)*, EPA, <https://www.epa.gov/coronavirus/indoor-air-and-coronavirus-covid-19#main-content>.

1 might be harder to keep people apart and there's less ventilation."²⁵ In line with that guidance, a
2 July 2020 study reviewed transmission of SARS-CoV-2 and COVID-19 among three family
3 clusters within an air-conditioned restaurant; the study concluded that the most likely cause of the
4 outbreak among the separate families was droplet transmission prompted by strong airflow from
5 the air conditioner.²⁶ Similarly, a recent study analyzed transmission of SARS-CoV-2 and
6 COVID-19 between two people who spent five minutes in the same restaurant—all while twenty
7 feet apart; researchers concluded that SARS-CoV-2 and COVID-19 spread via droplets carried in
8 direct air flow from the infected person.²⁷ The coronavirus has also been detected in the heating,
9 ventilation, and air conditioning (HVAC) system of COVID-19 hospital wards, including on
10 exhaust filters at least one hundred and sixty (160) feet away from patient rooms.²⁸

11 66. Given their physical characteristics and various modes of transmission, SARS-
12 CoV-2 and COVID-19 cause physical loss and/or damage by attaching to, corrupting, and
13 physically altering property, including the air in buildings and various common surfaces, and by
14 rendering such property dangerous, unusable, and unfit for its intended function.

15 67. Thus, because of the high risk of spread through person-to-person interaction, as
16 well as through the physical droplets residing in the air and on surfaces and objects, tribal, local,
17 state, and federal governmental authorities have sought to limit transmission by reducing indoor
18 person-to-person and person-to-surface contact. These various orders reflect the impacts to
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21 ²⁵ *Coronavirus Disease 2019 (COVID-19) – Deciding to Go Out*, CDC (updated Sept. 11,
2020), <https://www.cdc.gov/coronavirus/2019-ncov/daily-life-coping/deciding-to-go-out.html>.

22 ²⁶ *COVID-19 Outbreak Associated with Air Conditioning in Restaurant, Guangzhou, China,*
23 2020, EMERGING INFECTIOUS DISEASES (July 2020),
https://wwwnc.cdc.gov/eid/article/26/7/20-0764_article.

24 ²⁷ *Evidence of Long-Distance Droplet Transmission of SARS-CoV-2 by Direct Air Flow in a*
25 *Restaurant in Korea*, JOURNAL OF KOREAN MEDICINE (Nov. 23, 2020),
<https://jkms.org/DOIx.php?id=10.3346/jkms.2020.35.e415>; see Victoria Kim, *Infected after 5*
26 *minutes, from 20 feet away: South Korea study shows coronavirus' spread indoors,*, THE LOS
27 ANGELES TIMES (December 9, 2020), <https://www.latimes.com/world-nation/story/2020-12-09/five-minutes-from-20-feet-away-south-korean-study-shows-perils-of-indoor-dining-for-covid-19>.

28 ²⁸ *See Long-distance airborne dispersal of SARS-CoV-2 in COVID-19 wards*, SCIENTIFIC
REPORTS (Nov. 11, 2020), <https://www.nature.com/articles/s41598-020-76442-2#citeas>

1 property posed by SARS-CoV-2 and COVID-19, including the damage or loss to publicly
2 accessible commercial properties where person-to-person and person-to-property-to-person
3 transmission is otherwise unavoidable. These very impacts led the Casino to be compulsorily
4 closed for three months at the onset of the pandemic (beginning on March 15, 2020).

5 68. Although the ability of the SARS-CoV-2 virus to attach onto surfaces is accepted
6 in the scientific and medical communities, there is no yet generally recognized, reliable, and
7 available method to test for its presence on property (although researchers in the biotechnology
8 field have begun to develop this technology). But given the prevalence of asymptomatic carriers
9 and consistent with state and local authorities having established the presence of SARS-CoV-2
10 and COVID-19 in San Bernardino County with over 280,000 confirmed cases, the inescapable
11 conclusion is that SARS-CoV-2 and COVID-19 were, and continue to be, physically present at the
12 Casino and properties within five miles of that location based on contact tracing data.

13 69. Moreover, a significant portion of patrons travel from neighboring counties that
14 have been similarly impacted: Los Angeles County (over 1 million confirmed cases), Riverside
15 County (280,000 confirmed cases), and Orange County (240,000 confirmed cases). The Tribe's
16 leadership and EMS Operations Manager and Designated Infection Control Officer ("DICO") have
17 tracked the county based health and safety information in light of the numerous visitors to the San
18 Manuel Reservation, Casino, and to the hotel. Consistent with these figures and the inevitabilities
19 of community spread of SARS-CoV-2, employees at the Casino have confirmed COVID-19
20 positive diagnoses during periods in which they were physically present at the Casino (before
21 quarantining or staying at home under the Tribe's contagious respiratory illness assessment
22 protocols).

23 70. As already acknowledged by courts and governmental authorities throughout the
24 nation, SARS-CoV-2 has caused loss and damage to property by physically altering property,
25 including its surfaces, as well as the air within the property. This has rendered the Casino unusable
26 for normal occupancy and use, impairing the property's utility and usefulness. The Casino is
27 *intended* to be used as an indoor venue for persons to congregate and engage for gaming,
28 entertainment, accommodation, and dining. The pandemic, occasioned by the widespread risk of

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1 transmission of SARS-CoV-2 and COVID-19 through physical droplets in the air and on surfaces,
2 rendered those properties unsafe, dangerous, and unsuitable for their intended purposes at normal
3 capacity levels.

4 71. By their very nature, SARS-CoV-2 particles are external physical forces that
5 suspend in the air within the property and attach to surfaces, causing direct physical damage or
6 loss and impacting property's functionality and use.

7
8 **The Impact of SARS-CoV-2 and COVID-19 on Casino Operations – the Closure Order**
9 **Ceases All Business Activity from March 15 – June 9, 2020**

10 72. The Tribe's covered properties include a casino, a separate hotel, and other business
11 properties related to these ventures. All told, these operations under normal circumstances
12 encompass nearly 5,000 gaming machines, approximately 150 table games, over 100 hotel rooms,
13 12 food service facilities and restaurants, three retail establishments, 11 bars, and four service bars,
14 and employ more than 4,000 individuals. Under normal circumstances, the Tribe welcomes on
15 average tens of thousands of guests onto the Casino property per day.

16 73. Most of the Tribe's revenue derives from gaming, with a smaller portion generated
17 by hotel, dining, retail, concessions, and certain other ancillary activities. However, all of these
18 revenue streams depend on the volume of customers physically present at the Casino and affiliated
19 properties.

20 74. Tribal gaming is a highly regulated industry subject to extensive regulation under
21 the laws, rules, and regulations of tribal, state, and federal governments. The regulatory body that
22 exercises control over the Casino is the SMTGC, which is tasked with adopting, interpreting, and
23 enforcing gaming laws, rules and regulations.

24 75. The SMTGC has a duty to enforce certain Environment and the Public Health and
25 Safety ("EPHS") Standards, which are derived from regulations at the tribal, federal, and state
26 levels, to ensure gaming is conducted in a manner that is safe for human health and property.
27 Compliance with the SMTGC requirements, including the EPHS standards and orders, is a
28 condition of the Casino maintaining a gaming facility license, registrations, and permits necessary

1 to continue the operations.

2 76. In addition to the oversight role of the SMTGC, the San Manuel Business
3 Committee (the “Business Committee”), a governing body of the Tribe, is authorized to take such
4 actions as are necessary to carry into effect the directives of the Tribe’s General Council. Pursuant
5 to the San Manuel Emergency Management Ordinance, this includes the authority to declare a
6 “State of Emergency” to efficiently address emergencies that threaten the property, life, health,
7 and safety on the San Manuel Reservation.

8 77. On or about February 5, 2020, the Business Committee established a task force to
9 begin preparations to protect the health and safety of persons and property within its jurisdiction
10 in response to the threat posed by the potential spread of COVID-19 in California.

11 78. Thereafter, to address the presence of SARS-CoV-2 or COVID-19, the following
12 orders and guidance were issued by representatives from the California State and Federal
13 Government:

14

- 15 • March 4, 2020 – the Governor of the State of California declared a state of
16 emergency to begin preparations for the spread of COVID-19 in California;
- 17 • March 11, 2020 – the California Department of Public Health issued a “stay at
18 home” order and guidance recommending, among other measures, that all non-
19 essential public or private gatherings should be limited to help prevent the spread
20 of COVID-19 within the state;
- 21 • March 12, 2020 – the Governor of the State of California issued an executive order
22 containing directives intended to further prepare the State to mitigate the spread
23 and impact of COVID-19 in California; and
24 March 13, 2020 – the President of the United States issued a proclamation declaring
25 a national emergency in order to enable additional measures to be taken to
26 successfully contain and combat COVID-19 within the United States.

27

28 79. On March 14, 2020 the Business Committee declared that a State of Emergency

1 existed on the San Manuel Reservation due to the pandemic.²⁹ The declaration was issued in
2 response to the presence of SARS-CoV-2 or COVID-19 in locations at or near the Casino and its
3 affiliated properties, in line with the task force recommendations regarding the protection of
4 property located within the San Manuel Reservation from the impacts of the COVID-19 pandemic
5 (factoring in the preceding orders of other civil authorities at the local, state, and federal
6 government level), and to safeguard the health and safety of tribal citizens, casino employees,
7 customers and the surrounding community. In turn, the Business Committee issued the directive
8 closing the Casino until further notice and subject to SMTGC guidance and input. This order
9 shutting down the Casino went into effect on March 15, 2020 (the “Closure Order”).

10 80. The Closure Order reflected what the Business Committee and SMTGC deemed to
11 be the most responsible course of action given a deep concern for the welfare of the community
12 and the protection of property, reflecting the Tribe’s core value of Yawa’ to “act on our beliefs.”

13 81. The same day the Casino closed, the first confirmed case of COVID-19 was
14 reported in San Bernardino County. Shortly thereafter, the Tribe’s DICO received the first
15 reported employee COVID-19 case, which involved an individual who had worked the day the
16 Casino closed.

17 82. To ensure the damage caused by SARS-CoV-2 and COVID-19 was adequately
18 addressed and mitigated, the Closure Order was extended on March 23 and again on April 11. The
19 Casino ultimately remained closed to the general public until June 15, 2020, with a limited VIP
20 opening on June 9, 2020 (by invitation only to tribal citizens and a VIP group of patrons).

21 83. During this period when the Casino remained closed and inoperative under the
22 Closure Order, Plaintiffs suffered a total estimated loss in excess of \$265 million.

23 84. The Casino and affiliated properties were damaged by SARS-CoV-2 and the
24 resulting COVID-19 pandemic at the time of the Closure Order until reopening on June 9. SARS-
25 CoV-2, which is contained in physical droplets residing in the air and on the surfaces within the
26 property, caused the Casino to be unsafe and unusable for its normal occupancy and use, impairing
27

28 ²⁹ See Business Committee Resolution No. 2020-002, dated March 14, 2020.

1 its value and utility. These physical droplets attached to the air and to objects within the Casino
2 and affiliated property and therefore changed and altered those surfaces and objects, which
3 reflected and/or caused physical damage. These conditions were not unique to the Casino; rather
4 they were ubiquitous for indoor properties within a five-mile vicinity of the Casino (and beyond).

5 85. The damage and loss caused by SARS-CoV-2 or COVID-19 and the threat of
6 further loss, as well as the Closure Orders directed to preventing that loss or further loss, had a
7 severely detrimental effect on the Tribe.

8 86. The presence of SARS-CoV-2 or COVID-19 and the impact of the Closure Order,
9 together with “Stay at Home Orders” issued by other civil authorities, caused a total prohibition
10 of access to the Casino and affiliated properties, leading to an immediate business income loss.

11
12 **The Impact of SARS-CoV-2 and COVID-19 on Casino Operations – Reopening with**
13 **Safeguards and Operational Limitations from June 9 – October 31, 2020**

14 87. During the shutdown of the Casino pursuant to the Closure Orders, the Tribe
15 worked tirelessly to create one of the most robust safety plans in the country to facilitate its
16 reopening. Plaintiffs repaired and remediated the entire Casino property by implementing rigorous
17 mitigation protocols and modifications, under the guidance of medical experts, while introducing
18 new technology to minimize touchpoints.

19 88. The result of this exercise was the development of a Casino Operations Reopening
20 Plan (the “Reopening Plan”), which was presented to the SMTGC for approval and subsequently
21 adopted. Among the limitations in the Reopening Plan are:

- 22
23
- A maximum Casino Patron Occupancy reduced by more than two-thirds;
 - Eliminating more than half of the slot machines and table games in operation;
 - Planned non-operation of certain food venues (guest-facing buffet operations, sit-down service, restaurants such as The Pines Modern Steakhouse and Hong Bao Kitchen) and other traditional services (shuttles and valet);
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- Adjusted policies for Baccarat, Blackjack, and all poker derivatives to include no touching of the cards and elimination of gaming positions that do not allow for patrons to practice social distancing; and
- Non-operation of other standard games such as Card Craps and Mystery Card Roulette.

89. In turn, the Reopening Plan adopted several safety standards designed to combat the physical loss or damage to property and assist in the prevention and control of potential outbreaks of COVID-19. For example, requirements were established to clean and disinfect all hard human contact surfaces with an EPA-approved disinfectant at least four times per shift. The Reopening Plan also requires mandatory face coverings, social distancing, and health screenings for employees and guests, as well as triage and case protocols for individuals exhibiting symptoms of illness. Clear plastic barriers, hand sanitizer units, and other sanitation equipment with appropriate PPE were installed at the Casino where applicable, as well as changes to facility equipment and maintenance to change carbon filters and clean 4-ply filters more frequently. Finally, enhanced safety protocols and trainings were put in place for food preparation and sanitizing services.

90. On June 2, 2020, the Business Committee adopted the Reopening Plan to govern operations at the Casino and authorized the reopening of the Casino, subject to the oversight of the SMTGC.³⁰ With these limitations and framework in place, the Casino reopened on June 9, 2020, to invited patrons only, and then to the general public on June 15, 2020.

91. Of course, because of the unprecedented and devastating impact of SARS-CoV-2 and COVID-19 in the community, no mitigation plan can *completely* eliminate the impact of the pandemic from the Tribe's property. Following reopening, several employees at the Casino and associated properties tested positive for COVID-19 or were subject to quarantine/self-isolation consistent with the health and safety protocols. This includes reported cases and employees who

³⁰ See Business Committee Resolution No. 2020-007, dated June 2, 2020.

1 contend they were COVID-19 positive while present at the workplace (e.g., the Casino or an
2 associated facility). Consistent with the protocols established in the Reopening Plan, patrons
3 exhibiting potential symptoms or who failed thermal scanning have been screened out of
4 admittance or removed from the property.

5 92. Similarly, the operational limitations and restrictions mitigated losses but did not
6 restore the pre-COVID-19 business realities for the Casino. Total revenues were down
7 significantly in comparison to prior comparable periods and internal pre-COVID-19 projections.
8 Even in the months when the Casino net income stabilized, this outcome reflected the significantly
9 reduced operating expenses and robust demand for gaming in a facility implementing top of the
10 line safety measures. In speaking to this demand, during peak night and weekend periods at the
11 Casino, patrons were routinely turned away because the facility was already at its reduced
12 maximum occupancy.

13 93. Under any objective measure, the Casino reopening plan and protocols have been
14 successful at mitigating the omnipresent risks and impact of SARS-CoV-2 and COVID-19 and
15 reduced the ongoing business interruption losses to the Tribe (as well as the thousands of families
16 that depend on the Casino enterprise for its livelihood). However, notwithstanding these prudent
17 steps, during this period Plaintiffs incurred extra expense and suffered an estimated loss in excess
18 of \$10 million.

19
20 **The Impact of SARS-CoV-2 and COVID-19 on Casino Operations – Further Restrictions**
21 **and Limitations to Address Community Spread from November 1, 2020 - Current**

22 94. As community spread and outbreak figures continued to increase in San Bernardino
23 County, California, and across the United States, new challenges were presented to Plaintiffs for
24 operations at the Casino and associated facilities.

25 95. To address the unprecedented rise in the rate of increase in COVID-19 cases,
26 hospitalizations, test positivity rates, and deaths across California, the California Department of
27 Public Health issued a limited Stay at Home Order on November 19, 2020 and a Regional Stay at
28 Home Order on December 13, 2020 (the “California Stay at Home Orders”). These California

1 Stay at Home Orders, applicable to address damage at properties in San Bernardino County within
2 five miles of the Casino and generally directed at casino patrons from across California, required
3 individuals in specific regions to stay at home with specific limitations.

4 96. Consistent with the process enumerated in the Reopening Plan and in recognition
5 of the same data driving the renewed California Stay at Home Orders, the standards and limitations
6 applicable to the gaming operations were amended and revised to address the evolving
7 circumstances of the COVID-19 pandemic. For example, after slowly raising the maximum
8 number of guests from the initial reopening, the Casino further reduced capacity beginning in early
9 November. Additional precautions were adopted—in line with governing guidance by the Tribe’s
10 Business Committee and SMTGC—to ensure operations could continue in as safe a manner as
11 could be expected under the circumstances. Even with all the safety measures taken and consistent
12 with the established protocols, the presence of SARS-CoV-2 and COVID-19 could not be
13 completely eliminated - employees at the Casino continued to test positive for COVID-19 on
14 occasion, with prospective patrons who failed health screening or exhibited symptoms turned away
15 from entering the Casino.

16 97. As in the prior reopening period, total revenues were down significantly in
17 comparison to prior comparable periods and internal pre-COVID-19 projections, but net income
18 from Casino operations has also dipped below prior performance and projections. These losses
19 occurred despite the curtailed operating expenses and robust demand for gaming that persisted
20 from prior months. During November through December 2020, Plaintiffs suffered an estimated
21 loss in excess of \$35 million, as well as amounts for January 2021 forward that are still being
22 calculated.

23 98. The ongoing damage and loss caused by the presence of SARS-CoV-2 or COVID-
24 19, including at other indoor properties within a five mile vicinity of the Casino (and beyond), as
25 well as the limitations and restrictions from the California Stay at Home Orders and Reopening
26 Plan directed at mitigating that ongoing damage or loss through the partial prohibition of access to
27 the Casino and affiliated properties, have continued to cause business interruption loss.

28

Plaintiffs' Insurance Coverage Portfolio and the All Risk Policies

99. This coverage dispute arises under first-party commercial property All Risk Policies, which the Defendant All Risk Insurers sold to the Tribe.

100. The All Risk Policies have a policy period of April 1, 2019 through April 1, 2020, and each policy forms part of a larger insurance portfolio or program, providing Plaintiffs \$1.6 billion in coverage per occurrence for that period.³¹ Each of the All Risk Insurers participates in the Tribe's portfolio at specific "attachment points" in various "layers," also known as a shared and layered program, agreeing to insure a specific portion of the total \$1.6 billion in coverage in exchange for significant premiums.

101. Although the All Risk Insurers generally sold separate respective policies to the Tribe—with each policy contributing independently up to the extent of the participation of that policy and its total limits of liability—every policy sold by the All Risk Insurers incorporated a 51-page Policy Form, subject to endorsements or modifications added by each insurer in the portfolio. The Policy Form is attached as **Exhibit 1**, and is incorporated by reference.

102. The All Risk Policies reflect a negotiation involving highly sophisticated insurers. Through their review of the Policy Form, and the extensive changes they made and required the Tribe to accept, the All Risk Insurers adopted the Policy Form as their own.

103. "All Risk" policies provide the broadest coverage available, including time element coverage for lost gross earnings and extra expenses incurred as a result of an interruption of business. Under an all-risk policy, the policyholder's burden is minimal—the policyholder need only show that a loss occurred and that the loss was fortuitous. The burden then shifts to the insurance company to show that an express exclusion in the policy either bars or limits coverage.

104. The "All Risk" coverage the All Risk Insurers sold provides that "[t]his policy insures against all risk of direct physical loss or damage to property." **Exhibit 1**, § 5.

105. The Casino and affiliated properties are all covered property under the All Risk

³¹ The length of time for which loss may be claimed under the All Risk Policies is called the period of recovery and begins with the date of loss or damage and is not limited by the expiration of the policy period.

1 Policies. *See Exhibit 1, § 7.A.*

2 106. Because property damage or loss caused by SARS-CoV-2 and COVID-19 are not
3 otherwise excluded under the All Risk Policies, Plaintiffs are entitled to coverage under several
4 provisions in each of the All Risk Policies, many of which overlap. There is no provision in the
5 All Risk Policies governing how Plaintiffs may structure their claim when multiple coverage
6 provisions apply. Plaintiffs are thus entitled to structure their claim, to order their recovery, and
7 to “stack” applicable coverages from implicated All Risk Policies to maximize their recovery.

8

9 **A. Applicable Coverages under the All Risk Policies**

10 107. The Policy Form provides coverages that are implicated by Plaintiffs’ losses here,
11 including, but not limited to, the following:

12 **i. *Business Interruption (Gross Earnings)***

13 108. The Business Interruption (Gross Earnings) coverage the All Risk Insurers sold to
14 Plaintiffs insures:

15 Loss due to the necessary interruption or interference of business
16 conducted by the Insured, including all interdependencies between
17 or among companies owned or operated by the Insured resulting
18 from physical loss or damage insured herein that occurs during the
19 term of this policy to real and/or personal property

20 Such loss shall be adjusted on the basis of the actual loss sustained
21 by the Insured, consisting of the net profit including tips which is
22 prevented from being earned including ordinary payroll and payroll;

23 and

24 all charges and other expenses (including soft costs and redemptive
25 costs applicable to casino chips, markers, plaques or other casino
26 gaming measures of value or credit) to the extent that these must
27 necessarily continue during the interruption of business, but only to
28 the extent to which such charges and expenses would have been
incurred had no loss occurred.

Exhibit 1, § 7.C.

109. There is no sublimit for Gross Earnings coverage under the Policy Form. There is
no aggregate limit. **Exhibit 1, § 3.**

110. As alleged *supra*, Plaintiffs have suffered business interruption loss as a direct

1 result of losses of the type insured under the Policy Forms—specifically, the presence or suspected
2 presence of SARS-CoV-2 and COVID-19 at the Casino and affiliated properties—and that loss is
3 covered by the Policy Form’s Gross Earnings provision.

4 ii. *Interruption by Civil or Military Authority or Casino Control*
5 *Commissioner Authority*

6 111. The Interruption by Civil or Military Authority or Casino Control Commissioner
7 Authority coverage the All Risk Insurers sold to Plaintiffs provides that:

8 This policy is extended to insure direct physical loss sustained
9 during the period of time when, as a result of loss, damage or
10 destruction not excluded in Clause 6 within 5 miles of an Insured’s
11 location, access to such location is impaired by order or action of
12 civil or military authority or Casino Control Commissioner
13 authority.

14 **Exhibit 1, § 8.B.**

15 112. The Interruption by Civil or Military Authority or Casino Control Commissioner
16 Authority coverage is limited to the lesser of 60 days of losses or \$50 million per Occurrence.³²

17 There is no aggregate limit. **Exhibit 1, § 3.**

18 113. Plaintiffs have lost business income and incurred extra expense because of the
19 Closure Order, the restrictions made a part of the Reopening Plan, as well as Stay at Home Orders
20 from local and state governments, that impaired access to the Casino and affiliated properties.
21 These orders addressed a direct physical loss—that is, the physical presence of SARS-CoV-2 or
22 COVID-19 on property (i.e., in the air, on fixtures, floors and surfaces) and the continued
23 transmission from persons to property—either at or within five miles of the Casino and affiliated
24 properties.

25 114. For example, the ability of guests to access and patronize the Casino has been
26 prohibited by the Closure Order or restricted by the operations limitations following the partial
27 reopening under the Reopening Plan. Further, the California Stay at Home Orders prohibited, in
28 part, customers and potential customers from accessing and patronizing the Casino by requiring

³² An “Occurrence” is defined under the Policy Form to be a “Loss or a series of losses, which are attributable directly or indirectly to one cause or disaster or to one series of similar causes or disasters arising from a single event.” See **Exhibit 1, § 57, L.**

1 them to shelter in place or restricting them from travel.

2 115. Plaintiffs' loss of business income and its sustained Extra Expenses are thus
3 covered under the Policy Form's Interruption by Civil or Military Authority or Casino Control
4 Commissioner Authority coverage.

5 **iii. Extra Expense**

6 116. The Extra Expense coverage the All Risk Insurers sold to Plaintiffs extends to:

7 Extra Expense necessarily incurred by the Insured in order to
8 continue as nearly as practicable the normal operation of the
9 Insured's business following loss or damage insured herein and
occurring during the term of this policy to real and/or personal
property as described in Clause 7.A.

10 The term Extra Expense, as used herein, is defined as the excess (if
11 any) of the total cost chargeable to the operation of the Insured's
12 business, over and above the total cost that would normally have
been incurred to conduct the business had no loss or damage
occurred, including soft costs.

13 **Exhibit 1, § 7.C.**

14 117. The sublimit for Extra Expense coverage is \$100 million per Occurrence. There is
15 no aggregate limit. **Exhibit 1, § 3.**

16 118. Plaintiffs are entitled to Extra Expense coverage for the reasonable and necessary
17 extra costs incurred as a result of loss based on the presence or suspected presence of SARS-CoV-
18 2 and COVID-19 at the Casino and affiliated properties.

19 119. For example, Plaintiffs have incurred (and will continue to incur) certain
20 remediation and mitigation costs related to health and safety modifications at the property,
21 enhanced cleaning and disinfecting, and screening protocols. These expenses were incurred to
22 minimize the suspension and impact to the business and to comply with the limitations mandated
23 by the Closure Order, Reopening Plan, and ongoing guidance regarding the best practices reported
24 by the CDC, the WHO, and public health officials.

25 **iv. Contingent Business Interruption/Contingent Extra Expense**

26 120. The Contingent Business Interruption/Contingent Extra Expense coverage the All
27 Risk Insurers sold to Plaintiffs insures loss resulting from or caused by physical loss or damage to:
28 Property of a type not excluded that directly or indirectly prevents a

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direct supplier of goods and/or services to the Insured from rendering their goods and/or services, or property of a type not excluded that prevents direct customers of goods and/or services from the Insured from accepting the Insured's goods and/or services.

Exhibit 1, § 8.A.1.

121. The sublimit for Contingent Business Interruption/Contingent Extra Expense coverage is \$25 million per Occurrence. There is no aggregate limit. **Exhibit 1, § 3.**

122. Plaintiffs' direct customers and suppliers have experienced loss or damage not otherwise excluded—that is, loss and damage from the presence or suspected presence of SARS-CoV-2 and COVID-19—to their property.

123. The loss to property of these direct customers and suppliers has prevented the suppliers from supplying their goods and services to Plaintiffs and customers from patronizing the Casino. Plaintiffs have sustained and will continue to sustain loss of business income and incur extra expense resulting from these impacts.

124. These losses are covered under the Policy Form's Contingent Business Interruption/Contingent Extra Expense coverage.

v. *Ingress/Egress*

125. The Ingress/Egress coverage the All Risk Insurers sold to Plaintiffs provides that:
This policy is extended to insure loss sustained during the period of time when, as a result of direct physical loss, damage or destruction not excluded in Clause 6. within 5 miles of the Insured's location, ingress to or egress from such location is impaired.

Exhibit 1, § 8.C.

126. The sublimit for Ingress/Egress coverage is limited to the lesser of 60 days of losses or \$50 million per Occurrence. There is no aggregate limit. **Exhibit 1, § 3.**

127. Plaintiffs have suffered business interruption loss as a direct result of an impairment of ingress to or egress from the Casino and affiliated properties due to loss or damage to neighboring properties in Highland and San Bernardino County. The California Stay at Home Orders and other local government limitations—addressing loss and damage from the presence or suspected presence of SARS-CoV-2 and COVID-19 at those non-covered locations within San

1 Bernardino County—impaired customer and potential customer ingress to the Casino and affiliated
2 properties. That loss is covered by the All Risk Policies’ Ingress/Egress provisions.

3 **vi. Loss Adjustment Expenses**

4 128. The Loss Adjustment Expenses provision in the All Risk Policies the All Risk
5 Insurers sold to Plaintiffs provides that:

6 This policy is extended to insure expenses incurred by the Insured,
7 or by the Insured’s representatives for assessing, for preparing
8 and/or certifying details of a claim resulting from a loss which would
be payable under this policy. But this provision does not insure
expenses incurred for the services of any lawyer or public adjuster.

9 **Exhibit 1, § 45.**

10 129. The sublimit for Loss Adjustment Expenses is \$10 million per Occurrence. There
11 is no aggregate limit. **Exhibit 1, § 3.**

12 130. Plaintiffs have incurred expenses for loss adjustment expenses for the services of
13 The Claro Group in preparing the interim proof of loss and supporting documentation. Those costs
14 are continuing to be incurred and will be proven at trial.

15 131. While Plaintiffs have identified the six foregoing coverages as applicable to the
16 losses it has suffered to date, additional coverages under the All Risk Policies may be triggered as
17 the loss is continuing.

18
19 **B. No Applicable Exclusions in the All Risk Policies**

20 132. No exclusion in the Policy Form, or added via endorsement to any of the All Risk
21 Policies issued by the Defendant All Risk Insurers, applies to Plaintiffs’ claim. To the extent the
22 Defendant All Risk Insurers contend any exclusion(s) apply, such exclusion(s) are ambiguous,
23 inapplicable, and/or unenforceable.

24 133. Viruses, such as SARS-CoV-2, and communicable diseases, such as COVID-19,
25 are known perils in underwriting standard all risk policies. Indeed, the insurance industry has
26 known for years that the presence of disease causing agents on property constitutes damage and
27 loss to that property. Since the 1960s, courts have held that the presence of disease-causing agents,
28 as well as other risks that render property unfit or unsafe for its intended purpose, cause damage

1 and loss to property. More recently, property insurers have paid claims related to the SARS
2 outbreak in the early 2000s.

3 134. In response to the SARS outbreak, in 2006 the insurance industry's drafting arm,
4 the Insurance Services Office, Inc. (the "ISO"), sought regulatory approval for introducing its
5 standard "Exclusion of Loss Due to Virus or Bacteria." The ISO recognized that "disease-causing
6 agents" (like SARS) can cause property damage and lead to "business interruption (time element)
7 losses." Filing CF-2006-OVBEF, "Amendatory Endorsement – Exclusion of Loss Due to Virus
8 or Bacteria" at 1 (ISO Properties, Inc., 2006). The ISO exclusion does not appear anywhere in the
9 All Risk Policies issued by the Defendant All Risk Insurers, despite the common use of the ISO
10 exclusion (or similar language) in the insurance industry following the outbreaks of SARS, MERS,
11 H1N1 and Zika.

12 135. However, unlike the Defendant All Risk Insurers named in this lawsuit, two of
13 Plaintiffs' insurers in the portfolio modified their policies (through endorsements) to exclude from
14 coverage property damage or loss (and related business interruption) caused by pathogens or
15 communicable diseases: National Fire & Marine Insurance Company ("National") and Endurance
16 America Specialty Insurance Company ("Endurance").³³

17 136. The National exclusion states:

18 This policy does not provide any coverage for any loss, cost,
19 expense or damage of any nature, however caused, directly or
20 indirectly arising out of, resulting from, or in any way related to the
21 actual or suspected presence or threat of any pathogenic or
22 poisonous biological or chemical substance or material of any kind,
including, but not limited to, any malicious use of such substance or
material, whether isolated or wide-spread, regardless of any other
cause or event contributing at the same time or in any sequence.

23 137. The Endurance exclusion states:

24 This Policy excludes any loss, expense, cost or damage directly or
25 indirectly arising out of, contributed to by, or resulting from, in
26 whole or in part, the actual or alleged transmission of a
"communicable disease", or threat thereof, including any cost or
expense arising out of or related to testing for, prevention of, failure
to report the disease to governmental authorities, monitoring,

27 _____
28 ³³ Five other insurers from the Tribe's portfolio are not part of this lawsuit because their
policies include mandatory arbitration provisions.

1 cleaning up, removing, containing, treating, or neutralizing the
2 “communicable disease[.]” . . . “Communicable disease,” as used in
3 this endorsement, means any sickness or malady capable of being
4 transmitted.

5 138. The Defendant All Risk Insurers could have added an exclusion to their policies for
6 damage or loss caused by or resulting from a virus or communicable disease conditions, as
7 National and Endurance did, but elected instead to undertake and insure that risk.

8 139. The Policy Form issued by the All Risk Insurers also includes an exclusion for
9 “Seepage and/or Pollution and/or Contamination.” But this exclusion does not preclude coverage
10 for Plaintiffs’ claim under the All Risk Policies because it applies to traditional environmental
11 pollution, not pandemic conditions or the circumstances presented by SARS-CoV-2 and COVID-
12 19.

13 140. This conclusion is also evidenced by the adoption of the specific exclusions in that
14 National and Endurance policies, described above and not made a part of this lawsuit. If the loss
15 caused by SARS-CoV-2 and COVID-19 were already excluded by a traditional environmental
16 pollution exclusion, the National and Endurance exclusions would be redundant and unnecessary.
17 Similarly, Plaintiffs do not seek coverage under the All Risk Policies’ coverage extensions for
18 “Decontamination and Clean Up Expense” or “Pollutant Cleanup and Removal,” because SARS-
19 CoV-2 and COVID-19 are neither a contaminant nor a pollutant.

20 141. Thus, because the All Risk Policies cover the Tribe’s properties against all risks not
21 specifically excluded, and damage and loss from a virus is not excluded, the Defendant All Risk
22 Insurers must pay for the Tribe’s substantial losses.

23 142. However, these are not risks that the insurers are willing to underwrite going
24 forward. Recognizing the significant exposure presented by the COVID-19 pandemic and other
25 virus outbreaks, the insurers tellingly insisted on new language in the Tribe’s 2020-2021 policy
26 form which excludes damage or loss caused by virus or communicable disease:

27 Notwithstanding any other provision of this Policy to the contrary,
28 the Company does not insure any loss, cost, damage or expense,
arising out of, attributable to, or occurring concurrently or in any
sequence with a communicable disease.

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As used herein, communicable disease means any infectious or contagious substance: 1. Including, not limited to, a virus, bacterium, parasite or other organism or any mutation thereof, whether deemed living or not, and 2. Regardless of the method of transmission, whether direct or indirect, including, but not limited to, airborne transmission, bodily fluid transmission, transmission from or to any surface or object, solid, liquid or gas or between humans, animals, or from any animal to any human or from any human to any animal, that can cause or threaten damage to human health or human welfare or causes or threatens damage, deterioration, loss of value, marketability or loss of use to tangible or intangible property insured hereunder.

For avoidance of doubt, no coverage extension, additional coverage, global extension, exception to any exclusion or other coverage grant shall afford any coverage that would otherwise be excluded through this exclusion.

Other policies in the 2020-2021 insurance program included new specific endorsements for “pandemic disease,” “COVID-19,” and “any mutation or variation of SARS-CoV-2.” This new exclusionary language added to *subsequent* policies—which are not found in any of the prior All Risk Policies—confirm that this risk was covered and not excluded in the All Risk Policies at issue in this suit.

The Defendant All Risk Insurers Improperly Fail to Pay Plaintiffs’ Claim or Render a Determination in Favor of Coverage

143. Plaintiffs provided notice to the Defendant All Risk Insurers that they were presenting a claim for coverage of Losses under the All Risk Policies, with the loss incepting on March 15, 2020 (the date of closure for the Casino).

144. The Defendant All Risk Insurers retained Sedgwick—a third-party administrator—to investigate and adjust Plaintiffs’ claim. Sedgwick sent a pair of reservation of rights letters in June and August 2020, representing that its investigation of the claim was “ongoing” while advancing several arguments for why coverage may not be afforded and reserving all rights to deny the claim.

145. Sedgwick claimed that Plaintiffs losses were not supported by “facts indicating

1 'direct physical loss or damage to property' as required by the Policy." Sedgwick also argued on
2 behalf of the Defendant All Risk Insurers that the Policy Form's "Seepage and/or Pollution and/or
3 Contamination Exclusion" applies to all losses based on "the COVID-19 Pandemic," because
4 COVID-19 itself is "any kind of seepage or any kind of pollution and/or contamination" as that
5 term is used in the exclusion. In effect, the Defendant All Risk Insurers staked out a position that
6 no coverage could *ever* be provided for losses stemming from SARS-CoV-2 and COVID-19,
7 regardless of the information delivered to support the claim.

8 146. In response, Plaintiffs confirmed they would cooperate with the
9 Defendant All Risk Insurers in a reasonable, good-faith investigation and adjustment of the claim,
10 provided the parties first agree on the scope and nature of the coverage provided. If the Insurers
11 would not agree as a threshold that the damage or loss caused by SARS-CoV-2 and COVID-19
12 would be covered, it would not be productive to incur the significant cost, time, and delay to adjust
13 the claim given the parties' fundamental disagreement on the scope of coverage. Accordingly,
14 Plaintiffs requested that the Defendant All Risk Insurers (i) confirm coverage in line with the
15 provisions enumerated above and (ii) make an immediate advance payment of \$45 million under
16 the All Risk Policies while the claim is adjusted, as a show of good faith given the significantly
17 higher damages suffered.

18 147. The Defendant All Risk Insurers again stonewalled — failing to confirm coverage
19 and rejecting an advance payment in any amount. Despite Plaintiffs paying the Defendant All
20 Risk Insurers many millions in premiums, the Defendant All Risk Insurers refused to accept
21 coverage or pay a single penny of Plaintiffs' losses.

22 148. Concurrently with initiating this suit, Plaintiffs provided the Defendant All Risk
23 Insurers with an interim proof of loss, even though Plaintiffs' losses were ongoing and still being
24 assessed. In addition, Plaintiffs again encouraged the Defendant All Risk Insures to reconsider
25 their position, acknowledge their coverage obligations and cooperatively work with Plaintiffs to
26 adjust and pay their claim. As a result, Plaintiffs have timely performed all conditions required
27 under the All Risk Policies.

28 149. However, the Defendant All Risk Insurers have not lived up to their end of the

1 bargain and their refusal to pay any portion of the claim has caused Plaintiffs to suffer and continue
2 to suffer significant damages. Thus, to protect their rights and obtain the benefit of the insurance
3 coverage they purchased, Plaintiffs bring this lawsuit.

4
5 **FIRST CAUSE OF ACTION**

6 **(Declaratory Relief)**

7 150. Plaintiffs incorporate by reference the foregoing paragraphs.

8 151. Each of the respective All Risk Policies are valid and enforceable contracts between
9 Plaintiffs and each of the Defendant All Risk Insurers.

10 152. An actual controversy presently exists between Plaintiffs and each of the Defendant
11 All Risk Insurers regarding the obligations to Plaintiffs under their respective All Risk Policies.

12 153. Plaintiffs seek an order declaring the parties' rights and duties under the respective
13 All Risk Policies.

14 154. The damage or loss at the Casino and affiliated properties, along with the resulting
15 business interruption and other time element losses suffered by Plaintiffs, are covered under the
16 All Risk Policies. Nevertheless, Plaintiffs are informed and believed, and thereupon allege, that
17 the Defendant All Risk Insurers contend they are not obligated to pay for these losses.

18 155. Accordingly, Plaintiffs are entitled to a declaratory judgment regarding the parties'
19 rights and duties under the All Risk Policies, including a declaration stating that Plaintiffs' losses
20 resulting from the physical loss or damage, either at or within five miles of the Casino and affiliated
21 properties, associated with SARS-CoV-2 and/or COVID-19 are covered under the All Risk
22 Policies and that the Defendant All Risk Insurers are obligated to pay for such losses (consistent
23 with the participation of their respective All Risk Policies) under implicated coverages including,
24 but not limited to:

- 25 i. Business Interruption (Gross Earnings);
26 ii. Interruption by Civil or Military Authority or Casino Control Commissioner
27 Authority;
28 iii. Extra Expense;

- iv. Contingent Business Interruption/Contingent Extra Expense;
- v. Ingress/Egress; and/or
- vi. Loss Adjustment Expense.

SECOND CAUSE OF ACTION

(Breach of Contract)

156. Plaintiffs incorporate by reference the foregoing paragraphs.

157. Each of the respective All Risk Policies are valid and enforceable contracts between Plaintiffs and the Defendant All Risk Insurers.

158. Plaintiffs have performed all conditions required under the All Risk Policies, including by paying the required premiums and providing notice of the damage or loss to their properties associated with SARS-CoV-2 and/or COVID-19.

159. Defendant All Risk Insurers have breached their obligations under their respective All Risk Policies by refusing to pay for Plaintiffs' losses.

160. As a direct and proximate result of the Defendant All Risk Insurers' breach, Plaintiffs have sustained losses, including interest thereon, and reasonable attorneys' fees and costs that Plaintiffs will continue to incur. To date, these estimated amounts total more than \$300 million, with the exact amount to be proven at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for the following relief:

1. On the First Cause of Action:

a. For an order declaring that Plaintiffs' losses resulting from the physical loss or damage, either at or within five miles of the Casino and affiliated properties, associated with SARS-CoV-2 and COVID-19 are covered under the All Risk Policies, and that the Defendant All Risk Insurers are obligated to pay for those losses; and

b. For attorneys' fees and costs, and such other relief as the Court deems just

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and proper.

2. On the Second Cause of Action:

- a. For an order declaring that Defendant All Risk Insurers have breached their obligations under the All Risk Policies;
- b. For compensatory damages in an amount to be proven at trial, including interest thereon, and attorneys' fees, costs and expenses; and
- c. For such other and further relief the Court deems just and proper.

JURY DEMAND

Plaintiffs demand a trial by jury on all issues so triable.

Dated: March 9, 2021

LATHAM & WATKINS LLP

By 

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Attorneys for Plaintiffs

Made in USA



EXHIBIT 1

**San Manuel Indian Bingo and Casino, San
Manuel Band of Mission Indians**

POLICY NO: REDACTED

PROPERTY INSURANCE

LIMIT USD 1,600,000,000

Period 1st April, 2019 to 1st April, 2020

Name of Insured:

San Manuel Indian Bingo and Casino, San Manuel Band of Mission Indians, and all subsidiary, affiliated, associated, or allied companies, corporations, entities or organizations as may now or hereafter be constituted, for which the Insured has the responsibility for purchasing insurance and for which coverage is not otherwise more specifically provided.

It is agreed that coverage provided by this policy also applies to the Insured's interests in any partnership, joint venture, joint lease or joint operating agreement unless such interest is specifically excluded by endorsement to this policy.

All hereinafter referred to as the "Insured"

Mailing Address: 777 San Manuel Blvd
Highland, CA 92346

1. Policy Term and Premium:

In consideration of the annual premium, this policy attaches and insures from April 1, 2019 to April 1, 2020, beginning and ending at 12:01AM standard time at the property insured.

2. Territory:

This policy insures within and between the 50 states of the United States of America, The District of Columbia, Puerto Rico, the United States Virgin Islands, Canada.

3. Limits of Liability:

USD 250,000,000 per occurrence excess of the policy deductibles and in the aggregate for the policy term for the peril of earthquake shock at locations designated on the SOV except:

USD \$25,000,000 per occurrence excess of the policy deductibles and in the aggregate for the policy term for the peril of earthquake shock at Arrowhead Springs Hotel

USD 250,000,000 per occurrence excess of the policy deductibles and in the aggregate for the policy term for the peril of flood

USD 750,000,000 per accident excess of the policy deductibles as respects Boiler & Machinery, except

USD15,000,000 per accident excess of the policy deductibles as respects Expediting Expense.

USD15,000,000 per accident excess of the policy deductibles as respects Hazardous Substances.

USD15,000,000 per accident excess of the policy deductibles as respects Water Damage.

USD25,000,000 per accident excess of the policy deductibles as respects Ordinance or Law.

USD1,600,000,000 per occurrence excess of the policy deductibles as respects Demolition and Increased Cost of Construction – Section A,

	except \$75,000,000 per occurrence as respects Section B & C combined
USD50,000,000	per occurrence excess of policy deductibles as respects Newly Acquired Property subject to 90 days reporting
USD 100,000,000	per occurrence excess of policy deductibles as respects Off Premises Power/Service Interruption.
USD50,000,000	per occurrence excess of policy deductibles as respects Property in the Course of Construction, including: USD10,000,000 per occurrence excess of policy deductibles as respects Delay in Start up/Soft Costs
USD 50,000,000	per occurrence or 60 days (whichever is lesser) excess of policy deductibles as respects Interruption by Civil or Military Authority limited to within 5 miles of the Insured's premises.
USD50,000,000	per occurrence or 60 days (whichever is lesser) excess of policy deductibles as respects Ingress/Egress limited to within 5 miles of the Insured's premises.
USD50,000,000	per occurrence or 60 days (whichever is lesser) excess of policy deductibles as respects Interruption by Casino Control Commissioner limited to within 5 miles of the Insured's premises.
USD1,000,000	per occurrence excess of policy deductibles as respects Mold, Mildew and Fungus.
USD100,000,000	per occurrence excess of policy deductibles as respects Extra Expense.
USD50,000,000	per occurrence excess of policy deductibles as respects Valuable Papers.
USD50,000,000	per occurrence excess of policy deductibles as respects Accounts Receivable.
USD25,000,000	per occurrence excess of policy deductibles as respects Contingent Time Element.
USD50,000,000	per occurrence excess of policy deductibles as respects Errors and Omissions.
USD10,000,000	per occurrence excess of policy deductibles as respects Fine Arts.
USD5,000,000	per occurrence excess of policy deductibles as respects Preservation of Property.
USD 500,000	per occurrence excess of policy deductibles as respects Aged Wine and Spirits valuation.
USD 500,000	per occurrence excess of policy deductibles as respects Inability to Use Food or Beverage.

USD2,000,000	per occurrence excess of policy deductibles as respects Loss from Promotions or Advertising Activities.
USD25,000,000	per occurrence excess of policy deductibles as respects Expediting Expense.
USD25,000,000	per occurrence excess of policy deductibles as respects Money and Securities for Fire, Earthquake, Wind, Hail, Explosion, Smoke, Lightening, Riot, Civil Commotion, Impact by Aircraft or Objects falling therefrom, Impact from Vehicles, Water Damage, and Theft (other than by an employee of the Insured) only.
USD5,000,000	per occurrence excess of policy deductibles as respects Landscaping subject to a USD50,000 per item for Trees, Shrubs, Plants, (Landscaping).
USD25,000,000	per occurrence or 25% of the locations' combined property damage loss (whichever is greater) excess of policy deductibles as respects Debris Removal.
USD10,000,000	per occurrence excess of policy deductibles as respects Loss Adjustment Expense.
USD2,500,000	per occurrence excess of policy deductibles and in the aggregate for the policy term as respects Pollutant Cleanup and Removal.
USD 250,000	per occurrence excess of policy deductibles as respects Goodwill and Public Relations expenditures, subject to a maximum of USD500 per room.
USD 250,000	per occurrence excess of policy deductibles as respects Guest Property and USD2,000,000 in the aggregate for the policy term.
USD1,000,000	per occurrence excess of policy deductibles as respects Guest Relocation and USD2,000,000 in the aggregate for the policy term.
USD10,000,000	per occurrence excess of policy deductibles as respects Electronic Data.
USD5,000,000	per occurrence excess of policy deductibles as respects Leasehold Interest.
USD5,000,000	per occurrence excess of policy deductibles as respects Royalties.
180 Days	per occurrence excess of policy deductibles as respects Ordinary Payroll.
USD1,000,000	per occurrence excess of policy deductibles as respects Transit.
USD10,000,000	per occurrence and USD10,000,000 in the aggregate excess of policy deductible as respects Special Time Element Coverage.

USD1,000,000 per occurrence as respects Loss of License Liquor.

However, in no event shall this **Insurer** be liable for more than its proportional share of USD1,600,000,000 per **occurrence**.

The total amount to be indemnified under this policy and/or any admitted version of this policy issued by the **Insurer** shall not exceed the overall limit or any applicable sublimit stated in this policy.

4. Deductibles and Waiting Periods:

- A. All loss or damage arising out of any one occurrence shall be adjusted as one loss and from the amount of such adjusted loss shall be deducted the sum of USD250,000 except:
- USD250,000 Physical Damage / 24 Hours Waiting Period for Time Element at all Casinos.
- B. In the event of property damage and/or time element loss as respects earthquake shock occurring in the state of California, the sum to be deducted shall be:
- 1) As respects property damage loss, five percent (5%) of the reported value of the following:
 - a) Each separate building or structure;
 - b) And contents including electronic data processing equipment/media, inventory and property in the yard of each separate building or structure.
 - 2) as respect business interruption, five percent (5%) of the net profit and continuing expenses attributable to the operations of each separate building or structure, which has sustained loss or damage, for the twelve month period immediately following the loss.
 - 3) as respects extra expense loss, no deductible shall apply except as outlined in 1).
 - 4) The earthquake shock deductible is subject to a minimum deductible of USD250,000 and a maximum deductible of USD25,000,000
- C. In the event of property damage and/or time element loss as respects flood, the sum to be deducted shall be USD250,000 per occurrence.
- D. In the event of loss or damage involving more than one deductible, the Insured can either elect to have the deductibles apply separately or have the single largest deductible apply.
- E. The deductible amount specified in Clause A. above shall not apply to General Average contributions and/or salvage charges.
- F. If other insurance applies to the same property as insured hereunder, and to the extent recovery is made from such other insurance, the deductible under this policy shall be reduced by such recovery, but in no event shall the deductible under this policy be less than shown in the policy. If recovery from such other insurance is greater than the deductible in this policy, then the deductible under this policy shall not apply.

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- G. Whenever mortgage or lease conditions require insurance protection without deductibles, or with deductibles less than are provided herein, Insurers agree to make payment without consideration of the applicable deductible. The Insured agrees to reimburse the Insurers for any payments so made within a reasonable time after settlement of the loss.
 - H. In any occurrence where loss or damage is caused by more than one cause of loss or damage (peril) insured against under this policy, the Insured shall have the right to separate the loss amount by peril for the purposes of application of the deductible(s) specified in this section, notwithstanding the above reference to two or more deductibles and the policy limits.
 - I. A 24 hour waiting period shall apply to the peril of Service Interruption/Off Premises Power Interruption.

Waiting Period

The definition of a waiting period is as follows: The Insurer will not be liable for any loss or damage unless the period of interruption exceeds the specified Waiting Period and then such potential liability will attach from the time the interruption occurs and will be adjusted per the terms and conditions and the enclosed deductibles.

5. Perils Insured (Loss or Damage Insured):

This policy insures against all risk of direct physical loss or damage to property including General Average, salvage, and all other charges on shipments insured hereunder except as hereinafter excluded.

6. Loss Or Damage Excluded:

This policy does not insure the following:

- A. 1. Loss or damage caused by hostile or warlike action in time of peace or war, including action in hindering, combating, or defending against an actual, impending, or expected attack:
 - (a) by any government or sovereign power (de jure or de facto) or by any
 - (b) authority maintaining or using military, naval, or air forces;
 - (c) or by military, naval, or air forces;
 - (d) or by an agent of such government, power, authority, or forces;
- 2. Loss or damage caused by any weapon employing atomic fission or fusion;
- 3. Loss or damage caused by rebellion, revolution, civil war, usurped power; or action taken by governmental authority in hindering, combating, or defending against such occurrence;

Loss or damage caused by seizure or destruction by order of public authority, except destruction by order of public authority to prevent spread of, or to otherwise contain, control or minimize loss, damage, or destruction which occurs due to loss or damage insured under this policy;

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4. Risks of contraband or illegal trade.
 5. "Act of Terrorism." An "Act of Terrorism" means an act, including but not limited to the use of force or violence and/or the threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organization(s) or government(s), committed for political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public, or any sector of the public, in fear.

If the Insurer alleges that by reason of this exclusion, any loss, damage, cost or expense is not covered by this Policy the burden of proving the contrary shall be on the Insured.

In the event any portion of this provision is found to be invalid or unenforceable, the remainder shall remain in full force and effect.

- B. Loss or damage caused by nuclear reaction or nuclear radiation or radioactive contamination, all whether controlled or uncontrolled, and whether such loss be direct or indirect, proximate or remote, or be in whole or in part caused by, attributed to, or aggravated by loss or damage insured herein except:

1. The Insurer shall be liable for loss or damage caused by sudden or accidental radioactive contamination, including resultant radiation damage for each occurrence from material used or stored or from processes conducted on insured premises, provided at the time of loss there is neither a nuclear reactor capable of sustaining nuclear fission in a self-supporting chain reaction nor any new or used nuclear fuel on the insured premises;
2. If an insured loss ensues, liability is specifically assumed by the Insurer for such ensuing direct loss or damage insured hereunder but not including any loss due to nuclear reaction, nuclear radiation or radioactive contamination.

- C. Loss or damage caused by fraudulent or dishonest act or acts committed in fact by the Insured or any of the Insured's employees.

This exclusion does not apply to loss or damage resulting from the Insured voluntarily parting with title or possession of any property if induced to do so by any fraudulent scheme, trick, device or false pretence, nor shall this exclusion apply to wilful acts of destruction committed by the Insured's employees.

- D. Ordinary wear and tear, rust, corrosion, depletion, erosion, inherent vice, change in temperature, or gradual deterioration, unless physical loss or damage not excluded in this policy ensues, and then this policy shall insure only such ensuing loss or damage.

Except, if an occurrence to an object ensues, then this policy shall also insure the ordinary wear and tear, or gradual deterioration that initiated the damage to the object causing the occurrence.

- E. Loss or damage caused by defective design, faulty material, or faulty workmanship, except, if physical loss or damage not excluded in this policy ensues, then this policy shall insure only the ensuing loss or damage. This exclusion shall not apply to faulty material that results in an occurrence to an object.
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- F. Except as provided in Clause 15, Decontamination and Clean Up Expense, loss or damage arising out of the dispersal, release or escape of contaminants or pollutants into or upon land, the atmosphere or any water course or body of water, but not excluding resultant loss or damage from contaminants or pollutants to insured property caused by or resulting from loss or damage not otherwise excluded.

If loss or damage not excluded in this policy causes the dispersal, release or escape of contaminants or pollutants, then the entire loss or damage is insured by this policy.

- G. Mysterious disappearance and loss disclosed solely upon taking inventory or audit.
- H. Normal settling, shrinkage or expansion in foundations, walls, floors or ceilings, unless physical loss or damage not excluded in this policy ensues, and then this policy shall insure only such ensuing loss or damage.

7. Coverage:

This policy insures the interest of the Insured in the following:

A. Real and Personal Property:

Real and personal property located anywhere within the territorial limits of this policy, including while in due course of transit which is owned, leased, used, or contracted for use by the Insured, or acquired by the Insured, and property of others in the Insured's care, custody or control including the Insured's liability for such property and including the costs to defend any allegations of liability for loss or damage to such property; including but not limited to the following:

1. Improvements and betterments. The Insurer agrees to accept and consider the Insured as sole and unconditional owner of the improvements and betterments, notwithstanding any contract or lease to the contrary.
2. At the option of the Insured, personal property of the Insured's officials and employees, while in the Insured's care, custody or control, or while on the Insured's premises.
3. Contractor's and/or subcontractor's (of any tier) and vendor's interests in property insured to the extent of the Insured's liability imposed by law or assumed by contract, whether written or oral.
4. At the option of the Insured, the interest of the Insured's customers in property sold by the Insured under conditional sale, trust agreement, instalment plan or other deferred payment plan including property which is leased to customers under a lease/purchase agreement.
5. Property of others that the Insured has agreed to insure prior to loss or damage including property not in the Insured's care, custody or control and at the Insured's option the interest of the owner of such property.
6. Newly Acquired Property. This Policy covers insured property at any location rented, leased, purchased, or which is under construction by the Insured after the inception date of this Policy. This coverage

applies from the date of rental, lease, purchase, or commencement of construction.

This coverage will apply until whichever of the following occurs first:

- a) The location is reported to and which is accepted by the Insurer; upon which the Policy Limit shall apply;
 - 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 of this Policy has been reached.
7. **Miscellaneous Unnamed Locations.** A Miscellaneous Unnamed Location as used herein shall be defined as a location at which the Insured has property of the type insured hereunder which has not been reported to the Company. Upon report to the Company of said location, the Policy Limit shall apply.
 8. **Property while in the course of construction and/or during erection, assembly and/or installation.**
 9. **Guest Property** meaning the Personal Property of registered Guests and other patrons and customers of the hotel while on insured premises.
 10. **Prize Giveaways.**

B. Business Interruption - Gross Earnings:

1. Loss due to the necessary interruption or interference of business conducted by the Insured, including all interdependencies between or among companies owned or operated by the Insured resulting from physical loss or damage insured herein that occurs during the term of this policy to real and/or personal property described in Clause 7.A.
 2. Such loss shall be adjusted on the basis of the actual loss sustained by the Insured, consisting of the net profit including tips which is prevented from being earned including ordinary payroll and payroll;

and

all charges and other expenses (including soft costs and redemptive costs applicable to casino chips, markers, plaques or other casino gaming measures of value or credit) to the extent that these must necessarily continue during the interruption of business, but only to the extent to which such charges and expenses would have been incurred had no loss occurred.
 3. In determining the amount of net profit, charges, and expenses insured hereunder for the purposes of ascertaining the amount of the actual loss sustained, due consideration shall be given to the experience of the business before the date of the loss or damage and to the probable experience thereafter had no loss occurred.
 4. In the event of insured physical loss or damage to property as described in Clause 7.A. which results in an interruption of
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research and development activities, which in themselves would not have produced income during the recovery period, this policy shall insure the actual loss sustained of the continuing charges and expenses, including ordinary payroll, and payroll, directly attributable to such research and development activities.

5. As respects coverage provided under Clause 7.B., the Insurer shall not be liable for any loss resulting from loss or damage to finished stock or stock in process nor for the time required to reproduce said finished stock or stock in process.

less any sum saved during the indemnity period in respect of such of the standing charges of the business payable out of gross profit as may cease or be reduced in consequence of the damage.

C. Extra Expense:

1. Extra Expense necessarily incurred by the Insured in order to continue as nearly as practicable the normal operation of the Insured's business following loss or damage insured herein and occurring during the term of this policy to real and/or personal property as described in Clause 7.A.
2. The term Extra Expense, as used herein, is defined as the excess (if any) of the total cost chargeable to the operation of the Insured's business, over and above the total cost that would normally have been incurred to conduct the business had no loss or damage occurred, including soft costs.

D. Guest Relocation Expense:

This Policy insures expenses necessarily incurred by the Insured to relocate and house guests at another "location" as a result of a peril insured by this Policy.

E. Accounts Receivable:

In the event of loss or damage to records or accounts receivable from customers caused by physical loss or damage insured herein, this Insurer will indemnify the Insured as follows:

1. All sums due the Insured (from customers), provided the Insured is unable to effect collection thereof as a result of physical loss or damage to records of accounts receivable by loss or damage insured by this policy.
2. All sums due the Insured from factoring transactions, when the property of the debtor has been lost or damaged by loss or damage insured by this policy and the Insured has been unable to effect collection thereof.
3. Interest charges on any loan to offset impaired collections pending repayment of such sums made uncollectible by such loss or damage.
4. Collection expenses in excess of normal collection cost and made necessary because of such loss or damage.
5. Other expenses, when reasonably incurred by the Insured in re-establishing records of accounts receivable following such loss or damage.

For purpose of this insurance, charges under a credit card company and maintained on Electronic Data shall be deemed to represent sums due the Insured from customers.

When there is proof that a loss of records of accounts receivable has occurred by the Insured and the Insured cannot more accurately establish the total amount of accounts receivable outstanding as of the date of such loss, such amount shall be computed as follows:

1. The monthly average of accounts receivable during the last available twelve (12) months shall be adjusted in accordance with the percentage increased or decreased in the twelve (12) months average of monthly gross revenues which may have occurred in the interim;
2. The monthly amount of accounts receivable thus established shall be further adjusted in accordance with any demonstrable variance from the average for the particular month in which the loss occurred, due consideration also being given to the normal fluctuations in the amount of accounts receivable within the fiscal month involved.

There shall be deducted from the total amount of accounts receivable, however established, the amount of such accounts evidenced by records, not lost or damaged, or otherwise established or collected by the Insured and an amount to allow for probable bad debts which would normally have been uncollectible by the Insured.

F. Leasehold Interest:

This policy provides coverage for leasehold interest when insured property is rendered wholly or partially untenable by any insured loss during the term of this policy and a lease is cancelled by a party not insured by this policy in accordance with the conditions of the lease or by statutory requirements of the appropriate jurisdiction in which the damaged property is located.

1. Coverage under this clause includes the:
 - (a) Pro-rata portion from the date of loss to the expiration date of the lease (to be paid without discount) on the Insured's interest in:
 - (i) the amount of bonus paid by the Insured for the acquisition of the lease not recoverable under the terms of the lease;
 - (ii) improvements and betterments to real property which are not insured under any other section of this policy;
 - (iii) the amount of advance rental paid by the Insured and not recoverable under the terms of the lease;
2. This Insurer shall indemnify the Insured for its Lease Interest for the first three months following the loss or damage and for its Net Lease Interest for the remaining unexpired term of the lease, provided that the Insurer shall not be liable for any increase in the amount recoverable hereunder 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 which

constitutes a default under the lease; and provided further that the Insured shall use any suitable property or service owned or controlled by the Insured or obtainable from another source to reduce the loss hereunder.

G. Rental Value and Rental Income

1. Loss of Rental Income and/or Loss of Rental Value of the Insured caused by physical loss or damage insured herein occurring during the term of this policy to property and/or premises insured hereunder that are rented, leased or occupied by the Insured and/or rented or leased by the Insured to others.
2. Rental Income shall include the following:
 - (a) The total anticipated gross rental income from tenant(s) of the Insured's building(s) and structure(s), and
 - (b) The amount of all charges assumed by tenant(s) except those charges which do not continue, which would otherwise be obligations of the Insured, and
 - (c) The fair rental reasonable expected from unrented portions of such property and the fair rental for that portion occupied by the Insured.
3. Rental Value shall include the following:

Rental Income Insurance that complies with the terms of any lease or rental agreement requiring the Insured to maintain such insurance on behalf of any landlord.

Rental expenses incurred by the Insured in excess of the expenses which would have been incurred had a leased or rented premises not been damaged or destroyed by loss or damage insured herein. Such coverage will apply for all additional expenses incurred during the period of untenability or if the lease cannot be terminated until its expiration.

H. Royalties

1. Loss of Royalties, Fees and Commissions which would have been earned under Royalties, Fees or Commission Agreements between the Insured and any concern(s), as a result of loss or damage to the property of such concern(s) which is of a type not excluded caused by physical loss or damage insured herein occurring during the term of this policy.
2. Such loss shall be adjusted on the basis of actual loss sustained of such income referred to in paragraph 7.H.1., which would have been earned had no loss occurred, giving due consideration to the experience of the business before the date of the loss or damage and to the probable experience thereafter had no loss occurred.

I. Transit

This insurance is extended to insure loss or damage to insured property in transit including resulting loss as afforded under clauses 7.B., 7.C., 7.D., 7.G. and 7.H.

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1. This insurance is also extended to insure loss or damage to property:
 - (a) sold and shipped by the Insured under terms of F.O.B. point of origin or other terms usually regarded as terminating the shipper's responsibility short of points of delivery;
 - (b) at the Insured's option, which is incoming to the Insured.
 2. This policy also insures loss or damage:
 - (a) arising out of any unauthorized person(s) representing themselves to be the proper party(ies) to receive goods for shipment or to accept goods for delivery;
 - (b) occasioned by the acceptance by the Insured, by its agents, or by its customers of fraudulent bills of lading, shipping and delivery orders, or similar documents;

J. Goodwill and Public Relations

Measurement of Loss:

The recoverable Goodwill and Public relations expenditures will be the reasonable and necessary costs incurred by the Insured for the removal, relocation or forgiveness of room charges for customers as a direct result of insured property damage to insured property. The Insured is authorized to make such payments as are deemed necessary at the time of loss.

8. Extensions of Coverage:

THIS CLAUSE EXTENDS THE COVERAGES DESCRIBED IN CLAUSES 7. B, 7. C, 7. D, 7. E., 7. F., 7. G., 7. H and 7. I.

A. This policy insures loss resulting from or caused by physical loss or damage insured herein to the following:

1. **Contingent Business Interruption/Contingent Extra Expense:** Property of a type not excluded that directly or indirectly prevents a direct supplier of goods and/or services to the Insured from rendering their goods and/or services, or property of a type not excluded that prevents direct customers of goods and/or services from the Insured from accepting the Insured's goods and/or services.

There is no liability under Clause 8.A.1., for any loss or damage insured under Clause 8.A.2.

2. **Service Interruption/Off Premises Power:** Any service provider's property including, but not limited to, electrical equipment and systems, water, gas, sewerage, steam, telephone, telecommunications or their respective transmission and distribution lines or utility plants which directly or indirectly provide incoming or outgoing services to the Insured situated on or outside of the Insured's premises.

There is no liability under Clause 8.A.2. for any loss or damage insured under Clause 8.A.1.

3. **Impounded Water:** Dams, reservoirs or equipment connected therewith when water used as a raw material or used for power or for

other manufacturing purpose stored behind such dams or reservoirs is released from storage and causes an interruption of business as a result of lack of adequate water supply from such sources.

B. Interruption by Civil or Military Authority or Casino Control Commissioner Authority

This policy is extended to insure direct physical loss sustained during the period of time when, as a result of loss, damage or destruction not excluded in Clause 6. within 5 miles of an Insured's location, access to such location is impaired by order or action of civil or military authority or Casino Control Commissioner authority.

C. Ingress/Egress

This policy is extended to insure loss sustained during the period of time when, as a result of direct physical loss, damage or destruction not excluded in Clause 6. within 5 miles of the Insured's location, ingress to or egress from such location is impaired.

D. Loss of License

This policy insures the loss sustained by the Insured arising out of the non-renewal or refusal to renew a license by any competent authority when as a direct result of physical loss, damage or destruction by a peril insured by this policy.

If, during the Policy term, a license granted for the sale of liquors becomes suspended or forfeited under the provisions of the appropriate legislation governing such licenses, or if such a license is refused renewal after due application for such renewal to the appropriate authority, and if such suspension, forfeiture or refused renewal is occasioned by reasons other than a negligent act of the Insured, the Company shall pay or make good to the Insured all losses that they shall sustain including, but not restricted to:

- (a) The depreciation in value of the "Location";
- (b) Loss of revenue by the "Insured";
- (c) Loss of rent receivable by the Insured;
- (d) Loss of outstanding loans and other trading debts incurred in the event of the bankruptcy of the tenant;

caused by the suspension, forfeiture of or refusal to renew the license with the written consent of the Company in connection with any appeal against the suspension, forfeiture of or refusal to renew the license.

Notwithstanding the foregoing, this Policy shall not insure the refused renewal, suspension or forfeiture of the license arising directly or indirectly from any scheme of town or country planning improvement or redevelopment, compulsory purchase or from any alteration of the law affecting the grant, surrender, refusal to renew, suspension or forfeiture of license.

Memorandum

The Insured shall, on becoming aware of any:

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- (a) complaint against the premises or the control thereof;
 - (b) proceedings against or conviction of the license holder, manager, tenant or occupier of the premises for any breach of licensing law or any matter whatsoever whereby the character or reputation of the person concerned is affected or called into question with respects to his honesty, moral standing or sobriety;
 - (c) transfer or proposed transfer of the license;
 - (d) alteration in the purpose for which the premises are used;
 - (e) objection to the renewal or other circumstances which may endanger the license or renewal thereof;

notice thereof as soon as possible in writing to the Company and supply such additional information and give such assistance as the Company may reasonably require.

9. Loss Provisions Applicable to Clauses 7.B, 7.C, 7.D, 7.G., 7.H. , 7.I. and 8.

A. Period of Recovery

The length of time for which loss may be claimed is referred to as the period of recovery and:

1. shall commence with the date of such loss or damage and shall not be limited by the date of expiration of this policy;
 2. shall not exceed such length of time as would be required with the exercise of due diligence and dispatch to rebuild, repair, or replace the property that has been destroyed or damaged at the same or another site within the territorial limits of the Policy, giving due consideration to any delays in rebuilding, repairing or replacing the destroyed or damaged property caused by loss adjustment activities conducted by or on behalf of the Insured;
- and
3. such additional length of time to restore the Insured's business to the condition that would have existed had no loss occurred, commencing with the later of the following dates:
 - (a) the date on which the liability of the Insurer for loss or damage would otherwise terminate; or
 - (b) the date on which repair, replacement or rebuilding of the property that has been damaged is actually completed and the Insured has resumed normal operations.

but in no event for more than three hundred and sixty-five (365) consecutive days thereafter from said later commencement date;

4. with respect to alterations, additions, or property while in the course of construction, erection, installation, or assembly, due consideration shall be given to the level of production or level of business operations that would reasonably have been achieved after construction and start up would have been completed had no loss or damage occurred.

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- B. If the Insured can reduce the loss resulting from the interruption of business:
1. by a complete or partial resumption of operations of the property insured, whether damaged or not; or
 2. by making use of stock, merchandise, or other property insured herein;

Such reduction shall be taken into account in arriving at the amount of loss hereunder.

- C. Expense to Reduce Loss: (not applicable to 7.C.)

This policy also insures such expenses as are necessarily incurred for the purpose of reducing any loss under this policy, however such expenses may not exceed the amount by which the loss under this policy is thereby reduced.

- D. Experience of the Business:

In determining the amount of loss insured hereunder due consideration shall be given to the experience of the business before the date of loss or damage and to the probable experience thereafter had no loss or damage occurred.

10. Property Excluded

This policy does not insure loss or damage to:

- A. Watercraft (except as provided in Clause 7 A.), aircraft, satellites, and motor vehicles licensed for highway use when not on the Insured's premises, except this exclusion shall not apply to contractor's equipment, nor to such property which constitutes stock or which is on exhibit or being repaired.
- B. Land, except as insured under Clause 15, Decontamination and Clean Up Expense. This exclusion shall not apply to the cost of reclaiming, restoring or repairing land improvements. Land improvements as described hereunder include, but are not limited to, any alteration to the natural condition of the land by grading, excavating, landscaping, earthen dikes or dams, as well as additions to land such as pavements, roadways, ponds, or similar works.
- C. Precious stones, jewellery, gold bullion.
- D. Money, securities except for the perils of Fire, Wind, Hail, Explosion, Smoke, Lightning, Riot, Civil Commotion, Impact by Aircraft or Objects falling therefrom, Impact from Vehicles, Water Damage, and Theft (other than by an employee of the Insured) only.
- E. Growing crops, standing timber to be used for industrial processes, and live animals.
- F. Water, except as insured under Clause 8.A.3. Impounded Water, Clause 15. Decontamination and Clean Up Expense, or when contained in any form of piping system, processing system or holding tank or used in the manufacturing process.
- G. Export and import shipments after loading on board the oceangoing watercraft and during ocean transit, but coverage will attach after unloading at the destination port. However, this exclusion will not apply to:

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1. ferry shipments to, from and between countries in Continental Europe, the United Kingdom and Ireland; and
 2. air or inland waterway shipments to, from and between countries in Continental Europe.
- H. Waterborne shipments via the Panama Canal.
- I. Waterborne shipments to and from Alaska, to and from Hawaii, and to and from Puerto Rico, Guam and the Virgin Islands.
- J. Transmission and distribution lines beyond 1,000 feet of an Insured's location.

11. Valuation

At time of loss, the basis of adjustment shall be as follows:

- A. On buildings and structures, at the replacement cost new with material of a like kind and quality; if not replaced, then at the actual cash value.
- B. On machinery, equipment, furniture, fixtures and improvements and betterments at the replacement cost new with material of like kind and quality; if not replaced, then at the actual cash value.
- C. Valuable Papers and Records and Electronic Data at the value blank plus the cost of labor, service and/or supplies for actually reconstructing, researching, gathering information, reproducing, recreating, transcribing or copying such papers, records and Electronic Data.
- D. Fine Arts owned by the Insured at the cost of reasonably replacing or restoring the property to its condition immediately prior to the loss, or in the event that the property cannot be replaced or restored at the appraised value prior to the loss. In absence of such appraisal, at the market value at the time of loss, plus the Insured's costs.
- Fine Arts, which is the property of others, at the Insured's option, either at the cost of reasonably restoring the property to its condition immediately prior to loss, or the Insured's contractual or legal liability.
- E. Finished Stock and other merchandise for sale, at the Insured's selling price less discounts to which the goods would have been subject had no loss occurred.
- F. Property of others and property leased by the Insured, or for which the Insured has agreed to insure, at the Insured's option either:
1. the replacement cost new, or;
 2. the amount stipulated in the lease agreement, or;
 3. Insured's contractual or legal liability.
- G. Stock in process (raw stock which has undergone any aging, seasoning, or other processing by the Insured, but which has not become finished stock) shall be valued at the Insured's selling price of finished stock at the time of loss, less any manufacturing expense not incurred by the Insured and less any discounts, rebates, and unincurred expenses to which the sales price would have been subject.
- H. Gaming Chips at the cost to reproduce with material of like kind and quality.

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- I. All other property, not otherwise mentioned above, at the replacement cost new with material of like kind and quality; if not replaced, then at the actual cash value.

It is understood and agreed that as respects replacement cost new, the Insured shall have the option of replacing equipment having technological advantages and/or representing an improvement in function and/or forming part of a program of system enhancement provided that such replacement can be accomplished without increasing the Insurer's liability.

The Insured, using reasonable discretion, shall be the sole judge as to whether electrical and mechanical equipment are damaged and unusable. This Insurer shall be allowed to dispose of, as salvage, any non-proprietary property deemed unusable by the Insured. As respects 11.A., 11.B. and 11.H., the Insured may elect not to replace the real and/or personal property lost, damaged, or destroyed and obtain loss settlement on a replacement cost basis if the proceeds of such loss settlement are expended in any other expenditures related to the Insured's operations.

Permission is granted for the Insured to replace the property with similar property at the same or another site within the territorial limits of the policy, but recovery is limited to what it would cost to replace on same site.

12. Demolition and Increased Cost of Construction

In the event of physical loss or damage insured under this policy that causes the enforcement of any law, ordinance and/or governmental directive regulating the construction, repair or use of the property which is in force at the time of such loss or damage, the Insurer shall be liable for:

- A. The cost of demolishing the undamaged property including the cost of clearing the site;
- B. The proportion that the value of the undamaged part of the property bore to the value of the entire property prior to loss;
- C. The increased cost of repair or reconstruction of the damaged and undamaged property on the same or another site and limited to the costs that would have been incurred in order to comply with the minimum requirements of such law, ordinance and/or governmental directive regulating the repair or reconstruction or use of the damaged property on the same site or another site. However, the Insurer shall not be liable for any increased cost of construction loss unless the damaged property is actually rebuilt or replaced at the same or at another site within the territorial limits of the policy;
- D. The increase in loss, including, but not limited to, Business Interruption, Extra Expense, Rental Value, Leasehold Interest or Royalties or extensions thereof arising out of the additional time required to comply with said law, ordinance and/or governmental directive.

13. Fire Brigade Charges and Extinguishing Expenses

This policy insures the following expenses resulting from physical loss or damage insured herein:

- A. fire brigade charges and other extinguishing expenses for which the Insured may be assessed;
- B. loss of fire extinguishing materials expended.

14. Debris Removal

This policy insures the necessary and reasonable expenses actually incurred by the Insured due to loss or damage as insured herein, occurring during the term of this policy, to remove, clean up and/or properly dispose of any debris remaining after any such loss or damage.

15. Decontamination and Clean Up Expense

If insured property is contaminated as a direct result of physical damage insured by this Policy and there is in force at the time of the loss any law or ordinance regulating contamination, including but not limited to the presence of pollution or hazardous material, including asbestos, 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 as a direct result of insured physical damage.

The Insurer is not liable for the costs required for removing contaminated uninsured property nor the contaminant therein or thereon, whether or not the contamination results from an insured event.

16. Notice of Loss

The Insured shall report to the Insurer any loss or damage which may become a claim under this insurance policy as soon as may be practicable after it becomes known to the Director of the Risk Management Department (or the individual acting in a similar capacity) of the Insured.

17. Knowledge of Occurrence

It is agreed that knowledge of an occurrence by an agent, servant or employee of the Insured shall not in itself constitute knowledge by the Insured. Knowledge is understood to occur only when the Director of the Risk Management Department (or the individual acting in a similar capacity) of the Insured shall have received notice from its agent, servant or employee. However, the provisions of this clause shall not apply to cover provided under Decontamination and Clean Up expense.

18. Proof and Payment of Loss

A detailed Proof of Loss shall be filed with the Insurer as soon as practicable. Loss shall be adjusted with the Risk Management Department of the Insured or assigned representatives, and all adjusted claims shall be paid to the Insured or its order within Thirty (30) days after filing and acceptance of a Proof of Loss.

19. Non-Reduction of Limits of Liability

Any loss hereunder shall not reduce the limit(s) of liability under this policy except for aggregate limits as described in Clause 3.

20. Subrogation and Subrogation Waiver

A. It is agreed that upon payment of any loss, this Insurer is subrogated to all the rights of the Insured to the extent of such payment.

Any release or waiver of liability entered into by the Insured in the course of their business prior to loss (including but not limited to bills of lading and/or receipts from carriers, bailees, warehouseman, lighterman, processors,

limiting or releasing their liability) hereunder shall not prejudice the Insured's rights of recovery under this policy.

- B. The right of subrogation against the Insured's subsidiary, affiliated, or associated corporations or companies, joint ventures, partnerships or individuals, or any other party required to be insured, or any other corporations or companies associated with the Insured through ownership or management is waived, and at the option of the Insured, subrogation is waived against any tenant or landlord of the Insured.
- C. In the event of any payment under this policy, except where subrogation rights have been waived, the Insurer shall be subrogated to the extent of such payment to all the Insured's rights of recovery therefore. The Insured shall execute all papers required and shall take reasonable and necessary action to secure such subrogation rights. The Insurer will act in concert with all other interests concerned, i.e., the Insured and any other company(ies) participating in the payment of any loss as primary or excess insurers, in the exercise of such rights of recovery. If any amount is recovered, after deducting the costs or recovery, such amount shall be divided between the interests concerned in the proportion of their respective interests. If there should be no recovery, all costs and expenses shall be borne by the party instituting the proceedings.

21. Preservation of Property

In case of actual or imminent physical loss, damage or destruction by a peril insured by this Policy, the expenses incurred by the Insured in taking reasonable and necessary actions for the temporary protection and preservation of property insured by this Policy shall be added to the total physical loss, damage or destruction, if any, otherwise recoverable under the Policy and be subject to the applicable Deductible and without increase in the Policy Limits of Liability.

22. Appraisal

In case the Insured and this Insurer shall fail to agree as to the amount of loss, then, on the written demand of either, each shall select a competent and disinterested appraiser and notify the other of the appraiser selected within Twenty (20) days of such demand. The appraisers shall select a competent and disinterested umpire; and, failing for Fifteen (15) days to agree upon such umpire, then on request of the Insured or the Insurer, such umpire shall be selected by a judge of a district court of a judicial district in accordance with the Jurisdiction and Suit clause of this policy. The appraisers shall then appraise the loss, separating the loss to each item; and, failing to agree, shall submit their differences only to the umpire. An award in writing, so itemized of any two when filed with the Insurer, shall determine the amount of loss. Each appraiser shall be paid by the party selecting each respective appraiser and the expenses of appraisal and umpire shall be paid by the parties equally. However, if the award is greater than the amount offered by the Insurer in payment of the loss at any time before the award is rendered, then the Insurer shall pay 100% of the fees and expenses for each appraiser and the umpire and for the appraisal.

23. Brands and Labels

In case of insured loss or damage to property bearing a brand or trademark or which in any way carries or implies the guarantee or the responsibility of the manufacturer or the Insured, the salvage value of such damaged property shall be determined after removal in the customary manner, at the expense of the Insurer, of all such brands or trademarks or other identifying characteristics.

24. Control of Damaged Merchandise

The Insured shall have full right to the possession of all merchandise manufactured, sold or distributed by the Insured involved in any loss under this policy and shall retain control of all damaged merchandise. The Insured, exercising reasonable discretion, shall be the sole judge as to whether the merchandise involved in any loss under this policy are fit for consumption, sale or use and any merchandise so deemed by the Insured to be unfit for consumption, sale or use shall not be sold or otherwise disposed of except by the Insured or with the Insured's consent, but the Insured shall allow this Insurer any salvage proceeds obtained by the Insured on any sale or other disposition of such merchandise.

25. Salvage and Recoveries

Except as described in Clause 24, after expenses incurred in salvage or recovery are deducted, any salvage or other recovery, except recovery through subrogation proceedings and/or from underlying and/or excess insurance as described herein, shall accrue entirely to the benefit of this Insurer until the sum paid by the Insurer has been recovered.

26. Expediting Expense

This policy insures the reasonable extra cost of temporary repair or replacement and of expediting the repair or replacement of damaged property insured hereunder, including overtime and express freight or other rapid means of transportation.

27. Jurisdiction and Suit

It is hereby understood and agreed that:

- A. In the event of the failure of the Insurer to pay an amount claimed to be due hereunder, at the direction of the Insured, the Insurer will submit to the jurisdiction of any court of competent jurisdiction within the United States and will comply with all requirements necessary to give such jurisdiction. All matters arising hereunder shall be determined in accordance with the law and practice of such court.
- B. In any suit instituted against it under this policy, the Insurer will abide by the final decision of such court or any appellate court in the event of an appeal.

28. Pair and Set/Consequential Reduction in Value

In the event of insured loss or damage to personal property, this policy shall insure the resulting reduction in value of the remaining undamaged components or parts of products customarily sold as individual units or sold as pairs, sets or lots or ranges of sizes or colors.

29. Consequential/Sequential Damage

This policy insures consequential/sequential physical loss or damage caused by or resulting from the change in temperature or humidity caused by, but not limited to, interruption of power, heat, light, air conditioning, refrigeration, telephone or telegraphs, supply water or telecommunications to property/equipment or plants used to provide refrigeration, cooling, humidifying, dehumidifying, air conditioning, heating, generating, converting power, or telephone or telegraphs, or telecommunications, including all connections and supply from transmission lines and pipes, power generating equipment, utility plants or sources, whether or not such equipment is on or off the premises of the Insured.

30. Permits

Permission is hereby granted for any building(s) to be and remain vacant and unoccupied without limit of time and without prejudice to the Insured's right of recovery for claim under this policy.

Any change in occupancy or use of the premises or any increase in hazard shall not prejudice the Insured's right of recovery for claim under this policy.

31. Contributing Insurance

Permission is granted for other policies written upon the same terms, conditions, and provisions irrespective of limit or attachment point as those contained in this policy. This policy shall contribute to the total of each loss otherwise payable herein to the extent of the participation of this policy in the total limit of liability stated herein.

32. Excess Insurance

Permission is granted for the Insured to have excess insurance over the limit of liability in this policy without prejudice to this policy and the existence of such insurance, if any, shall not reduce any liability under this policy.

33. Underlying Insurance

Permission is granted for the Insured to purchase insurance on all or any part of the deductible and against all or any of the coverage provided by this policy. The existence of such underlying insurance shall not prejudice or affect any recovery otherwise payable under this policy.

34. Other Insurance

Except as referred to in Clause 31 Contributing Insurance, Clause 32 Excess Insurance and Clause 33 Underlying Insurance, this policy shall not insure to the extent of any other insurance, whether prior or subsequent hereto in date and whether directly or indirectly insuring the same property against the same loss or damage. This insurance shall be excess of and/or supplementary to the amount recoverable from such other collectible insurance.

35. Coinsurance Waiver

This policy is not subject to Coinsurance or Average Clause.

36. Errors & Omissions

No inadvertent error, omission or failure in making reports or other data hereunder shall prejudice the Insured's right of recovery, but shall be corrected when discovered. It is further understood and agreed that any error in description of locations, or values of projects insured or to be insured by this policy shall not invalidate or reduce the policy limit of liability, or otherwise prejudice any recovery under this policy.

37. Liberalization

If during the period that insurance is in force under this policy, any authorized endorsement or filed rules or regulations affecting the same are revised by statute or otherwise so as to broaden the insurance without additional premium charge, such extended or broadened insurance shall inure to the benefit of the Insured hereunder.

38. Titles of Paragraphs

The several titles of the various paragraphs of this policy (and of Endorsements and Supplemental Policies, if any, which are attached to this policy) are inserted solely for convenience or reference and shall not be deemed in any way to limit or affect the provisions to which they relate.

39. Waiver of Company Conditions

The terms and conditions of this manuscript form are substituted for those of the Insurer's policy jacket and other pre-printed Insurer forms and the Insurer's declaration page to which it is attached, the terms and conditions of same being waived and superseded by this manuscript form.

40. Certificates of Insurance

All parties to whom a Certificate of Insurance has been issued are automatically added to this policy upon issuance of said certificates, either as Additional Insureds or as Loss Payees, or both, in accordance with the terms and conditions of this policy unless otherwise agreed to by the Insurer. Permission is granted for Aon Risk Services to issue Certificates on the Insurer's behalf.

41. Partial Payment of Loss

It is understood and agreed that this Insurer will make partial payments of claims subject to the policy provisions and the normal policy adjustment provisions.

To obtain said partial claim payment, the Insured shall submit a partial Proof of Loss with supporting documentation.

42. Mortgage Clause

Loss or damage, if any, under this policy shall be payable to the mortgagee(s) (or trustee(s)) as interest(s) may appear, and this insurance, as to the interest(s) of the mortgagee(s) (or trustee(s)) only therein, shall not be invalidated by any act or neglect of the mortgagor or owner of the described property, nor by any foreclosure or other proceedings or notice of sale relating to the property, nor by any change in the title or ownership of the property, nor by the occupation of the premises for purposes more hazardous than are permitted by this policy provided that in case the mortgagor or owner shall neglect to pay any premium due under this policy, the mortgagee (or trustee) shall, on demand, pay the same.

Wherever this Insurer shall pay the mortgagee (or trustee) any sum for loss or damage under this policy, and shall claim that as the mortgagor or owner, no liability therefore existed, this Insurer shall, to the extent of such payment, be thereupon legally subrogated to all the rights of the party to whom such payment shall be made.

43. Cancellation

- A. This policy may be cancelled at any time at the request of the first named Insured, or it may be cancelled by the Insurer by mailing via registered or certified mail to the Insured during the term of this policy, and with copies provided to **Aon Risk Services West Inc, 425 Market Street, Suite 2800, San Francisco, CA 94105**, written notice stating when no less than Ninety (90) days thereafter, except Ten (10) days for non-payment of premium, such cancellation shall be effective..

This insurance may be cancelled at any time by the Insured by surrender of this policy to the Insurer or by mailing or delivery to the Insurer written notice stating when thereafter such cancellation shall take effect. Return premium

shall be allowed the Insured on a pro rata basis if the Insurer cancels and also on a pro rata basis if the Insured cancels.

Payments or tender of any unearned premium by the Insurer shall not be a condition precedent to the effectiveness of cancellation, but such payment shall be made as soon as practicable.

- B. The mailing of notice as described in A. above shall be sufficient proof of notice and the effective date and hour of cancellation stated in the notice shall become the end of the policy period. Delivery of such written notice either by the Insured or by this Insurer shall be equivalent to mailing.
- C. Cancellation shall not affect coverage on any shipment in transit on the date of cancellation. Coverage will continue in full force until such property is safely delivered and accepted at place of final destination.

44. Inspection and Audit

This Insurer shall be permitted, but not obligated, to inspect the Insured's property at any reasonable time. Neither the Insurer's right to make inspections, nor the making thereof, nor any report thereon, shall constitute an undertaking, on behalf of or for the benefit of the Insured or others, to determine or warrant that such property is safe.

45. Loss Adjustment Expenses

This policy is extended to insure expenses incurred by the Insured, or by the Insured's representatives for assessing, for preparing and/or certifying details of a claim resulting from a loss which would be payable under this policy. But this provision does not insure expenses incurred for the services of any lawyer or public adjuster.

46. Currency

It is hereby understood and agreed that all amounts used herein are in United States currency and that premiums shall be paid and all losses shall be adjusted and paid in United States currency. In the event of a loss adjustment involving foreign currency, conversion into the currency of the United States of America shall be calculated as follows:

- A. As respects real and personal property, the cost of repair, replacement or reconditioning shall be converted, at the option of the Insured, based on any of the following:

- 1. date of loss;
- 2. date of repair, replacement or reconditioning;
- 3. date of acceptance or proof of loss or settlement.

Options A. 1. - A. 3. shall be based on the rate of exchange quoted in the Wall Street Journal.

If the property is not replaced or repaired, the conversion into the currency of the United States of America shall be at the rate of exchange quoted in the Wall Street Journal as of the date of loss.

- B. As respects all other coverages, currency shall be converted at the rate of exchange quoted in the Wall Street Journal and such rate of exchange shall be based on the average of the daily rate of exchange quoted in the Wall Street Journal for the period of loss.
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47. Difference in Conditions

Subject to all other terms and conditions set forth herein, coverage under this policy is to apply only when coverage and/or definitions and/or conditions set forth herein are broader in meaning or scope than those of specific underlying or primary policies. The insurance provided by this policy will apply as contributing or excess insurance as respects loss arising from loss or damage insured under such other policies. In the absence of any other valid and collectible insurance, this policy shall become primary, subject to the terms and conditions of this policy.

48. Tax Treatment of Profits

This policy is extended to insure the additional loss sustained by the Insured resulting from loss or damage insured by this policy in the event the tax treatment of:

- A. the profit portion of a loss recovery involving finished stock manufactured or purchased by the Insured; and/or
- B. the profit portion of business interruption loss proceeds; differs from the tax treatment of profits that would have been incurred had no loss occurred.

49. Promotional Coupons

This policy insures unredeemed and redeemed coupons issued by or on behalf of the Insured.

50. Severability of Interest

Each of the Insureds insured by this policy will have the same protection and obligations as if the policy has been issued individually to each of them, except as respects the obligations associated with Clause 43. Cancellation. However, the inclusion of more than one Insured will not operate to increase the limit of liability of the Insurer beyond the limit of liability stated in this policy.

51. Non Admitted Tax Liability

This Policy covers the Non-Admitted Increased Tax Liability as described herein of the Insured for a loss covered under this Policy.

- 1) If a loss recovery under this Policy cannot be paid in the country of its occurrence because of local law or otherwise, such loss is to be paid in the currency of this Policy in a country designated by the Insured where such payment is legally permissible. In the event of such a payment, the Insurer will pay in addition to the loss, the net amount required to offset local taxes on income with due consideration to any tax relief/credit that accrues because of such payment. The amount of such additional payment is to be calculated as follows:

$$\text{Additional Payment} = [a (1 - c) / (1-b)] - a$$

Where:

- a = Loss otherwise payable under this Policy except for operation of this coverage, after due consideration for any applicable deductible(s).
 - b = The net effective rate of the sum of: any taxation (a positive number) plus any tax relief/credit (a negative number) that accrues in the country where loss payments are received.
 - c = The net effective rate of the sum of: any taxation (a positive number) plus any tax relief/credit (a negative number) that accrues in the country where the loss occurred.
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- 2) The formula herein will not apply if the calculation of additional payment results in an amount less than zero. The rates referred to herein will be the respective corporate income tax rates in effect on the date of the loss.
 - 3) The Insured will cooperate with the Insurer in making every reasonable effort to pay the loss or portion thereof locally in the country in which the loss occurred.
 - 4) Any payment under this coverage will be made only after completion and acceptance by the Insurer of audited tax returns for the period in question for both the country where a payment hereunder is made and the country where the loss occurred. The actual payment under this coverage will be adjusted and reduced by all appropriate tax credits and/or tax relief entitled and/or received by the Insured and/or the local entity where the loss occurred provided that an income tax liability is incurred.

52. Loss Adjusters

It is hereby understood and agreed that each and every loss will be adjusted by Joseph Lakich from **Vericlaim, Inc.**, unless otherwise agreed by the Insured and the Insurer.

53. Loss Payable

Loss, if any, shall be adjusted with and payable to the San Manuel Band of Mission Indians or its Designee.

54. Pollutant Cleanup and Removal

This Policy covers the reasonable and necessary cost for the cleanup, removal and disposal of contaminants or pollutants from uninsured property consisting of land, water or any other substance in or on land at the location of the Insured if the release, discharge or dispersal of contaminants or pollutants is a direct result of insured physical loss or damage to insured property.

55. Additional Interests

It is understood that building, condominium, and timeshare owners have an insurable interest in certain property insured under this policy, whether or not such property is owned or managed by the Insured or its affiliates.

56. Definitions

The following terms whenever used in this policy shall mean:

A. Earthquake Shock

Quaking, vibratory or undulating movement of a portion of the earth's crust, produced by underground volcanic forces or by breaking and shifting of rock beneath the earth's crust. It is understood and agreed that if any loss or damage results from a cause of loss otherwise insured by this policy, Earthquake Shock shall not include such ensuing loss or damage, regardless of whether Earthquake Shock contributed concurrently or in any other sequence with such other cause of loss. Such ensuing loss or damage shall be construed to have been of the same Occurrence, but of a different proximate cause from Earthquake Shock.

B. EDP Systems

Electronic Data Processing Systems shall include, but not be limited to, transferring equipment, computer systems, telecommunications systems or electronic control equipment and component parts.

C. Electronic Data

As detailed in applicable endorsement

D. Fine Arts

Fine Arts shall include, but not be limited to, bona fide works of art, works of rarity, works of historical value, works of artistic merit, photographs, (positives and negatives) lithographs, illustrations, galley proofs, original records.

E. Finished Stock

Stock manufactured by the Insured which, in the ordinary course of the Insured's business, is ready for packing, shipment or sale.

F. Fire Brigade Charges/Fire Extinguishing Materials and Expenses

Fire fighting and/or containment charges and/or fire department service charges and other extinguishing expenses.

G. Flood

Waves, tide or tidal water, tsunami, rapid accumulation of surface waters, or the rising (including overflowing or breaking of boundaries) of lakes, reservoirs, rivers, streams or other bodies of water. It is understood and agreed that if any loss or damage results from a cause of loss otherwise insured by this policy, Flood shall not include such ensuing loss or damage, regardless of whether Flood contributed concurrently or in any other sequence with such other cause of loss. Such ensuing loss or damage shall be construed to have been of the same occurrence, but of a different proximate cause from Flood. It is further understood and agreed that Flood shall not include any storm surges, waves, tide or tidal water caused by a Named Windstorm.

H. Fraudulent or Dishonest Acts

Fraudulent or dishonest acts committed by the Insured or the Insured's employees with the manifest intent to:

1. cause the Insured to sustain such loss; and
2. obtain financial benefit for the Insured, Insured's employee, or for any other person or organization intended by the Insured or the employee to receive such benefit for such fraudulent or dishonest act or acts.

I. 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 any maintenance or operating charges) for each month during the unexpired term of the Insured's lease; and/or

The rental income earned by the Insured from sublease agreements, to the extent not insured under any other section of this policy, over and above the rental expenses specified in the lease between the Insured and the lessor.

J. Net Lease Interest

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

K. Object

Means any boiler, fired or unfired vessel subject to pressure or vacuum, including piping or apparatus attached thereto and forming a part thereof, and any mechanical or electrical machine or apparatus used for the generation, transmission or utilization of mechanical or electrical power.

L. Occurrence

Loss, or a series of losses or several losses, which are attributable directly or indirectly to one cause or disaster or to one series of similar causes or disasters arising from a single event. All such losses shall be added together and the total amount of such losses shall be treated as one occurrence irrespective of the period of time or area over which such losses occur.

When the term applies to windstorms, it shall be defined as the sum total of all losses arising out of or caused by the same atmospheric disturbance during any period of 72 consecutive hours. The Insured shall have the right to elect the moment from which the 72 hour period shall be deemed to have commenced, provided always that no elected period of 72 hours shall commence within the period of any previous occurrence. However, it is further understood and agreed that any loss from windstorm and resulting loss and damage as respects any storm cell that is declared by the National Weather Bureau and/or National Hurricane Center and/or any other similar weather center in foreign countries, shall be considered as a single occurrence regardless of the duration of a named or numbered storm cell.

When the term applies to earthquake shock, it shall be defined as the sum total of all the Insured's losses sustained during any period of 168 consecutive hours by reason of one earthquake shock or a series of earthquake shocks. The Insured may elect the moment from which the 168 hour period shall be deemed to have commenced, provided always that no elected period of 168 hours shall commence within the period of any previous occurrence.

When the term applies to flood, it shall be defined as the sum total of all losses sustained by reason of one flood or a series of floods.

When the term applies to theft, the sum total of all losses insured herein resulting from one or more fraudulent or dishonest acts committed by a person(s) acting alone or in collusion with others shall constitute one occurrence.

M. Ordinary Payroll

Ordinary Payroll is the entire payroll expense for all employees of the Insured except officers, executives, employees under contract, and other critical employees.

N. Soft Costs

Expenses related to the delay of completion of a project over and above those costs which would have been incurred, including, but not limited to, interest payments on financing under loan agreements, additional interest expenses, loss of rents, general overhead developer expenses, legal debt service payments, insurance premiums, refinancing charges, bond interest, founders fees, refunds, miscellaneous operating expenses, architect and engineering fees and real estate taxes accruing during the period of delay.

O. Transit

Shipments within and between the territorial limits of this policy, including the coastal waters thereof, by any means of conveyance, from the time the property is moved for purpose of loading and continuously thereafter while awaiting and during loading and unloading and in temporary storage including temporary storage on any conveyance intended for use for any outbound or used for inbound shipment, including during deviation and delay, until safely delivered and accepted at place of final destination.

P. Underlying Policy

An insurance policy issued to the Insured which is similar as respects the terms and conditions of this policy and issued for limits below the attachment point or deductible of this policy.

Q. Valuable Papers & Records

Written, printed or otherwise inscribed documents, and records including but not limited to books, maps, films, drawings, abstracts, deeds, mortgages, mortgage files, manuscripts and micro or electronically/magnetically inscribed documents, but not including the monetary value of monies and/or securities.

R. Named Windstorm

Named Windstorm is defined as the direct action of wind including wind driven rain, storm surge and resulting waves, tide or tidal water, tsunami, rapid accumulation of surface waters, or the rising (including overflow of breaking of boundaries) of lakes, reservoirs, rivers, streams or other bodies of water that has been declared by the National Weather Service to be a Hurricane, Typhoon, Tropical Cyclone or Tropical Storm.

S. Special Flood Hazard Areas (SFHA)

Flood Areas as defined by the United States Federal Emergency Management Agency.

T. Insurer

Insurance Company (refer to Participation Endorsement)

REDACTED

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Endorsement 1

Insured: San Manuel Band of Mission Indians

This Endorsement is attached to and forms a part of the above stated Contract of Insurance. Premium for this Endorsement, if any, are stated elsewhere.

SPECIAL TIME ELEMENT

This Policy insures loss sustained, actual or pending, by the Insured arising out of the occurrence of murder, suicide or rape; food or drink poisoning; vermin or pests; strike, riot or civil commotion, or defective sanitation, all while at the Insured's location, but excluding in this provision strikes by the Insured's employees, contractors or subcontractors or the like and also excluding any loss directly attributable to actual physical loss or damage caused by any of the foregoing and otherwise insured by this Policy.

ALL OTHER TERMS AND CONDITIONS REMAIN UNALTERED.

Endorsement 2

Insured: San Manuel Band of Mission Indians

This Endorsement is attached to and forms a part of the above stated Contract of Insurance. Premium for this Endorsement, if any, are stated elsewhere.

ADDITIONAL VALUATIONS

Aged Wines and Spirits Valuation

On wines or spirits not due for sale within four years from the date of physical loss, damage or destruction of same:

1. As respects stock to be included in blended products:
 - a. the cost of bottling materials unless bottled at the time of the loss;

Authentic Materials

As respects II. Valuation, the repair and replace provisions include the cost to repair, replace or reproduce the architectural features of damaged property including the cost of skilled labor and authentic materials necessary to restore such features as nearly as possible to the pre-loss condition.

Loss from Promotions or Advertising Activity

Advertising and promotional expenses which have to be incurred again as a result of the direct physical loss or damage to insured property.

Inability to Use Food or Beverage

Loss resulting from interruption of or interference with the Business directly or indirectly arising from loss or damage to food or drink provided on the Insured Premises, including by refrigeration breakdown, shall be deemed to be loss resulting from damage to property used by the Insured at the Insured Premises for the purpose of the Business.

ALL OTHER TERMS AND CONDITIONS REMAIN UNALTERED.

Endorsement 3

Insured: San Manuel Band of Mission Indians

This Endorsement is attached to and forms a part of the above stated Contract of Insurance. Premium for this Endorsement, if any, are stated elsewhere.

ELECTRONIC DATE RECOGNITION EXCLUSION (EDRE)

This policy does not cover any loss, damage, cost, claim or expense, whether preventative, remedial or otherwise, directly or indirectly arising out of or relating to:

- (a) the calculation, comparison, differentiation, sequencing or processing of data involving the date change to the year 2000, or any other date change, including leap year calculations, by any computer system, hardware, programme or software and/or any microchip, integrated circuit or similar device in computer equipment or non-computer equipment, whether the property of the Insured or not;
- (b) any change, alteration, or modification involving the date change to the year 2000, or any other date change, including leap year calculations, to any such computer system, hardware, programme or software and/or microchip, integrated circuit or similar device in computer equipment or non-computer equipment, whether the property of the Insured or not.

This clause applies regardless of any other cause or event that contributes concurrently or in any sequence to the loss, damage, cost, claim or expense.

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ALL OTHER TERMS AND CONDITIONS REMAIN UNALTERED.

Endorsement 4

Insured: San Manuel Band of Mission Indians

This Endorsement is attached to and forms a part of the above stated Contract of Insurance. Premium for this Endorsement, if any, are stated elsewhere.

MICROORGANISM EXCLUSION

Mold, Mildew or Fungus

1. Except as set forth in paragraph Clause 2 below, this Policy does not insure any loss, damage, claim, cost, expense or other sum directly or indirectly arising out of or relating to:

mold, mildew or fungus

This exclusion applies regardless whether there is (a) any physical loss, damage or destruction of property insured; (b) any insured peril or cause, whether or not contributing concurrently or in any sequence; (c) any loss of use, occupancy, or functionality; or (d) any action required, including but not limited to repair replacement, removal, cleanup, abatement, disposal, relocation, or steps taken to address medical or legal concerns.

2. Notwithstanding the foregoing, this Policy insures physical loss, damage or destruction of property insured by mold, mildew or fungus when directly caused by a Listed Peril occurring during the Policy Period.

Listed Perils

Fire; lightning; explosion; windstorm or hail; smoke; direct impact of vehicle, aircraft or vessel; strike, riot or civil commotion; vandalism or malicious mischief; leakage or accidental discharge of fire protection equipment; collapse; falling objects; weight of snow, ice or sleet; theft, sudden and accidental discharge leakage, backup or overflow of liquids or molten material from confinement within piping, plumbing systems, tanks, equipment or other containment located at the insured "location"; "Earthquake"; "Flood."

This coverage is subject to all the limitations in this Policy and, in addition, to each of the following specific limitations:

- a. The property must otherwise be insured under this Policy for physical loss, damage or destruction by the Listed Peril.
- b. The Insured must report to the Insurer the existence and cost of the physical loss, damage or destruction by mold, mildew or fungus as soon as practicable, but no later than twelve (12) months after the Listed Peril first caused physical loss, damage or destruction of insured property during the Policy period. This Policy does not insure any physical loss, damage or destruction by mold, mildew or fungus first reported to the Insurer after that twelve (12) month period.

ALL OTHER TERMS AND CONDITIONS REMAIN UNALTERED.

Endorsement 5

Insured: San Manuel Band of Mission Indians

This Endorsement is attached to and forms a part of the above stated Contract of Insurance. Premium for this Endorsement, if any, are stated elsewhere.

ADDITIONAL LIMITATIONS AND CONDITIONS ENDORSEMENT (STANDARD)

THIS ENDORSEMENT CONTAINS PROVISIONS IN CLAUSES II, V AND VI THAT MAY LIMIT OR PREVENT RECOVERY UNDER THIS POLICY FOR DEBRIS REMOVAL (AS PROVIDED IN CLAUSE II) AND/OR RESULTING LOSS (AS PROVIDED IN CLAUSE V).

I. Land, Water and Air Exclusion Clause

Notwithstanding any provision to the contrary within the Policy of which this Endorsement forms part (or within any other Endorsement which forms part of this Policy), this Policy does not insure land (including but not limited to land on which the insured property is located), water or air, howsoever and wherever occurring, or any interest or right therein. The foregoing exclusion shall not apply to water which is contained in plumbing or fire fighting installations in the Assured's buildings at the time of any damage insured by this Policy insured under either Clause 8.A.3. Impounded Water or Clause 15. Decontamination and Clean Up Expense; or contained in any form of piping system, processing system or holding tank or used in the manufacturing process. Moreover, this exclusion shall not apply to the cost of reclaiming, restoring or repairing land improvements. Land improvements as described hereunder include, but are not limited to, any alteration to the natural condition of the land by grading, excavating, landscaping, earthen dikes or dams, as well as additions to land such as pavements, roadways, ponds, golf courses, or similar works.

II. Debris Removal Clause

Nothing contained in this Clause shall override any seepage and/or pollution and/or contamination exclusion or any radioactive contamination or any other exclusion applicable to this Policy. The inclusion of this Clause shall in no event increase the limit of liability of Underwriters under this Policy or any other endorsement applicable to this Policy.

Any provision within this Policy (or within any other Endorsement which forms part of this Policy) which insures debris removal is canceled and replaced by the following;

- 1) In the event of direct physical damage to property, for which Underwriters agree to pay hereunder, or which but for the application of a deductible or underlying amount they could agree to pay (hereinafter in this Clause referred to as "Damage"), this Policy also insures, subject to the limitations below and method of calculation in Clause IV of this Endorsement and to all the other terms and conditions of the Policy, expense:
 - a) which is reasonable and necessarily incurred by the Assured in the removal, from the premises of the Assured at which the Damage occurred, of debris which results from the Damage; and
 - b) of which the Assured becomes aware and advises the amount to Underwriters hereon within one year of the commencement of the Damage; provided, however, that nothing in this Clause shall insure any expense provided under Clause V of this Endorsement.

ENDORSEMENT NO. 5 (continued)

- 2) The maximum amount of expense for removal of debris (subject to the limitations of paragraph 1 above) that can be included in the method of calculation in Clause VI of this Endorsement, shall be the greater of USD25,000,000 or 25% of the amount Damage from which such expense results.

III. Seepage and/or Pollution and/or Contamination Exclusion Clause

Notwithstanding any provision to the contrary within the Policy of which this Endorsement forms part (or within any other Endorsement which forms part of this Policy), this Policy does not insure:

- 1) any loss, damage, cost or expense; or
- 2) any increase in insured loss, damage, cost or expense; or
- 3) any loss, damage, cost, expense, fine, penalty or other sum which is incurred, sustained or imposed by, or by the threat of, any judgment, order, direction, instruction or request of, or any agreement with, any court, government agency, any public, civil or military authority or any other person (and whether or not as a result of public or private litigation);

which arises from any kind of seepage or any kind of pollution and/or contamination, or threat thereof, whether or not caused by or resulting from a peril insured, or from steps or measures taken in connection with the avoidance, prevention, abatement, mitigation, remediation, clean-up or removal of such seepage or pollution and/or contamination, or threat thereof.

The term "any kind of seepage or any kind of pollution and/or contamination" as used in this Endorsement includes (but is not limited to):

- 1) seepage of, or pollution and/or contamination by, anything, including but not limited to, any material designated as a "hazardous substance" by the United States Environmental Protection Agency or as a "hazardous material" by the United States Department of Transportation, or defined as a "toxic substance" by the Canadian
- 2) Environmental Protection Act for the purposes of part II of that Act, or any substance designated or defined as toxic, dangerous, hazardous or deleterious to persons or the environment under any other law, ordinance or regulation; and
- 3) the presence, existence, or release of anything which endangers or threatens to endanger the health, safety or welfare of persons or the environment.

IV. Listed Perils Resulting from Seepage and/or Pollution and/or Contamination Clause

This Policy is amended as set forth below. All other terms and conditions of this Policy remain unchanged and continue to apply with full force and effect. Nothing contained in this Clause shall override any radioactive contamination exclusion applicable to this Policy. If any of the perils listed below results from seepage and/or pollution and/or contamination, then such resultant perils shall not be excluded solely by the foregoing Seepage and/or Pollution and/or Contamination Exclusion Clause.

Listed Perils

Fire,
Explosion.

ENDORSEMENT NO. 5 (continued)

Nothing in this Clause, however, shall extend this Policy to insure:

- 1) loss, damage, cost, expense, fine or penalty, or other sum arising from any kind of seepage or any kind of pollution and/or contamination that causes or results from a listed peril; or
- 2) loss or damage at the premises other than the premises where the listed peril took place; or
- 3) property and/or interests other than those insured by this Policy against the listed perils.

V. Limited Seepage and/or Pollution and/or Contamination Resulting from Physical Damage Caused by Listed Perils Clause

THIS CLAUSE IS VOID AND OF NO FORCE OR EFFECT UNLESS AN AMOUNT IS SPECIFIED IN PARAGRAPH 2) BELOW.

This Policy is amended as set forth below. All other terms and conditions of this Policy remain unchanged and continue to apply with full force and effect. Nothing contained in this Clause shall override any radioactive contamination exclusion or, except as set forth herein, the foregoing Seepage and/or Pollution and/or Contamination Exclusion Clause. The inclusion of this Clause shall in no event increase the limit of liability of Underwriters under this Policy or any other endorsement applicable to this Policy.

- 1) If,
 - a) any of the perils listed below is the sole, immediate and direct cause of physical damage to property insured by this Policy against such listed peril (hereinafter in this Clause referred to as "Original Damage"); and
 - b) the Original Damage is the sole, immediate and direct cause of seepage into, and/or pollution and/or contamination of property, which is:
 - i) at the same premises as the Original Damage; and
 - ii) insured by this Policy against the listed peril causing the Original Damage; and
 - c) said property is damaged thereby (hereinafter in this Clause referred to as "Resulting Damage");

then this Policy, subject to the following additional terms and limitations and the method of calculation in Clause VI of this Endorsement, also insures:

- d) the Resulting Damage; and
- e) the reasonable and necessary expense incurred by the Assured for debris removal and/or clean up which is:
 - i) limited to the same premises as the Original Damage; and

ENDORSEMENT NO. 5 (continued)

ii) made necessary solely by the Resulting Damage,

but which shall in no event include any expense of clean up or removal of land, water or air,

(which Resulting Damage and expense of debris removal and/or clean up, hereinafter in this Clause are referred to as "Resulting Loss");

provided, however, that this Policy only insures the Resulting Loss where:

- f) Underwriters have agreed to pay for the Original Damage or, but for the operation of a deductible or underlying amount, would have agreed to pay for the Original Damage; and
- g) within one year of the commencement of the listed peril which caused the Original Damage, the Assured became aware and advised Underwriters of the amount of:
 - i) the Resulting Loss; and
 - ii) any other interest to be claimed under this Policy as a result of the Resulting Damage, whether physical damage, business interruption, extra expense or otherwise.

Listed Perils

Fire, Lightning, Explosion, Named Windstorm, Earthquake Shock, Flood, Hail, Direct Impact of Vehicle, Aircraft or Vessel, Riot or Civil Commotion, Vandalism or Malicious Mischief, or Accidental Discharge of Fire Protection Equipment.

Nothing in this Clause, however, shall extend this Policy to cover any condition that existed prior to the Original Damage nor to insured any loss, damage, cost, expense, fine, penalty, or other sum which is incurred, sustained or imposed by, or by the threat of, any judgment, order, direction, instruction or request of, or any agreement with, any court, government agency, any public, civil or military authority or any other person (and whether or not as a result of public or private litigation) in connection with any kind of seepage or any kind of pollution and/or contamination from any cause.

- 2) The maximum amount for any Resulting Loss and any other interest claimed under this Policy as a result of the Resulting Damage, whether physical damage, business interruption, extra expense or otherwise, that can be included in the method of calculation in Clause VI of this Endorsement is USD 2,500,000.

VI. Method of Calculation

In calculating the amount, if any, payable under this Policy for a claim including expense of debris removal (as provided for and limited in Clause II of this Endorsement) and/or Resulting Loss (as provided for and limited in Clause V of this Endorsement), the amount of such expense of debris removal and/or such Resulting Loss shall be added to:

- a) the amount of the Damage (as defined in Clause II) or the amount of the Original Damage (as defined in Clause V); and

ENDORSEMENT NO. 5 (continued)

- b) all other amounts, if any, insured under this Policy as a result of the same occurrence that Underwriters hereon agree to pay or, but for the application of a deductible or underlying amount, they could agreed to pay;

then the resulting sum shall be the amount to which first all deductibles and then any underlying amounts to which this Policy is subject shall be applied and the balance, if any, shall be the amount payable, subject to all other provisions of this Policy and to the applicable limit(s), sub-limits(s) and aggregate limit(s).

ALL OTHER TERMS AND CONDITIONS REMAIN UNALTERED.

Endorsement 6

Insured: San Manuel Band of Mission Indians

This Endorsement is attached to and forms a part of the above stated Contract of Insurance. Premium for this Endorsement, if any, are stated elsewhere.

ASBESTOS ENDORSEMENT

A. This Policy only insures asbestos physically incorporated in an insured building or structure, and then only that part of the asbestos which has been physically damaged during the period of insurance by one of these Listed Perils:

Fire; Explosion; Lightning; Windstorm; Hail, Direct Impact of Vehicle, Aircraft or Vessel; Riot or Civil Commotion, Vandalism or Malicious Mischief; Accidental Discharge of Fire Protective Equipment; Named Windstorm; Earthquake Shock; and Flood.

This coverage is subject to each of the following specific limitations:

1. The said building or structure must be insured under this Policy for damage by that Listed Peril.
 2. The listed Peril must be the immediate, sole cause of the damage of the asbestos.
 3. The Assured must report to Underwriters the existence and cost of the damage as soon as practicable after the Listed Peril first damaged the asbestos. However, this Policy does not insure any such damage first reported to the Underwriters more than 12 (twelve) months after the expiration, or termination, of the period of insurance.
 4. Insurance under this Policy in respect of asbestos shall not include any sum relating to:
 - i) any faults in the design, manufacture or installation of the asbestos;
 - ii) asbestos not physically damaged by the Listed Peril including any governmental or regulatory authority direction or request of whatsoever nature relating to undamaged asbestos.
- B. Except as set forth in the foregoing Section A, this Policy does not insure asbestos or any sum relating thereto.

LMA5019 (Amended)

ALL OTHER TERMS AND CONDITIONS REMAIN UNALTERED.

Endorsement 7

Insured: San Manuel Band of Mission Indians

This Endorsement is attached to and forms a part of the above stated Contract of Insurance. Premium for this Endorsement, if any, are stated elsewhere.

ELECTRONIC DATA ENDORSEMENT A

1. Electronic Data Exclusion

Notwithstanding any provision to the contrary within the Policy or any endorsement thereto, it is understood and agreed as follows:

- a) This Policy does not insure loss, damage, destruction, distortion, erasure, corruption or alteration of ELECTRONIC DATA from any cause whatsoever (including but not limited to COMPUTER VIRUS) or loss of use, reduction in functionality, cost, expense of whatsoever nature resulting therefrom, regardless of any other cause or event contributing concurrently or in any other sequence to the loss.

ELECTRONIC DATA means facts, concepts and information converted to a form useable for communications, interpretation or processing by electronic and electromechanical data processing or electronically controlled equipment and includes programmes, software and other coded instructions for the processing and manipulation of data or the direction and manipulation of such equipment.

COMPUTER VIRUS means a set of corrupting, harmful or otherwise unauthorized instructions or code including a set of maliciously introduced unauthorized instructions or code, programmatic or otherwise, that propagate themselves through a computer system or network of whatsoever nature. COMPUTER VIRUS includes but is not limited to 'Trojan Horses,' 'worms' and 'time or logic bombs.'

- b) However, in the event that a peril listed below results from any of the matters described in paragraph a) above, this Policy, subject to all its terms, conditions and exclusions, will cover physical damage occurring during the Policy period to property insured by this Policy directly caused by such listed peril.

Listed Perils:

Fire
Explosion

2. Electronic Data Processing

Notwithstanding any provision to the contrary within the Policy or any endorsement thereto, it is understood and agreed as follows:

Should electronic data processing media insured by this Policy suffer physical loss or damage insured by this Policy, then the basis of valuation shall be the cost to repair, replace or restore such media to the condition that existed immediately prior to such loss or damage, including the cost of reproducing any ELECTRONIC DATA contained

thereon, providing such media is repaired, replaced or restored. Such cost of reproduction shall include all reasonable and necessary amounts, not to exceed USD 10,000,000, any one loss, incurred by the Assured in recreating, gathering and assembling such ELECTRONIC DATA. If the media is not repaired, replaced or restored the basis of valuation shall be the cost of the blank media. However this Policy does not insure any amount pertaining to the value of such ELECTRONIC DATA to the Assured or any other party, even if such ELECTRONIC DATA cannot be recreated, gathered or assembled.

NMA2914

ALL OTHER TERMS AND CONDITIONS REMAIN UNALTERED.

Endorsement 8

Insured: San Manuel Band of Mission Indians

This Endorsement is attached to and forms a part of the above stated Contract of Insurance. Premium for this Endorsement, if any, are stated elsewhere.

Priority of Payments

Any recoveries made under this Policy shall first apply to loss or damage not insured against by the excess Policy(ies). Upon exhaustion of this Policy's Limit, the excess Policy(ies) shall step down and be liable for the loss in excess of the amount attributed to this policy as respects loss or damage insured thereunder subject to the excess Policy(ies)limits.

STEP-DOWN / DROP-DOWN WORDING (applicable to Excess Layers only)

The provisions of this clause shall not apply until the amount of loss, damage or expense arising out of any one occurrence exceeds USD75,000,000 plus the applicable deductibles and waiting periods of the primary policy to which this policy is excess.

It is understood that the underlying policy to which this policy is excess has a Policy limit of USD\$75,000,000. It is also understood that within the primary and underlying policy limits, certain coverages are subject to various sub-limits.

It is further understood that the primary and underlying policies to which this policy is excess contain the following Priority of Payments Clause:

Any recoveries made under this policy shall first apply to loss or damage not insured by the excess policy(ies). Upon exhaustion of this policy's limit, the excess policy(ies) apply in excess of the amount attributed to this policy as respects loss or damage insured thereunder subject to the excess policy(ies) limits.

There is no recovery under this excess policy as respects those coverages which are sublimited within the primary and/or underlying policies to amounts less than USD\$75,000,000 nor for those coverages excluded in this excess policy; however, the Insurers to this excess policy recognize that the primary and underlying Policy Limits can be eroded or exhausted, wholly or partially, by application of said sublimits or by coverages excluded hereunder but covered by the primary and/or underlying policies. After application of the sublimits and priority of payments provision of the primary and underlying policies, this excess policy shall apply in excess of the primary and underlying policy limits for those coverages which are not sublimited in the primary or underlying policies nor excluded in this excess policy, subject to the limit of this policy.

ALL OTHER TERMS AND CONDITIONS REMAIN UNALTERED.

Endorsement 9

Insured: San Manuel Band of Mission Indians

This Endorsement is attached to and forms a part of the above stated Contract of Insurance. Premium for this Endorsement, if any, are stated elsewhere.

BIOLOGICAL OR CHEMICAL MATERIALS EXCLUSION

It is agreed that this Insurance excludes loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with the actual or threatened malicious use of pathogenic or poisonous biological or chemical materials regardless of any other cause or event contributing concurrently or in any other sequence thereto.

NMA2962

ALL OTHER TERMS AND CONDITIONS REMAIN UNALTERED.

Endorsement 10

Insured: San Manuel Band of Mission Indians

This Endorsement is attached to and forms a part of the above stated Policy. Premium for this Endorsement, if any, are stated elsewhere.

WAR AND TERRORISM EXCLUSION ENDORSEMENT

Notwithstanding any provision to the contrary within this insurance or any endorsement thereto it is agreed that this insurance excludes loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any of the following regardless of any other cause or event contributing concurrently or in any other sequence to the loss;

1. war, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power, or
2. any act of terrorism.

For the purpose of this endorsement an act of terrorism means an act, including but not limited to the use of force or violence and/or the threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organisation(s) or government(s), committed for political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public, or any section of the public, in fear.

This endorsement also excludes loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to 1 and/or 2 above.

If the Insurers allege that by reason of this exclusion, any loss, damage, cost or expense is not covered by this insurance the burden of proving the contrary shall be upon the Insured.

In the event any portion of this endorsement is found to be invalid or unenforceable, the remainder shall remain in full force and effect.

NMA2918

SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
CIVIL DIVISION

RECEIVED
MAR 09 2021

Endorsement 11

Insured: San Manuel Band of Mission Indians

This Endorsement is attached to and forms a part of the above stated Policy. Premium for this Endorsement, if any, are stated elsewhere.

**U.S. TERRORISM RISK INSURANCE ACT OF 2002 AS AMENDED
NOT PURCHASED CLAUSE**

This Clause is issued in accordance with the terms and conditions of the "U.S. Terrorism Risk Insurance Act of 2002" as amended as summarized in the disclosure notice.

It is hereby noted that the Underwriters have made available coverage for "insured losses" directly resulting from an "act of terrorism" as defined in the "U.S. Terrorism Risk Insurance Act of 2002", as amended ("TRIA") and the Insured has declined or not confirmed to purchase this coverage.

This Insurance therefore affords no coverage for losses directly resulting from any "act of terrorism" as defined in TRIA except to the extent, if any, otherwise provided by this policy.

All other terms, conditions, insured coverage and exclusions of this Insurance including applicable limits and deductibles remain unchanged and apply in full force and effect to the coverage provided by this Insurance.

**LMA5092
21/12/2007
Form approved by Lloyd's Market Association**

Endorsement 12

Insured: San Manuel Band of Mission Indians

PARTICIPATION ENDORSEMENT

In consideration of premium paid as indicated below, this Company's liability for loss under this policy shall be:

Participation: REDACTED

Premium Paid: REDACTED

The following conditions apply:

Certified and Non-Certified Terrorism coverage is excluded.

All other terms and conditions of this policy remain unchanged.

REDACTED
/ / a .

Endorsement 13

Insured: San Manuel Band of Mission Indians

This Endorsement is attached to and forms a part of the above stated Policy. Premium for this Endorsement, if any, are stated elsewhere.

Joint Loss Agreement

In the event of damage to or destruction of property at a location designated in this "Fire" policy and also designated in an "Earthquake" insurance policy and there is disagreement between the insurers with respect to whether such damage or destruction was caused by a peril insured against by this policy or by a peril insured against by such "Earthquake" insurance policy, or the extent of participation of this policy and of such "Earthquake" insurance policy in a loss which is insured against, partially or wholly, by any one or all of said policies, this Insurer shall, upon written request of the Insured, pay to the Insured one-half of the amount of the loss which is in disagreement, but in no event more than this Insurer would have paid if there had been no "Earthquake" insurance policy in effect, subject to the following conditions:

1. The amount of the loss which is in disagreement is limited to the minimum amount remaining payable under either this policy or such "Earthquake" policy(ies) after making provision for any undisputed claims payable under said policies and after the amount of the loss is agreed upon by the Insured and the Insurers;
2. The "Earthquake" and "Fire" insurer(s) shall simultaneously pay to the Insured one-half of said amount which is in disagreement;
3. The payments by the insurers hereunder and acceptance of same by the Insured signify the agreement of the insurers to submit to and proceed with arbitration within 90 days of such payments. The arbitrators shall be three in number, one of whom shall be appointed by this policy's insurer and one of whom shall be appointed by the "Earthquake" insurer(s) and the third appointed by consent of the other two arbitrators, and the decision by the arbitration shall be binding on the insurers and that judgment upon such award may be entered in any court of competent jurisdiction.

Endorsement 14

Insured: San Manuel Band of Mission Indians

In consideration of the premium charged, it is understood and agreed that California Earthquake coverage is excluded at the following San Manuel Indian Bingo and Casino, San Manuel Band of Mission Indians locations:

<u>Street</u>	<u>City</u>	<u>State</u>	<u>Zip</u>
422 First St SE	Washington	DC	20006
1127 15th Street, Penthouse Condos (18 units)	Sacramento	CA	95814
AHS - Bungalows B1 through B11	San Bernardino	CA	92404
5797 N Victoria	Highland	CA	92346
1482 Enterprise Drive (AKA Norton 466)	San Bernardino	CA	92408
27961 Highland Ave Suite B	Highland	CA	92346
Norton E2B - 3277 E 3RD Street	San Bernardino	CA	92408
1127 15th Street, Unit P304	Sacramento	CA	95814
AHS - Maintenance Shop & Shed Structure	San Bernardino	CA	92404
AHS - Hill Auditorium	San Bernardino	CA	92404
3735 Hemlock	San Bernardino	CA	92404
3713 Hemlock Drive	San Bernardino	CA	92402
Communication Tower - Reservation	Highland	CA	92346
3716 Hemlock Drive	San Bernardino	CA	92404
3284 Victoria Avenue	San Manuel Reservation	CA	92345
AHS - Office	San Bernardino	CA	92404
3083 Pepper Street	Highland	CA	92346
AHS - Village Dormitories	San Bernardino	CA	92404
3742 Hemlock Drive	San Bernardino	CA	92404
2405 Shasta Drive	San Bernardino	CA	92404
3759 Hemlock Drive	San Bernardino	CA	92404
2814 Piedmont	Highland	CA	92345

26248 Glenmare Street	Highland	CA	92346
3756 Hemlock Drive	San Bernardino	CA	92494
AHS - Recreation / Water facilities	San Bernardino	CA	92404
3754 Hemlock Drive	San Bernardino	CA	92404
3121 Bangor Ave	San Bernardino	CA	92346
3074 Shauna Drive	Highland	CA	92346
3164 Yuma Drive	Highland	CA	92346
3153 Yuma Drive	Highland	CA	92346
3161 Cactus Court	Highland	CA	92346
Rezek 5 - 3604 Juniper Drive	San Bernardino	CA	92404
3144 Carriage Hills Ct.	Highland	CA	92446
3151 N. Carriage Hills Ct.	Highland	CA	92346
5676 Blythe Avenue	Highland	CA	92346
3095 Indian Canyon Court	San Bernardino	CA	92346
3459 Holly Circle Drive	Highland	CA	92346
26281 Edgemont Drive	Highland	CA	92346
3024 Shauna Drive	Highland	CA	92346
5675 Blythe Avenue	Highland	CA	92346
3434 Willow Drive	San Bernardino	CA	92404
3628 Palm Crest Drive	Highland	CA	92346
3165 Cactus	Highland	CA	92346
3167 Cactus Court	Highland	CA	92346
3142 Cactus Circle	Highland	CA	92346
2912 Higland Avenue	Highland	CA	92346
Motocross Track Rec Structure	Highland	CA	92346
5686 Blythe Avenue	Highland	CA	92346
2714 Del Norte Circle	Highland	CA	92346

2845 Piedmont Drive	Highland	CA	92346
2942 Bangor Avenue	Highland	CA	92346
2779 Mirada Road	Highland	CA	92346
3153 Cactus Circle	Highland	CA	92346
2824 Piedmont	Highland	CA	92345
2804 Piedmont	Highland	CA	92345
3171 Cactus Circle	Highland	CA	92345
3177 Cactus Circle	Highland	CA	92345
5665 Blythe Avenue	Highland	CA	92346
5635 Blythe Avenue	Highland	CA	92346
2995 Los Feliz Drive	Highland	CA	92346
2735 Lomita Place	Highland	CA	92346
3173 Cactus Circle	Highland	CA	92345
3175 Cactus Circle	Highland	CA	92345
3179 Cactus Circle	Highland	CA	92345
3150 Cactus Circle	Highland	CA	92346
3134 Yuma Drive	Highland	CA	92346
3148 Yuma Drive	Highland	CA	92346
2261 East Foothill Drive	San Bernardino	CA	92404
3034 Central Avenue	Highland	CA	92346
3105 Cactus Circle	Highland	CA	92346
3133 Cactus Circle	Highland	CA	92346
5695 Belvedere Avenue	Highland	CA	92346
26176 Edgemont Drive	Highland	CA	92346
3157 Cactus Circle	Highland	CA	92346
3037 Piedmont	Highland	CA	92346
3154 Lynwood Drive	Highland	CA	92346

3043 Pepper Street	Highland	CA	92346
3120 Yuma Drive	Highland	CA	92346
5675 Belvedere Avenue	Highland	CA	92346
5656 Blythe Avenue	Highland	CA	92346
2930 Los Feliz Drive	Highland	CA	92346
3065 Shauna Drive	Highland	CA	92346
2894 Bangor Avenue	Highland	CA	92346
2765 Mirada Road	Highland	CA	92346
3112 Yuma	Highland	CA	92346
3143 Yuma	Highland	CA	92346
3156 Yuma Drive	Highland	CA	92347
3163 Cactus Circle	Highland	CA	92346
3142 Yuma Drive	Highland	CA	92346
2704 Del Norte Circle	Highland	CA	92346
2883 Havasu Court	Highland	CA	92346
3113 Yuma	Highland	CA	92346
3005 Pepper Street	Highland	CA	92346
2724 Del Norte Circle	Highland	CA	92346
2865 Piedmont Drive	Highland	CA	92346
2915 Havasu Court	Highland	CA	92346
2922 Havasu Court	Highland	CA	92346
2882 Havasu Court	Highland	CA	92346
5685 Blythe Avenue	Highland	CA	92346
3064 Central Avenue	Highland	CA	92346
26278 Glenmare Street	Highland	CA	92345
26268 Glenmare Street	Highland	CA	92346
3184 Cactus Circle	Highland	CA	92346

3145 Cactus Circle	Highland	CA	92346
2669 Del Norte Place	Highland	CA	92346
3174 Lynwood Drive	Highland	CA	92346
3194 Rockford Ave	Highland	CA	92346
2704 Val Mar Circle	Highland	CA	92346
AHS - Pool Structure	San Bernardino	CA	92404
2744 Val Mar Circle	Highland	CA	92346
2715 Val Mar Circle	Highland	CA	92346
2715 Del Norte Circle	Highland	CA	92346
2735 Val Mar Circle	Highland	CA	92346
AHS - Village Auditorium	San Bernardino	CA	92404
AHS - Sierra Room	San Bernardino	CA	92404
AHS - Misc Structure	San Bernardino	CA	92404
AHS - Spring House	San Bernardino	CA	92404
AHS - Creekside lodge	San Bernardino	CA	92404
AHS - Fire Training	San Bernardino	CA	92404
AHS - Church	San Bernardino	CA	92404