

Case No. _____

In the Supreme Court of Nevada

STARR SURPLUS LINES INSURANCE CO.,
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT COURT
of the State of Nevada, in and for the
County of Clark; and THE HONORABLE
MARK DENTON, District Judge,
Respondents,

and

JGB VEGAS RETAIL LESSEE, LLC,
Real Party in Interest.

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District Court Case No.
A-20-816628-B

**PETITIONER'S APPENDIX
VOLUME 4
PAGES 509-738**

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CERTIFICATE OF SERVICE

Pursuant to NRAP 25, I hereby certify that on this 8th day of July 2022, the foregoing **APPENDIX IN SUPPORT OF PETITION FOR WRIT OF MANDAMUS, VOLS. I THROUGH VIII (excluding those volumes containing sealed material)**, were e-submitted to the Clerk of the Supreme Court of the State of Nevada and services were executed to the addresses shown below in the manner indicated:

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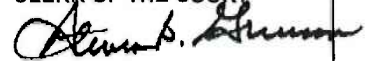
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16 **DISTRICT COURT**
17 **CLARK COUNTY, NEVADA**

18 **JGB VEGAS RETAIL LESSEE, LLC,**
19 **Plaintiff,**

20 **vs.**

21 **STARR SURPLUS LINES INSURANCE**
22 **COMPANY,**
23 **Defendant.**

Case No.: A-20-816628-B
Dept. No.: XIII

**PLAINTIFF JGB VEGAS RETAIL
LESSEE, LLC'S MOTION FOR
ORDER TO SEAL: 1) PLAINTIFF JGB
VEGAS RETAIL LESSEE, LLC'S
OPPOSITION TO DEFENDANT
STARR SURPLUS LINES
INSURANCE COMPANY'S MOTION
FOR SUMMARY JUDGMENT; AND
2) CERTAIN EXHIBITS**

HEARING NOT REQUESTED

26 Plaintiff JGB Vegas Retail Lessee, LLC ("JGB"), by and through its counsel of record,
27 hereby moves this Court for an order permitting Plaintiff JGB to file under seal the following
28 documents: Plaintiff JGB's Opposition to Defendant Starr Surplus Lines Insurance Company's

1 Motion For Summary Judgment (the “Opposition”); and 2) certain exhibits cited in the Opposition
2 and submitted in the Appendix of Exhibits. This motion is based on the accompanying
3 Memorandum of Points and Authorities, the papers and pleadings on file, and any oral argument
4 that this Court may consider.

5 **MEMORANDUM OF POINTS AND AUTHORITIES**

6 Plaintiff JGB brings a motion in compliance with the Nevada Rules for Sealing and
7 Redacting Court Records (“SRCR”) and the parties’ Stipulated Protective Order seeking an order
8 from the Court to file under seal the following documents: Plaintiff JGB’s Opposition to Defendant
9 Starr Surplus Lines Insurance Company’s Motion For Summary Judgment (the “Opposition”); and
10 2) certain exhibits cited in the Opposition and submitted in the Appendix of Exhibits. The
11 aforementioned documents contain nonpublic, sensitive information, and certain documents are
12 designated “CONFIDENTIAL” under the parties’ Stipulated Protective Order that are to be filed
13 under seal. Therefore, JGB’s Opposition and certain exhibits should be treated as confidential in
14 accordance with the SRCR.

15 **I. LEGAL STANDARD**

16 “Any person may request that the court seal or redact court records for a case that is subject
17 to these rules by filing a written motion . . .” SRCR 3(1). SRCR 3(4) provides:

18 The court may order the court files and records, or any part thereof, in a civil
19 action to be sealed or redacted, provided the court makes and enters written
20 findings that the specific sealing or redaction is justified by identified compelling
21 privacy or safety interests that outweigh the public interest in access to the court
22 record.

21 SRCR 3(4) enumerates specific instances in which privacy interests outweigh the public interest in
22 open court records, including findings that (1) “[t]he sealing or redaction furthers . . . a protective
23 order entered under NRCP 26(c),” SRCR 3(4)(b), and (2) “[t]he sealing or redaction is justified or
24 required by another identified compelling circumstance.” SRCR 3(4)(h).

25 **II. THE DOCUMENTS SHOULD BE FILED UNDER SEAL**

26 Plaintiff JGB’s Opposition and certain exhibits cited in the Opposition should be filed under
27 seal pursuant to SRCR 3(4)(b) and 3(4)(h). First, as to SRCR 3(4)(b), the documents contain
28

1 nonpublic, sensitive information. The documents constitute or are designated "CONFIDENTIAL"
2 within the meaning of the parties' Stipulated Protective Order entered in this litigation, and are
3 required to be filed under seal pursuant to the Protective Order. Second, as to SRCR 3(4)(h), all
4 parties in this litigation have privacy interests in keeping confidential documents nonpublic. Plaintiff
5 cannot identify a public interest in accessing the documents temporarily filed under seal that
6 outweighs Plaintiff's, as well as the parties', privacy interests. Filing said documents under seal
7 satisfies SRCR 3(4)(h).

8 **III. CONCLUSION**

9 For the foregoing reasons, Plaintiff JGB respectfully requests that this Court enter an order
10 permitting it to file JGB's Opposition and certain exhibits under seal. A proposed order is attached
11 to this motion as **Exhibit 1**.

12 DATED: April 1, 2022.

**WOLF, RIFKIN, SHAPIRO,
SCHULMAN & RABKIN, LLP**

13
14 By: /s/ Royi Moas, Esq.

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22 *LLC*

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on this 1st day of April, 2022, a true and correct copy of **PLAINTIFF**
3 **JGB VEGAS RETAIL LESSEE, LLC'S MOTION FOR ORDER TO SEAL: 1) PLAINTIFF**
4 **JGB VEGAS RETAIL LESSEE, LLC'S OPPOSITION TO DEFENDANT STARR**
5 **SURPLUS LINES INSURANCE COMPANY'S MOTION FOR SUMMARY JUDGMENT;**
6 **AND 2) CERTAIN EXHIBITS** was served by electronically filing with the Clerk of the Court
7 using the Odyssey eFileNV system and serving all parties with an email-address on record, pursuant
8 to Administrative Order 14-2 and Rule 9 of the N.E.F.C.R.

9
10 By /s/ Melissa Shield
11 Melissa Shield, an Employee of
12 WOLF, RIFKIN, SHAPIRO, SCHULMAN &
13 RABKIN, LLP
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EXHIBIT 1

EXHIBIT 1

1 **ORD**

2 **DISTRICT COURT**

3 **CLARK COUNTY, NEVADA**

4 **JGB VEGAS RETAIL LESSEE, LLC,**

5 **Plaintiff,**

6 **vs.**

7 **STARR SURPLUS LINES INSURANCE**
8 **COMPANY,**

9 **Defendant.**

Case No.: A-20-816628-B

Dept. No.: XIII

**[PROPOSED] ORDER GRANTING
PLAINTIFF'S MOTION TO SEAL**

10 WHEREAS, Plaintiff JGB Vegas Retail Lessee, LLC ("JGB") has moved under the Nevada
11 Rules for Sealing and Redacting Court Records ("SRCR") for an order permitting Plaintiff JGB to
12 file under seal the following documents: 1) Plaintiff JGB's Opposition to Defendant Starr Surplus
13 Lines Insurance Company's Motion For Summary Judgment (the "Opposition"); and 2) certain
14 exhibits cited in the Opposition and submitted in the Appendix of Exhibits.;

15 NOW, THEREFORE, having considered Plaintiff's JGB's Motion to Seal, the files and
16 records in this Action, and for good cause shown, IT IS HEREBY ORDERED that:

- 17 1. Plaintiff JGB's Motion to Seal is GRANTED;
- 18 2. The documents temporarily filed under seal shall be sealed pursuant to SRCR 3(4)(b)
19 and SRCR 3(4)(h);
- 20 3. The sealing of documents is justified pursuant to SRCR 3(4)(b) in that sealing the
21 documents furthers a protective order entered under NRCR 26(c); and
- 22 4. The sealing of the documents is further justified by a compelling circumstance
23 pursuant to SRCR 3(4)(h) in that the documents contain sensitive information that
24 Plaintiff deems confidential, and Plaintiff's interests in sealing the documents
25 outweigh the public interests in having access to such confidential information at this
26 stage in the litigation.

1 Submitted by:

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3 **SCHULMAN & RABKIN, LLP**

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16 **DISTRICT COURT**

17 **CLARK COUNTY, NEVADA**

18 **JGB VEGAS RETAIL LESSEE, LLC,**

19 **Plaintiff,**

20 **vs.**

21 **STARR SURPLUS LINES INSURANCE**
22 **COMPANY,**

23 **Defendant.**

Case No.: A-20-816628-B

Dept. No.: XIII

**PLAINTIFF JGB VEGAS RETAIL
LESSEE, LLC'S OPPOSITION TO
STARR SURPLUS LINES
INSURANCE COMPANY'S MOTION
FOR SUMMARY JUDGMENT**

Hearing: April 18, 2022
9:00 a.m.

1 Plaintiff JGB Vegas Retail Lessee, LLC ("JGB") by and through its counsel of record hereby
2 respectfully submits this Opposition to Defendant Starr Surplus Lines Insurance Company's
3 ("Starr") Motion for Summary Judgment ("Motion" or "Mot.").

4 **I. INTRODUCTION**

5 Since March 2020, JGB's business has been devastated by the rapidly spreading and novel
6 coronavirus and resulting COVID-19 disease, which has invaded JGB's Grand Bazaar Shops (the
7 "Shops"), physically attaching to surfaces and altering the ambient air therein, and transforming this
8 once high-occupancy tourist destination of approximately 38 shops and restaurants located by
9 Bally's Casino on Las Vegas's fabled Strip, into an impaired and inherently dangerous property.
10 The presence and spread of COVID-19 resulted in individuals, businesses, and local, state, and
11 federal governments taking necessary and extreme measures to protect life *and property* from an
12 infectious virus, measures and consequences that many if not all are still reeling from today.

14 Thus, JGB turned to its property and business interruption insurer, Starr, for the help it
15 needed for the significant business losses it suffered at the Shops. And almost as rapidly as COVID-
16 19 spread, the insurance industry, Starr included, determined it was not going to be responsible for
17 assisting its policyholders, JGB included, during this difficult time. When it denied coverage, Starr
18 did not care that its denial for losses from this tangible, noxious, and resilient peril lacked a basis
19 under applicable law, nor that its "all risks" Policy had no exclusion for the same. Not even this
20 Court's prior statements and rulings that rejected Starr's grounds for denial matter to Starr. Nothing
21 matters to Starr except keeping the necessary funds away from its insured JGB at all costs, even if
22 it must ignore every relevant fact on summary judgment to do so.

24 Starr primarily argues that the Court must hold, as a matter of law, that neither SARS-CoV-
25 2 nor COVID-19 on or around the Shops' premises can ever constitute "physical loss or damage"
26 to property, triggering coverage—despite those terms not being defined—because Nevada law
27 requires "demonstrable" or "structural" damage or alteration to property, and COVID-19 is invisible
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1 to the naked eye. But no Nevada state court at any level holds that, nor has any such court spoken
2 to what specifically constitutes “physical loss or damage” under Nevada law. Rather Nevada state
3 courts, including this Court, have stated that COVID-19 could constitute “physical loss or damage”
4 where the presence of the virus is impairing and altering property, making it unsafe and
5 uninhabitable. In contrast, Starr’s citation of “Nevada law” is primarily to a single Nevada federal
6 trial court that misconstrues previous Nevada precedent. And when Starr implores the Court to
7 follow California and other jurisdictions that have dismissed COVID-19 cases, it ignores that, unlike
8 here, the vast majority of those cases did not allege COVID-19 on the premises and/or involved
9 policies that contained industry-drafted exclusions designed to apply to loss caused by viral diseases.
10 Numerous courts (including the California Court of Appeals) have stated that where the insured can
11 show COVID-19 (the disease caused by microscopic (but dangerous) viral particles) was present,
12 then physical loss or damage can be shown to trigger coverage for business interruption losses.
13
14

15 These facts are exactly what JGB has shown in discovery—but the Court will find none of
16 them in Starr’s brief because they shatter the pretext that Starr needs to win as a matter of law. In
17 an effort to tie JGB’s losses *solely* to Governor Sisolak’s orders closing non-essential businesses,
18 Starr ignores that Shops began shuttering before the orders and, because COVID-19 compromised
19 access to and safety at the Shops, remained closed even after restrictions were lifted. Starr further
20 ignores that JGB has confirmed cases of COVID-19-infected persons on its premises. Moreover,
21 JGB’s fact witnesses testified specifically as to the presence of COVID-19 at the Shops, as well as
22 the physical remediation measures taken to address it, and JGB’s resulting damages. And unrebutted
23 expert scientific testimony has established not only that SARS-CoV-2 is a physical, noxious virus
24 that remains infectious in the air and on property for days, but also that COVID-19 was constantly
25 being reintroduced in and at the Shops, making it resilient to any efforts to permanently extinguish
26 without persistent alterations. All of these material facts are ignored by Starr because they doom its
27
28

1 Motion and differentiate JGB's case from those cases that have been dismissed on the pleadings.

2 Starr's tact of ignoring facts that contradict its position is no different when it addresses the
3 Policy's available time element coverage extensions, such as civil authority and ingress/egress
4 coverages. Starr mischaracterizes not just the coverages—*e.g.*, as requiring all access to the property
5 to be physically prohibited to all when they do not—but also the facts that trigger such coverage,
6 including JGB's witnesses' testimony. And the same is true for JGB's bad faith claims where Starr
7 omits that it misrepresented the coverage terms and the plain text of the governmental orders in
8 arriving at its industry-driven decision to deny JGB coverage, and it glosses over that it *can* be liable
9 to JGB under Nevada law solely for its disingenuous and delayed "investigation" of JGB's claim.
10 But most jarring is Starr's argument that its boilerplate Policy exclusion for environmental and
11 industrial pollution and contamination applies to COVID-19 solely because it uses the word "virus,"
12 despite the Court twice rejecting Starr's argument, and holding that the exclusion does not apply.
13

14
15 Indeed, none of these events matter to Starr's bid to the Court to dogmatically follow other,
16 non-binding cases that involve different procedures, facts, and policy language to avoid coverage.
17 Under this case's specific facts, law, and policy language, however, Starr has not met its burden of
18 showing that no material facts are in dispute, and its Motion should be denied.

19 **II. COUNTER-STATEMENT OF UNDISPUTED MATERIAL FACTS**

20 **A. THE POLICY PROVIDES BROAD PROPERTY AND BUSINESS**
21 **INTERRUPTION COVERAGE TO JGB**

22 For the policy period December 19, 2019 to December 19, 2020, Starr sold to JGB broad
23 property and time element "all risks" coverage, meaning protection against all risks to property
24 unless specifically excluded. *See* Ex. 1¹ (Policy) at 5. The Policy broadly "covers the property
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26
27 ¹ All "Ex." references refer to exhibits attached to the April 1, 2022 Declaration of Marc T. Ladd
28 and are included within the appendix filed herewith. Ex. pin cites refer to pages bearing the prefix
"OPP ____." All "Mot. Ex." references refer to exhibits attached to Starr's Motion.

1 insured hereunder against all risks of direct physical loss or damage to covered property while at
2 INSURED LOCATIONS [*i.e.*, the Shops] occurring during the Term of this POLICY, except as
3 hereinafter excluded or limited.” *Id.* at 17 § 1. Significantly, the Policy includes “TIME ELEMENT”
4 coverage, which further protects against “the actual loss sustained due to the necessary interruption
5 of [JGB’s] NORMAL² business operations including but not limited to, loss described in the
6 BUSINESS INTERRUPTION SECTION.” *Id.* at 32 § 13(Z). Under this coverage, Starr must pay
7 for all “[l]oss directly resulting from necessary interruption of [JGB’s] NORMAL business
8 operations caused by direct physical loss or damage to real or personal property covered herein”
9 *Id.* at 34 § 1. This Time Element coverage guarantees that Starr will pay for JGB’s “[a]ctual loss
10 sustained ... but not exceeding the reduction in GROSS EARNINGS less charges and expenses
11 which do not necessarily continue during the interruption of business,” (*id.* at 34 § 2), and “GROSS
12 EARNINGS” includes, among other things, “earnings derived from operation of the business,”
13 including rental and other business income proceeds. *Id.* at 35 § 5(3). While both the property and
14 general business interruption coverages require there be “physical loss or damage” to apply, the
15 Policy does not define any of those terms.

16
17
18 Starr also agreed to provide additional TIME ELEMENT coverage extensions that apply
19 where access to JGB’s property has been limited or interfered with. First, the Policy provides
20 “Interruption by Civil or Military Authority” coverage, which covers JGB “when, as a direct result
21 of damage to or destruction of property within one (1) statute mile of the premises described under
22 the property section by the peril(s) insured against, access to such described premises is specifically
23 prohibited by order of civil or military authority.” Ex. 1 at 35 § 7. Second, the “Ingress/Egress”
24 coverage insures JGB’s “ACTUAL LOSS SUSTAINED...starting at the time of physical
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27
28 ² “NORMAL” means “the condition that would have existed had no physical loss or damage
occurred.” Ex. 1 at 30 § 13(O).

1 damage...when as a direct result of loss or damage by a peril insured against to property of a type
2 insured against within one (1) mile of an INSURED LOCATION, ingress to or egress from the
3 premises insured is impaired,” regardless of whether JGB’s property has been damaged. *Id.* at 61.

4 JGB also is covered for “Expenses Related to Reducing Loss,” defined as “expenses
5 necessarily incurred for the purpose of reducing loss under this POLICY.” Ex. 1 at 35 § 4. The
6 Policy also covers “the reasonable and necessary EXTRA EXPENSE,³ incurred by [JGB] in order
7 to continue as nearly as practicable the NORMAL operation of [JGB’s] business following direct
8 physical loss or damage” to property. *Id.* at 55 § A. Finally, the Policy insures JGB’s “Protection
9 and Preservation of Property,” defined, in effect, as mitigation expenses. *Id.* at 23 § 9.

11 The Policy provides a limit of liability of \$33,604,400 for property damage and business
12 interruption loss that applies “per occurrence,”⁴ subject to a \$10,000 deductible. Ex. 1 at 5,
13 Declarations. Various sublimits and/or time limits apply again “per occurrence” to certain of the
14 Time Element extensions (*e.g.*, \$500,000 for Extra Expense, 14 consecutive days each for Civil
15 Authority and Ingress/Egress), but no sublimit applies to the coverage for general business
16 interruption. Finally, the Policy’s “Period of Indemnity” is not a trigger of coverage as Starr suggests
17 (Mot. at 4); rather, it sets forth the period of time during which JGB’s recovery may be measured:
18 it begins at the start of physical loss or damage by any peril and ends when the property “should be
19 repaired, rebuilt or replaced with the exercise of due diligence and dispatch.” *Id.* at 30 § 13(R).

21
22 **B. COVID-19’S PRESENCE IN LAS VEGAS, AND GOVERNOR SISOLAK’S**
23 **RESPONSE TO PROTECT PEOPLE AND PROPERTY**

24 The impact of the coronavirus, or SARS-CoV-2, and the resulting COVID-19 disease has
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26 ³ “EXTRA EXPENSE” means total operation costs over and above that which would “normally
27 have been incurred to conduct” business had no damage or destruction occurred.” Ex. 1 at 56 § G.

28 ⁴ Occurrence means “any one loss, or series of losses arising out of one event.” Ex. 1 at 70 § B(1).

1 been staggering on life and property, and particularly acute for businesses dependent on tourism and
2 foot-traffic, such as the Shops in Las Vegas, Nevada. The first reported case of COVID-19 in Clark
3 County, Nevada was on March 5, 2020.⁵ And, in early March, there were confirmed case(s) of
4 COVID-19 on the Las Vegas Strip, including at a conference attended by over 1,000 guests at the
5 Mirage casino. Ex. 3. On March 12, 2020, Nevada Governor Steve Sisolak declared a state of
6 emergency in Nevada in response to the presence of the highly infectious virus and its ability to
7 cause property loss and damage. Ex. 4 (Order⁶ issued “to save lives, protect property, and protect
8 the health and safety of persons in this state”). By March 17, confirmed cases in Clark County rose
9 to forty-two (Ex. 2 at 115), and between March 5 and May 9, 2020, there were “over 4,700 cases
10 and 250 deaths reported in Clark County, Nevada.”⁷

12 On March 17, news outlets reported Governor Sisolak’s plans to issue a stay-at-home Order
13 closing non-essential business (such as most of JGB’s tenants at the Shops) because of the presence,
14 and extreme danger, of COVID-19. This Order, which did not take effect until March 20, 2020 at
15 11:59 p.m., was issued pursuant to Nevada law permitting emergency management to “protect the
16 health and safety of persons *and property*” because of the presence of COVID-19. Mot. Ex. C at 2;
17 Mot. Ex. B (E. Siegel Dep. Tr., JGB Corporate Representative), 77:11-18 (testifying that “Governor
18 Sisolak announced a statewide closure due to the presence of COVID-19 in the market, on the strip,
19 everywhere”); *id.* 89:14-90:2 (“concern about the physical nature of it, the transmissibility of it
20 through an airborne nature [and] through surfaces”). Subsequent Orders explained that “the ability
21 of the novel coronavirus that causes COVID-19 to survive on surfaces for indeterminate periods of
22 time, renders some property unusable” and contributes to “damage . . . and property loss.” Ex. 6 at
23
24
25

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27 ⁵ Ex. 2 (Expert Witness Report of I. Burstyn, PhD and N. Goldstein, PhD) at 110 and 115.

28 ⁶ Civil authority orders impacting the Grand Bazaar Shops are referred to herein as “Orders.”

⁷ Ex. 5 (Expert Witness Report of J. Lessler, PhD) at 147-48 ¶ 12.

1 181; *see also* Ex. 7 (Dr. Lessler Dep. Tr., JGB’s epidemiologist expert), 30:18-25 (studies “have
2 recovered SARS-Co-V-2 RNA from a variety of surfaces”). Although on May 28, 2020, the
3 Governor allowed certain shuttered retail businesses to reopen no sooner than June 4, 2020, subject
4 to restrictions (Ex. 8 at 226), by June 16, 2020, normalcy had not returned; *confirmed* COVID-19
5 cases in Las Vegas rose to more than 9,000. Ex. 2 at 116.
6

7 **C. THE VIRUS THAT CAUSES COVID-19 IS A PHYSICAL, TANGIBLE, AND**
8 **NOXIOUS SUBSTANCE THAT SURVIVES IN AIR AND ON SURFACES,**
9 **AND CANNOT BE ERADICATED BY ROUTINE CLEANING ALONE**

10 Starr’s brief is silent as to the discovery in this case establishing the physical and lethal nature
11 of SARS-CoV-2, and its ability to cause high rates of unchecked and sustained COVID-19
12 transmission through surfaces and the air. As JGB’s epidemiologist expert explained, “the presence
13 of SARS-CoV-2 has been recovered from surfaces in the hospital rooms of infected patients
14 including floors, bed rails, switches, toilet seats and air exhaust vents, including some evidence that
15 such virus particles can deposit on surfaces and remain infectious.” Ex. 5 at 148 ¶ 14. In “aerosolized
16 form” where the deadly SARS-CoV-2 is “most efficient,”⁸ SARS-CoV-2’s “physical particles” can
17 fall onto surrounding surfaces within minutes, or “remain in the air for an extended period of time,
18 depending on size and environmental conditions.” Ex. 5 at 149-51 ¶¶ 15, 18; Ex. 7 23:8-13. SARS-
19 CoV-2, although invisible, has “long potential suspension time in the air” and can survive on
20 surfaces, including plastic, glass, stainless steel, and cardboard for days. Ex. 5 at 149-50 ¶¶ 15-16.
21 Viral particles can deposit on surfaces and remain infectious, creating the potential for fomite-based
22 transmission. *Id.* at 148-56 ¶¶ 14, 29-34 (SARS-CoV-2 persists “in a viable form for hours to days
23 on common surfaces, including materials common in retail establishments”). Moreover, sustained
24 survival times, regardless of exact length, create dangerous opportunities for fomite transmission in
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28 ⁸ Grand Bazaar Shops is an open-air concourse with many enclosed spaces. Mot. Ex. B 52:7-11.

1 environments where infected individuals are, or have been, recently present. *Id.* at 151 ¶ 19, 156 ¶
2 33 (commercial venues are source of most non-healthcare setting outbreaks). Even Starr's third-
3 party adjuster acknowledged that the Center for Disease Control advised in May 2020 that surfaces
4 were "critical" to stopping the spread. Ex. 9 (S. Larson Dep. Tr.), 225:13-226:3.

5
6 Moreover, Starr's assertion that "the COVID-19 virus can be removed through routine
7 cleaning" (Mot. at 14), is contrary to the scientific evidence offered by experts in this case. First,
8 JGB's expert Dr. Lessler explained that "[c]leaning of surfaces absent other mitigation measures is
9 unlikely to substantially impact transmission" and that "there is not corresponding evidence that
10 enhanced cleaning protocols alone are sufficient to contain transmission" of COVID-19. Ex. 5 at
11 150 ¶ 17, 165 ¶ 51. Second, even if COVID-19 can be cleaned using enhanced cleaning processes,
12 the "presence of SARS-CoV-2 infected individuals in any setting can lead to rapid redepositing of
13 virus on surfaces." *Id.* at 149-50 ¶ 16 ("Because of SARS-CoV-2's long potential suspension time
14 in the air and the fast drying/evaporation times of disinfectants, rapid reintroduction of the virus to
15 surfaces is possible, if not likely, when infectious individuals are present.").

17 **D. COVID-19'S PRESENCE IN LAS VEGAS AND AT THE GRAND BAZAAR**
18 **SHOPS CAUSES SIGNIFICANT LOSSES TO JGB'S OPERATIONS**

19 Starr completely omits the dense evidentiary record showing the constant presence of
20 COVID-19 at, and resulting damages to, the Shops. Indeed, *prior* to the Governor's March 20 Order
21 and even prior to its announcement, several tenants at the Shops had already shuttered due to the
22 presence of COVID-19. On March 16, 2020, the owner of The Dog House, LLC "made the decision
23 to close at least until the end of March" due to COVID-19, but it never reopened. Ex. 10; Ex. 11 at
24 344. That same day, the owner of Ayala's, Inc. d/b/a Tags also reported it was "closing due to the
25 coronavirus" and re-opening would be contingent on "advice from the CDC." Ex. 12. Tags also
26 never re-opened for business. Ex. 11 at 338. These were just a sample, as the Shops' General
27 Manager, Connie Stankivicz, testified that as of March 17, 2020, some stores had already started
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1 closing due to “concerns of the safety of their employees.” Mot. Ex. E (C. Stankivicz Dep. Tr.),
2 42:10-17. *See also* Ex. 13; Ex. 20.⁹

3 Even though—as Starr’s adjuster admitted (Ex. 9 225:22-226:3)—testing was unavailable
4 at the Shops in the early days of the pandemic, the evidence is un rebutted that COVID-19 was
5 present on site at the Shops at the start of the pandemic. Mot. Ex. E 50:11-21; 119:16-120:6 (Ms.
6 Stankivicz testifying that businesses were starting to shut down before the Governor’s Order; “We
7 knew that . . . it was not safe.”). Starr tries to mischaracterize JGB as not suffering any property loss
8 or damage from COVID-19 following the Governor’s May [7], 2020 Order that allowed limited
9 reopening of businesses at 50% capacity, and mischaracterizes that all the Shops purportedly
10 reopened on June 4, 2020 and have been open “ever since.” Mot. at 8. First, this is factually incorrect.
11 While some Shops reopened on June 4, some opened much later, others opened and re-closed
12 following COVID-19 positive cases onsite, and “some never reopened due to the presence of
13 COVID.” Mot. Ex. B 103:25-104:5; Ex. 11 at 337-344 (noting 7 tenants never reopened).¹⁰

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16 Second, the easing of restrictions did not mean that the noxious peril of COVID-19 was no
17 longer altering JGB’s property or causing loss—the opposite was borne out in discovery in this case.
18 Given the Shops’ location on the Las Vegas Strip, even during the worse part of the pandemic, there
19 was still constant foot traffic in and around the Shops. Statistical modeling based on data of
20 confirmed COVID-19 cases in Clark County and foot-traffic reports from JGB proved that “for most
21 epidemiologic weeks from March 5, 2020 through September 2021, the chance that infected persons
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25 ⁹ Starr cites one email sent by Ms. Stankivicz communicating to tenants that the Shops’ *management*
26 *office* (not tenants) would close in light of the March 20 Order. *See* Mot. Ex. E 47:3-49:17.

27 ¹⁰ *See* Ex. 14 (A. Stroink Dep. Tr., Starr’s senior claims handler), 156:21-157:3 (per adjuster’s
28 report, most businesses remained “a hundred percent closed in May 2020”). Starr’s adjuster also
could not confirm which tenants were subject to the May 7 Order. *See* Ex. 9 229:22-230:3; Mot. Ex.
D at PJGB000182 at Section 19.

1 entered the Grand Bazaar Shops was 100%.” Ex. 2 at 104, 110; *see also* Ex. 15 (Dr. Burstyn Dep.
2 Tr.) 36:18-37:2.¹¹ Thus, COVID-19 was constantly being reintroduced on the premises of the Shops
3 at all times. Mot. Ex. B 79:18-23 (“It’s our expectation [COVID-19] was on site given the type of
4 foot traffic that we have and that it was in the market.”).

5
6 This statistical reality is supported by the fact that JGB had various confirmed cases of
7 COVID-19 on premises. For example, Celebrity Burgers, LLC (“Wahlburgers”) reported that an
8 employee tested positive for COVID-19 on June 25, 2020. Ex. 16 at 493-94. On July 1, 2020,
9 another positive COVID-19 case at Wahlburgers was reported, and the restaurant shut down to
10 conduct a deep clean and hired an outside cleaning company to conduct a COVID-19 sanitization
11 before re-opening. *Id.* at PJGB002861; Mot. Ex. B 116:8-117:12 (JGB’s corporate representative
12 testifying to ten reported cases over time at Wahlburgers). On July 5, 2020, the Shops’ General
13 Manager reported a positive COVID-19 case at VPC Las Vegas Strip Pizza, LLC (“Giordano’s”),
14 which also resulted in closure. Ex. 16 at 492; *see* Ex. 11 at 344 (another positive Giordano’s report
15 occurred on August 12, 2020, requiring closure); Mot. Ex. B 117:2-4 (JGB’s corporate
16 representative testified to more than 50 positive cases of Giordano’s employees); *see also* Ex. 16 at
17 496; Ex. 2 at 110, 132. These were just the *confirmed* cases that were *reported*. As Ms. Stankivicz
18 testified, even though JGB requested that the Shops report positive tests (Mot. Ex. F at
19 PJGB007575), “[a] lot of the tenants didn’t report” to JGB their confirmed or suspected cases (Mot.
20 Ex. E 146:11-21; 51:9-24). *See also* Mot. Ex. B 117:5-12 (dozens of cases mostly went unreported).
21 Finally, as Starr admits, JGB and its tenants enacted remediations to the property due to the presence
22 of COVID-19 on site (Mot. at 8), including adding sanitizer stations, signs, and plexiglass, and
23 cleaning, each representing repairs (and Extra Expenses) suffered during the ongoing disruption to
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27 ¹¹ *See also* Ex. 7 50:14-16 (JGB’s epidemiologist expert testified to outdoor transmission).
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1 normal business operations caused by COVID-19 and the Orders.¹²

2 In short, due to the danger COVID-19 created at, inside, and around the Shops, there was a
3 lack of commerce, JGB's tenants were unable to pay their rent, whether fixed or due as a percentage
4 of sales, and JGB was unable to fill otherwise rentable spaces. Mot. Ex. B 78:8-79:6. All told, JGB
5 suffered millions of dollars in losses resulting from, *inter alia*, (1) lost base rent revenue from
6 tenants; (2) lost percentage rent revenue from tenants; and (3) other lost rental income and extra
7 expenses. *See, e.g.*, Ex. 19 (J. Galanti Supp. Expert Report) at 532.

8
9 **E. STARR IMMEDIATELY REFUSES TO PROPERLY EVALUATE AND**
10 **INVESTIGATE JGB'S CLAIM IN GOOD FAITH, AND JGB FILES SUIT**

11 In the face of COVID-19's presence and JGB's mounting lost income (coupled with tenant
12 requests for rent abatements and deferrals¹³), on April 17, 2020, JGB gave notice to Starr. Mot. Ex.
13 G. Contrary to Starr's contention, nether this notice nor JGB's follow-up letter on April 22, 2020
14 based JGB's losses solely and exclusively on the Orders (*see* Mot. at 8); JGB already had tenants
15 close before the Orders.¹⁴ In response to JGB's claim under its property policy, Starr's third-party
16 claims adjuster, Sedgwick, made several requests relevant to coverage, including whether there were
17 any confirmed cases of COVID-19 on the premises. Mot. Ex. I at PJGB000429. As this was still in
18 the very beginning of the novel and unprecedented pandemic when testing was unavailable on site
19 and even tenants that had confirmed cases were not reporting them to JGB (Mot. Ex. B 117:5-12),
20 JGB responded that it had not had any confirmed cases yet. Mot. Ex. J at 2.

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24 ¹² Losses continued after tenants who reported cases and closed were able to reopen. *See* Ex. 18 (M.
25 Newton Expert Rep.) at 520 (it typically takes time "to bring revenues up to normal levels").

26 ¹³ Mot. Ex. K at 2; Mot. Ex. B 113:2-114:17; Mot. Ex. E 85:9-87:3; Ex. 9 111:18-113:2.

27 ¹⁴ *See, e.g.*, Mot. Ex. B 94:18-95:11 ("the presence of COVID" was "the reason for the interruption
28 to our business"). JGB's April 22, 2020 letter that identified a "date of loss" in connection with the
Orders was done at the *request of Starr* for a single date of *when JGB* was shut down, so Starr would
not have to open additional claim files. *See* Ex. 14 121:7-122:8, 142:17-143:17, and 146:9-17. The
letter itself asks Starr if this information "is sufficient for a date of loss." Mot. Ex. H.

1 In any event, Starr did not meaningfully review the information JGB *had* provided before
2 authorizing Sedgwick's May 26, 2020 letter that made clear Starr was refusing coverage. The May
3 26 letter misrepresented the *facts* of the claim by stating that the Governor's Orders did not mention
4 physical loss or damage to property or prohibit access to property (they did) and the *Policy language*
5 by asserting that "no actual **physical** loss or damage was identified" and that time element coverage
6 required "physical prevention" to property (it does not). Mot. Ex. K at 2, 10. Further, Starr's claims
7 handler admitted she did not review the Orders or think they "made a difference" to coverage and
8 she only skimmed JGB's loss information. Ex. 14 155:5-156:6; 192:12-193:13. In fact, Starr's
9 claims handler testified that even if JGB *had* spelled out in its first correspondence that it suffered
10 loss due to the confirmed presence of COVID-19 on its property, she would have denied coverage
11 all the same. Ex. 14 209:13-210:21, 220:13-21.¹⁵
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14 Given that Starr was refusing coverage, on June 15, 2020, JGB filed suit. Dkt. No. 1. Starr
15 swiftly moved to dismiss JGB's lawsuit on the basis that there was no coverage at all, yet it
16 contended it was not liable for bad faith because it still had not *formally* denied coverage. That
17 supposedly came on November 5, 2020, not because Starr was unable to "complete its investigation"
18 until that time; its claims handler was doing nothing but awaiting instruction from counsel. Ex. 14
19 193:7-25.¹⁶ Rather, Starr simply hoped to avoid bad faith by waiting until *the day after* its Motion
20 to Dismiss Reply was filed to issue a "formal" denial. Dkt. No. 22 at 27-28. On November 30, 2020,
21 the Court denied Starr's Motion to Dismiss in its entirety, held that JGB's Complaint sufficiently
22 alleged losses "stemming from the direct physical loss and/or damage to property from COVID-
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26 ¹⁵ JGB provided Starr various tenant emails in May 2020 reflecting closures due to COVID-19.
27 Starr's claims handler simply failed to review them. Mot. Ex. J; Exs. 10, 12, 13.

28 ¹⁶ Starr's claims handler reviewed JGB's complaint in June 2020, along with JGB's supplemental
loss data in September 2020; she testified that responsive material to Starr's allegedly "outstanding"
requests had been included therein. Ex. 14 261-4-266:19, 267:22-129:11, 273:16-23; Ex. 26.

1 19,” and ruled that the Policy’s exclusion for Pollution and Contamination “d[id] not apply to
2 exclude JGB’s claims.” Dkt. No. 27 at 5-6. On February 10, 2021, the Court subsequently denied
3 Starr’s request to amend that Order, including Starr’s request to remove the “conclusion that the
4 Policy’s Pollut[ion] and Contamnina[tion] exclusion does not apply[.]” Dkt. No. 30 at 2.

5
6 **III. ARGUMENT**

7 **A. LEGAL STANDARD**

8 Summary judgment may not be granted to Starr absent a showing that “no genuine dispute
9 as to any material fact” exists. NRCP 56(a). General allegations or conclusory statements will not
10 create issues of fact, but the evidence on file “and any reasonable inferences drawn from it, must be
11 viewed in a light most favorable to the nonmoving party.” *Baiguen v. Harrah’s Las Vegas, LLC*,
12 426 P.3d 586, 589 (Nev. 2018). Viewing the fulsome record of this case in a light most favorable to
13 JGB, genuine issues of material fact proliferate through Starr’s Motion, which should be denied.

14 **B. STARR CANNOT ESTABLISH AS A MATTER OF NEVADA LAW THAT**
15 **JGB’S DAMAGES FROM COVID-19 FAIL TO CONSTITUTE “DIRECT**
16 **PHYSICAL LOSS OR DAMAGE” TO PROPERTY**

17 According to Starr, the Court must follow Nevada law and hold that “direct physical loss or
18 damage” requires “some sort of structural or physical change” or “alteration” to property, which
19 JGB cannot show because COVID-19 is “invisible,” “odorless,” and “microscopic.” Mot. at 13-14.
20 Yet, no Nevada state court has stated, much less held, this narrow interpretation of “physical loss or
21 damage”—in fact, Nevada state courts have specifically not adopted it, and California courts *have*
22 held that the presence of COVID-19 can trigger coverage for “direct physical loss or damage.” Starr
23 cannot meet its burden that Nevada law prohibits coverage for JGB’s claims as a matter of law.

24 **1. The Presence Of COVID-19 Rendering Property Uninhabitable And**
25 **Unsafe, Constitutes “Direct Physical Loss Or Damage”**

26 Under Nevada law, insurance policies must be read as a whole, and “[e]very word must be
27 given effect if at all possible.” *Bielar v. Washoe Health Sys., Inc.*, 306 P.3d 360, 364 (Nev. 2013)
28 (citation omitted). Policy language is analyzed from the perspective of a lay person, “one untrained

1 in law or in the insurance business.” *Fourth St. Place v. Travelers Indem. Co.*, 270 P.3d 1235, 1239
2 (Nev. 2011), *as modified on reh’g* (2012). Undefined terms are ascribed their plain and ordinary
3 meaning, and courts look to dictionaries to interpret what the insured may have understood. *Fed.*
4 *Ins. Co. v. Coast Converters*, 339 P.3d 1281, 1287 (Nev. 2014). Finally, Nevada follows the
5 “fundamental tenet” that insurance contracts “should be interpreted broadly, affording the greatest
6 possible coverage to the insured.” *Farmers Ins. Grp. v. Stonik*, 867 P.2d 389, 391 (Nev. 1994).

8 The terms “direct physical loss or damage” are undefined in the Policy. The dictionary
9 definition of “direct” includes “natural, straightforward” and a “close logical, causal, or
10 consequential relationship.”¹⁷ “Physical” is “having material existence”;¹⁸ “loss” is defined to
11 include “partial or complete deterioration or absence of physical capability or function”;¹⁹ and
12 “damage” is defined as “loss or harm resulting from injury to person, property, or reputation.”²⁰
13 Taken together, “direct physical loss or damage” means that a “material thing” has impaired the
14 “value or usefulness” or physical function or capability of the insured’s property.

16 JGB has submitted un rebutted evidence establishing that COVID-19 has caused direct
17 physical loss or damage to JGB’s property under the plain, ordinary meaning of those words. It is
18 undisputed that SARS-CoV-2, the virus that causes COVID-19, is a physical, tangible particle that
19 can land on and attach to property and last for days. Ex. 5 at 148 ¶ 14, 155-56 ¶¶ 29-34. Viral
20 particles remain infectious while suspended in air as well as on property, and are capable of
21 transmission on property in the form of fomites. *Id.* Not only did JGB have *confirmed* cases of
22 COVID-19 at the Shops that required closings, but un rebutted expert scientific testimony establishes
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26 ¹⁷ “Direct,” Merriam Webster (“Merriam”), <http://www.merriam-webster.com/dictionary/direct>
(last visited 4/1/22).

27 ¹⁸ “Physical,” Merriam, <http://www.merriam-webster.com/dictionary/physical> (last visited 4/1/22).

28 ¹⁹ “Loss,” Merriam, <https://www.merriam-webster.com/dictionary/loss> (last visited 4/1/22).

²⁰ “Damage,” Merriam, <https://www.merriam-webster.com/dictionary/damage> (last visited 4/1/22).

1 that the virus was constantly reintroduced onto JGB's property and in the restaurants and other
2 Shops, impairing the property and the tenant's stores, driving away tenants and customers, resulting
3 in continued losses to JGB. In every sense, JGB has established that COVID-19 on the premises
4 resulted in "direct physical loss or damage" to its property based on the plain meaning of those
5 words. There is no binding Nevada law on point that precludes JGB's position that COVID-19
6 triggers coverage, and Starr is not entitled to judgment as a matter of law.
7

8 **2. Starr's Nevada Federal Court Cases Are Not Persuasive, Distinguishable**
9 **As To Nevada Law On "Direct Physical Loss Or Damage"**

10 Starr's entire claim that Nevada law interprets "direct physical loss or damage" to require
11 "structural" or "demonstrative" damage to property that cannot be caused by COVID-19 is rooted
12 in a single federal court's untethered interpretation of Nevada law, rendered in three motion-to-
13 dismiss decisions (that are largely copies of each other), all of which are factually distinguishable.

14 In *Levy Ad Group, Inc. v. Chubb Corp.*, 519 F. Supp. 3d 832 (D. Nev. 2021), the insured
15 advertising agency specifically did not allege COVID-19 was present at its property; rather it was
16 seeking purely economic losses from shutting down (*see Levy Compl.*, 2020 WL 2042673 (D. Nev.
17 2020) (No. 2:20-CV-00763)). In attempting to predict Nevada law on this issue, the court relied on
18 this fact (*Levy*, 519 F. Supp. 3d at 836), and then stated that two previous Nevada Supreme Court
19 decisions had "cabined" claims for property damage as causing "some sort of structural or physical
20 change to a property, actually altering its functionality or use." *Id.* However, those decisions did not
21 interpret what "direct physical loss or damage" meant (it was not disputed), much less hold that it
22 had to involve a "structural alteration" or "physical change." Rather, they involved damaged
23 machinery and home flooding,²¹ not claims involving property exposure to dangerous, albeit
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27 ²¹ See *Coast Converters*, 339 P.3d at 1283 (manufacturing plant machine damage) and *Farmers*
28 *Home Mut. Ins. Co. v. Fiscus*, 725 P.2d 234, 236 (Nev. 1986) (flooding from pipes). The Ninth

1 invisible, physical substances. *Id.*

2 Ten days later, the same court decided *Circus Circus LV, LP v. AIG Specialty Insurance Co.*,
3 525 F. Supp. 3d 1269 (D. Nev. 2021), which was essentially a companion case to *Levy*. The court
4 acknowledged the lack of controlling Nevada authority interpreting “direct physical loss or damage”
5 but again cited *Coast Converters* and *Fiscus* as informing its ruling that Nevada courts referred to
6 “structural alteration” to property for direct physical loss or damage. However, as in *Levy*, the *Circus*
7 decision was similarly the result of a *lack* of allegations that the insured’s losses were caused by the
8 presence of COVID-19 on casino property, noting instead that the insured’s closure was within “one
9 minute” of the Governor’s mandate, not due to infected persons having first been on premises. *Id.*
10 at 1276, n.40.²² And in *Project Lion LLC v. Badger Mutual Insurance Co.*, 2021 WL 2389885 (D.
11 Nev. May 19, 2021), the same court again misconstrued the same Nevada law, and distinguished
12 another COVID-19 decision where the insurer’s motion to dismiss was denied on the basis that
13 “unlike [that case], the [insured] affirmatively den[ied] that COVID-19 has entered their properties,
14 damaged their surfaces, or infected their employees” but rather “merely assert[ed] the temporary
15 closure of their premises because of a government shut-down order.” *Id.* at *1, 3.

16 No binding Nevada law supports Starr’s claim that JGB can never establish “direct physical
17 loss or damage” due to COVID-19. To the contrary, Nevada *state* courts have not read in any
18 requirement for “structural” or “demonstrable” alteration to property to allege physical loss or
19 damage. For example, in *Nevada Property 1 LLC vs. Factory Mutual Insurance Co.*, Case No. A-
20 21-831049-B, *3 (Clark Cty., Nev. Aug. 16, 2021) (Ex. 21), not cited by Starr, the court denied the
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26 Circuit affirmed *Levy* in an unpublished and non-precedential decision relying on other Circuit Court
27 decisions (not Nevada cases). *Levy*, 2022 WL 816927, at *1 (9th Cir. Mar. 17, 2022).

28 ²² *Circus* distinguished this Court’s prior order as “an unpublished, trial-court opinion decided under
[NRCP] 12(b)(5)” (*id.* at 1277), but other courts have cited it with approval. *See AC Ocean Walk,
LLC v. Am. Guar. & Liab. Ins. Co.*, 2021 WL 6091224, at *8-9 (N.J. Super. Ct. Dec. 22, 2021).

1 insurer's motion to dismiss where the insured alleged it had suffered physical loss or damage based
2 on the presence of COVID-19, and stated that "[t]he scientific community has confirmed that SARS-
3 CoV-2 virions and COVID-19 alter the conditions of properties and buildings such that the premises
4 are physically damage[d] and no longer safe and habitable for normal use." That Nevada state court
5 cases have refused insurers' arguments to dismiss cases seeking coverage for COVID-19 is the best
6 predictor that the Nevada Supreme Court would disagree with the federal court in *Levy, Circus* and
7 *Project Lion* that Nevada law requires "structural" or "demonstrable" damage. Indeed, the federal
8 court's interpretation improperly collapses the words "physical loss" into "physical damage," which
9 is contrary to Nevada law that contracts must be read "as a whole" to "avoid[] negating any contract
10 provision." *Road & Highway Builders v. N. Nev. Rebar*, 284 P.3d 377, 380-81 (Nev. 2012).

12 Moreover, though Nevada courts often look to California courts for state law guidance, Starr
13 misstates (and the court in *Levy, Circus*, and *Project Lion* misinterpreted) California law to require
14 "structural" alteration to establish "direct physical loss or damage." See Mot. at 13. Rather, the
15 California Court of Appeal's holding in *Inns-by-the-Sea v. California Mutual Insurance Co.*, 71 Cal.
16 App. 5th 688 (Cal. Ct. App. 2021), review denied, (Mar. 9, 2022), rejected that position. The *Inns*
17 court held that "physical loss or damage" may be shown by alleging "damage that is not structural,
18 but instead is caused by a noxious substance or an odor" or other "invisible substance or biological
19 agent," including COVID-19 *if present*. *Id.* at 706 n.19, 710 n.21 (an "all risks" policy is triggered
20 by perils that cause no "tangible injury to the physical structure itself").²³ However, *Inns* held there
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24 ²³ This holding is consistent with several California denials of motions to dismiss based on
25 allegations of COVID-19 on premises. See, e.g., *Boardwalk Ventures CA, LLC v. Century-Nat'l Ins.*
26 *Co., et al.*, No. 20STCV27359 (Cal. Super. Ct. Mar. 18, 2021) (Ex. 22) (sufficient allegations of
27 presence of virus on property); *P.F. Chang's China Bistro, Inc. v. Certain Underwriters at Lloyd's*
28 *of London*, No. 20STCV17169, 2021 WL 818659, at *2 (Super. Ct. Los Angeles County Feb. 4,
2021); *Goodwill Indus. of Orange County Cal. v. Phila. Indem. Ins. Co.*, 2021 WL 476268, at *3
(Super. Ct. Orange Cnty. Jan. 28, 2021); *Ross Stores Ins. v. Zurich Am. Ins. Co.*, 2021 WL 3700659,

1 was no coverage because the insured did not (and never could) allege that it suffered losses due to
2 the presence of COVID-19 on its property impairing its function and habitability.²⁴

3 Here, in contrast and as discussed *supra*, JGB has established through fact and expert
4 discovery, SARS-CoV-2, despite being microscopic, is indisputably a tangible, physical thing with
5 a material existence, which attaches to, and remains resilient on, property creating multiple
6 modalities of transmission. *See* Ex. 5 at 147-49 ¶¶ 11, 14-15 (experiments show detectable and
7 viable SARS-CoV-2 remains “on many common surfaces for days, and in aerosolized form for
8 longer than an hour”); Ex. 7 37:7-21. And, JGB has submitted evidence that routine cleaning alone
9 does not eliminate the high risk of reintroduction posed by COVID-19 infections on JGB’s property
10 where the chance was 100% that infected individuals were on the premises. *Id.* at 149-50 ¶¶ 15-
11 16.²⁵ Starr’s assertion that COVID-19 is “invisible, odorless, and ephemeral” (Mot. at 14) is
12 irrelevant. JGB and tenants were “constantly disinfecting,” yet they faced numerous confirmed
13 COVID-19 cases at the Shops, rendering the Shops unsafe for their functional purpose, resulting in
14 losses. Mot. Ex. E 127:4-18; Mot. Ex. B 117:2-4. Indeed, *after* certain government restrictions were
15 lifted and non-essential businesses were allowed to reopen, JGB continued to suffer losses due to
16 the presence of COVID-19—showing such losses are not tied solely to the Governor’s Orders. Starr
17 does not address, let alone refute, any of these material facts that COVID-19 was on premises
18 causing physical loss and damage under the relevant Nevada (or California) law.

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22 **C. STARR’S NON-NEVADA CASE LAW IS IRRELEVANT IN DETERMINING**
23 **IF THE SPECIFIC FACTS OF JGB’S COVID-19 LOSSES ARE COVERED**

24 Because there is no binding Nevada law regarding the issue of “physical loss or damage” or

25
26 at *9 (Super. Ct. Alameda Cnty. July 13, 2021).

27 ²⁴ *Inns*, 71 Cal. App. 5th at 703 (policyholder did not “allege that the presence of the COVID-19
virus on its premises” rendered premises uninhabitable or unsuitable for their intended purpose).

28 ²⁵ *See also* Ex. 15 36:18-37:2; Ex. 2 at 104, 110; Mot. Ex. B 79:18-23 (COVID-19 was onsite); Ex.
16; Mot. Ex. E 49:17-22, 120:1-6 (“COVID-19 was everywhere and people knew it was unsafe”).

1 coverage for COVID-19, Starr cites to various non-binding out-of-state cases; but these do not
2 support its Motion for summary judgment. Mot. at 13-17. While Starr asks the Court to ignore JGB's
3 specific facts and blindly follow other courts, many such decisions in Starr's compilation of almost
4 entirely federal cases were ultimately decided on different facts, prematurely on motions to dismiss,
5 without the benefit of discovery like JGB has put forth (and Starr has ignored) here.

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7 For instance, many of Starr's non-binding cases involve different facts (*e.g.*, the insured did
8 not allege COVID on the premises) and different policy language (*e.g.*, policies with broad
9 Insurance Services Office ("ISO") "virus" exclusions not present in JGB's Policy). *See, e.g.*,
10 *Mudpie, Inc. v. Travelers Cas. Ins. Co. of Am.*, 15 F.4th 885, 893 (9th Cir. 2021) (policyholder "did
11 not allege that COVID-19 was present in its storefront premises during the relevant period" and
12 policy had broad virus exclusion); *Selane Prods., Inc. v. Cont'l Cas. Co.*, 2021 WL 4496471, at *1
13 (9th Cir. Oct. 1, 2021) (policyholder "did not allege that SARS-CoV-2 was present on its property
14 to cause any damage"); *Oral Surgeons, P.C. v. Cincinnati Ins. Co.*, 2 F.4th 1141, 1145 (8th Cir.
15 2021) ("The complaint pleaded generally that Oral Surgeons suspended non-emergency procedures
16 due to the COVID-19 pandemic and the related government-imposed restrictions"); *Cosmetic Laser,*
17 *Inc. v. Twin City Fire Ins. Co.*, 2021 WL 3569110, at *10 (D. Conn. Aug. 11, 2021) (claim dismissed
18 where policy had express virus exclusion), *appeal filed*, No. 21-2160 (2d. Cir. Sept. 9, 2021).

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20 Contrary to Starr's attempts to paint all COVID-19 cases with the same broad brush, a closer
21 look reveals that there is no consensus among these courts, and that each depends on the facts and
22 policy language involved. *Live Nation Ent., Inc. v. Factory Mut. Ins. Co.*, 2022 WL 390712, at *7
23 (C.D. Cal. Feb. 3, 2022) (noting California federal courts have reached different outcomes on the
24 issue of coverage for COVID-19, but "[t]he position that the presence of COVID-19 is a physical
25 intrusion that affects the integrity of a property is the more persuasive one."). It is specifically JGB's
26 evidence of COVID-19 constantly on the premises that separates this case from courts that have
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1 dismissed COVID-19 cases because they only alleged “loss of use,” untethered to any actual
2 physical impact. Mot. at 18 (citing *Sandy Point Dental, P.C. v. Cincinnati Ins. Co.*, 20 F. 4th 327,
3 332 (7th Cir. 2021) (rejecting argument that direct physical loss captures “loss of use”) and *Santo’s*
4 *Italian Café LLC v. Acuity Ins. Co.*, 15 F.4th 398, 402 (6th Cir. 2021) (“No one argues that the virus
5 physically and directly altered the property. The restaurant indeed makes no such argument.”)).
6 Same as the *Inns* court, the federal district court’s decision in *Mudpie* (that the Ninth Circuit
7 affirmed) stated that “*had* Mudpie alleged the presence of COVID-19 in its store,” the Court’s
8 conclusion about an intervening physical force [on its property] would [have] be[en] different.”
9 *Mudpie, Inc. v. Travelers Cas. Ins. Co. of Am.*, 487 F. Supp. 3d 834, 841 n.7 (N.D. Cal. 2020).

11 Various other courts have found that “direct physical loss or damage” includes the inability
12 to use property for its intended purpose because of the dangerous presence or threatened presence
13 of SARS-CoV-2 on the property. *See, e.g., Elegant Massage, LLC v. State Farm Mut. Auto. Ins.*
14 *Co.*, 506 F. Supp. 3d 360, 376 (E.D. Va. 2020) (“[I]t is plausible that [the policyholder] experienced
15 a direct physical loss when the property was deemed uninhabitable, inaccessible, and dangerous to
16 use by the Executive Orders”); *Life Time, Inc. v. Zurich Am. Ins. Co.*, 2021 WL 4768307, at *5-8
17 (Minn. Dist. Ct. Oct. 7, 2021) (denying dismissal of COVID-19 claims and holding that loss of
18 function or value is sufficient, if proved, to support a claim for direct physical loss); *Perry St.*
19 *Brewing Co. v. Mut. Of Enumclaw Ins. Co.*, 2020 WL 7258116, at *3 (Wash. Super. Ct. Nov. 23,
20 2020) (summary judgment for insured that “direct physical loss” could include “interruption of
21 [insured’s] business operations...because [its] property could not physically be used for its intended
22 purpose”); *North State Deli, LLC v. The Cincinnati Ins. Co.*, 2020 WL 6281507, at *3 (N.C. Super.
23 Oct. 9, 2020) (summary judgment for insured’s COVID-19 losses because “direct physical loss”
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1 includes “inability to utilize or possess something in the real, material, or bodily world”).²⁶

2 As one state court judge stated in response to the insurer’s insistence that he must follow
3 other courts on denying coverage for COVID-19 claims: “judges are not sheep [that] decide a case
4 by counting noses.”²⁷ Coverage for JGB’s claim is not dictated by other jurisdictions’ non-binding
5 decisions on motions to dismiss; rather, JGB is entitled to coverage based on the Policy language
6 and the specific evidentiary record before the Court.
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8 **D. STARR’S READING OF THE POLICY’S OTHER PROVISIONS DOES NOT**
9 **CONFIRM THAT THE POLICY PRECLUDES COVERAGE FOR JGB**

10 Starr contends that if COVID-19 cannot be ruled out as “physical loss or damage,” other
11 Policy clauses, such as the definition for “PERIOD OF INDEMNITY,” confirm that to be the case.
12 Mot. at 19-20. Starr is wrong on this point and its reading of “physical loss or damage” together
13 with “PERIOD OF INDEMNITY” (among other provisions) actually undermines its position.

14 Specifically, Starr contends that the virus on property can be addressed “neither through
15 replacement, rebuilding, nor repair,” and thus, the “PERIOD OF INDEMNITY” definition means
16 “the presence of COVID-19 is not ‘direct physical loss or damage.’” Mot. at 19. First, the period of
17 indemnity sets JGB’s loss recovery period—it does not define the scope of, or trigger, JGB’s
18 recoverable loss. *See* Ex. 1 at 30 § 13.R. As one court recently stated in denying this argument:
19 “The “period of restoration” does not require repairs, rebuilding, replacement, or relocation of
20 [insured] property in order for Plaintiff to be entitled to coverage.” *Ungarean, DMD v. CNA*, 2021
21 WL 1164836, at *8 (Pa. Ct. Com. Pl. Mar. 25, 2021) (“The [period] ends when Plaintiff’s business
22 is once again operating at normal capacity, or reasonably could be operating at normal capacity.”).
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26 ²⁶ *See Snoqualmie Ent. Auth., v. Affiliated FM Ins. Co.*, 2021 WL 4098938, *1, 6 (Wash. Super. Ct.
27 Sept. 3, 2021) (summary judgment for insured for COVID-19 losses and the court was not persuaded
28 by a Washington federal court’s reliance on the opinions of other courts under other state’s laws).

²⁷ *JDS Constr. Grp., LLC v. Cont’l Cas. Co.*, No. 2020CH5678 (Ill. Cir. Ct. Oct. 25, 2021) (Ex. 23).

1 Second, as Starr concedes, “repair” is undefined in the Policy. “Repair” is defined broadly
2 to include “to restore to a sound or healthy state; RENEW; to make good: compensate for:
3 REMEDY.”²⁸ Here, the undisputed facts, along with expert testimony and relevant law, show that
4 physical remediation efforts undertaken by JGB and its tenants to restore the Shops to their pre-
5 coronavirus state did, in fact, “repair” altered property. As JGB’s corporate representative testified,
6 JGB’s cleaning vendor engaged in enhanced cleaning with a heavy-duty sanitation machine, and
7 JGB and its tenants installed signage and physical barriers to prevent further damage. *See* Mot. Ex.
8 B 125:14-21 (as examples, restaurant tenants “put up Plexiglass partitions, dividers between seating
9 areas. . . [N]early all of our tenants, a large number of them, additional cleaning product, additional
10 cleaning protocol, [and] additional hand sanitizer, all those types of things, to the property”). Far
11 from “temporary” (Mot. at 19-20), repair efforts for COVID-19 were constant.²⁹

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13 Starr’s own damages expert recognized that cleaning can be “repair.” *See* Ex. 24 (M. Newton
14 Dep. Tr.), 102:25-103:16, 103:24-104:14 (testifying to other “covered claims,” including
15 salmonella, involving cleaning repairs to property to “satisfy the health authorities it’s safe [] to
16 reopen”). In short, these efforts comport with the common dictionary definition of “repair.” *See*
17 *Brown’s Gym Inc. v. Cincinnati Ins. Co.*, 2021 WL 3036545, at *22 (Pa. Com. Pl. July 13, 2021)
18 (repairs include installation of partitions, handwashing/sanitation stations, and other renovations to
19 the premises “to make the property safe for public use”). Starr cannot avoid coverage merely
20 because its Policy did not account for the fact that the “period of indemnity” may be “more difficult
21 to pinpoint in the context of the COVID-19 pandemic” than in a fire loss, and the relevant period is
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25 ²⁸ “Repair,” Merriam, <http://www.merriam-webster.com/dictionary/repair> (last visited 4/1/22).

26 ²⁹ *See, e.g.*, Ex. 17 at 498, 501, 505 (purpose of guidelines sent to JGB was for reopening of facilities
27 and “ongoing maintenance” of areas, and included installing sanitation stations, requiring that
28 “podiums, countertop surfaces...be cleaned between [employee] use and/or if a guest touches the
surface” and bars’ countertops, tubs, and storage be cleaned and disinfected).

1 a disputed issue of fact. *Ungarean*, 2021 WL 1164836, at *8.³⁰

2 In fact, reading the PERIOD OF INDEMNITY provision in context with the Policy's
3 "Resumption of Operations" provision reinforces JGB's reasonable reading of "physical loss or
4 damage" to mean the impairment of property for its intended purpose. Indeed, that provision
5 contemplates that JGB's property need not be "damaged" in the first instance in requiring JGB to
6 attempt to reduce its loss. Ex. 1 at 34 § 3 (conditioning insurance on insured's attempts toward
7 "complete or partial resumption of operation of the property herein described, *whether damaged or*
8 *not*") (emphasis added). In short, the PERIOD OF INDEMNITY definition does not rewrite what
9 constitutes "physical loss or damage," and does not preclude coverage for JGB.

10 **E. THE POLICY'S ADDITIONAL TIME ELEMENT COVERAGES FOR**
11 **CIVIL AUTHORITY AND INGRESS/EGRESS APPLY**

12 Not only has JGB established in evidence that COVID-19 physically attaches and alters
13 property entitling JGB to access its general business interruption coverage, but Starr also cannot
14 show as a matter of law that the Policy's additional Time Element coverages for Civil Authority and
15 Ingress/Egress do not apply to JGB's losses under those separate coverage extensions.

16 To establish Civil Authority coverage, the Policy requires (1) that JGB suffer a business
17 interruption resulting from damage to property within one mile of the Grand Bazaar Shops by any
18 insured peril, and (2) that "access" to the property was specifically prohibited by order of civil or
19 military authority." Ex. 1 at 35 § 7. First, it cannot be disputed that by the start of the pandemic
20 individuals carrying SARS-CoV-2 shed or deposited it on and around property within one mile of
21 the Shops given their central location on the Las Vegas Strip. Even before adequate testing was in
22 place, there were local reports of *confirmed* COVID-19 case(s). *Supra* Facts §§ B, D. And JGB has
23 presented evidence that the presence of COVID-19 on and near its property was statistically certain
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28 ³⁰ See Ex. 24 88:23-89:23 (period of indemnity runs through June 2020); Ex. 25 (J. Galanti Expert
Rebuttal Report) at 674-75 (period of indemnity is continuing).

1 (*id.*) and Starr cannot dispute that COVID-19-infected persons on JGB's property rendered common
2 surfaces and the air therein altered and unsafe. *Supra* Facts § E.

3 Second, JGB has also shown specific prohibition of access to the Shops was a "direct" result
4 of the presence of COVID-19. The Orders were not merely prophylactic; Governor Sisolak declared
5 a state of emergency on March 12, 2020 in response to the presence of the novel virus in Nevada,
6 including Las Vegas. *See* Ex. 4 (Order issued "to save lives, protect property, and protect the health
7 and safety of persons in this state"). On March 20, the Governor ordered citizens to stay in their
8 homes and businesses to shutter, specifically prohibiting tenants and customers from accessing the
9 Shops due to the presence of COVID-19 and the risks of further transmission. *See supra* Facts § B;
10 Mot. Ex. E 37:24-38:19 ("we were told that we had to shut down. And that's what we did").

11 Starr's citation to *County of Clark v. Factory Mutual Insurance Co.*, 2005 WL 6720917, at
12 *3 (D. Nev. Mar. 28, 2005) (Mot. at 21) does not support the position that the Orders were not the
13 "direct result" of physical damage. In that case, the damage at the World Trade Center and Pentagon
14 was not within 1,000 feet of the insured property as the policy required, and the prevention of flying
15 was the result of an FAA mandatory ground stop order, not the damage from the 9/11 attacks. Here,
16 there can be no reasonable dispute that the Orders prohibited access to non-essential businesses
17 because of "the ability of the novel coronavirus that causes COVID-19 to survive on surfaces for
18 indeterminate periods of time, renders some property unusable" and contributes to "damage . . . and
19 property loss." Ex. 6. The coverage does not require that the government "construct physical
20 barriers" to prevent access (Mot. Ex. B 85:5-13), and it is irrelevant that a small number of restaurant
21 tenants were allowed to operate in limited fashion (take out or delivery). The Policy's terms require
22 specific, not all or total, prohibition of access to property, and that is exactly what the Orders did.³¹

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28 ³¹ Plus, the Civil Authority sublimit applies "per occurrence," and the number of "occurrences" at
issue is a question of fact that Starr failed to brief. *See* Mot. at 5.

1 For Ingress/Egress coverage, JGB simply must show ingress or egress to the Shops was
2 prevented as a result of loss or damage within one mile of the “impaired” property, regardless of
3 whether the Shops had been damaged. Ex. 1 at 61. As discussed *supra*, Starr has failed to present
4 any facts to dispute that such damage or loss caused by COVID-19 at and around the Shops impaired
5 ingress or egress thereto. Mot. Ex. E 38:17-19, 49:17-22, 120:1-6 (in March 2020, “COVID-19 was
6 everywhere and people knew it was unsafe”); Ex. 12. Thus, JGB is entitled to Civil Authority and
7 Ingress/Egress coverage and Starr’s Motion fails on these points.

8 **F. THE COURT CORRECTLY HELD THAT THE POLLUTION AND**
9 **CONTAMINATION EXCLUSION DOES NOT APPLY TO JGB’S LOSSES**

10 This is the third time Starr has argued that JGB’s claims are barred by an environmental and
11 industrial pollution and contamination exclusion, and Starr’s brief does not even acknowledge that
12 the Court has already (twice) rejected its argument. To preclude coverage, an insurer must “(1) write
13 the exclusion in obvious and unambiguous language . . . (2) establish that the interpretation
14 excluding coverage . . . is the only interpretation of the exclusion that could be fairly made, and (3)
15 establish that the exclusion clearly applies to this particular case.” Dkt. No. 27 at 5. The Court
16 already held that Starr could not meet its burden, and that this Exclusion did not apply:

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18 Starr has not shown that it is unreasonable to interpret the [Exclusion] to apply only
19 to instances of traditional environmental and industrial pollution and contamination
20 that is not at issue here, where JGB’s losses are alleged to be the result of a
21 naturally-occurring, communicable disease. This is the case, even though the
22 Exclusion contains the word “virus.” . . . Accordingly, the Court finds that the
23 Pollution and Contamination Exclusion does not apply to exclude JGB’s claims.

24 Dkt. No. 27 at 5-6. Starr questioned the Court’s Order in a motion to “alter or amend” it, arguing
25 “the Court could not (and did not)” find the Exclusion inapplicable and seeking to replace the Order
26 with its own that said nothing about the Exclusion. Dkt. No. 30. The Court denied Starr’s motion
27 and refused its alternative order. Dkt. No. 47 at 1-3.

28 Starr’s argument on the Exclusion is barred under the law of the case. “The law-of-the-
case doctrine ‘refers to a family of rules embodying the general concept that a court involved in later

1 phases of a lawsuit should not re-open questions decided (*i.e.*, established as law of the case) by that
2 court or a higher one in earlier phases.” *Edgeworth Fam. Tr. v. Simon*, 2020 WL 7828800, *3 (Nev.
3 Dec. 30, 2020) (citation omitted). The doctrine applies where “the issue in question [was] ‘decided
4 explicitly [in the] previous disposition.’” *Id.*, 2020 WL 7828800, at *3 (quoting *U.S. v. Jingles*, 702
5 F.3d 494, 499 (9th Cir. 2012)). Starr’s argument on the Exclusion (1) was necessary to the Court’s
6 ruling on Starr’s motion to dismiss (it was an independent ground for dismissal); (2) was decided
7 by the Court explicitly; and (3) no facts or binding precedent require a change in that ruling.
8 Application of the Exclusion was always whether SARS-CoV-2 fit in the Exclusion as written as a
9 matter of law, and the Court held it did not. Starr is prohibited from reopening this rejected argument.
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11 Even if the Court revisited Starr’s argument, the Court’s prior rejection was correct—Starr
12 does not meet its burden that the Exclusion unambiguously applies. The Policy does not have a
13 “virus” exclusion intended to exclude coverage for losses arising out of a pandemic, despite the
14 insurance industry claiming that it drafted just such an exclusion in 2006.³² Starr’s Exclusion defines
15 “POLLUTANT” and “CONTAMINANT” as the same, and then bars damage caused by
16 “contamination” and/or “the actual or threatened release, discharge, dispersal, migration or seepage
17 of POLLUTANTS.” Ex. 1 at 22 § 7(b). The Exclusion’s reference to “release, discharge, escape or
18 dispersal” shows it was intended by Starr to apply to pollutants used or maintained in the course of
19 an insured’s industrial business—such as chemicals used in manufacturing or cleaning processes,
20 or bacteria or virus kept in a lab—that are released or discharged from their containers. This
21 Exclusion was not negotiated for JGB’s business as a commercial landlord; rather, it is a standard
22 boilerplate exclusion in the Policy form.
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27 ³² ISO Form CP 01 40 07 06, titled “Exclusion for Loss Due to Virus or Bacteria,” excludes coverage
28 for “loss or damage caused by or resulting from any virus, bacterium or other microorganism that
induces or is capable of inducing physical distress, illness or disease.” Dkt. No. 17, Ex. 1.

1 The Nevada Supreme Court has refused to broaden similar exclusions beyond the reasonable
2 expectations of the insured. *Cent. Sur. Co. v. Casino West, Inc.*, 329 P.3d 614, 616 (Nev. 2014)
3 (exclusion for ‘damage arising out of “discharge, dispersal, seepage, migration, release or escape of
4 ‘pollutants,’” defined as any gaseous irritant or contaminant, including smoke, vapor and fumes,
5 applied to traditional environmental pollution, not carbon monoxide poisoning). *Id.* That *Casino*
6 *West* involved an exclusion in a CGL policy instead of a property policy is a distinction without a
7 difference; the same standard for exclusions applies here. The argument here is not that SARS-CoV-
8 2 is not a virus. Mot. at 26. Rather, the Exclusion’s use of “virus” must be read in conjunction with
9 its surrounding words—“migration,” “seepage,” “soot,” “fumes,” “acids,” “alkalis,” “chemicals,”
10 “waste,” and “hazardous substances” listed in various environmental regulatory acts. *Fourth St.*
11 *Place*, 127 Nev. at 966 (the court “ascertain[s] the meaning of terms in the Policy by referencing
12 the terms with which they are associated.”). It is unreasonable to expect that “virus” as used here
13 was meant to encompass COVID-19. In contrast, the contamination exclusion in *Circus* applied
14 where the contaminant would “cause or threaten damage to human health”—there is no such
15 descriptor here. *Id.*, 525 F. Supp. 3d at 1278. Moreover, the Colorado federal court in *Monarch*
16 *Casino & Resort, Inc. v. Affiliated FM Insurance Co.*, 2021 WL 4260785, *3 (D. Colo. Sept. 17,
17 2021) ignored *Casino West* despite applying both Colorado and Nevada law, and the exclusion there
18 applied broadly to the actual or threatened “presence” of a virus, and contained none of the
19 environmental terms of art contained in Starr’s Exclusion. *Id.*

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23 While Starr cites to decisions from other jurisdictions for support that the Court should apply
24 its Exclusion,³³ none are more persuasive than the New Jersey state court’s decision in *AC Ocean*
25 that cited this Court’s prior ruling in arriving at the same conclusion that the exclusions did not
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28 ³³ For instance, Starr cites dicta from in *Ford of Slidell, LLC v. Starr Surplus Lines Insurance Co.*,
2021 WL 5415846, *10 (E.D. La. Nov. 19, 2021) (applying Louisiana law).

1 apply. Same as here, the exclusions at issue used the same environmental terms of art (“discharge,”
2 “migration”) and defined “contaminant” to include “virus” along with “alkilis,” “soot” and
3 substances under the “Clean Air Act” and other regulatory acts. 2021 WL 6091224, at *6. And,
4 same as here, the state’s highest court had previously held (in CGL policies) that such exclusions
5 were limited to traditional environmental pollution. *Id.* at *7. The *AC Ocean* court stated that the
6 exclusions “overwhelmingly refer[red] to environmental and industrial pollution contaminants,” and
7 it rejected the insurer’s argument, same as in JGB, that the word “virus” was attributable to anything
8 other than “pollution caused by traditional environmental and industrial pollution,” and finding it
9 was not unreasonable to conclude that exclusions in an “all-risk policy” directed at traditional
10 environmental and industrial damages “do not pertain to damages for a virus such as COVID-19.”
11 As Starr is aware, the Exclusion was never intended to apply to JGB’s losses from a pandemic
12 resulting from a “naturally occurring communicable disease.” *Id.*

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15 **G. THE LAW AND UNDISPUTED FACTS UNDERPINNING JGB’S NUCPA**
16 **AND BAD FAITH CLAIMS PRECLUDE SUMMARY JUDGMENT**

17 Finally, Starr’s Motion misconstrues the law applicable to JGB’s NUCPA and implied
18 covenant claims, and the evidentiary record shows, *irrespective* of Starr’s wrongful denial, Starr
19 misrepresented to JGB pertinent facts and Policy provisions based on only a cursory review of JGB’s
20 claim—and then delayed its “denial” under the guise of “investigation” to preserve its litigation
21 posture in this case.

22 Starr asserts to prevail under NRS 686A.310, JGB must “prove that Starr knew its coverage
23 position was incorrect and withheld coverage anyway.” Mot. at 29 (citing *Tao Grp. Holdings, LLC*
24 *v. Emp’s Ins. Co. of Wassau*, No. 2:21-cv-00382-GMN-NJK, 2022 WL 705926, at *12 (D. Nev.
25 Mar. 8, 2022)). However, the NUCPA “proscribes specific actions taken by an insurer that Nevada
26 [deems] unfair, regardless of whether insurance benefits are denied.” Mot. at 28 (quoting *Phillips v.*
27 *Clark Cty. Sch. Dist.*, 903 F. Supp. 2d 1094, 1102-03 (D. Nev. 2012) (summary judgment for insurer
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1 rejected where questions of fact remained if insurer did independent examination or a “pure paper”
2 review)). Nevada law does not require there to be a finding of coverage for a NUCPA violation.³⁴

3 Second, *Tao* does not hold that to prevail under NRS 686A.310(e), Nevada law requires
4 proof the insurer “knew” it was wrong on liability when it denied coverage. To the contrary, the *Tao*
5 court recognized an insurer’s superficial investigation of coverage may show a NUCPA “unfair act”;
6 however, the insurer’s short investigation was fine in *Tao* because, in the court’s view, the denial
7 was consistent with applicable law. *See Tao*, 2022 WL 705926, at *12.³⁵ In contrast here, Starr
8 purports to have needed to “investigate” JGB’s claim for more than six months under the guise of
9 needing more information, but the whole time, Starr was affirmatively seeking to dismiss this
10 lawsuit based on its view that COVID-19 cannot be “direct physical loss or damage” as a matter of
11 law (*supra* Facts § E), even though there was no applicable law on this issue.
12

13 Further, Sedgwick’s May 26, 2020 letter misrepresented that “there is no mention of the
14 [Nevada] orders having been issued because of physical loss or damage,” when, in fact, there was
15 such mention. Mot. Ex. K at 2; Ex. 6 at 181 (Order stating: “the novel coronavirus that causes
16 COVID-19 . . . survive[s] on surfaces for indeterminate periods of time [and] renders some property
17 unusable and contributes to . . . damage, and property loss”). The May 26 letter also misrepresented
18 that time element coverage required “physical prevention” to property when, in fact, it does not. *See*
19 Mot. Ex. K at 10; Ex. 1 at 35 § 7 and 61. These statements were not a matter of reasonable
20 misinterpretation, nor did they result because of the “novelty of COVID-19-related claims.” Mot. at
21 29. Discovery shows Starr simply failed to consider loss information in good faith and never updated
22 its erroneous positions.³⁶ *See* Ex. 14 155:5-156:6 (Starr’s claims handler did not review government
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25 ³⁴ *See Schumacher v. State Farm Fire & Cas. Co.*, 467 F. Supp. 2d 1090, 1095 (D. Nev. 2006).

26 ³⁵ *Tao* did not consider Nevada law and misrelied on *MRI Healthcare Center of Glendale, Inc. v.*
27 *State Farm General Insurance Co.*, 187 Cal. App. 4th 766, 778-79 (Cal. Ct. App. 2010) (recognizing
coverage could be triggered if a change in property renders it “unsatisfactory for future use”).

28 ³⁶ *See also supra* n.15, p. 12; Ex. 9 260:21-261:5, 261:16-18, 262:1-7 (adjuster disputed “that access
to [JGB’s] premises was prohibited”).

1 orders nor think they “made a difference”). As for Starr’s previous argument that JGB cannot hold
2 Starr liable under NAC 686A.660 because “there is no private cause of action available for perceived
3 violations of the [Insurance] code” (Mot. at 28 n.14), the *Thorpe* case restricted recovery under NRS
4 690B.012 (not at issue here) and states that its ruling “does not foreclose actions for tortious and
5 contractual bad faith against first-party insurers.” *Allstate v. Thorpe*, 170 P.3d 989, 997 (Nev. 2007).

6 Starr’s attack on JGB’s breach of the implied covenant claim is equally without merit.
7 Nevada law does not require Starr to have “known” the claim was covered but nonetheless denied.³⁷
8 Rather, a party breaches the covenant of good faith and fair dealing when it “performs a contract in
9 a manner that is unfaithful to the purpose of the contract and the justified expectations of the other
10 party are thus denied.” *Ahuja v. W. United Ins. Co.*, No. 3:13-CV-00038, 2013 WL 5316538, at *3
11 (D. Nev. Sept. 23, 2013) (failure of contract claim need not, and did not, preclude bad faith).

12 Although Starr asserts that JGB delayed in providing all requested information, which
13 precluded Starr from completing its investigation (*see* Mot. at 29-30), the record shows that Starr
14 merely regurgitated already answered requests in Sedgwick’s May 26 letter at the direction of
15 counsel (*supra* Facts § E)—and then hid behind those requests until *after* Starr filed its Motion to
16 Dismiss Reply to preserve its (incorrect) argument that there can be no bad faith absent a “formal”
17 denial. *See also* Ex. 14 267:22-274:25 (Starr’s claims handler testified that all requests had been
18 answered by JGB’s Complaint in June, despite Starr continuing to repeat such questions as late as
19 September); Ex. 26 at 680; Ex. 27; Mot. Ex. L. Plus, this all transpired *after* Starr’s effective denial
20 on May 26, 2020, when Sedgwick issued a letter informing JGB of Starr’s “serious concerns” as to
21 coverage. Mot. Ex. K at 2. In short, discovery has shown the merit of JGB’s extracontractual claims
22 and Starr has failed to establish applicable law or undisputed facts supporting summary judgment.

23 CONCLUSION

24 For the foregoing reasons, JGB respectfully requests that this Court deny Starr’s Motion.
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27 ³⁷ *See, e.g., Dogra v. Liberty Mut. Fire Ins. Co.*, No.: 2:14-cv-01841-GMN-GWF, 2017 WL
28 4158607, at *5 (D. Nev. Sept. 19, 2017) (rejecting insurer’s argument that it “cannot be liable for
bad faith as a matter of law in the absence of a breach of contract”).

1 DATED: April 1, 2022

WOLF, RIFKIN, SHAPIRO,
SCHULMAN & RABKIN, LLP

2
3 By: /s/ Bradley Schrager, Esq.

4 Bradley Schrager, Esq. (NSB No. 10217)
5 Royi Moas, Esq. (NSB No. 10686)
6 3773 Howard Hughes Parkway, Suite 590 South
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12 Robin L. Cohen, Esq. (*Admitted pro hac vice*)
13 Marc T. Ladd, Esq. (*Admitted pro hac vice*)
14 Jillian M Raines, Esq. (*Admitted pro hac vice*)
15 Jason D. Meyers, Esq. (*Admitted pro hac vice*)
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24 jraines@cohenziffer.com
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26 *Attorneys for Plaintiff JGB Vegas Retail Lessee,*
27 *LLC*
28

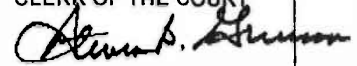
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CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of April, 2022, a true and correct copy of **PLAINTIFF JGB VEGAS RETAIL LESSEE, LLC'S OPPOSITION TO STARR SURPLUS LINES INSURANCE COMPANY'S MOTION FOR SUMMARY JUDGMENT** was served by electronically filing with the Clerk of the Court using the Odyssey eFileNV system and serving all parties with an email-address on record, pursuant to Administrative Order 14-2 and Rule 9 of the N.E.F.C.R.

By /s/ Melissa Shield
Melissa Shield, an Employee of
WOLF, RIFKIN, SHAPIRO, SCHULMAN &
RABKIN, LLP

4882-3448-9114, v. 1



1 **DEC**

2 Bradley Schrager, Esq. (NSB No. 10217)

3 Royi Moas, Esq. (NSB No. 10686)

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17 jraines@cohenziffer.com

18 jmeyers@cohenziffer.com

15 *Attorneys for Plaintiff*

16 *JGB Vegas Retail Lessee, LLC*

17 **DISTRICT COURT**

18 **CLARK COUNTY, NEVADA**

19 JGB VEGAS RETAIL LESSEE, LLC,

20 Plaintiff,

21 vs.

22 STARR SURPLUS LINES INSURANCE
COMPANY,

23 Defendant.

Case No.: A-20-816628-B

Dept. No.: XIII

**DECLARATION OF MARC T. LADD
IN SUPPORT OF PLAINTIFF'S
OPPOSITION TO DEFENDANT'S
MOTION FOR SUMMARY
JUDGMENT**

Hearing: April 18, 2022
9:00 a.m.

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DECLARATION OF MARC T. LADD

1 I, Marc T. Ladd, declare and state as follows:

2 1. I am a partner at Cohen Ziffer Frenchman & McKenna, counsel for plaintiff JGB
3 Vegas Retail Lessee, LLC ("JGB") in this litigation. I have personal knowledge of the facts set
4 forth in this declaration and if called as a witness, I could and would competently testify thereto.

5 2. Attached as Exhibit 1 is a true and correct copy of Starr Surplus Lines Insurance
6 Company Policy No. SLSTPTY11245819, issued to JGB Vegas Retail Lessee, LLC, with a policy
7 period from December 15, 2019 to December 15, 2020, bearing Bates Nos. PJGB000001 -
8 PJGB000100.

9 3. Attached as Exhibit 2 is a true and correct copy of the Expert Witness Report of Igor
10 Burstyn, PhD, and Neal Goldstein, PhD, without attachments A, B, D, E, F, and H, bearing Bates
11 Nos. PJGB008928 - PJGB009020.

12 4. Attached as Exhibit 3 is a true and correct copy of the USA Today article
13 "Coronavirus patient visited conference at Mirage on Las Vegas Strip, had symptoms prior," dated
14 Mar. 12, 2020, bearing Bates Nos. PJGB002828 - PJGB002830.

15 5. Attached as Exhibit 4 is a true and correct copy of Governor Sisolak's Declaration
16 of Emergency for COVID-19, dated March 12, 2020, bearing Bates Nos. PJGB000102 -
17 PJGB000104.

18 6. Attached as Exhibit 5 is a true and correct copy of the Expert Report of Justin Lessler,
19 PhD, without appendices, bearing Bates Nos. PJGB009233 - PJGB009315.

20 7. Attached as Exhibit 6 is a true and correct copy of the press release of Nevada Health
21 Response, "Prior to rolling out Roadmap to Recovery reopening plan for Nevada, Gov. Sisolak
22 announces extension Stay at Home directive with initial easing of restrictions," enclosing Governor
23 Sisolak's Declaration of Emergency Directive 016, dated April 29, 2020, bearing Bates Nos.
24 PJGB000158 - PJGB000172.

25 8. Attached as Exhibit 7 is a true and correct copy of the transcript of the deposition of
26 Dr. Justin Lessler, dated January 26, 2022.

27 9. Attached as Exhibit 8 is a true and correct copy of Governor Sisolak's Declaration
28 of Emergency Directive 021, bearing Bates Nos. PJGB000222 - PJGB000231.

1 10. Attached as Exhibit 9 is a true and correct copy of the transcript of the deposition of
2 Serena Larson, dated August 20, 2021.

3 11. Attached as Exhibit 10 is a true and correct copy of email correspondence by and
4 between Jillian Kester, Owner of the Dog House, and Connie Stankivicz, General Manager of the
5 Grand Bazaar Shops, dated March 11, 2020 - March 16, 2020, bearing Bates Nos. PJGB006057 -
6 PJGB006058.

7 12. Attached as Exhibit 11 is a true and correct copy of a document created by
8 representatives of JGB with the assistance of counsel entitled "JGB Vegas Retail Lessee, LLC
9 Tenant / Licensee Rent Abatement / Deferral / Termination Documents and Closings and Re-
10 openings," bearing Bates Nos. PJGB012190 - PJGB012196.

11 13. Attached as Exhibit 12 is a true and correct copy of email correspondence from
12 Donna Ayala to Connie Stankivicz, General Manager of the Grand Bazaar Shops, dated March 16,
13 2020, bearing Bates No. PJGB006059.

14 14. Attached as Exhibit 13 is a true and correct copy of a letter from Jonathan Schwartz,
15 AVP Real Estate & Business Development at It'Sugar, to the General Manager of the Grand Bazaar
16 Shops, dated March 18, 2020, bearing Bates No. PJGB002608.

17 15. Attached as Exhibit 14 is a true and correct copy of the transcript of the deposition
18 of Andrea Stroink, dated September 28, 2021.

19 16. Attached as Exhibit 15 is a true and correct copy of the transcript of the deposition
20 of Dr. Igor Burstyn, dated February 3, 2022.

21 17. Attached as Exhibit 16 is a true and correct copy of Docket No. 18, bearing Bates
22 Nos. PJGB002858 - PJGB002865.

23 18. Attached as Exhibit 17 is a true and correct copy of an email with attachment sent
24 from Al Croteau, Assistant General Manager / Director of Operations at Caesars Entertainment, to
25 Larry Siegel, dated May 29, 2020, bearing Bates Nos. PJGB005374 - PJGB005389.

26 19. Attached as Exhibit 18 is a true and correct copy of the Expert Report of Mark R.
27 Newton, without exhibits, dated November 8, 2021, bearing Bates Nos. STARR-NEWTON 000001
28 - STARR-NEWTON 000008.

1 20. Attached as Exhibit 19 is a true and correct copy of the Supplemental Expert Report
2 of Joseph J. Galanti, CFA, CFE, dated January 28, 2022, without Attachment 1, bearing Bates Nos.
3 PJGB012468 - PJGB012495.

4 21. Attached as Exhibit 20 is a true and correct copy of email correspondence by and
5 between Lisa Heap, Director of Sales Operations at Exotics Racing, and Connie Stankivicz, General
6 Manager of the Grand Bazaar Shops, dated March 17, 2020, bearing Bates No. PJGB006069.

7 22. Attached as Exhibit 21 is a true and correct copy of *Nevada Property 1 LLC d/b/a*
8 *The Cosmopolitan of Las Vegas v. Factory Mutual Insurance Company*, Case No.: A-21-831049-B
9 (D. Ct. Nev. Sept. 1, 2021).

10 23. Attached as Exhibit 22 is a true and correct copy of *Boardwalk Ventures CA, LLC v.*
11 *Century-Nat'l Ins. Co.*, No. 20STCV27359 (Cal. Super. Ct. Mar. 18, 2021).

12 24. Attached as Exhibit 23 is a true and correct copy of *JDS Constr. Group, LLC v.*
13 *Cont'l Cas. Co.*, No. 2020 CH 5678 (Ill. Cir. Ct. Oct. 25, 2021).

14 25. Attached as Exhibit 24 is a true and correct copy of the transcript of the deposition
15 of Mark R. Newton, dated January 14, 2022.

16 26. Attached as Exhibit 25 is a true and correct copy of the Expert Rebuttal Report of
17 Joseph J. Galanti, CFA, CFE, dated December 6, 2021, without attachments, bearing Bates Nos.
18 PJGB012197 - PJGB012202.

19 27. Attached as Exhibit 26 is a true and correct copy of email correspondence by and
20 between Serena Larson and Andrea Stroink, dated September 10, 2020, attaching a letter from
21 Connie Stankivicz, General Manager of the Grand Bazaar Shops, to Serena Larson, dated September
22 10, 2020 without attachments, bearing Bates Nos. STARR-JGB 000818 - STARR-JGB 000821 and
23 used as Exhibit LARSON 23 in the deposition of Serena Larson.

24 28. Attached as Exhibit 27 is a true and correct copy of an email from Rita Tuttle,
25 Administrative Assistant, to Marc Ladd, dated September 14, 2020, attaching a letter from Amy
26 Samberg to Marc Ladd, dated September 14, 2020, with enclosures, bearing Bates Nos. PGB002728
27 - PGB002747 and used as Exhibit STROINK 58 in the deposition of Andrea Stroink.

28

1 I declare under penalty of perjury under the laws of the State of Nevada that the foregoing
2 is true and correct.

3

4 Executed this 1st day of April 2022, at New York, New York.

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/s/ Marc Ladd

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Marc T. Ladd

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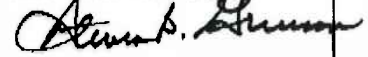
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CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of April, 2022, a true and correct copy
of **DECLARATION OF MARC T. LADD IN SUPPORT OF PLAINTIFF'S OPPOSITION
TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT** was served by electronically
filing with the Clerk of the Court using the Odyssey eFileNV system and serving all parties with
an email-address on record, pursuant to Administrative Order 14-2 and Rule 9 of the N.E.F.C.R.

By /s/ Melissa Shield
Melissa Shield, an Employee of
WOLF, RIFKIN, SHAPIRO, SCHULMAN &
RABKIN, LLP



1 **APEN**
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2 Royi Moas, Esq. (NSB No. 10686)
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Marc T. Ladd, Esq. (*Admitted pro hac vice*)
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jmeyers@cohenziffer.com
14

15 *Attorneys for Plaintiff*
16 *JGB Vegas Retail Lessee, LLC*

17 **DISTRICT COURT**

18 **CLARK COUNTY, NEVADA**

19 **JGB VEGAS RETAIL LESSEE, LLC,**

20 **Plaintiff,**

21 **vs.**

22 **STARR SURPLUS LINES INSURANCE**
23 **COMPANY,**

24 **Defendant.**

Case No.: A-20-816628-B

Dept. No.: XIII

**PLAINTIFF JGB VEGAS RETAIL
LESSEE, LLC'S APPENDIX OF
EXHIBITS IN SUPPORT OF ITS
OPPOSITION TO DEFENDANT
STARR SURPLUS LINES
INSURANCE COMPANY'S MOTION
FOR SUMMARY JUDGMENT**

25 Pursuant to E.D.C.R. 2.27(b), Plaintiff here submits this Appendix of Exhibits in Support of
26 Its Opposition To Defendant Starr Surplus Lines Insurance Company's Motion For Summary
27 Judgment:
28

-1-

**PLAINTIFF JGB VEGAS RETAIL LESSEE, LLC'S APPENDIX OF EXHIBITS IN SUPPORT OF ITS
OPPOSITION TO DEFENDANT STARR SURPLUS LINES INSURANCE COMPANY'S MOTION FOR
SUMMARY JUDGMENT**

EXHIBIT NO	DESCRIPTION	PAGE NO.
1.	Starr Surplus Insurance Policy No. SLSTPTY11245819	OPP000001 thru OPP000101
2.	Dr. Burstyn Expert Report and Exhibits - CONFIDENTIAL - FILED UNDER SEAL	OPP000102 thru OPP000132
3.	News Article Regarding Coronavirus Patient Visiting Mirage	OPP000133 thru OPP000136
4.	Declaration of Emergency Directive 001	OPP000137 thru OPP000140
5.	Dr. Lessler Expert Report without Appendices - CONFIDENTIAL - FILED UNDER SEAL	OPP000141 thru OPP000168
6.	Declaration of Emergency Directive 016	OPP000169 thru OPP000184
7.	Deposition Transcript – Dr. Justin Lessler - CONFIDENTIAL - FILED UNDER SEAL	OPP000185 thru OPP000216
8.	Declaration of Emergency Directive 021	OPP000217 thru OPP000227
9.	Deposition Transcript – Serena Larson - CONFIDENTIAL - FILED UNDER SEAL	OPP000228 thru OPP000333
10.	Email RE Dog House - Coronavirus Impact - CONFIDENTIAL - FILED UNDER SEAL	OPP000334 thru OPP000336
11.	Closure Chart - CONFIDENTIAL - FILED UNDER SEAL	OPP000337 thru OPP000344
12.	Email RE Tags Grand Bazaar - CONFIDENTIAL - FILED UNDER SEAL	OPP000345 thru OPP000346

EXHIBIT NO	DESCRIPTION	PAGE NO.
13.	It's Sugar Notice - CONFIDENTIAL - FILED UNDER SEAL	OPP000347 thru OPP000348
14.	Deposition Transcript – Andrea Stroink - CONFIDENTIAL - FILED UNDER SEAL	OPP000349 thru OPP000453
15.	Deposition Transcript – Dr. Igor Burstyn - CONFIDENTIAL - FILED UNDER SEAL	OPP000454 thru OPP000487
16.	Stankivicz Declaration in Support of Plaintiff's Opposition to Motion to Dismiss - CONFIDENTIAL - FILED UNDER SEAL	OPP000488 thru OPP000496
17.	Email from A. Croteau to L. Siegel RE Health Guidelines - CONFIDENTIAL - FILED UNDER SEAL	OPP000497 thru OPP000513
18.	Newton Expert Report - CONFIDENTIAL - FILED UNDER SEAL	OPP000514 thru OPP000522
19.	Supplemental Expert Report of Joseph J. Galanti - CONFIDENTIAL - FILED UNDER SEAL	OPP000523 thru OPP000534
20.	Email RE Exotics Racing – Update - CONFIDENTIAL - FILED UNDER SEAL	OPP000535 thru OPP000536
21.	Nevada Property 1 LLC d/b/a The Cosmopolitan of Las Vegas v. Factory Mutual Insurance Company, Case No.: A-21-831049-B (D. Ct. Nev. Sept. 1, 2021)	OPP000537 thru OPP000546
22.	Boardwalk Ventures CA, LLC v. Century-Nat'l Ins. Co., No. 20STCV27359 (Cal. Super. Ct. Mar. 18, 2021)	OPP000547 thru OPP000554
23.	JDS Constr. Group, LLC v. Cont'l Cas. Co., No. 2020 CH 5678 (Ill. Cir. Ct. Oct. 25, 2021)	OPP000555 thru OPP000560
24.	Deposition Transcript – Mark R. Newton - CONFIDENTIAL - FILED UNDER SEAL	OPP000561 thru OPP000669

EXHIBIT NO	DESCRIPTION	PAGE NO.
25.	Expert Rebuttal Report of Joseph J. Galanti - CONFIDENTIAL - FILED UNDER SEAL	OPP000670 thru OPP000676
26.	Larson Exhibit 23 - CONFIDENTIAL - FILED UNDER SEAL	OPP000677 thru OPP000681
27.	Stroink Exhibit 58 - CONFIDENTIAL - FILED UNDER SEAL	OPP000682 thru OPP000702

DATED: April 1, 2022.

WOLF, RIFKIN, SHAPIRO,
SCHULMAN & RABKIN, LLP

By: /s/ Royi Moas, Esq.

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*Attorneys for Plaintiff JGB Vegas Retail Lessee,
LLC*

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CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of April, 2022, a true and correct copy of **PLAINTIFF JGB VEGAS RETAIL LESSEE, LLC'S APPENDIX OF EXHIBITS IN SUPPORT OF ITS OPPOSITION TO DEFENDANT STARR SURPLUS LINES INSURANCE COMPANY'S MOTION FOR SUMMARY JUDGMENT** was served by electronically filing with the Clerk of the Court using the Odyssey eFileNV system and serving all parties with an email-address on record, pursuant to Administrative Order 14-2 and Rule 9 of the N.E.F.C.R.

By /s/ Melissa Shield
Melissa Shield, an Employee of
WOLF, RIFKIN, SHAPIRO, SCHULMAN &
RABKIN, LLP

EXHIBIT 1

EXHIBIT 1

NOTICE TO POLICYHOLDER

This insurance contract is issued pursuant to the Nevada Insurance laws by an insurer neither licensed by nor under the supervision of the Division of Insurance of the Department of Business and Industry of the State of Nevada. If the insurer is found insolvent, a claim under this contract is not covered by the Nevada Insurance Guaranty Association Act.



Christopher McGovern

PJGB000001

OPP000002

PA 0561

JGB VEGAS RETAIL LESSEE, LLC
Starr Surplus Lines Insurance Company Policy No. SLSTPTY11245819

PROPERTY COVERAGE FORM
SCHEDULE OF POLICY FORMS AND ENDORSEMENTS

	<u>FORM NAME</u>	<u>FORM NO.</u>	<u>NO. OF PAGES</u>
1.	Starr Surplus Lines Insurance Company Declarations Page	N/A	2 Pages
2.	Policy Security Page	N/A	1 Page
3.	Common Policy Conditions	IL 00 17 11 98	1 Page
4.	Commercial Property Conditions	CP 00 90 07 88	2 Pages
5.	US Treasury Department's Office of Foreign Assets Control (OFAC) Advisory Notice to Policyholders	IL P 001 01 04	1 Page
6.	Policyholder State Notices	N/A	12 Pages
7.	Property Coverage Form Declarations	PR 001 D (05/12)	4 Pages
8.	Property Coverage Form General Conditions	PR 002 (02/19)	16 Pages
9.	Property Coverage Form Property Section	PR 003 (02/12)	1 Page
10.	Property Coverage Form Business Interruption Section	PR 004 (02/12)	3 Pages

ENDORSEMENTS

			<u>ENDORSEMENT NO.</u>
11.	Accounts Receivable Endorsement	PR 006 (02/12)	2 Pages
12.	Agreed Amount Endorsement (Business Interruption)	PR 007 (02/12)	1 Page
13.	Agreed Amount Endorsement (Property)	PR 008 (02/12)	1 Page
14.	Biological, Chemical or Nuclear Exclusion	N/A	1 Page
15.	Boiler and Machinery Endorsement	PR 012 (07/13)	5 Pages
16.	Course of Construction Endorsement	PR 018 (02/12)	4 Pages
17.	Data Distortion/Corruption Endorsement Covers Subsequent Damage from Named Perils and B&M	PR 020 (02/12)	1 Page
18.	Electronic Data Processing Endorsement	PR 023 (02/12)	2 Pages
19.	Electronic Date Recognition Clause Endorsement (Combined)	PR 024 (02/12)	1 Page
20.	Extra Expense Endorsement	PR 028 (02/12)	2 Pages
21.	Fire and Police Department Service Charges Endorsement	PR 029 (02/12)	1 Page
22.	Fine Arts Endorsement	PR 030 (11/16)	2 Pages
23.	Increased Cost of Construction & Demolition Endorsement	PR 034 (06/16)	1 Page

PR 078(02/12)

Page 1 of 2

PJGB000002

OPP000003

PA 0562

24.	Ingress/Egress Endorsement	PR 035 (02/12)	1 Page	14
25.	Leasehold Interest Endorsement	PR 037 (02/12)	2 Pages	15
26.	Minimum Earned Premium Endorsement	N/A	1 Page	16
27.	Mobile Equipment Endorsement	PR 041 (11/16)	3 Pages	17
28.	Named Windstorm Definition	PR 042 (11/16)	1 Page	18
29.	Newly Acquired Locations Endorsement	PR 043 (11/16)	1 Page	19
30.	Occurrence Limit of Liability Endorsement	PR 044 (02/12)	1 Page	20
31.	Pollution and Contamination Clean-Up Endorsement	PR 049 (02/12)	1 Page	21
32.	Radioactive Contamination Exclusion	NMA1191	1 Page	22
33.	Rental Value Insurance Endorsement	PR 053 (02/12)	2 Pages	23
34.	Replacement Cost Endorsement	PR 054 (09/14)	2 Pages	24
35.	Roof Limitation Endorsement	N/A	1 Page	25
36.	Schedule of Locations Endorsement	PR 056 (09/14)	1 Page	26
37.	Service of Process Clause Endorsement	SSL-0005	1 Page	27
38.	Spoilage Endorsement	N/A	1 Page	28
39.	Temporary Removal of Property Endorsement	PR 059 (02/12)	1 Page	29
40.	Terrorism Exclusion (For Certified Acts of Terrorism Under the Terrorism Risk Insurance Act, as amended)	61330 (01/15)	1 Pages	30
41.	Total Terrorism Exclusion	61331 (01/15)	1 Page	31
42.	Trade or Economic Sanctions Endorsement	PR 067 (02/12)	1 Page	32
43.	Transit Endorsement	PR 064 (07/13)	3 Pages	33
44.	Unnamed Location Coverage Endorsement (Real and Personal Property)	PR 065 (02/12)	1 Page	34
45.	Valuable Papers and Records Endorsement	PR 066 (07/13)	2 Pages	35
46.	War and Terrorism Exclusion (as respects Transit)	NMA2918	1 Page	36
47.	Policy Amendment Endorsement	N/A	1 Page	37
48.	Application of Sublimits Endorsement	N/A	1 Page	38
49.	Additional Insureds and Loss Payees Endorsement	N/A	2 Pages	39
50.	Pre-Existing Damages Exclusion	N/A	1 Page	40
51.	Appendix A – New Madrid Seismic Zone	PR 073 (02/12)	2 Pages	
52.	Appendix B – Pacific Northwest Seismic Zones	PR 074 (02/12)	1 Page	
53.	Appendix C – Definition of Tier 1 Wind Counties	PR 075 (09/15)	2 Pages	
54.	Claims Notice	N/A	1 Page	

Program Manager:
Starr Specialty Lines Insurance Agency, LLC
3353 Peachtree Road NE
Suite 1000
Atlanta, GA 30326

Company:
Starr Surplus Lines Insurance Company
399 Park Avenue
8th Floor
New York, NY 10022

Policy Number: SLSTPTY11245819

Renewing or in lieu of: N/A

DECLARATIONS

Insured: JGB Vegas Retail Lessee, LLC

Producer: All Risks Ltd.

Address: 3645 Las Vegas Blvd S, Unit 101 Box
172
Las Vegas, NV 89109

Address: 10150 York Rd
Hunt Valley, MD 21030

Commission:

Policy Period: From December 15, 2019 at 12:01 A.M., to December 15, 2020 at 12:01 A.M. Local Standard Time at the address of the insured listed in the declarations.

To the extent that coverage in this policy replaces coverage in other policies terminating at noon standard time on the inception date of this policy, coverage under this policy shall not become effective until such other coverage has terminated.

The insurance afforded is only with respect to the specific part and coverages therein, the full title of which is set forth below the caption "Form."

IN RETURN FOR THE PAYMENT OF THE PREMIUM, AND SUBJECT TO ALL THE TERMS OF THIS POLICY, WE AGREE WITH YOU TO PROVIDE THE INSURANCE AS STATED IN THIS POLICY.

PERILS INSURED	COVERAGE PROVIDED	FORMS & ENDORSEMENTS	LIMIT OF LIABILITY
AS PER ATTACHED FORMS AND ENDORSEMENTS	AS PER ATTACHED FORMS AND ENDORSEMENTS	SEE ATTACHED SCHEDULE OF FORMS AND ENDORSEMENTS	\$33,604,400 per occurrence, that being 100% part of \$33,604,400 per occurrence excess of various deductibles. Coverage does not apply to locations situated in Guam or the U.S. Virgin Islands.

GROSS PREMIUMS:	PROPERTY PREMIUM:	\$75,900.00
	CERTIFIED TERRORISM PREMIUM:	\$0.00
	NON-CERTIFIED TERRORISM PREMIUM:	\$0.00
	TOTAL PREMIUM:	\$75,900.00

PIGB000004

OPP000005

PA 0564

This Declaration and attached Form(s), with Policy Standard Conditions and Endorsements, if any, issued to form a part thereof, completes the above numbered policy.

The Company shall have no duty to defend or investigate any claim or suit unless and until all limits of all underlying insurance policies have been exhausted by payment of judgments, claims or settlements.

If any underlying insurance policy has no duty to pay a claim for injury or damage for a reason other than exhaustion of an aggregate limit of insurance, then Company shall have no obligation to make any payment under this policy.

Any taxes imposed by virtue of this policy being written by an unauthorized insurer are the responsibility of the insured and a licensed producer.



Signature of Authorized Agent

1/14/20

Date

Tax \$2,726.50
SFNV \$311.60
Policy Fee \$2,000.00
Total Payable at Inception \$80,938.10

PIGB000005

OPP000006

PA 0565

SECURITY PAGE

The insurance companies named herein, each for itself, severally but not jointly, do obligate themselves under the terms of this policy to the extent of the percentage set opposite their names.

Companies

Percent Assumed

Starr Surplus Lines Insurance Company:

100%

PIGB000006

OPP000007

PA 0566

COMMON POLICY CONDITIONS

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

A. Cancellation

1. The first Named Insured shown in the Declarations may cancel this policy by mailing or delivering to us advance written notice of cancellation.
2. We may cancel this policy by mailing or delivering to the first Named Insured written notice of cancellation at least:
 - a. 10 days before the effective date of cancellation if we cancel for nonpayment of premium; or
 - b. 30 days before the effective date of cancellation if we cancel for any other reason.
3. We will mail or deliver our notice to the first Named Insured's last mailing address known to us.
4. Notice of cancellation will state the effective date of cancellation. The policy period will end on that date.
5. If this policy is cancelled, we will send the first Named Insured any premium refund due. If we cancel, the refund will be pro rata. If the first Named Insured cancels, the refund may be less than pro rata. The cancellation will be effective even if we have not made or offered a refund.
6. If notice is mailed, proof of mailing will be sufficient proof of notice.

B. Changes

This policy contains all the agreements between you and us concerning the insurance afforded. The first Named Insured shown in the Declarations is authorized to make changes in the terms of this policy with our consent. This policy's terms can be amended or waived only by endorsement issued by us and made a part of this policy.

C. Examination Of Your Books And Records

We may examine and audit your books and records as they relate to this policy at any time during the policy period and up to three years afterward.

D. Inspections And Surveys

1. We have the right to:
 - a. Make inspections and surveys at any time;

- b. Give you reports on the conditions we find; and

- c. Recommend changes.

2. We are not obligated to make any inspections, surveys, reports or recommendations and any such actions we do undertake relate only to insurability and the premiums to be charged. We do not make safety inspections. We do not undertake to perform the duty of any person or organization to provide for the health or safety of workers or the public. And we do not warrant that conditions:

- a. Are safe or healthful; or

- b. Comply with laws, regulations, codes or standards.

3. Paragraphs 1. and 2. of this condition apply not only to us, but also to any rating, advisory, rate service or similar organization which makes insurance inspections, surveys, reports or recommendations.

4. Paragraph 2. of this condition does not apply to any inspections, surveys, reports or recommendations we may make relative to certification, under state or municipal statutes, ordinances or regulations, of boilers, pressure vessels or elevators.

E. Premiums

The first Named Insured shown in the Declarations:

1. Is responsible for the payment of all premiums; and
2. Will be the payee for any return premiums we pay.

F. Transfer Of Your Rights And Duties Under This Policy

Your rights and duties under this policy may not be transferred without our written consent except in the case of death of an individual named insured.

If you die, your rights and duties will be transferred to your legal representative but only while acting within the scope of duties as your legal representative. Until your legal representative is appointed, anyone having proper temporary custody of your property will have your rights and duties but only with respect to that property.

COMMERCIAL PROPERTY CONDITIONS

This Coverage Part is subject to the following conditions, the Common Policy Conditions and applicable Loss Conditions and Additional Conditions in Commercial Property Coverage Forms.

A. CONCEALMENT, MISREPRESENTATION OR FRAUD

This Coverage Part is void in any case of fraud by you as it relates to this Coverage Part at any time. It is also void if you or any other insured, at any time, intentionally conceal or misrepresent a material fact concerning:

1. This Coverage Part;
2. The Covered Property;
3. Your interest in the Covered Property; or
4. A claim under this Coverage Part.

B. CONTROL OF PROPERTY

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

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

C. INSURANCE UNDER TWO OR MORE COVERAGES

If two or more of this policy's coverages apply to the same loss or damage, we will not pay more than the actual amount of the loss or damage.

D. LEGAL ACTION AGAINST US

No one may bring a legal action against us under this Coverage Part unless:

1. There has been full compliance with all of the terms of this Coverage Part; and
2. The action is brought within 2 years after the date on which the direct physical loss or damage occurred.

E. LIBERALIZATION

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

F. NO BENEFIT TO BAILEE

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

G. OTHER INSURANCE

1. You may have other insurance subject to the same plan, terms, conditions and provisions as the insurance under this Coverage Part. If you do, we will pay our share of the covered loss or damage. Our share is the proportion that the applicable Limit of Insurance under this Coverage Part bears to the Limits of Insurance of all insurance covering on the same basis.
2. If there is other insurance covering the same loss or damage, other than that described in 1. above, we will pay only for the amount of covered loss or damage in excess of the amount due from that other insurance, whether you can collect on it or not. But we will not pay more than the applicable Limit of Insurance.

H. POLICY PERIOD, COVERAGE TERRITORY

Under this Coverage Part:

1. We cover loss or damage commencing:
 - a. During the policy period shown in the Declarations; and
 - b. Within the coverage territory.
2. The coverage territory is:
 - a. The United States of America (including its territories and possessions);
 - b. Puerto Rico; and
 - c. Canada.

**I. TRANSFER OF RIGHTS OF RECOVERY
AGAINST OTHERS TO US**

If any person or organization to or for whom we make payment under this Coverage Part has rights to recover damages from another, those rights are transferred to us to the extent of our payment. That person or organization must do everything necessary to secure our rights and must do nothing after loss to impair them. But you may waive your rights against another party in writing:

1. Prior to a loss to your Covered Property or Covered Income.
2. After a loss to your Covered Property or Covered Income only if, at time of loss, that party is one of the following:
 - a. Someone insured by this insurance;
 - b. A business firm:
 - (1) Owned or controlled by you; or
 - (2) That owns or controls you; or
 - c. Your tenant.

This will not restrict your insurance.

U.S. TREASURY DEPARTMENT'S OFFICE OF FOREIGN ASSETS CONTROL ("OFAC") ADVISORY NOTICE TO POLICYHOLDERS

No coverage is provided by this Policyholder Notice nor can it be construed to replace any provisions of your policy. You should read your policy and review your Declarations page for complete information on the coverages you are provided.

This Notice provides information concerning possible impact on your insurance coverage due to directives issued by OFAC. **Please read this Notice carefully.**

The Office of Foreign Assets Control (OFAC) administers and enforces sanctions policy, based on Presidential declarations of "national emergency". OFAC has identified and listed numerous:

- Foreign agents;
- Front organizations;
- Terrorists;
- Terrorist organizations; and
- Narcotics traffickers;

as "Specially Designated Nationals and Blocked Persons". This list can be located on the United States Treasury's web site – <http://www.treas.gov/ofac>.

In accordance with OFAC regulations, if it is determined that you or any other insured, or any person or entity claiming the benefits of this insurance has violated U.S. sanctions law or is a Specially Designated National and Blocked Person, as identified by OFAC, this insurance will be considered a blocked or frozen contract and all provisions of this insurance are immediately subject to OFAC. When an insurance policy is considered to be such a blocked or frozen contract, no payments nor premium refunds may be made without authorization from OFAC. Other limitations on the premiums and payments also apply.

POLICYHOLDER NOTICES

Nevada:

This insurance contract is issued pursuant to the Nevada insurance laws by an insurer neither licensed by nor under the supervision of the Division of Insurance of the Department of Business and Industry of the State of Nevada. If the insurer is found insolvent, a claim under this contract is not covered by the Nevada Insurance Guaranty Association Act.

PIGR000011

OPP000012

PA 0571

PROPERTY COVERAGE FORM
DECLARATIONS

POLICY NUMBER: Starr Surplus Lines Insurance Company Policy No.
SLSTPTY11245819

NAMED INSURED: JGB VEGAS RETAIL LESSEE, LLC

MAILING ADDRESS: 3645 LAS VEGAS BLVD S, UNIT 101 BOX 172
LAS VEGAS, NV 89109

LOSS PAYABLE CLAUSE: LOSS, IF ANY, TO BE ADJUSTED WITH AND PAYABLE TO
INSURED, WHOSE RECEIPT SHALL CONSTITUTE A
RELEASE IN FULL OF ALL LIABILITY UNDER THIS POLICY
AS REGARDS SUCH LOSS.

TERM OF THIS POLICY: FROM DECEMBER 15, 2019 AT 12:01 A.M. TO DECEMBER
15, 2020 AT 12:01 A.M. STANDARD TIME AT THE ABOVE
MAILING ADDRESS.

PREMIUM: \$75,900

LIMIT OF LIABILITY: THE LIMIT OF LIABILITY UNDER THIS POLICY SHALL IN NO
EVENT EXCEED THE AMOUNT SHOWN BELOW.

POLICY LIMIT OF LIABILITY: \$33,604,400 ANY ONE OCCURRENCE EXCESS OF POLICY
DEDUCTIBLES.

SUBLIMITS:

THE FOLLOWING SUBLIMITS ARE PART OF AND NOT IN ADDITION TO THE POLICY LIMIT OF LIABILITY:

EARTH MOVEMENT	NOT COVERED	PER OCCURRENCE AND IN THE ANNUAL AGGREGATE, EXCEPT:
EARTH MOVEMENT in the State of Alaska, California or Hawaii	NOT COVERED	PER OCCURRENCE AND IN THE ANNUAL AGGREGATE, EXCEPT:
EARTH MOVEMENT in the NEW MADRID or PACIFIC NORTHWEST Seismic Zones (per Appendices A and B)	NOT COVERED	PER OCCURRENCE IN THE ANNUAL AGGREGATE, EXCEPT
The maximum payable for all EARTH MOVEMENT losses in any one policy term shall in no event exceed:	NOT COVERED	

SUBLIMITS (Continued):

FLOOD	NOT COVERED	PER OCCURRENCE AND IN THE ANNUAL AGGREGATE, EXCEPT:
FLOOD (Including Storm Surge) for any LOCATION Wholly or partially situated within an area defined as a Flood Zone A, A1-A30, AE, AH, AO, AR, A99, AOVEL Or V, V1-V30 and VE as designated by the Federal Emergency Management Agency (FEMA) In published FLOOD Hazard Base Maps Or Flood Insurance Rate Maps		
	NOT COVERED	PER OCCURRENCE AND IN THE ANNUAL AGGREGATE, EXCEPT:
The maximum payable for all FLOOD (Including Storm Surge) losses in any One policy term shall in no event exceed:	NOT COVERED	
ACCOUNTS RECEIVABLE:	\$1,000,000	
COURSE OF CONSTRUCTION:	\$500,000	
DEBRIS REMOVAL:	THE GREATER OF 25% OF ADJUSTED DIRECT PROPERTY LOSS OR \$2,500,000	
ELECTRONIC DATA PROCESSING:	\$250,000	
EXTRA EXPENSE:	\$500,000	
FINE ARTS:	\$100,000	
FIRE AND POLICE DEPARTMENT SERVICE CHARGES:	\$25,000	
INCREASED COST OF CONSTRUCTION, DEMOLITION:	\$1,000,000	
INCREASED COST OF CONSTRUCTION, DEMOLITION (UNDAMAGED PORTION):	INCLUDED	
LEASEHOLD INTEREST:	\$250,000	
LEASED OR RENTED EQUIPMENT:	\$50,000	
MOBILE EQUIPMENT:	\$50,000 (\$10,000 max per item)	
MISCELLANEOUS UNNAMED LOCATIONS:	\$50,000	
NEWLY ACQUIRED LOCATIONS:	\$1,000,000	
POLLUTION AND CONTAMINATION CLEAN UP:	\$50,000 PER OCCURRENCE AND IN THE ANNUAL AGGREGATE	
TEMPORARY REMOVAL OF PROPERTY:	\$50,000	
RENTAL VALUE:	\$50,000	
OFF-PREMISES POWER:	NO COVERAGE	
SIGNS:	\$50,000	
SPOILAGE:	\$100,000	
TRANSIT:	\$50,000	
TREES AND SHRUBS:	\$50,000(NOT TO EXCEED \$ 1,000 PER TREE OR SHRUB)	

SUBLIMITS (Continued):

VALUABLE PAPERS AND RECORDS: \$500,000
VEHICLES: NO COVERAGE

BOILER AND MACHINERY: INCLUDED IN POLICY
LIMIT OF LIABILITY ANY ONE ACCIDENT

The following sublimits are part of and not in addition to the Boiler and Machinery Sublimit:

AMMONIA CONTAMINATION:	\$100,000	ANY ONE ACCIDENT
CONSEQUENTIAL DAMAGE:	\$100,000	ANY ONE ACCIDENT
EXPEDITING EXPENSES:	\$100,000	ANY ONE ACCIDENT
HAZARDOUS SUBSTANCES:	\$100,000	ANY ONE ACCIDENT
WATER DAMAGE:	\$100,000	ANY ONE ACCIDENT

TIME LIMITS:

NO COVERAGE IS PROVIDED BY THIS POLICY BEYOND THE CORRESPONDING TIME LIMIT SPECIFIED BELOW:

CIVIL AND MILITARY AUTHORITY	14 CONSECUTIVE DAYS
INGRESS/EGRESS	14 CONSECUTIVE DAYS
NEWLY ACQUIRED LOCATIONS	60 CONSECUTIVE DAYS
EXTENDED PERIOD OF INDEMNITY	NO COVERAGE

DEDUCTIBLES:

ALL DEDUCTIBLES LISTED BELOW ARE PER OCCURRENCE EXCEPT WITH RESPECT TO COVERAGE PROVIDED UNDER THE BOILER & MACHINERY ENDORSEMENT, IF ATTACHED, WHICH SHALL BE ANY ONE ACCIDENT.

PROPERTY DAMAGE: \$10,000
TIME ELEMENT: \$10,000

1. If the deductible is specified as a (%) percentage, whether separately or combined, the deductible is calculated as follows:

PROPERTY DAMAGE – SEE ABOVE% of the 100% value submitted to and accepted by the COMPANY at the time of loss, of the property insured at the LOCATION where the physical loss or damage occurred.

TIME ELEMENT – SEE ABOVE% of the 100% Time Element values that would have been earned in the 12 month period following the OCCURRENCE by use of the facilities at the LOCATION where the loss or damage occurred, plus that proportion of the 100% TIME ELEMENT values at all other LOCATIONS where TIME ELEMENT loss ensues that was directly affected by use of such facilities and that would have been earned in the 12 month period following the OCCURRENCE

2. If the deductible is specified in hours or days, liability shall exist only for such part of the determined period of interruption in excess of the first number of hours or days stated above, starting at the time of physical loss or damage.
3. When this POLICY insures more than one INSURED LOCATION, the deductible will apply against the total loss covered by this POLICY in any one OCCURRENCE except that a deductible that applies on a per LOCATION basis, if specified, will apply separately to each LOCATION where the physical damage occurred regardless of the number of Locations involved in the OCCURRENCE.
4. Unless stated otherwise, if two or more deductibles apply to an OCCURRENCE, the total to be deducted will not exceed the largest deductible applicable. If two or more deductibles apply on a per INSURED LOCATION basis in an OCCURRENCE the largest deductible applying to each INSURED LOCATION will be applied separately to each such INSURED LOCATION.
5. If separate Property Damage and TIME ELEMENT deductibles are shown in the Declarations, then the deductible amount(s) shown in the Declarations shall apply separately to each such coverage.
6. The term "TIME ELEMENT" shall be defined as the actual loss sustained due to the necessary interruption of the Insured's NORMAL business operations including but not limited to, loss described in the BUSINESS INTERRUPTION SECTION, if attached, and the following TIME ELEMENT extensions, if endorsed hereon: Contingent Business Interruption, Contingent Extra Expense, Extra Expense, Ingress/Egress, Leasehold Interest, Rental Value, Off Premises Power Business Interruption, but this definition shall not otherwise expand or modify the coverage, if any, provided by this POLICY or its Endorsements.

COINSURANCE:

100% (WAIVED BY AGREED AMOUNT ENDORSEMENT)

LOCATIONS COVERED:

SEE SCHEDULE ATTACHED

INSURANCE COMPANY:

SEE SECURITY PAGE ATTACHED

ISSUED AT:

**STARR SPECIALTY LINES INSURANCE AGENCY, LLC
399 Park Avenue
New York, NY 10022**

PROPERTY COVERAGE FORM **GENERAL CONDITIONS**

1. **COVERAGE: PERILS INSURED AGAINST:**

This POLICY covers the property insured hereunder against all risks of direct physical loss or damage to covered property while at INSURED LOCATIONS occurring during the Term of this POLICY, except as hereinafter excluded or limited.

2. **LIMITS OF LIABILITY:**

The POLICY Limit of Liability shall be the amount stated in the Declarations for loss, damage, costs or expenses arising from any one OCCURRENCE. The Sublimits of liability as stated on the Declarations and in any attached endorsements are part of and not in addition to the POLICY Limit of Liability.

The maximum Sublimit amount collectible under this POLICY shall be the Sublimit applicable for all loss or damage resulting from a peril insured against by this POLICY, regardless of any other Sublimit involved in this POLICY.

The COMPANY's liability under this POLICY will not exceed the percentage shown in the Declarations of the Policy Limit of Liability or any Sublimit of liability as provided in the Declarations, the Limits of Liability clause in this section or elsewhere in this POLICY, nor the percentage shown in the Declarations of the recoverable loss in any one OCCURRENCE.

3. **DEDUCTIBLES:**

In each case of loss covered by this POLICY, the COMPANY will be liable only if the Insured sustains a loss in a single OCCURRENCE greater than the applicable deductible specified on the Declarations, and only for its share of the amount that exceeds the Deductible.

A. When this POLICY insures more than one INSURED LOCATION, the deductible will apply against the total loss covered by this POLICY in any one OCCURRENCE except that a deductible that applies on a per LOCATION basis, if specified, will apply separately to each LOCATION where the physical damage occurred regardless of the number of Locations involved in the OCCURRENCE.

B. Unless stated otherwise, if two or more deductibles apply to an OCCURRENCE, the total to be deducted will not exceed the largest deductible applicable. If two or more deductibles apply on a per INSURED LOCATION basis in an OCCURRENCE the largest deductible applying to each INSURED LOCATION will be applied separately to each such INSURED LOCATION.

C. If separate Property Damage and TIME ELEMENT deductibles are shown in the Declarations, then the deductible amount(s) shown in the Declarations shall apply separately to each such coverage.

4. **COINSURANCE:**

a. Applicable to **PROPERTY SECTION:**

It is expressly stipulated and made a condition of this POLICY that the Insured shall at all times maintain contributing insurance on each item of property covered by this POLICY to the extent of at least the percentage specified on the Declarations of the value required per the terms and conditions of the Valuation Clause in this POLICY at the time of loss, and that failing to do so, the Insured shall to the extent of such deficit bear his, or their proportion of any loss.

In the event that the aggregate claim for any loss is less than \$10,000. and less than 2% of the total amount of insurance upon the property described herein at the time such loss occurs, the Insured shall not be required to furnish any inventory of the undamaged property to establish compliance with the Valuation Clause, provided however, that nothing herein shall be construed to waive the application of the Coinsurance Clause.

b. Applicable to BUSINESS INTERRUPTION SECTION:

This COMPANY shall be liable, in the event of loss, for no greater proportion thereof than the amount hereby covered bears to the percentage specified on the Declarations of the GROSS EARNINGS as defined hereafter, that would have been earned had no loss occurred during the twelve (12) MONTHS immediately following the date of damage to or destruction of the covered property.

5. PROPERTY EXCLUDED:

This POLICY does not cover:

- a. Currency, money, deeds, evidence of debt or title, notes, securities, stamps, letters of credit, jewelry, precious stones, furs, fine arts, valuable papers, accounts receivable, accounts, bills, semi-precious stones, gold, silver, platinum and other precious alloys or metals, (except coverage is provided for precious metals and alloys on the premises which are part of any catalyst subject to the limitations specified under paragraph u. of Property Excluded), unless endorsed hereon;
- b. Property while in transit, unless endorsed hereon;
- c. DATA PROCESSING EQUIPMENT AND MEDIA, except for damage and destruction directly resulting from the perils of fire, lightning, explosion, riot, riot attending a strike, civil commotion, aircraft, vehicles, smoke, WIND, unless endorsed hereon;
- d. Land, including excavations, grading, or filling, land values, landscaping, roads, lawns, trees, plants, shrubs, standing timber, crops, atmosphere, any water course or body of WATER whether above or below ground including sediments and/or beds of any body of WATER, or the restoration or replacement of any of the above;
- e. Costs for excavating, clearing, cutting, removing, replacing, re-grading, re-burying, lowering, raising, moving, relocating, filling-in, WATER or air jetting non-covered property of any type that surrounds, rests, upon, supports or interferes with the use and/or operation of above or below grade level of covered property;
- f. Animals, livestock, fish, fowl, birds, pets;
- g. Piers, docks, wharves, retaining walls, bulkheads, breakwaters, riprap, pilings, breasting and mooring dolphins, unless specifically endorsed hereon;
- h. Foundations, including pilings of buildings or structures which extend below the surface of the lowest pit or basement floor, or where there is no pit or basement, which extend below the surface of the ground inside the foundation walls of the buildings or structures;
- i. Foundations of machinery or equipment which are below the surface of the ground;
- j. Underground wells, underground and underwater piping, including personal property contained therein; well casings, piping, mains, sewers, fittings, conduits, drains or flues, and contents including personal property contained therein; underground cables; underground tanks, subterranean strata and their contents, including personal property located therein;

- k. Mines, shafts, caverns, tunnels, or any property located therein;
- l. Open pits and any other open cut excavation;
- m. Aircraft and their contents; satellite and/or spacecraft and their contents;
- n. Motor vehicles or trailers licensed for use on public highways and their contents, except contents at INSURED LOCATIONS consigned to or to be shipped by the Insured while not under control of common carrier;
- o. Hulls or waterborne vessels of every type, nature and description and their contents;
- p. Railroad or railway rolling stock and contents, except contents at INSURED LOCATIONS consigned to or to be shipped by the Insured while not under control of public carrier;
- q. Earthen, concrete and all other types of storage pits or reservoirs and their contents;
- r. Dams, tailings dams, watersheds, power tunnels, dikes, gates, flumes, containment basins, berms, levees, penstocks, and settling and/or collecting ponds;
- s. All property specifically insured elsewhere;
- t. Property in course of construction, unless endorsed hereon;
- u. Any refractory lining or catalyst, except for damage or destruction directly resulting from the perils of external fire, lightning, explosion, riot, riot attending a strike, civil commotion, aircraft, vehicles, smoke, WIND;
- v. Crude oil, natural gas or hydrocarbons prior to initial recovery above ground;
- w. Drilling and producing platforms, including rigs, derricks, cranes, hydrocarbon wells, and associated equipment;
- x. Property located offshore or beyond the shoreline except that structures (and their contents) extending from land or shore are not to be considered as offshore;
- y. Owned electrical transmission and distribution lines and their supporting structures located beyond an INSURED LOCATION;
- z. Damage to property in open air from WIND or rain unless such property is designed to function without the protection of walls or roof.

6. PERILS EXCLUDED:

This POLICY does not insure against loss or damage caused by or resulting from any of the following regardless of any cause or event contributing concurrently or in any other sequence to the loss:

- a. Infidelity or dishonesty of the Insured or any of its directors, officers, employees, agents, contractors, or others to whom the insured property may be entrusted; loss or damage resulting from the Insured or any of its directors, officers, employees, agents, or contractors voluntarily parting with title or possession of any property if induced to do so by any fraudulent scheme, trick, device or false pretense; any unexplained loss, mysterious disappearance, or loss or shortage disclosed on taking inventory, or resulting from accounting errors; burglary or theft by a director, officer, employee, agent, or contractor;

- b. Faulty or defective material, faulty workmanship, faulty methods of construction, errors or omissions in plans, specifications, or designs, errors in processing, or errors in manufacturing the Insured's product, unless loss by a separate peril not otherwise excluded ensues, and then coverage shall be afforded only for loss, damage, costs, or expenses caused by the separate ensuing peril;
- c. Mechanical or machinery breakdown, disassociation or derangement, including rupture or bursting caused by centrifugal force; nor rupture, bursting or operation of pressure relief devices;
- d. Electrical failure, electrical injury or disturbance to electrical appliances, devices, fixtures, or wiring caused by electrical currents artificially generated, unless fire or explosion ensues and then coverage shall be afforded only for the actual loss or damage directly caused by such ensuing fire or explosion;
- e. Explosion, bulging, rupture, cracking or bursting of steam boilers, or steam pipes, or steam turbines, or steam engines, flywheels or gas turbines, if owned by, leased by or operated under the control of the Insured; and bulging, bursting, rupture, explosion or cracking of fired and unfired pressure vessels, except that this COMPANY shall be liable for direct explosion loss caused by internal pressure of steam in processing machinery, equipment or apparatus, and direct loss resulting from the explosion of accumulated gases or unconsumed fuel within the firebox or combustion chamber of any fired vessel, other than gas turbines, or within the flues or passages which conduct the gases of combustion therefrom;
- f. Deterioration, depletion, inherent vice, latent defect, termites, moth, vermin, animals, insects, larvae, pupae, infestation, wear and tear, dampness or dryness of atmosphere, extremes or changes of temperature, smog, shrinkage, evaporation, loss of weight, rust, corrosion, erosion, wet or dry rot, change in flavor or color or texture or finish, unless loss by a separate peril not otherwise excluded ensues, and then coverage shall be afforded only for loss, damage, costs, or expenses caused by the separate ensuing peril;
- g. Settling, cracking, shrinkage, bulging or expansion in foundations, walls, floors, or ceilings;
- h. Misappropriation, conversion, embezzlement or secretion by any person in lawful possession of the property or failure of such persons to return property loaned, rented or placed in their care;
- i. Evaporation, mixing, shortage, seepage, spillage or leakage unless resulting from direct physical loss or damage to the tanks, taps or pipes by an insured peril, except willful and malicious damage or destruction of the tanks, taps or pipes is excluded;
- j. War including but not limited to:
 - 1. Hostile or warlike action in time of peace or war, whether such loss or damage be direct or indirect, proximate or remote, or be in whole or in part caused by, contributed to or aggravated by the peril(s) insured against in this POLICY, 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 authority maintaining or using military, naval or air forces;
 - b) by military, naval or air forces;
 - c) by an agent of any such government, power, authority or forces; or
 - 2. Any weapon employing atomic fission, fusion, or radioactive force whether in time of peace or war; or
 - 3. Insurrection, rebellion, revolution, civil war, usurped power, or action taken by governmental authority in hindering, combating or defending against such a situation; or
 - 4. Risks of contraband or illegal transportation or trade;

- k. Confiscation, seizure, expropriation, nationalization, commandeering, requisition or destruction of or damage to property by order of the Government de jure or de facto or any public, municipal or local authority of the country or area in which the property is situated (except as provided by the Governmental Action Clause), seizure or destruction under quarantine or customs regulation;
 - l. 1. 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, contributed to, or aggravated by the peril(s) insured against in this POLICY; however, subject to the foregoing and all provisions of this POLICY, direct loss by fire resulting from nuclear reaction or nuclear radiation or radioactive contamination is insured against by this POLICY;
 - 2. a) Discharge, explosion, or use of nuclear device, weapon or material employing or involving nuclear fission, fusion, or radioactive force, whether in time of peace or war and regardless of who commits the act.
 - b) Seizure or destruction under quarantine or custom regulation or confiscation by order of any governmental or public authority.
 - m. 1. The unlawful possession, use, release, discharge, dispersal or disposal of any bacteriological, viral, radioactive or similar agents or material regardless of who is responsible for the act, whether or not the act is certified as an act of terrorism pursuant to the federal Terrorism Risk Insurance Act, and whether war has been declared or not, and regardless of any other cause or event contributing concurrently or in any other sequence thereto; or
 - 2. The unlawful possession, use, release, discharge, detonation, dispersal or disposal of any device or material capable of producing a nuclear reaction or the spread of radioactivity, regardless of who is responsible for the act, whether or not the act is certified as an act of terrorism pursuant to the federal Terrorism Risk Insurance Act, and whether war has been declared or not, and regardless of any other cause or event contributing concurrently or in any other sequence thereto;
 - n. Freezing of plumbing, heating or fire protection systems in vacant properties, when property is vacant for more than thirty (30) consecutive days, and any resulting ruptures and/or releases;
 - o. Backing up of sewers or drains;
 - p. Maintenance, repairs, or alterations, unless loss by a separate peril not otherwise excluded ensues, and then coverage shall be afforded only for loss, damage, costs, or expenses caused by the separate ensuing peril;
 - q. Mold, moss, mildew, fungi, spores, bacterial infestation or any similar organism, wet or dry rot and extremes of temperature or humidity, whether directly or indirectly the result of a covered peril. This exclusion applies, and is not limited to, the cost for investigation, testing, remediation services, Such loss, damage, costs, or expenses are excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss, or whether such loss is directly or indirectly, proximately or remotely, or in whole or in part caused by, the result of, contributed to or aggravated by any other peril.
- If loss otherwise covered by this POLICY occurs and the cost of removal of debris is increased due to the presence of rust, mold, moss, fungus, bacterial infestation, wet or dry rot or extremes of temperature or humidity, this POLICY will only be liable for the costs of debris removal which would have been incurred had no such factors been present in, on, or about the covered property to be removed, subject to the provisions of the Debris Removal Clause.
- r. EARTH MOVEMENT, as defined herein, unless endorsed hereon;
 - s. FLOOD, as defined herein, unless endorsed hereon.

7. ADDITIONAL EXCLUSIONS:

a. Fire Fighting Expense Exclusion Clause:

This POLICY shall not pay for any cost or expense in fighting fire.

b. Pollution and Contamination Exclusion Clause:

This POLICY does not insure against loss or damage caused by or resulting from any of the following regardless of any cause or event contributing concurrently or in any other sequence to the loss:

1. contamination;

2. the actual or threatened release, discharge, dispersal, migration or seepage of POLLUTANTS at an INSURED LOCATION during the Term of this POLICY unless the release, discharge, dispersal, migration, or seepage is caused by fire, lightning, leakage from fire protective equipment, explosion, aircraft, vehicles, smoke, riot, civil commotion or vandalism. This POLICY does not insure off-premises cleanup costs arising from any cause and the coverage afforded by this clause shall not be construed otherwise.

c. Off Premises Services Exclusion Clause:

This POLICY shall not pay for loss caused directly or indirectly by the interruption of utility services furnished to the described premises, such as electricity, steam, WATER, gas or refrigeration.

d. Professional Fees Exclusion Clause:

This POLICY shall not pay for fees, costs or expenses of any professionals including but not limited to accountants, architects, auditors, engineers, attorneys, public adjusters, insurance agents or brokers, loss appraisers, loss consultants, or other professionals, all including any of their subsidiary, related or associated entities either partially or wholly owned by them or retained by them.

e. This POLICY shall not pay for:

1. Delay or loss of use or market except as may be provided under TIME ELEMENT coverage if provided herein
2. Enforcement of any ordinance or law regulating the construction, repair or demolition of any property insured hereunder, except as specifically stated herein or by endorsement;
3. Fines or penalties incurred, sustained by or imposed on the Insured at the order of any Government Agency, Court, or other Authority arising from any cause whatsoever;
4. Asbestos material removal, unless the asbestos itself is damaged by fire, lightning, aircraft impact, explosion, riot, civil commotion, smoke, vehicle impact, vandalism, malicious mischief, leakage or accidental discharge from automatic fire protective systems;
5. Demolition or Increased cost of reconstruction, repair, debris removal or loss of use necessitated by the enforcement of any law or ordinance regulating asbestos material; or
6. Any governmental direction or request declaring that asbestos material present in or part of or utilized on any undamaged portion of the Insured's property can no longer be used for the purpose for which it was intended or installed and must be removed or modified.

8. DEBRIS REMOVAL CLAUSE: (Applies only to insurance covering direct property loss.)

This POLICY will pay the necessary expense incurred by the Insured during the Term of this POLICY for the removal of debris of the property covered hereunder from premises covered hereunder which may be occasioned by insured loss caused by any of the perils insured against in this POLICY. The COMPANY's total liability in any one OCCURRENCE under this POLICY for removal of debris shall in no event exceed the Sublimit specified in the Declarations. This provision does not increase any amounts or limits of insurance in this POLICY. In no event shall the combined loss for property and debris removal exceed the amount of insurance applying under the POLICY to the property damaged.

Furthermore, the COMPANY shall not be liable for more than the proportion of such debris removal expense as the amount of insurance under this POLICY bears to the total amount of insurance on the property covered, whether or not all such insurance includes this clause, or is collectible or not. This insurance will not pay, under this clause, expenses to:

1. Remove, or extract CONTAMINANTS or POLLUTANTS, or debris defined as a CONTAMINANT or POLLUTANT, from land or WATER, nor remove, restore or replace polluted or contaminated land or WATER; or
2. Remove any property because of the enforcement of any law, ordinance, regulation or rule regulating or restricting the construction, installation, repair, replacement, demolition, occupancy, operation or other use of such property; or
3. Remove or transport any property or debris to a site for storage, disposal, or decontamination, or the cost to store, dispose of, or decontaminate any such property or debris, required because the property or debris is affected by Contaminations or POLLUTANTS, whether or not such removal, transport, or decontamination is required by law, ordinance or regulation; or
4. Remove any property or debris which discharges, releases, or escapes into or upon any watercourse or body of WATER above or below ground, on or off the insured premises.

No liability shall exist under this Debris Removal Clause unless such expenses are reported in writing to the COMPANY within one hundred and eighty (180) days of the date of direct loss.

9. PROTECTION AND PRESERVATION OF PROPERTY:

In case of actual physical loss or damage of the type insured against by this POLICY, the expenses incurred by the Insured in taking reasonable and necessary actions for the temporary protection and preservation of Property insured hereunder shall be added to the total direct physical loss or damage otherwise recoverable under this POLICY and be subject to the applicable Deductible.

The COMPANY's total liability in any one OCCURRENCE under this provision shall in no event exceed the Sublimit specified in the Declarations. This provision does not increase any amounts or limits of insurance in this POLICY.

10. VALUATION:

In case of loss, the basis of adjustment, unless otherwise endorsed hereon, shall be as follows at time and place of loss:

- a. FINISHED STOCK sold but not delivered, at the Insured's net selling price of such property less all discounts and unincurred expenses to which such property would have been subject had no loss occurred. FINISHED STOCK not sold, at REPLACEMENT COST.

- b. RAW STOCK and STOCK IN PROCESS, at REPLACEMENT COST with like kind and quality;
- c. Buildings and other structures, at ACTUAL CASH VALUE unless otherwise endorsed hereon;
- d. Machinery, equipment and any other insured property not otherwise provided for at ACTUAL CASH VALUE unless otherwise endorsed hereon;
- e. Catalyst at ACTUAL CASH VALUE;

11. LIMITATIONS:

a. Books and Records:

This POLICY limits coverage on books of account, abstracts, drawings, card index systems and other records (except film, tape, disk, drum, cell and other magnetic recording and storage media for electronic data processing), to an amount not exceeding the cost of blank books, cards or other blank materials plus the cost of labor incurred by the Insured for transcribing or copying such records; and on film, tape, disk, drum, cell and other magnetic recording and storage media for electronic data processing to an amount not exceeding the cost of such media in unexposed or blank form.

b. Employee's Tools and Wearing Apparel:

This POLICY also covers tools and wearing apparel of officers and employees, except in dwellings and living quarters, while on premises insured hereunder, subject to a limit of two hundred fifty dollars (\$250.00) on said property of any officer or employee in any one OCCURRENCE.

12. CONDITIONS:

a. Abandonment:

There can be no abandonment to this COMPANY of the property insured.

b. Appraisal:

If the Insured and this COMPANY fail to agree on 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, if failing for twenty (20) days to agree upon such umpire, then, on the request of the Insured or this COMPANY, such umpire shall be selected by a judge of a state or federal court of record in the state in which the damaged property is located. The appraisers shall then appraise the loss, stating separately 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 this COMPANY shall determine the amount of loss and shall be binding and final. Each appraiser shall be paid by the party selecting him and the expenses of appraisal and umpire shall be paid by the parties equally. The COMPANY shall not be held to have waived any of its rights by any act relating to appraisal.

c. Brands and Labels:

If branded or labeled MERCHANDISE covered by this POLICY is damaged and the COMPANY elects to take all or any part of such MERCHANDISE at the value established by the provisions of this POLICY, the Insured may, at his own expense, stamp "salvage" on the MERCHANDISE or its containers or may remove or obliterate the brands or labels, if such stamps, removal or obliteration will not physically damage the MERCHANDISE.

d. Bridge Wording

Whenever used in this POLICY, the terms, "we", "our", "you", and "your" are hereby changed to "the COMPANY", "the COMPANY's", "the Insured", and "the Insured's".

e. Choice of Law and Choice of Venue:

No suit, action, or proceeding regarding this POLICY for the recovery of any claim shall be sustainable in any court of law or equity unless the Insured shall have fully complied with all the requirements of this POLICY. The COMPANY agrees that any suit, action, or proceeding against it for recovery of any claim under this POLICY shall not be barred if commenced within the time prescribed in the statutes of the State of New York. Any suit, action, or proceeding against the COMPANY must be brought solely and exclusively in a New York state court or a federal district court sitting within the State of New York. The laws of the State of New York shall solely and exclusively be used and applied in any such suit, action, or proceeding, without regard to choice of law or conflict of law principles.

f. Company's Options:

It shall be optional for this COMPANY to take all, or any part, of the property at the agreed or appraised value, and also to repair, rebuild or replace the property destroyed or damaged with other of like kind, size, capacity and quality within a reasonable time, on giving notice of its intention to do so within thirty (30) days after the receipt of proof of loss herein required.

g. Conflict of Wording:

If there is conflict between the specific sections or endorsements and general conditions in this POLICY, the conditions of the specific sections or endorsements shall prevail.

h. Governmental Action Clause:

This COMPANY shall be liable for acts of destruction at the order of civil authority at the time of and for the purpose of preventing the spread of fire, provided such fire did not originate from any perils herein specifically excluded.

i. Loss Clause:

It is a condition of this POLICY that in case of loss occurring hereunder, the amount of such loss shall be automatically reinstated after its OCCURRENCE without payment of additional premium for such reinstatement with the exception of loss caused by perils which are subject to annual aggregate sublimits as noted on the Declarations of this POLICY.

j. Machinery:

In the event of loss of or damage to machinery consisting, when complete for sale or use, of several parts, the Insurer shall only be liable for the value of the part(s) lost or damaged.

k. Pair and Set:

In the event of loss of or damage to:

- (a) any article or articles which are a part of a pair or set, the measure of loss of or damage to such article or articles shall be a reasonable and fair proportion of the total value of the pair or set, giving consideration to the importance of said article or articles, but in no event shall such loss or damage be construed to mean total loss of the pair or set; or
- (b) any part of property covered consisting, when completed for use, of several parts, the COMPANY shall be liable for the value of the part lost or damaged.

l. Permission Clause:

Permission is hereby granted: 1) to do work and to make such changes in the use or occupancy of the premises as is usual or incidental to the business of the Insured, 2) to make alterations, additions, improvements and repairs, 3) to shut down or cease operations, and for individual buildings or units to remain vacant or unoccupied without limit of time, provided fire protection, watchmen and alarm services are maintained. But this COMPANY, unless endorsed hereon, shall not be liable for loss occurring:

1. when the entire premises or plant has ceased operations or been unoccupied or vacant for a period exceeding thirty (30) consecutive days, or
2. while the hazard is increased by any means within the control or knowledge of the insured.

m. Requirements in Case Loss Occurs:

Every loss hereunder shall be reported in writing as soon as practicable with full particulars to the COMPANY. The Insured shall protect the property from further damage and separate the damaged and undamaged personal property; put it in the best possible order; furnish a complete inventory of the destroyed, damaged and undamaged property, showing in detail quantities, costs, value and amount of loss claimed, and within sixty (60) days after the loss, unless such time is extended in writing by this COMPANY, the Insured shall render to this COMPANY a proof of loss, signed and sworn to by the Insured, stating the knowledge and belief of the Insured as to the following:

1. The time and origin of the loss;
2. The interest of the Insured and of all others in the property;
3. The value of each item thereof and the amount of loss thereto;
4. All encumbrances thereon;
5. All other contracts of insurance whether valid or not, covering any of said property;
6. Any changes in the title, use, occupation, LOCATION, possession or exposures of said property since the issuing of this POLICY;
7. By whom and for what purposes any building herein described and the several parts thereof were occupied at the time of loss and whether or not it then stood on leased ground.
8. If this POLICY provides any TIME ELEMENT coverage, the Insured shall, in addition to the above, also give immediate written notice to this COMPANY of any TIME ELEMENT loss and protect the property from further damage that might result in extension of the period of interruption.
9. Within sixty (60) days following the date of damage to or destruction of the real or personal property described, unless such time is extended in writing by this COMPANY, the Insured shall render to this COMPANY a proof of loss, signed and sworn to by the Insured, stating the knowledge and belief of the Insured as to the following:
 - a. The time and origin of the property damage or destruction causing the interruption of business;
 - b. The interest of the Insured and of all others in the business;
 - c. All other contracts of insurance, whether valid or not, covering in any manner the loss insured against by this POLICY;

- d. Any changes in the title, nature, LOCATION, encumbrance, or possession of said business since the issuing of this POLICY;
 - e. By whom and for what purpose any building herein described and the several parts thereof were occupied at the time of damage or destruction, and shall furnish a copy of all the descriptions and schedules in all policies, and the actual amount of TIME ELEMENT value and loss claimed, accompanied by detailed exhibits of all values, costs, and estimates upon which such amounts are based.
- 10. The Insured shall furnish a copy of all the descriptions and schedules in all policies and if required, verified plans and specifications of any building, fixtures or machinery destroyed or damaged.
 - 11. The Insured, as often as may be reasonably required, shall exhibit to any person designated by this COMPANY all that remains of any property herein described, and shall submit, and insofar as is within its power, cause its employees and others to submit to examinations under oath by any person named by this COMPANY and subscribed to the same; and, as often as may be reasonably required, shall produce for examination all books of account, bills, invoices and other vouchers, or certified copies thereof if originals be lost, at such reasonable time and place as may be designated by this COMPANY or its representative, and shall permit extracts and copies thereof to be made.
 - 12. The Insured shall cooperate with the COMPANY and upon this COMPANY'S request shall attend hearings and trials and shall assist in effecting settlement, securing and giving evidence, and obtaining the attendance of witnesses in conduct of suits.
- n. Subrogation:
- 1. This insurance shall not be invalidated if the Insured in writing has waived or may hereafter, but prior to the OCCURRENCE of any loss covered hereunder, waive its right of recovery from any firm, corporation or individual, for loss or damage covered hereunder and this COMPANY expressly waives subrogation against any subsidiary or affiliated COMPANY of the Insured.
 - 2. In the event of any payment under this Policy, the COMPANY 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 do anything that may be necessary at the expense of the COMPANY to secure such right. The COMPANY will act in concert with any other interests concerned, i.e., the Insured and any other insurer 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 as a result of such proceedings, the net amount recovered after deducting the costs of recovery shall be divided between the interests concerned in the proportion of their respective interests. If there should be no recovery, the expense of proceedings shall be borne proportionately by the interests instituting the proceedings.
- o. Salvage and Recoveries:
- When, in connection with any loss hereunder, any salvage or recovery is received subsequent to the payment of such loss, the loss shall be refigured on the basis on which it would have been settled had the amount of salvage or recovery been known at the time the loss was originally determined. Any amounts thus found to be due either party from the other shall be paid promptly.

p. Titles of Paragraphs:

The several titles to the various paragraphs of this form (and of endorsements and supplemental contracts, if any, as now or hereafter attached to this POLICY) are inserted solely for the convenience of reference and shall not be deemed in any way to limit or affect the provisions to which they relate.

13. DEFINITIONS:

Unless otherwise stated, the Definitions below apply wherever used in this POLICY.

A. ACTUAL CASH VALUE

The term "ACTUAL CASH VALUE" shall mean REPLACEMENT COST subject to a deduction for deterioration, depreciation and obsolescence. ACTUAL CASH VALUE applies to valuation of insured property regardless of whether that property has sustained partial or total loss or damage.

B. COMPANY

The term "COMPANY" shall mean the Insurer providing this insurance "POLICY" as specified on the Declarations attached.

C. COMPUTER

The term "COMPUTER" shall mean a programmable or programmed machine that responds to a specific set of instructions in a well-defined manner and can execute a pre-recorded list of instructions. It includes but is not limited to mainframes, servers, workstations and portable COMPUTERS, personal information managers, wide and local area network hardware, electronic and electromechanical equipment, data processing equipment, electronic controls for machinery, electronically programmed memory chips, and electronically controlled communication equipment.

D. DATA PROCESSING SYSTEMS

The term "DATA PROCESSING SYSTEMS" shall include storage equipment (hardware), transferring equipment, COMPUTER systems, telecommunications systems or electronic control equipment, including component parts,, owned by the Insured or leased, rented or property of others for which the Insured may be liable.

E. DATA PROCESSING MEDIA, meaning all forms of data, converted data and/or programs and/or instructions and/or media vehicles employed in the Insured's data processing operations, and blank magnetic recording or storage media (software) for electronic data processing including film, tape, disc, drum, or cells, being property of the Insured or property of others for which the Insured may be liable.

F. EARTH MOVEMENT

The term "EARTH MOVEMENT" shall mean earthquake, landslide, subsidence, volcanic eruption, tsunami or any other earth movement whether natural or man-made, except MUDSLIDE or MUDFLOW caused by accumulation of WATER on or under the ground.

Loss or damage caused by EARTH MOVEMENT shall include all covered loss or damage to covered property at an INSURED LOCATION resulting directly or indirectly from EARTH MOVEMENT, however, physical loss or damage by fire, explosion, or sprinkler leakage resulting from EARTH MOVEMENT as defined herein is not to be considered to be loss by EARTH MOVEMENT.

G. FINISHED STOCK

The term "FINISHED STOCK" shall mean stock manufactured by the Insured or manufactured by others for the account of the Insured which is ready for packing, shipment or sale, NORMAL to the business of the Insured.

H. FLOOD

The term "FLOOD" shall mean rising WATER, surface WATER, waves, tidal WATER, high WATER, tidal wave other than tsunami, rising, overflowing or any breach of streams, rivers, lakes, reservoirs, or other natural or man-made bodies of WATER; STORM SURGE; or spray from any of the foregoing; the unusual and rapid accumulation or runoff of surface waters from any source; release of WATER held by a dam, levee or dike or by a WATER or FLOOD control device; MUDFLOW; MUDSLIDE; all whether driven by WIND or not, and regardless of any other cause of event or loss whatsoever contributing concurrently or in any sequence to produce the loss, directly or indirectly, and regardless of whether the event or loss occurs suddenly or gradually, involves isolated or widespread damage, arises from natural or external forces, or occurs as a result of any combination of these. However, physical loss or damage by fire, explosion or sprinkler leakage resulting from FLOOD as defined herein is not to be considered to be loss by FLOOD.

I. INSURED LOCATION(S)

The term "INSURED LOCATION(S)" as used in this POLICY shall mean any LOCATION listed on the latest SCHEDULE OF LOCATIONS submitted to and accepted by the COMPANY as of the POLICY inception date, as specified in the Declarations. INSURED LOCATION(S) includes the area within one thousand (1,000) feet of such LOCATION, all within the Coverage Territory.

If not so specified in the SCHEDULE OF LOCATIONS, a "LOCATION" is a building, yard or bulkhead (or any group of the foregoing) bounded on all sides by public streets, clear land space or open waterways, each not less than fifty (50) feet wide. Any bridge or tunnel crossing such street, space or waterway will render such separation inoperative for the purpose of defining a LOCATION.

The term "LOCATIONS" means more than one LOCATION.

J. LOSS OF EARNINGS

The term "LOSS OF EARNINGS" shall mean The ACTUAL LOSS SUSTAINED by the Insured resulting directly from such necessary interruption of business, but not exceeding the reduction in GROSS EARNINGS less charges and expenses which do not necessarily continue during the interruption of business.

K. MERCHANDISE

The term "MERCHANDISE" shall mean goods kept for sale by the Insured which are not the product of manufacturing operations conducted by the Insured.

L. MONTH

The term "MONTH" shall mean thirty (30) consecutive calendar days.

M. MUDFLOW

The term "MUDFLOW" shall mean a river of liquid and flowing mud on the surfaces of normally dry land areas as when earth is carried by a current of WATER.

N. MUDSLIDE

The term "MUDSLIDE" shall mean a saturated soil mass moving by liquidity down a slope.

O. NORMAL

The term "NORMAL" shall mean the condition that would have existed had no physical loss or damage occurred.

P. OCCURRENCE

The term "OCCURRENCE" shall mean a loss, incident, or series of losses or incidents immediately arising out of a single event or originating cause and includes all resultant or concomitant insured losses, except as modified herein.

1. In respect of losses hereunder arising from WIND, the term OCCURRENCE shall mean the sum total of all the Insured's losses sustained during any one period of seventy-two (72) consecutive hours commencing within the Term of this POLICY under the foregoing perils arising out of or caused by the same atmospheric disturbance.
2. In respect of losses hereunder arising from FLOOD, EARTH MOVEMENT, riot, riot attending a strike or civil commotion, the term OCCURRENCE shall mean the sum total of all the Insured's losses sustained during any one period of seventy-two (72) consecutive hours commencing within the Term of this POLICY.

As respects all the foregoing, the Insured may elect the moment from which any period of seventy-two (72) consecutive hours shall be deemed to have commenced, this COMPANY being responsible only for its proportion of the loss to the Insured in respect to the said elected period of seventy-two (72) hours. No single elected seventy-two (72) hour period shall overlap any other elected seventy-two (72) hour period

This COMPANY shall not be liable for any loss occurring before the effective date and time of this POLICY, nor for any loss occurring after the expiration date and time of this POLICY. The expiration of the POLICY shall not reduce the seventy-two (72) hour period.

Q. ORDINARY PAYROLL EXPENSES

The term "ORDINARY PAYROLL EXPENSES" shall mean payroll expenses for all employees of the Insured except: officers; executives; department managers; and employees under contract. Payroll expenses shall include: payroll; employee benefits, if directly related to payroll; FICA payments and union dues paid by the Insured; and workers' compensation premiums.

R. PERIOD OF INDEMNITY

The term "PERIOD OF INDEMNITY" shall mean the period of time that:

- (a) Begins with the date of direct physical loss or damage by any of the perils covered herein, at an INSURED LOCATION; and
- (b) Ends on the date when the damaged or destroyed property at the INSURED LOCATION should be repaired, rebuilt or replaced with the exercise of due diligence and dispatch.

The PERIOD OF INDEMNITY shall not be limited by the date of termination of this POLICY.

S. POLICY

The term "POLICY" shall mean all parts of the document to which this form is attached including, but not limited to, the Declarations, conditions, endorsements and this property form.

T. POLLUTANT or CONTAMINANTS

The term "POLLUTANTS" or "CONTAMINANTS" shall mean any solid, liquid, gaseous or thermal irritant or CONTAMINANT including, but not limited to, smoke, vapor, soot, fumes, acids, alkalis, chemicals, virus, waste, (waste includes materials to be recycled, reconditioned or reclaimed) or hazardous substances as listed in the Federal WATER Pollution Control Act, Clean Air Act, Resource Conservation and Recovery Act of 1976, and Toxic Substances Control Act, or as designated by the U.S. Environmental Protection Agency.

U. RAW STOCK

The term "RAW STOCK" shall mean material in the state in which the Insured receives it for conversion by the Insured into FINISHED STOCK.

V. REPLACEMENT COST

The term "REPLACEMENT COST" shall mean the lesser of the cost to repair, rebuild or replace the lost or damaged property with:

1) identical property or

2) property of like, kind and quality

on the same premises and intended for the same occupancy and use, determined at the time and place of loss, without deduction for deterioration, depreciation or obsolescence.

W. STOCK IN PROCESS

The term "STOCK IN PROCESS" shall mean RAW STOCK which has undergone any aging, seasoning, mechanical or other process of manufacture at the LOCATION(s) herein described but which has not become FINISHED STOCK.

X. STORM SURGE

The term "STORM SURGE" shall mean rising WATER, surface WATER, waves, tidal WATER, tidal wave other than tsunami; rising, overflowing or any breach of streams, rivers, lakes, reservoirs, or other bodies of WATER; or spray from any of the foregoing when driven by WIND.

Y. THE 100% PLANT BUSINESS INTERRUPTION DAILY VALUE

The term "THE 100% PLANT BUSINESS INTERRUPTION DAILY VALUE" shall mean the actual amount of GROSS EARNINGS, less charges and expenses which do not necessarily continue during the interruption of business, that would have been earned had no loss or damage occurred, divided by the actual number of working days, had no loss or damage occurred during the period of Interruption of the business with due consideration being given to the experience of the business before the date of loss or damage and the probable experience thereafter had no loss or damage occurred.

Z. TIME ELEMENT

The term "TIME ELEMENT" shall be defined as the actual loss sustained due to the necessary interruption of the Insured's NORMAL business operations including but not limited to, loss described in the BUSINESS INTERRUPTION SECTION, if attached, and the following TIME ELEMENT extensions, if endorsed hereon: Contingent Business Interruption, Contingent Extra Expense, Extra Expense, Ingress/Egress, Leasehold Interest, Rental Value, Off Premises Power Business Interruption, but this definition shall not otherwise expand or modify the coverage, if any, provided by this POLICY or its Endorsements.

AA. WATER

The term "WATER" shall mean WATER, but not WATER at any INSURED LOCATION which is contained within any type of processing tank, cistern, pond, piping, or other process equipment.

BB. WIND

The term "WIND," shall mean tornado, tempest, cyclone, hurricane, windstorm or hail.

PROPERTY COVERAGE FORM
PROPERTY SECTION

Interest and Property Insured:

This COMPANY agrees to insure subject to all the terms, conditions, limitations, exclusions and stipulations of this POLICY, except as hereinafter excluded, and excluding all property named in the STOCK PROVISIONAL SECTION, if included herein:

All buildings, tanks and structures of every description, and all contents therein and property of every description upon the premises as now or hereafter constituted; all whether owned by the Insured or Property of Others in the Insured's care, custody or control, or on consignment or on commission or held in storage or for repairs or sold but not delivered or removed; all comprised a part of or appertaining to the operations of the Insured at INSURED LOCATION(S).

This POLICY shall also cover loss or damage, if any, to improvements and betterments to buildings. In the event of loss or damage, this COMPANY agrees to accept and consider the Insured to be the sole and unconditional owner of improvements and betterments, any contract or lease the Insured may have made to the contrary notwithstanding.

PROPERTY COVERAGE FORM
BUSINESS INTERRUPTION SECTION

1. Interest and Property Insured:

This COMPANY agrees to insure subject to all the terms, conditions, limitations, exclusions and stipulations of this POLICY:

Loss directly resulting from necessary interruption of the Insured's NORMAL business operations caused by direct physical loss or damage to real or personal property covered herein, except FINISHED STOCK, and arising from a peril insured against hereunder and occurring during the term of this POLICY; all while located at INSURED LOCATIONS.

Unless and until liability has been admitted or a claim paid for direct physical damage to or destruction of property insured under this POLICY, no claim shall be payable nor any advance be due for any business interruption loss. This Condition shall not apply if no such payment shall have been made nor liability admitted solely owing to the operation of a "Deductible" in this POLICY which excludes liability for losses below a specified amount.

Further, the payment of a claim or admission of liability for loss due to direct physical loss or damage to property insured under this POLICY is not in and of itself, evidence that the Insured has sustained a business interruption loss under this Section.

2. ACTUAL LOSS SUSTAINED:

In the event of direct physical loss or damage to covered property by a peril insured against, this COMPANY shall be liable for the ACTUAL LOSS SUSTAINED by the Insured resulting directly from the necessary interruption of business, but not exceeding the reduction in GROSS EARNINGS less charges and expenses which do not necessarily continue during the interruption of business. Loss under this Section shall be subject to the PERIOD OF INDEMNITY.

The PERIOD OF INDEMNITY shall not be limited by the date of termination of this POLICY. Due consideration shall be given to the continuation of NORMAL charges and expenses, including ORDINARY PAYROLL EXPENSE, to the extent necessary to resume operations of the Insured with the same quality of service which existed immediately preceding the date of damage or destruction.

3. Resumption of Operations:

It is a condition of this insurance that if the Insured could reduce the loss resulting from interruption of business:

1. by complete or partial resumption of operation of the property herein described, whether damaged or not; or
2. by making use of MERCHANDISE or other property at any INSURED LOCATION; or
3. by making use of stock (RAW, IN PROCESS or FINISHED) at any INSURED LOCATIONS;

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

4. Expense Related to Reducing Loss:

Applicable only to this Section, this POLICY also covers such expenses as are necessarily incurred for the purpose of reducing loss under this POLICY (except expense incurred to extinguish a fire) and such expenses, in excess of NORMAL, as would necessarily be incurred in replacing any FINISHED STOCK used by the Insured to reduce loss under this POLICY; but in no event shall the amount payable under this coverage exceed the amount by which the loss otherwise payable under this POLICY is thereby reduced. Such expenses shall not be subject to the application of the Coinsurance Clause.

5. GROSS EARNINGS:

For the purpose of this Section "GROSS EARNINGS" are defined as the sum of:

1. Total net sales values of production;
2. Total net sales of MERCHANDISE; and
3. Other earnings derived from operation of the business;
less the cost of:
 4. RAW STOCK from which such production is derived;
 5. Supplies consisting of materials consumed directly in the conversion of such RAW STOCK into FINISHED STOCK or in supplying the service(s) sold by the Insured;
 6. MERCHANDISE sold, including packaging materials therefore; and
 7. Service(s) purchased from outsiders (not employees of the Insured) for resale which do not continue under contract.

No other costs shall be deducted in determining GROSS EARNINGS. In determining GROSS EARNINGS due consideration shall be given to the experience of the business before the date of damage or destruction and the probable experience thereafter had no loss occurred.

6. FINISHED STOCK:

This COMPANY shall not be liable for any loss resulting from damage to or destruction of FINISHED STOCK nor for the time required to reproduce said FINISHED STOCK.

7. Interruption by Civil or Military Authority:

This POLICY is extended to include, starting at the time of physical loss or damage, the actual loss sustained by the Insured, resulting directly from an interruption of business as covered hereunder, during the length of time, not exceeding the number of days shown under TIME LIMITS stated in the Declarations, when, as a direct result of damage to or destruction of property within one (1) statute mile of an INSURED LOCATION by the peril(s) insured against, access to such described premises is specifically prohibited by order of civil or military authority.

8. Additional Exclusions:

In addition to the exclusions elsewhere in this POLICY, the following exclusions apply to this Section:

This COMPANY shall not be liable for any increase of loss resulting from:

1. Enforcement of any law ordinance or regulation whether Federal, State or Local regulating the construction, repair or demolition of buildings or structures; or
2. Interference at the described premises, by strikers or other persons, with rebuilding, repairing or replacing the property or with the resumption or continuation of business; or
3. The suspension, lapse or cancellation of any lease, license, contract or order unless such suspension, lapse or cancellation results directly from the interruption of business (and then this COMPANY shall be liable for only such loss as affects the Insured's earnings) during, and limited to, the PERIOD OF INDEMNITY covered under this Policy;

nor shall this COMPANY be liable for any other consequential or remote loss.

Endorsement No. 1 Additional Premium _____ Return Premium _____

Name of Insured JGB Vegas Retail Lessee, LLC

ACCOUNTS RECEIVABLE ENDORSEMENT

A. COVERAGE:

Subject to the all terms, conditions, limitations, exclusions and stipulations of the POLICY to which this Endorsement is attached, not in conflict herewith, this POLICY is extended to cover:

- a. All sums due to the Insured provided the Insured is unable to affect collection thereof as a result of direct physical loss or damage by a peril insured against, to records of accounts receivable;
- b. Interest charges on any loan to offset impaired collections pending repayment of such sums made uncollectible by such loss or damage;
- c. Collection expense in excess of NORMAL collection cost and made necessary because of such loss or damage;
- d. Other expenses, when reasonable incurred by the Insured in reestablishing records of accounts receivable following such loss or damage.

B. LIMIT OF LIABILITY:

The COMPANY's total liability in any one OCCURRENCE under this Endorsement shall in no event exceed \$The Sublimit specified in the Declarations.

C. REMOVAL:

Such insurance as is afforded by this POLICY applies while the records of accounts receivable are being removed to and while at a place of safety because of imminent danger of loss or damage and while being returned from such place.

D. ADDITIONAL EXCLUSIONS:

In addition to the exclusions elsewhere in this POLICY, the following exclusions apply to this Endorsement:

This Endorsement does not insure against:

- a. Loss due to bookkeeping, accounting or billing errors or omissions;
- b. Loss, the proof of which (as to factual existence) is dependent upon an audit of records or an inventory computation, but this shall not preclude the use of such procedure in support of claim for loss which the Insured can prove, through evidence wholly apart therefrom, as due solely to a risk of loss to records of accounts receivable not otherwise excluded hereunder.
- c. Loss due to alteration, falsification, manipulation, concealment, destruction or disposal of records of accounts receivable committed to conceal the wrongful giving, taking, obtaining or withholding of money, securities, or other property, but only to the extent of such wrongful giving, taking, obtaining or withholding.

E. CONDITIONS:

- a. Recoveries:

After payment of loss, all amounts recovered by the Insured on accounts receivable for which the Insured has been indemnified shall belong and be paid to the COMPANY by the Insured up to the total amount of loss paid by the COMPANY, but all recoveries in excess of such amount shall belong to the Insured.

b. Determination of Receivables; Deductions:

1. When there is proof that a loss covered by this POLICY has occurred but the Insured cannot accurately establish the total amount of accounts receivable outstanding as of the date of such loss, such amount shall be based on the Insured's monthly statements and shall be computed as follows:
 - (a) Determine the amount of all outstanding accounts receivable at the end of the same fiscal MONTH in the year immediately preceding the year in which the loss occurs.
 - (b) Calculate the percentage of increase or decrease in the average monthly total of accounts receivable for the twelve MONTHS immediately preceding the MONTH in which the loss occurs, or such part thereof for which the Insured has furnished monthly statements to the underwriters as compared with such average for the same MONTHS for the preceding year;
 - (c) The amount determined under (a) above, increased or decreased by the percentage calculated under (b) above, shall be the agreed total amount of accounts receivable as of the last day of the fiscal MONTH in which said loss occurs.
 - (d) The amount determined under (c) above shall be increased or decreased in conformity with the NORMAL fluctuations in the amount of accounts receivable during the fiscal MONTHS involved, due consideration being given to the experience of the business since the last day of the last fiscal MONTH for which statement has been rendered.
2. There shall be deducted from the total amount of accounts receivable, however established, the amount of such accounts evidenced by receivables not lost or damaged, or otherwise established or collected by the Insured, and an amount to allow for probable bad debts that would normally have been uncollectible by the Insured. All unearned interest and service charges shall be deducted.

This Endorsement is subject to the Deductibles specified in the Declarations and does not increase any amounts or limits of insurance provided by this POLICY.

Nothing herein contained shall be held to vary, alter, waive or change any of the terms, limitations, exclusions or conditions of the POLICY, except as herein above set forth.

Endorsement No. 2 Additional Premium _____ Return Premium _____
Name of Insured JGB Vegas Retail Lessee, LLC

AGREED AMOUNT ENDORSEMENT
(BUSINESS INTERRUPTION)

Applying to BUSINESS INTERRUPTION SECTION Only:

In consideration of a Statement of GROSS EARNINGS filed with this COMPANY by the Insured and pursuant to the Coinsurance Clause in this Policy, the amount of \$The Sublimit specified in the Declarations, shall represent the percentage specified on the Declarations of the value required for compliance with such Coinsurance Clause.

This Agreed Amount Endorsement is effective until The Sublimit specified in the Declarations and thereafter the terms and conditions of the Coinsurance Clause in this POLICY applying to the BUSINESS INTERRUPTION SECTION shall apply without modification. It is agreed however, that the Insured is given an additional thirty (30) days in which to file the above mentioned Statement of GROSS EARNINGS, and the Agreed Amount Provision is extended for this thirty (30) day period.

Nothing herein contained shall be held to vary, alter, waive or change any of the terms, limitations, exclusions or conditions of the POLICY, except as herein above set forth.

Endorsement No. 3 Additional Premium _____ Return Premium _____
Name of Insured JGB Vegas Retail Lessee, LLC

AGREED AMOUNT ENDORSEMENT
(PROPERTY)

Applying to PROPERTY SECTION Only:

In consideration of a Statement of Values filed with this COMPANY by the Insured and pursuant to the Coinsurance Clause in this POLICY applying to the Property Section, the amount of **\$The Sublimit specified in the Declarations**, shall represent the percentage specified on the Declarations of the value required for compliance with such Coinsurance Clause.

This Agreed Amount Endorsement is effective until **The Sublimit specified in the Declarations** and thereafter the terms and conditions of the Coinsurance Clause in this POLICY applying to the PROPERTY SECTION shall apply without modification. It is agreed however, that the Insured is given an additional thirty (30) days in which to file the above mentioned Statement of Values, and the Agreed Amount Provision is extended for this thirty (30) day period.

Endorsement No. 4 Additional Premium _____ Return Premium _____
Name of Insured JGB Vegas Retail Lessee, LLC

BIOLOGICAL, CHEMICAL OR NUCLEAR EXCLUSION

The following exclusion is added to this policy; supersedes any term, provision or endorsement to the contrary in this policy; and applies notwithstanding such term, provision or endorsement:

- BIOLOGICAL, CHEMICAL OR NUCLEAR EXCLUSION

This policy does not insure against any loss, damage, cost or expense caused by or resulting from any of the following, regardless of any other cause or event contributing concurrently or in any sequence thereto:

1. The unlawful possession, use, release, discharge, dispersal or disposal of any chemical, bacteriological, viral, radioactive or similar agents or material regardless of who is responsible for the act, whether or not the act is certified as an act of terrorism pursuant to the federal Terrorism Risk Insurance Act, and whether war has been declared or not, and regardless of any other cause or event contributing concurrently or in any other sequence thereto; or
2. The unlawful possession, use, release, discharge, detonation, dispersal or disposal of any device or material capable of producing a nuclear reaction or the spread of radioactivity, regardless of who is responsible for the act, whether or not the act is certified as an act of terrorism pursuant to the federal Terrorism Risk Insurance Act, and whether war has been declared or not, and regardless of any other cause or event contributing concurrently or in any other sequence thereto.

Nothing herein contained shall be held to vary, alter, waive or change any of the terms, limitations, exclusions or conditions of the POLICY, except as herein above set forth.

Endorsement No. 5 Additional Premium _____ Return Premium _____
Name of Insured JGB Vegas Retail Lessee, LLC

BOILER AND MACHINERY ENDORSEMENT

1. INSURING AGREEMENT:

Subject to all additional terms, conditions, limitations, exclusions, and stipulations stated herein this POLICY is extended to cover:

- (a) direct physical loss or damage to property of the Insured and to property of others in the care, custody or control of the Insured;
- (b) the loss and expense resulting from the necessary interruption of business; if a BUSINESS INTERRUPTION SECTION and/or any other TIME ELEMENT endorsements are attached and then such provisions hereby apply;

resulting from an ACCIDENT to an OBJECT at an INSURED LOCATION.

When used in this Endorsement, the following definitions shall apply:

"OBJECT(S)" shall mean any boiler, fired or unfired pressure vessel, refrigerating or air conditioning system, piping and its accessory equipment, and any mechanical or electrical machine or apparatus used for the generation, transmission or utilization of mechanical or electrical power.

"ACCIDENT(S)" shall mean a sudden and accidental breakdown of an OBJECT or a part thereof which manifests itself at the time of its OCCURRENCE by physical damage that necessitates repair or replacement of the OBJECT or part thereof.

2. LIMIT OF LIABILITY:

The COMPANY's total liability arising out of any One ACCIDENT under this Endorsement, shall in no event exceed \$The Sublimit specified in the Declarations.

If an initial ACCIDENT causes other ACCIDENTS, all will be considered "One ACCIDENT". All ACCIDENTS at any one INSURED LOCATION which manifest themselves at the same time and are the result of the same cause will be considered "One ACCIDENT."

3. CONDITIONS:

With respect to OBJECTS insured by the provision of this Endorsement, the following additional Condition shall apply:

Suspension

Upon the discovery of a dangerous condition with respect to any OBJECT, any representative of the COMPANY may immediately suspend the insurance with respect to an ACCIDENT to said OBJECT by written notice mailed or delivered to the Insured at the address of the Insured, or at the INSURED LOCATION of the OBJECT. Insurance so suspended may be reinstated by the COMPANY, but only by an Endorsement issued to form a part of this POLICY. The Insured will be allowed the unearned portion of the premium paid for the suspended insurance, pro rata, for the period of suspension.

4. SUBLIMITS OF COVERAGE:

- a. Ammonia Contamination Coverage

This POLICY is extended to cover loss, including salvage expense, or damage by ammonia contacting or permeating property under refrigeration or in process requiring refrigeration, resulting from any One ACCIDENT to one or more OBJECTS subject to a limit of **\$The Sublimit specified in the Declarations** any One ACCIDENT. This limit is part of and not in addition to the Limit of Liability.

b. **Expediting Expenses Coverage**

This POLICY is extended to cover the reasonable extra cost to make temporary repair, expedite permanent repairs and expedite permanent replacement of property covered by this Endorsement, including overtime and the extra cost of express or other rapid means of transportation when loss to such property results from damage as insured against by this Endorsement, all subject to a limit of **\$The Sublimit specified in the Declarations** any One ACCIDENT. This limit is part of and not in addition to the Limit of Liability.

c. **Consequential Damage**

This POLICY is extended to cover loss to property of the Insured and loss to property of others for which the Insured shall become legally obligated to pay when such loss is due to spoilage from lack of power, light, heat, steam, or refrigeration resulting solely from a ACCIDENT to an OBJECT, subject to a limit of **\$The Sublimit specified in the Declarations** any One ACCIDENT. This limit is part of and not in addition to the Limit of Liability.

d. **Hazardous Substances Coverage**

It is agreed that, if, as a result of an ACCIDENT, any property is damaged, contaminated, or polluted by a substance declared by a governmental agency to be hazardous to health, the COMPANY shall be liable under the POLICY for the additional expenses incurred for cleanup, repair or replacement, or disposal of that damaged, contaminated or polluted property. The COMPANY'S total liability for additional expenses shall not exceed **\$The Sublimit specified in the Declarations** any One ACCIDENT. This limit is part of and not in addition to the Limit of Liability.

As used here, "additional expenses" shall mean expenses incurred beyond those for which the COMPANY would have been liable if no substance hazardous to health had been involved in the ACCIDENT.

e. **Water Damage Coverage**

This POLICY is extended to cover loss, including salvage expense, to property damaged by WATER, resulting from any One ACCIDENT shall not exceed **\$The Sublimit specified in the Declarations** any One ACCIDENT. This limit is part of and not in addition to the Limit of Liability.

5. **ADDITIONAL EXCLUSIONS:**

In addition to the exclusions elsewhere in this POLICY, the following exclusions apply to this Endorsement:

A. The following losses are not insured under this Endorsement:

- 1) Breakdown of any structure or foundation (other than a bedplate of a machine) supporting an OBJECT or any part thereof, not caused by an ACCIDENT to the OBJECT;
- 2) Breakdown of any boiler setting, insulating or refractory material not caused by an ACCIDENT to the OBJECT;
- 3) Breakdown of well casings, penstocks or draft tubes;

- 4) Breakdown of OBJECTS manufactured or held by the Insured for sale to others;
- 5) Breakdown of catalyst not caused by an ACCIDENT to the OBJECT containing such catalyst or any other insured OBJECTS;
- 6) Breakdown of any oven, stove or furnace;
- 7) Breakdown of any sewer piping, any underground gas piping, any piping forming a part of a sprinkler system or any water piping other than:
 - (a) feed water piping between any boiler and its feed pumps or injectors,
 - (b) boiler condensate return piping, or
 - (c) WATER piping forming a part of a refrigerating or air conditioning system used for cooling, humidifying or space heating purposes;
- 8) Breakdown of an OBJECT until such time as said OBJECT has been installed and completely tested at an INSURED LOCATION. For the purposes of this insurance, "completely tested" shall mean that said OBJECT has operated at an INSURED LOCATION in the capacity for which it was designed as part of the Insured's NORMAL production process or processes. Notwithstanding the above coverage under this Agreement shall apply to any newly installed OBJECT having a fair market value of \$1,000,000. or less and to any spare or replacement OBJECT or having parts thereof;
- 9) An ACCIDENT to any OBJECT while it is being maintained or altered if said ACCIDENT is a direct result of said maintenance or alterations. However, if an ACCIDENT otherwise insured hereunder subsequently ensues, then the COMPANY shall be liable for such ACCIDENT. Any opening, closing or transporting of an OBJECT shall not be considered a part of any maintenance or alterations;
- 10) An ACCIDENT to any OBJECT utilizing sulfur dioxide or hydrogen sulfide gas as respects:
 - (a) loss or damage resulting from corrosion anywhere following said ACCIDENT,
 - (b) loss or damage to catalyst caused by steam or WATER contacting or permeating the said catalyst following said ACCIDENT, and
 - (c) payment under any BUSINESS INTERRUPTION SECTION or Extra Expense Endorsement forming a part of this POLICY, for any time during which the resumption of business is in anyway curtailed, delayed or prevented because of loss or damage of the kinds referred to in the preceding Sections (a) and (b);
- 11) Breakdown of any vacuum tube or gas tube; and
- 12) Breakdown of any electronic computer or electronic data processing equipment, unless used to operate one or more insured "OBJECTS", unless endorsed hereon;
- 13) Any increase in loss caused by or resulting from the enforcement of any ordinance, law, regulation, rule or ruling regulating or restricting repair, replacement, alteration, use, operation, construction or installation. As used here, increase in loss also includes expenses incurred beyond those for which we would have paid

if no substance declared to be hazardous to health by a governmental agency had been involved in the "ACCIDENT";

B. As respects this Endorsement, ACCIDENT shall not include loss:

- 1) From depletion, deterioration, corrosion or erosion, wear and tear, leakage at any valve, fitting, shaft seal, gland packing, joint or connection; the functioning of any safety or protective device; nor shall ACCIDENT mean the breakdown of any OBJECT while it is undergoing hydrostatic, pneumatic, gas pressure, or insulation breakdown tests, or is being dried out;
- 2) From fire concomitant with or following an ACCIDENT or from the use of WATER or other means to extinguish fire (as respects any electrical machine or apparatus or gas turbine), this section is changed to read: "from fire outside said electrical machine or apparatus or gas turbine concomitant with or following an ACCIDENT or from the use of WATER or other means to extinguish fire";
- 3) From an ACCIDENT caused directly or indirectly by fire or from the use of WATER or other means to extinguish fire;
- 4) From a combustion explosion outside the OBJECT concomitant with or following a ACCIDENT;
- 5) From an ACCIDENT caused directly or indirectly by a combustion explosion outside the OBJECT;
- 6) As respects any boiler of the chemical recovery type, from an explosion within the furnace of any such boiler or within the passages from the furnace to the atmosphere whether or not such explosion (a) is contributed to or aggravated by an ACCIDENT to any part of said boiler that contains steam or WATER, or (b) is caused in whole or in part, directly or indirectly, by an ACCIDENT to any OBJECT or part thereof;
- 7)
 - (a) From an ACCIDENT in whole or in part caused by nuclear reaction, nuclear radiation or radioactive contamination, all whether controlled or uncontrolled, and whether such loss be direct or indirect, proximate or remote, or
 - (b) From nuclear reaction, 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, contributed to or aggravated by an ACCIDENT;

nor shall the COMPANY be liable for any loss covered in whole or in part by a contract of insurance, carried by the Insured, which also covers any hazard or peril of nuclear reaction or nuclear radiation, or radioactive contamination.

C. Notwithstanding any provisions in the POLICY or its other Endorsements to the contrary, the COMPANY assumes no liability under this Endorsement for any loss:

- 1) From an ACCIDENT caused directly or indirectly by EARTH MOVEMENT; or
- 2) From the explosion of accumulated gases or unconsumed fuel within the fire box, or combustion chamber, or any fired vessel or within the flues which conduct the gases of combustion there from;
- 3) From FLOOD, unless an ACCIDENT ensues and the COMPANY shall then be liable under this Endorsement only for loss from such ensuing ACCIDENT; and

- 4) From explosion of an OBJECT other than:
 - (a) any steam boiler, steam piping, steam turbine, gas turbine, steam engine, or
 - (b) any machine or electrical apparatus when such loss is caused by centrifugal force or mechanical breakdown.

D. With respect to an ACCIDENT to an OBJECT, liability for loss to any catalyst shall not exceed the ACTUAL CASH VALUE thereof at the time of said loss.

This Endorsement is subject to the Deductibles specified in the Declarations and does not increase any amounts or limits of insurance provided by this POLICY.

Nothing herein contained shall be held to vary, alter, waive or change any of the terms, limitations, exclusions or conditions of the POLICY, except as herein above set forth.

Endorsement No. 6 Additional Premium _____ Return Premium _____

Name of Insured JGB Vegas Retail Lessee, LLC

COURSE OF CONSTRUCTION ENDORSEMENT

A. COVERAGE:

Subject to all terms, conditions, limitations, exclusions and stipulations of the POLICY to which this Endorsement is attached, not in conflict herewith, this POLICY is extended to cover:

1. direct physical loss or damage by a peril insured against to alterations, extensions, renovations, erections, installations, assembly, additions and new facilities, including building materials, supplies, machinery or equipment incidental to such construction or occupancy while at an INSURED LOCATION described under the PROPERTY SECTION, while in the course of construction.
2. the ACTUAL LOSS SUSTAINED by the Insured resulting from the necessary interruption of business during the PERIOD OF INDEMNITY which results directly from the DELAY IN COMPLETION provided that the DELAY IN COMPLETION is caused solely by physical loss or damage to or destruction of Property Insured described in Item No. 1 above.
3. direct physical loss or damage to Property Insured described in Item No. 1 by a peril insured against while such property is undergoing Hot Testing during the HOT TESTING PERIOD.

All coverage afforded under this Endorsement shall cease upon the earlier of: (a) termination of the POLICY, or (b) termination of the HOT TESTING PERIOD as defined herein.

B. LIMIT OF LIABILITY:

The COMPANY's total liability in any one OCCURRENCE under this Endorsement, shall in no event exceed \$The Sublimit specified in the Declarations.

C. ADDITIONAL EXCLUSIONS:

In addition to the exclusions elsewhere in this POLICY, the following exclusions apply to this Endorsement:

This Endorsement does not insure:

- (1) Contractor's or subcontractor's equipment; machinery, tools, equipment and property of a similar nature not destined to become a permanent part of the completed project or structure;
- (2) Loss of use, loss of markets, penalties for noncompletion, noncompliance with contract conditions, consequential loss of any kind;
- (3) Loss caused by frost, falling of ice or freezing, unless resulting from damage caused by fire, lighting, explosion, windstorm, hail, riot, riot attending a strike, civil commotion,

aircraft, vehicles and smoke;

- (4) a) Any manufacturer or supplier of machinery, equipment or other property for the cost of making good any loss or damage which such party has agreed to make good under a guarantee or warranty, whether expressed or implied, or
- b) Any consulting engineer, architect or designer for loss or damage which arises out of the performance of their respective professional activities,

whether or not named as an Insured under this POLICY;
- (5) Loss or damage directly or indirectly caused by fault, defect error or omission in design, plan or specification;
- (6) Loss or damage occasioned directly or indirectly by any ordinance of law, any order of governmental or municipal authority; by suspension, lapse termination or cancellation of any license, lease or permit, and any injunction or process of any court;
- (7) Loss resulting from the failure of the Insured to use due diligence and dispatch and all reasonable means to restore the property Insured to the condition existing prior to loss or damage;
- (8) Loss resulting from any DELAY IN COMPLETION or use which may be occasioned by ordinance, law or regulation, rule or ruling regulating or restricting repair, alteration, use, operation, construction or installation of buildings, structures or equipment, nor by suspension, lapse or cancellation of any lease or license, contract or order, nor for the DELAY IN COMPLETION or use due to interference by strikers or other persons with the transportation of property, the construction of buildings or with the occupancy and use of the premises;
- (9) Consequential damages including liquidated damages, performance or non-performance penalties, and penalties for non-completion or non-compliance with contract conditions;
- (10) Interruption of incoming electricity, fuel, water, gas, steam, refrigerant, or any other services needed for construction or operation;
- (11) SOFT COSTS as defined herein;
- (13) HOT TESTING of prototype or developmental machinery and equipment or of used machinery and equipment.

D. AS RESPECTS TESTING:

No coverage shall be provided under this Endorsement unless all specified protective material and instrumentation is installed and activated.

In no event shall coverage be provided if supervisory or safety systems have been deliberately circumvented.

E. SUBROGATION:

For the purpose of this Endorsement only, the following applies:

- (A) In the event of any payment made hereunder, the COMPANY shall be subrogated to all the Insured's rights of recovery therefore against any person or organization and the Insured shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The Insured shall do nothing after loss to prejudice such rights.
- (B) Unless otherwise endorsed, it is a condition of this Endorsement that the COMPANY shall be subrogated, to the extent of payment, to all the Insured's rights of recovery against any subcontractor, architect, or design engineer, whether a named Insured or not, for any loss or damage for which the aforesaid subcontractor, architect, or design engineer would otherwise be legally liable.

F. DEFINITIONS:

The following terms whenever used in this Endorsement shall mean:

1. "DELAY IN COMPLETION": the time period between the ANTICIPATED COMPLETION OF THE PROJECT and the ACTUAL COMPLETION OF THE PROJECT less any time resulting from delay caused by loss or damage for which the COMPANY is not liable under this Endorsement and not more than the PERIOD OF INDEMNITY.
2. "ANTICIPATED COMPLETION OF THE PROJECT": that point in time when COMPLETION OF THE PROJECT would have taken place but for the loss or damage for which the COMPANY is liable under this Endorsement.
3. "ACTUAL COMPLETION OF THE PROJECT": that point in time when the COMPLETION OF THE PROJECT actually takes place.
4. "HOT TESTING PERIOD": that period of time beginning with the earlier of:
 - (a) introduction into a system of feedstock or other materials for processing or handling,
 - or
 - (b) commencement of fuel or energy supply to a systemand ending with the earliest of:
 - (a) the Project being taken over or taken into use by the principal of the Project, or
 - (b) Cancellation or Expiration of the POLICY.
5. "PERIOD OF INDEMNITY": The twelve (12) month period of time commencing with the ANTICIPATED COMPLETION OF THE PROJECT.
6. "SOFT COSTS": Expenditures which are necessarily incurred during the PERIOD OF INDEMNITY that would not have been incurred by the Insured if the DELAY had not occurred including:
 - a. Interest Expense on construction loan(s)
 - b. Advertising and promotional expenses necessarily incurred;
 - c. Architects and/or engineers fees;
 - d. Legal and accounting fees;
 - e. Commissions incurred upon renegotiation of leases;
 - f. Fees for licensing and permits;
 - g. Insurance premium;

- h. Real Estate taxes and assessments;
- i. Project administration expense;

This Endorsement is subject to the Deductibles specified in the Declarations and does not increase any amounts or limits of liability provided by this POLICY.

Nothing herein contained shall be held to vary, alter, waive or change any of the terms, limitations, exclusions or conditions of the POLICY, except as herein above set forth.

Endorsement No. 7 Additional Premium _____ Return Premium _____

Name of Insured JGB Vegas Retail Lessee, LLC

**DATA DISTORTION/CORRUPTION ENDORSEMENT
COVERS SUBSEQUENT DAMAGE
FROM NAMED PERILS AND B&M**

It is hereby understood and agreed that this POLICY is amended as follows:

The COMPANY will not pay for damage or consequential loss directly or indirectly caused by, consisting of, or arising from:

- (A) Any functioning or malfunctioning of the Internet or similar facility, or of any intranet or private network or similar facility,
- (B) Any corruption, destruction, distortion, erasure or other loss or damage to data, software or any kind of programming or instruction set,
- (C) Loss of use or functionality whether partial or entire of data, coding, program, software, any computer or COMPUTER system or other device dependent upon any microchip or embedded logic, and any ensuing inability or failure of the Insured to conduct business.

This endorsement shall not exclude subsequent damage or consequential loss, not otherwise excluded, which itself results from fire, lightning, explosion, falling aircraft, smoke, vehicle impact, WIND, or ACCIDENT.

This Endorsement shall not act to increase or broaden coverage afforded by this POLICY.

Such damage or consequential loss described in A, B, or C above, is excluded regardless of any other cause that contributed concurrently or in any other sequence.

In consequence of all the foregoing the Annual Premium remains unaltered.

Nothing herein contained shall be held to vary, alter, waive or change any of the terms, limitations, exclusions or conditions of the POLICY, except as herein above set forth.

Endorsement No. 8 Additional Premium _____ Return Premium _____
Name of Insured JGB Vegas Retail Lessee, LLC

ELECTRONIC DATA PROCESSING ENDORSEMENT

A. COVERAGE

Subject to all terms, conditions, limitations, exclusions and stipulations of the POLICY to which this Endorsement is attached, not in conflict herewith, this POLICY is extended to cover direct physical loss or damage by a peril insured against to ELECTRONIC DATA PROCESSING SYSTEMS and MEDIA including:

1. Direct physical loss or damage to covered equipment and media caused by mechanical breakdown or malfunction of DATA PROCESSING EQUIPMENT.
2. Direct physical loss or damage to covered DATA PROCESSING EQUIPMENT (including wiring) and DATA PROCESSING MEDIA caused by short circuit, blowout, electrical or magnetic injury or disturbance, or other electrical damage.
3. Direct physical loss or damage to covered DATA PROCESSING EQUIPMENT or DATA PROCESSING MEDIA from corrosion, rust or changes in humidity or temperature as a result of an insured peril loss to dedicated environmental control equipment.

B. ADDITIONAL COVERAGE:

This POLICY is extended to cover the cost to refill a:

1. Clean Agent Fire Extinguishing System, other than halon;
2. Carbon Dioxide (CO₂) Fire Extinguishing System

which protects data processing operations when they discharge as intended to control a loss covered by this Endorsement. The Insured agrees to keep the Clean Agent Fire Extinguishing System and/or Carbon Dioxide (CO₂) Fire Extinguishing System, in good working order while this Endorsement is in effect. This extension does not cover any loss that happens at the time of installation, repair or recharging of the special agent extinguishing system.

C. LIMIT OF LIABILITY

The COMPANY's total liability in any one OCCURRENCE under this Endorsement shall in no event exceed \$The Sublimit specified in the Declarations.

D. VALUATION:

In the event of loss or damage, the basis of adjustment of the property insured herein shall be as follows:

1. DATA PROCESSING SYSTEMS - the actual retail replacement cost of the property at the time any loss or damage occurs. Loss or damage shall be ascertained or estimated on the basis of the actual cash retail REPLACEMENT COST of property similar in kind to that insured at the place of and immediately preceding the time of such loss or damage.

2. DATA PROCESSING MEDIA - the actual reproduction cost of the property; if not replaced or reproduced, blank value of such property. Actual reproduction cost shall mean the cost of reproducing the data thereon from duplicates or from originals of the previous generation, but no liability is assumed hereunder for the cost of gathering or assembling information or data for such reproduction.

This Endorsement is subject to the Deductibles specified in the Declarations and does not increase any amounts or limits of insurance provided by this POLICY.

Nothing herein contained shall be held to vary, alter, waive or change any of the terms, limitations, exclusions or conditions of the POLICY, except as herein above set forth.

Endorsement No. 9 Additional Premium _____ Return Premium _____
Name of Insured JGB Vegas Retail Lessee, LLC

ELECTRONIC DATE RECOGNITION CLAUSE ENDORSEMENT (COMBINED)

It is hereby understood and agreed that this POLICY is amended as follows:

- A. This COMPANY will not pay for damage or consequential loss directly or indirectly caused by, consisting of, or arising from, the failure of any COMPUTER, DATA PROCESSING EQUIPMENT or media microchip, operating systems, microprocessors (computer chip), integrated circuit or similar device, or any computer software, whether the property of the insured or not, that results from the inability to:
1. Correctly recognize any date as its true calendar date;
 2. Capture, save, or retain and/or correctly manipulate, interpret or process any data or information or command or instruction as a result of treating any date otherwise than as its true calendar date; and/or
 3. Capture, save, retain or correctly process any data as a result of the operation of any command which has been programmed into any computer software, being a command which causes the loss of date or the inability to capture, save, retain or correctly process such data on or after any date.
- B. It is further understood that this COMPANY will not pay for the repair or modification of any part of an ELECTRONIC DATA PROCESSING SYSTEM or its related equipment, to correct deficiencies or features of logic or operation.
- C. It is further understood that this COMPANY will not pay for damage or consequential loss arising from the failure, inadequacy, or malfunction of any advice, consultation, design evaluation, inspection installation, maintenance, repair or supervision done by you or for you or by or for others to determine, rectify or rest, any potential or actual failure, malfunction or inadequacy described in A. above.

Such damage or consequential loss described in A, B, or C above, is excluded regardless of any other cause that contributed concurrently or in any other sequence.

This Endorsement shall not exclude subsequent damage or consequential loss, not otherwise excluded, which itself results from fire, lightning, explosion, falling aircraft, smoke, vehicle impact, WIND, ACCIDENT.

Nothing herein contained shall be held to vary, alter, waive or change any of the terms, limitations, exclusions or conditions of the POLICY, except as herein above set forth.

Endorsement No. 10 Additional Premium _____ Return Premium _____
Name of Insured JGB Vegas Retail Lessee, LLC

EXTRA EXPENSE ENDORSEMENT

A. COVERAGE:

Subject to all terms, conditions, exclusions, limitations, and stipulations of the POLICY to which this endorsement is attached, not in conflict herewith, this POLICY is extended to cover the reasonable and necessary EXTRA EXPENSE, incurred by the Insured in order to continue as nearly as practicable the NORMAL operation of the Insured's business following direct physical loss or damage of real or personal property at an INSURED LOCATION(S), by the peril(s) insured against during the Term of this POLICY.

B. LIMIT OF LIABILITY:

The COMPANY's total liability in any one OCCURRENCE under this Endorsement shall in no event exceed \$The Sublimit specified in the Declarations.

C. MEASURE OF RECOVERY:

In the event of direct physical loss or damage to covered property by a peril insured against, this COMPANY shall be liable for such reasonable and necessary EXTRA EXPENSE incurred only during the "PERIOD OF INDEMNITY."

No claim shall be payable with respect to EXTRA EXPENSE unless and until a loss has been paid or liability admitted, in respect of direct physical damage to property insured under this POLICY giving rise to such EXTRA EXPENSE loss. This Condition shall not apply if no such payment shall have been made nor liability admitted solely owing to the operation of a "Deductible" in this POLICY excluding liability for losses below a specified amount.

D. RESUMPTION OF OPERATIONS:

It is a condition of this POLICY that as soon as practicable the Insured shall resume NORMAL operation of the business and shall discontinue incurring such EXTRA EXPENSE.

E. INTERRUPTION BY CIVIL OR MILITARY AUTHORITY:

This POLICY is extended to include necessary EXTRA EXPENSE incurred by the Insured as covered hereunder, during the length of time, not exceeding the number of days shown under TIME LIMITS specified in the Declarations when, as a direct result of damage to or destruction of property within one (1) statute mile of the premises described under the property section by the peril(s) insured against, access to such described premises is specifically prohibited by order of civil or military authority.

F. ADDITIONAL EXCLUSIONS AND LIMITATIONS:

In addition to the exclusions elsewhere in this POLICY, the following exclusions apply to this Endorsement:

This COMPANY shall not be liable for any EXTRA EXPENSE resulting from:

- 1) Enforcement of any ordinance or law regulating the use, construction, repair or demolition of property; or
- 2) Interference at the described premises, by strikers or other persons, with rebuilding, repairing or replacing the property or with the resumption or continuation of business; or
- 3) The suspension, lapse or cancellation of any lease or license, contract or order beyond the PERIOD OF INDEMNITY.
- 4) Loss of income;
- 5) The cost of repairing or replacing any of the real or personal property herein described, or the cost of research or other expense necessary to replace or restore damaged or destroyed books of account, abstracts, drawings, card index systems or other records (including film, tape, disc, drum, cell and other magnetic recording or storage media for electronic data processing), that have been damaged or destroyed by the perils(s) insured against, except cost in excess of the NORMAL cost of such repair, replacement or restoration necessarily incurred for the purpose of reducing loss under this Policy. In no event shall such excess cost exceed the amount by which the total EXTRA EXPENSE loss otherwise payable under this Policy is thereby reduced; or
- 6) Any other consequential or remote loss.

G. DEFINITIONS:

The term "EXTRA EXPENSE", wherever used in this POLICY, is defined as the excess, if any, of the total cost incurred during the PERIOD OF INDEMNITY 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 during the same period had no damage or destruction occurred. Any salvage value of property obtained for temporary use during the PERIOD OF INDEMNITY, which remains after the resumption of NORMAL operations, shall be taken into consideration in the adjustment of any loss hereunder.

This Endorsement is subject to the Deductibles specified in the Declarations and does not increase any amounts or limits of insurance provided by this POLICY.

Nothing herein contained shall be held to vary, alter, waive or change any of the terms, limitations, exclusions or conditions of the POLICY, except as herein above set forth.

Endorsement No. 11 Additional Premium _____ Return Premium _____
Name of Insured JGB Vegas Retail Lessee, LLC

FIRE AND POLICE DEPARTMENT SERVICE CHARGES ENDORSEMENT

Subject to all terms, conditions, exclusions, limitations and stipulations of this POLICY to which this Endorsement is attached, not in conflict herewith, this POLICY is extended to cover the reasonable and necessary:

1. fire department firefighting charges imposed as a result of responding to a fire in, on or exposing the insured property at an INSURED LOCATION.
2. costs incurred of restoring and recharging fire protection systems following an insured loss at an INSURED LOCATION.
3. cost incurred for the WATER used for fighting a fire in, on or exposing the insured property at an INSURED LOCATION.
4. police department service charges imposed as a result of responding to an insured loss at an INSURED LOCATION.

The COMPANY's total liability in any one OCCURRENCE under this Endorsement shall in no event exceed **\$The Sublimit specified in the Declarations.**

This Endorsement is subject to the Deductibles specified in the Declarations and does not increase any amounts or limits of insurance provided by this POLICY.

Nothing herein contained shall be held to vary, alter, waive or change any of the terms, limitations, exclusions or conditions of the POLICY, except as herein above set forth.

Endorsement No. 12 Additional Premium _____ Return Premium _____
Name of Insured JGB Vegas Retail Lessee, LLC

FINE ARTS ENDORSEMENT

A. INTEREST AND PROPERTY INSURED:

Subject to all terms, conditions and stipulations of the POLICY to which this Endorsement is attached, not in conflict herewith, this POLICY is extended to cover direct physical loss or damage by a peril insured against to FINE ARTS as defined herein; all while at an INSURED LOCATION.

B. LIMIT OF LIABILITY:

The COMPANY's total liability in any one OCCURRENCE under this Endorsement shall in no event exceed \$The Sublimit specified in the Declarations.

C. NEWLY ACQUIRED PROPERTY:

This POLICY is extended to cover FINE ARTS newly acquired by the Insured during the term of this POLICY while such property is in the actual possession of the Insured and only while located within the territorial limits of this POLICY.

Coverage under this newly acquired property provision shall commence when the Insured first acquires actual possession of such FINE ARTS and shall cease Sixty (60) days from the date of such acquisition, or when reported to and accepted by the COMPANY, or on the expiration date of this POLICY, whichever shall occur first.

Liability for loss under this newly acquired property provision for any one FINE ARTS property shall not exceed \$5,000 per each FINE ARTS property.

This newly acquired property provision shall not increase any amounts or limits of liability provided by this POLICY.

D. ADDITIONAL EXCLUSIONS:

In addition to the exclusions elsewhere in this POLICY, the following exclusions apply to this Endorsement:

THIS ENDORSEMENT DOES NOT INSURE:

1. FINE ARTS property while in transit or while on the premises of any exhibition, exposition, fair or trade show;
2. Against loss or damage caused by any repairing, restoration, or retouching process performed on any FINE ARTS;
3. Against loss or damage caused by breakage of statuary, art glass windows, glassware, bric-a-brac, marble, porcelain and similar fragile property unless such breakage is caused by fire, lightning, WIND, removal, leakage from fire protective equipment, explosion, aircraft, vehicles, smoke, riot, civil commotion or vandalism.

E. PACKING AND UNPACKING:

The Insured agrees that when packing or unpacking of FINE ARTS is undertaken, such packing and unpacking will be performed by competent packers.

F. VALUATION:

The value of all FINE ARTS, including newly acquired property, will be the least of the following at the time of loss:

1. The reasonable and necessary cost to repair or restore such property to the physical condition that existed on the date of the loss,
2. The cost to replace the article,
3. The value, if any, stated on a schedule on file with the COMPANY,
4. The applicable limit stated in this endorsement.

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

G. FINE ARTS

The term "FINE ARTS" wherever used in this POLICY is defined as paintings, etchings, pictures, tapestries, rare or art glass, art glass windows, valuable rugs, statuary, sculptures, antique furniture, antique jewelry, bric-a-brac, porcelains, and similar property of rarity, historical value, or artistic merit, but excluding automobiles, coins, stamps, furs, jewelry other than antique, precious stones, precious metals, watercraft, aircraft, money or securities.

This Endorsement is subject to the Deductibles specified in the Declarations and does not increase any amounts or limits of insurance provided by this POLICY.

Nothing herein contained shall be held to vary, alter, waive or change any of the terms, limitations, exclusions or conditions of the POLICY, except as herein above set forth.

Endorsement No. 13 Additional Premium _____ Return Premium _____
Name of Insured JGB Vegas Retail Lessee, LLC

INCREASED COST OF CONSTRUCTION & DEMOLITION ENDORSEMENT

A. COVERAGE:

Subject to all terms, conditions, exclusions, limitations and stipulations of the POLICY to which this Endorsement is attached, not in conflict herewith, it is hereby understood and agreed that with respect to the Property Section of this POLICY only, this POLICY is extended to cover:

1. The increased cost of repair, rebuilding or construction of the building(s) or structure(s) covered under this POLICY, on the same premises, of like size and occupancy, caused by loss from any peril insured against under this POLICY and resulting from the enforcement of, and limited to the minimum requirements of, any law or ordinance regulating the construction or repair of damaged building(s) or structure(s); and
2. The insured value of the undamaged portion, and the cost of demolishing any such undamaged portion of the building(s) or structure(s) covered under this POLICY, including the cost of clearing the site thereof, caused by loss from any peril insured against under this POLICY and resulting from enforcement of any law or ordinance regulating the construction or repair of building(s) or structure(s) and in force at the time of loss which necessitate such demolition;

B. LIMIT OF LIABILITY:

The COMPANY's total liability in any one OCCURRENCE under this Endorsement shall in no event exceed \$The Sublimit specified in the Declarations.

C. ADDITIONAL EXCLUSIONS:

In addition to the exclusions elsewhere in the POLICY, the following exclusions apply to this Endorsement:

This COMPANY shall not be liable under this Endorsement for:

1. Any additional costs, resulting from the insured's obligation to comply with regulations mandated by any federal, state, municipal, or other authority, that existed prior to the loss from peril(s) insured hereunder.
2. Any loss unless and until the damaged or destroyed building(s) or structure(s) is actually rebuilt or replaced on the same premises with due diligence and dispatch, and, in no event, unless repair or replacement is completed within Two (2) years after the destruction or damage, or within such further time as the COMPANY may allow, in writing, during the Two (2) years.
3. More than the amount actually and necessarily expended to repair or replace as above provided, in excess of the amount recoverable under this POLICY had this endorsement not been attached thereto.
4. More than the amount insured under this endorsement in excess of the REPLACEMENT COST of the building(s) or structure(s) without deduction for depreciation however caused.

This Endorsement is subject to the Deductibles specified in the Declarations and does not increase any amounts or limits of insurance provided by this POLICY.

Nothing herein contained shall be held to vary, alter, waive or change any of the terms, limitations, exclusions or conditions of the POLICY, except as herein above set forth.

Endorsement No. 14 Additional Premium _____ Return Premium _____
Name of Insured JGB Vegas Retail Lessee, LLC

INGRESS/EGRESS ENDORSEMENT

Subject to all terms, conditions, exclusions, limitations and stipulations of the POLICY to which this Endorsement is attached, not in conflict herewith, this POLICY is extended to cover the ACTUAL LOSS SUSTAINED during the period of time, starting at the time of physical damage, **not exceeding the number of days shown under TIME LIMITS specified in the Declarations**, when as a direct result of loss or damage by a peril insured against to property of a type insured against within one (1) mile of an INSURED LOCATION, ingress to or egress from the premises insured is impaired irrespective of whether the premises or property insured shall have been damaged.

This Endorsement is subject to the Deductibles specified in the Declarations and does not increase any amounts or limits of insurance provided by this POLICY.

Nothing herein contained shall be held to vary, alter, waive or change any of the terms, limitations, exclusions or conditions of the POLICY, except as herein above set forth.

Endorsement No. 15 Additional Premium _____ Return Premium _____
Name of Insured JGB Vegas Retail Lessee, LLC

LEASEHOLD INTEREST ENDORSEMENT

A. COVERAGE

Subject to all terms, conditions, exclusions, limitations and stipulations of the POLICY to which this Endorsement is attached, not in conflict herewith, this POLICY is extended to cover the following, if caused by direct physical loss or damage by a peril insured against to real property of the type covered by this POLICY, located at LOCATIONS listed in Part B below:

1. the actual rent which remains payable for the unexpired term of the lease if such property becomes wholly untenable or unusable and the lease agreement requires continuation of the rent payment; or
2. the proportion of rent which remains payable for the unexpired term of the lease if such property becomes partially untenable or unusable and the lease agreement requires continuation of the rent payment; or
3. the LEASEHOLD INTEREST for the first three (3) MONTHS following loss or damage and the Net LEASEHOLD INTEREST for the remaining unexpired term of the lease if the lease is canceled by the lessor pursuant to the lease agreement or by the operation of law.

B. COVERED LOCATIONS AND LIMIT OF LIABILITY

Coverage provided by this Endorsement only applies to the LOCATION(S) listed below, and the COMPANY's total liability for loss under this Endorsement arising out of any one OCCURRENCE shall in no event exceed the amount shown opposite each LOCATION.

<u>LOCATION NUMBER</u>	<u>LOCATION</u>	<u>LIMIT OF LIABILITY</u> \$The Sublimit specified in the Declarations.
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C. ADDITIONAL CONDITION

It is a condition of this Endorsement that the Insured shall use any suitable property or service owned or controlled by the Insured or obtainable from another source to reduce the amount of loss hereunder.

D. ADDITIONAL EXCLUSIONS

In addition to the exclusions elsewhere in this POLICY, the following exclusions apply to this Endorsement:

This Endorsement does not insure against any loss or expense resulting from:

1. the suspension, lapse or cancellation of any license; or
2. the Insured exercising an option to cancel the lease; or
3. any act or omission of or by the Insured which constitutes a default under the lease.

E. DEFINITIONS

The following terms wherever used in this Endorsement shall mean:

1. "LEASEHOLD INTEREST": The excess rent paid for either the same or similar replacement property over the amount of rent and other charges which would have been payable under the unexpired lease plus bonuses or advance rent paid, including any maintenance, operating charges or taxes, for each MONTH during the unexpired term of the Insured's lease.
2. "NET LEASEHOLD INTEREST": The present value of the amount which placed at eight percent (8%) annual interest would equal the LEASEHOLD INTEREST, less any amounts otherwise payable hereunder.

This Endorsement is subject to the Deductibles specified in the Declarations and does not increase any amounts or limits of insurance provided by this POLICY.

Nothing herein contained shall be held to vary, alter, waive or change any of the terms, limitations, exclusions or conditions of the POLICY, except as herein above set forth.

Endorsement No. 16 Additional Premium _____ Return Premium _____
Name of Insured JGB Vegas Retail Lessee, LLC

MINIMUM EARNED PREMIUM ENDORSEMENT

In the event of cancellation of this policy by the Insured, a minimum earned premium of 30% of the original policy premium shall become earned; subject to the cancellation provisions of the policy.

Failure of the Insured to make timely payment of premium shall be a request by the Insured for the Company to cancel. In the event of such cancellation by the Company for non-payment of premium, the minimum earned premium shall be due and payable; provided, however, such non-payment cancellation shall be rescinded if the insured remits full premium due within 10 days of receiving it.

In the event of any other cancellation by the Company, the earned premium shall be computed pro rata, not subject to the minimum premium.

Nothing herein contained shall be held to vary, alter, waive or change any of the terms, limitations, exclusions or conditions of the POLICY, except as herein above set forth.

Endorsement No. 17 Additional Premium _____ Return Premium _____
Name of Insured JGB Vegas Retail Lessee, LLC

MOBILE EQUIPMENT ENDORSEMENT

The coverage provided by this POLICY to which this Endorsement is attached is restricted as respects direct physical loss or damage to Mobile Equipment of the Insured, or Mobile Equipment of others in the care, custody and control of the Insured and for which the Insured is legally liable, all while situated at an INSURED LOCATION and described in the MOBILE EQUIPMENT SCHEDULE set forth herein.

Boom(s) in excess of Twenty-Five (25) feet in length are insured hereunder only against loss or damage directly caused by fire, lightning, WIND, explosion, riot, riot attending a strike, civil commotion, aircraft, vehicles, smoke, landslide or overturning of the unit of which it is a part; collision, derailment or overturn of carrying conveyance on which the unit insured hereunder is being transported; collision with other Mobile Equipment, whether or not such other equipment is insured hereunder.

A. LIMIT OF LIABILITY:

This COMPANY's total liability in any one OCCURRENCE under this Endorsement shall in no event exceed the Scheduled value of each item set forth below, subject to \$The Sublimit specified in the Declarations for all items combined, either in case of partial or total loss, or salvage charges, or expenses, or all combined. Any subsequent increase in the Schedule of Values and/or Mobile Equipment Schedule shall not be deemed to increase the liability limit stated in this clause unless amended specifically by Endorsement.

B. MOBILE EQUIPMENT SCHEDULE

Location	Item #	Item Description	Limit of Liability	Loss Payee
As per Schedule submitted and accepted by the COMPANY as of the POLICY inception date specified in the Declarations.		As per Schedule submitted and accepted by the COMPANY as of the POLICY inception date set as specified in the Declarations.	\$The Sublimit specified in the Declarations	

C. ADDITIONAL EXCLUSIONS:

In addition to the exclusions elsewhere in this POLICY, the following exclusions apply to this Endorsement:

THIS ENDORSEMENT DOES NOT INSURE:

1. Property while loaned, leased or rented to others;
2. Plans, blueprints, designs, specifications or any similar property;
3. Automobiles, motor trucks, tractors, trailers, motorcycles, or similar conveyances licensed for use on public highways;
4. Aircraft or watercraft;
5. Property while underground, underwater, waterborne (except while being transported on a regular ferry line), or airborne;
6. Property which has become a part of any structure;
7. Against loss, damage or expense occasioned by the weight of a load exceeding the rated or registered lifting or supporting capacity of any machine;
8. Against loss, damage or expense to dynamos, exciters, lamps, switches, motors or other electrical appliances or devices, including wiring, caused by electrical injury or disturbance from artificial causes unless fire or explosion ensues and then only for the actual loss or damage directly caused by such ensuing fire or explosion;
9. Against loss, damage, or expense occasioned by any repairing, adjusting, servicing, remodeling or maintenance operation unless fire or explosion ensues and then only for the actual loss or damage directly caused by such ensuing fire or explosion;
10. Against loss, damage or expense to tires or tubes unless the loss or damage is caused by fire, windstorm or theft or is coincident with other loss or damage insured by this POLICY;
11. Against loss, damage or expense occasioned by breaking through ice, or subsidence of ice or sinking in muskeg;
12. Against loss, damage or expense occasioned by or resulting from misappropriation, secretion, conversion, infidelity or any dishonest act on the part of the Insured or any other party of interest, his or their employees or agents or any person or persons to whom the property may be entrusted, other than carriers for hire;
13. Against unexplained loss, mysterious disappearance, nor loss or shortage disclosed upon taking inventory;
14. Against loss, damage or expense occasioned by obsolescence;
15. Against loss, damage or expense caused by or resulting from wear and tear, mechanical or electrical breakdown or failure, inherent vice, latent defect, gradual deterioration, corrosion, pitting, rust, dampness of atmosphere, freezing or extremes of temperature;

16. Against loss, damage or expense occasioned by overheating or explosion originating within steam boilers, steam piping, pressure vessels or internal combustion engines;
17. Against loss, damage or expense occasioned by rotating parts of machinery caused by centrifugal force;
18. Against loss, damage or expense occasioned by any loss which is unexplained;
19. Against loss resulting from interruption of business, delay, loss of market or use, or direct or consequential loss of any kind;
20. The cost and expense of repairing any defective part.
21. An OCCURRENCE on public roads or waterways

D. VALUATION:

This COMPANY shall not be liable beyond the ACTUAL CASH VALUE of the Mobile Equipment at the time any loss or damage occurs and the loss or damage shall be ascertained or estimated according to such ACTUAL CASH VALUE, however caused, subject to a maximum of the scheduled value of the item, as scheduled herein, and shall in no event exceed what it would then cost to repair or replace the same with material of like kind and quality.

E. TERRITORY:

This Endorsement insures only while the Mobile Equipment is at locations within the United States of America including the District of Columbia.

F. NEW ACQUISITIONS:

This Endorsement is extended to cover additional items of a nature similar to those scheduled herein and such items have been acquired subsequent to the attachment date and during the term of this POLICY provided the Insured reports such additions within Thirty (30) days from the date acquired and pays full premium thereon from the date acquired at pro rata of the POLICY rate. It is specifically understood and agreed, however, that this Endorsement shall cease to cover such additional items if they are not reported to the COMPANY within the said Thirty (30) day period and that in any event this COMPANY shall not be liable under the provisions of this clause for more than the ACTUAL CASH VALUE of such property.

This Endorsement is subject to the Deductibles specified in the Declarations and does not increase any amounts or limits of insurance provided by this POLICY.

Nothing herein contained shall be held to vary, alter, waive or change any of the terms, limitations, exclusions or conditions of the POLICY, except as herein above set forth.

Endorsement No. 18 Additional Premium _____ Return Premium _____
Name of Insured JGB Vegas Retail Lessee, LLC

NAMED WINDSTORM DEFINITION

"NAMED WINDSTORM" shall mean a storm or weather condition that:

has been declared by the National Oceanic and Atmospheric Administration (NOAA), or its global equivalent, or the World Meteorological Organization or Regional Specialized Meteorological Center (RSMC), or Tropical Cyclone Warning Center (TCWC), or any governmental agency or body having the authority to make such declarations, or any other recognized meteorological authority, to be a hurricane, typhoon, tropical storm or cyclone. NAMED WINDSTORM includes all WIND and rain that ensues from a NAMED WINDSTORM.

In respect of losses hereunder arising from NAMED WINDSTORM, the term OCCURRENCE shall mean the sum total of all the Insured's losses sustained during any one period of seventy-two (72) consecutive hours commencing within the Term of this POLICY under the foregoing perils arising out of or caused by the same atmospheric disturbance.

As respects the foregoing, the Insured may elect the moment from which any period of seventy-two (72) consecutive hours shall be deemed to have commenced, this COMPANY being responsible only for its proportion of the loss to the Insured in respect to the said elected period of seventy-two (72) hours. No single elected seventy-two (72) hour period shall overlap any other elected seventy-two (72) hour period.

This COMPANY shall not be liable for any loss occurring before the effective date and time of this POLICY, nor for any loss occurring after the expiration date and time of this POLICY. The expiration of the POLICY shall not reduce the seventy-two (72) hour period.

Nothing herein contained shall be held to vary, alter, waive or change any of the terms, limitations, exclusions or conditions of the POLICY, except as herein above set forth.

Endorsement No. 19 Additional Premium _____ Return Premium _____
Name of Insured JGB Vegas Retail Lessee, LLC

NEWLY ACQUIRED LOCATIONS ENDORSEMENT

Subject to all terms, conditions, exclusions, limitations, and stipulations of this POLICY to which this Endorsement is attached, not in conflict herewith, this POLICY is automatically extended to cover any newly acquired property at LOCATIONS not already covered under this POLICY for a period of the number of days shown under TIME LIMITS specified in the Declarations from the date the property is acquired by the Insured subject to the following limit of liability:

The COMPANY's total liability under this Endorsement in any one OCCURRENCE shall in no event exceed \$The Sublimit specified in the Declarations at any one LOCATION.

At the termination of the period shown in the first paragraph above, permanent coverage may be provided subject to notification to and acceptance by the COMPANY at terms to be agreed upon at the time of acceptance.

This Endorsement shall not be construed as providing coverage at INSURED LOCATIONS or LOCATIONS otherwise insured herein.

ADDITIONAL EXCLUSIONS:

In addition to the exclusions elsewhere in this POLICY, the following exclusions apply to this Endorsement:

THIS ENDORSEMENT DOES NOT INSURE AGAINST:

1. loss or damage caused by or resulting from FLOOD and/or EARTH MOVEMENT;
2. property while in transit or waterborne;
3. property while on the premises of any exhibition, exposition, fair or trade show;

This Endorsement is subject to the Deductibles specified in the Declarations and does not increase any amounts or limits of insurance provided by this POLICY.

Nothing herein contained shall be held to vary, alter, waive or change any of the terms, limitations, exclusions or conditions of the POLICY, except as herein above set forth.

Endorsement No. 20 Additional Premium _____ Return Premium _____
Name of Insured JGB Vegas Retail Lessee, LLC

OCCURRENCE LIMIT OF LIABILITY ENDORSEMENT

A. It is agreed that the following special terms and conditions apply to, and are made a part of, the POLICY to which this Endorsement is attached:

1. The Limit of Liability or Amount of Insurance shown in the Declarations of this POLICY, or endorsed onto this POLICY, is the total limit of the COMPANY'S liability applicable to each OCCURRENCE as hereafter defined. Notwithstanding any other terms and conditions of this POLICY to the contrary, in no event shall the liability of the COMPANY exceed this limit or amount irrespective of the number of LOCATIONS involved.
2. The premium for this POLICY is based upon the Schedule of Values on file with the COMPANY, or attached to this POLICY. In the event of loss hereunder, liability of the COMPANY shall be limited to the least of the following:
 - a. The actual amount of loss, less applicable deductible (s);
 - b. The total stated value for the property involved, for Property Damage and TIME ELEMENT separately, as specified in the latest Statement of Values on file with the COMPANY, or attached to this POLICY, less applicable deductible(s);
 - c. The limit of liability or Amount of Insurance specified in the Declarations of this POLICY, or endorsed onto this POLICY.

B. DEFINITIONS

The following definition supersedes the definition of OCCURRENCE contained in the Policy:

1. "OCCURRENCE"

The term "OCCURRENCE" shall mean any one loss, or series of losses arising out of one event. When loss or losses result from the perils of WIND, FLOOD, EARTH MOVEMENT, riot, riot attending a strike, civil commotion and vandalism and malicious mischief, if such perils are covered by this Policy, one event shall be construed to be all losses arising during a continuous period of seventy-two (72) hours. When filing proof of loss, the Insured may elect the moment at which seventy-two (72) hour period shall be deemed to have commenced, which shall not be earlier than when the first loss to the covered property of interests occurs.

Nothing herein contained shall be held to vary, alter, waive or change any of the terms, limitations, exclusions or conditions of the Policy, except as herein above set forth.

Endorsement No. 21 Additional Premium _____ Return Premium _____
Name of Insured JGB Vegas Retail Lessee, LLC

POLLUTION AND CONTAMINATION CLEAN-UP ENDORSEMENT

Subject to all terms, conditions, limitations, exclusions and stipulations of the POLICY to which this Endorsement is attached, not in conflict herewith, it is hereby understood and agreed that this POLICY is extended to cover the reasonable and necessary expenses actually incurred by the Insured to cleanup and remove debris defined as a POLLUTANT or CONTAMINANT and other POLLUTANTS or CONTAMINANTS from LAND or WATER at an INSURED LOCATION if the release, discharge, dispersal, migration, or seepage of these substances results from direct physical loss or damage occurring during the term of this POLICY caused by any of the perils specified in the "Pollution and Contamination Exclusion Clause"

No liability shall exist for pollution cleanup and removal at any LOCATION insured for personal property only, at any property covered under the Newly Acquired Locations, Unnamed Locations or Errors and Omissions coverage and unless such expenses are reported to the COMPANY within one hundred eighty (180) days of the date of direct physical loss or damage or the expiration of this policy, whichever is earlier.

The COMPANY's total liability in any one OCCURRENCE and in the annual aggregate shall in no event exceed \$The Sublimit specified in the Declarations.

This Endorsement is subject to the Deductibles specified in the Declarations and does not increase any amounts or limits of insurance provided by this Policy.

Nothing herein contained shall be held to vary, alter, waive or change any of the terms, limitations, exclusions or conditions of the Policy, except as herein above set forth.

Endorsement No. 222 Additional Premium _____ Return Premium _____

Name of Insured JGB Vegas Retail Lessee, LLC

RADIOACTIVE CONTAMINATION EXCLUSION CLAUSE - PHYSICAL DAMAGE – DIRECT

This policy does not cover any loss or damage arising directly or indirectly from nuclear reaction, nuclear radiation or radioactive contamination however such nuclear reaction, nuclear radiation or radioactive contamination may have been caused NEVERTHELESS if Fire is an insured peril and a Fire arises directly or indirectly from nuclear reaction, nuclear radiation or radioactive contamination any loss or damage arising directly from that Fire shall (subject to the provisions of this policy) be covered EXCLUDING however all loss or damage caused by nuclear reaction, nuclear radiation or radioactive contamination arising directly or indirectly from that Fire.

*Note - If Fire is not an insured peril under this policy the words from "NEVERTHELESS" to the end of the clause do not apply and should be disregarded.

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Nothing herein contained shall be held to vary, alter, waive or change any of the terms, limitations, exclusions or conditions of the POLICY, except as herein above set forth.

Endorsement No. 23 Additional Premium _____ Return Premium _____
Name of Insured JGB Vegas Retail Lessee, LLC

RENTAL VALUE INSURANCE ENDORSEMENT

A. COVERAGE:

Subject to all terms, conditions, exclusions, limitations and stipulations of the POLICY to which this Endorsement is attached, not in conflict herewith, this POLICY is extended to cover against loss resulting directly from necessary untenability, caused by direct physical loss or damage to the building(s) or structure(s) as furnished and equipped by the Insured, by the peril(s) insured against during the term of this POLICY, on the premises situated as herein described.

B. LIMIT OF LIABILITY:

This COMPANY shall not be liable hereunder for an amount to exceed \$The Sublimit specified in the Declarations per OCCURRENCE.

C. MEASURE OF RECOVERY:

In the event of direct physical loss or damage this COMPANY shall be liable for the ACTUAL LOSS SUSTAINED by the Insured resulting directly from necessary untenability, caused by damage to or destruction of the building(s) or structure(s) as furnished and equipped by the Insured, on the described premises by the peril(s) insured against during the Term of Insurance, but not exceeding the reduction in RENTAL VALUE less charges and expenses which do not necessarily continue during the period of untenability, for only such length of time as would be required with the exercise of due diligence and dispatch to rebuild, repair or replace such part of the property herein described as has been damaged or destroyed, commencing with the date of such damage or destruction and not limited by the date of expiration of this Policy.

No claim shall be payable with respect to RENTAL VALUE unless and until a loss has been paid or liability admitted, in respect of direct physical damage to property insured under this POLICY giving rise to such RENTAL VALUE loss. This condition shall not apply if no such payment shall have been made nor liability admitted solely owing to the operation of a "Deductible" in this POLICY excluding liability for losses below a specified amount.

D. COINSURANCE:

This COMPANY shall be liable, in the event of loss, for no greater proportion thereof than the amount hereby covered bears to the percentage specified in the Declarations of the RENTAL VALUE that would have been earned (had no loss occurred) during the Twelve (12) MONTHS immediately following the date of damage to or destruction of the described property.

E. EXPENSES RELATED TO REDUCING LOSS:

This POLICY also covers such expenses as are necessarily incurred for the purpose of reducing loss under this Endorsement (except expenses incurred to extinguish a fire), but in no event shall the amount payable under this coverage exceed the amount by which the loss otherwise payable under this POLICY is thereby reduced. Such expenses shall not be subject to the application of the Coinsurance Clause.

F. INTERRUPTION BY CIVIL OR MILITARY AUTHORITY:

This POLICY is extended to include the ACTUAL LOSS SUSTAINED by the Insured, resulting directly from untenability as covered hereunder, during the length of time, not exceeding the number of days shown under TIME LIMITS specified in the Declarations when, as a direct result of damage to or destruction of property within one (1) statute mile of an INSURED LOCATION by the peril(s) insured against, access to such described premises is specifically prohibited by order of civil or military authority.

G. ADDITIONAL EXCLUSIONS:

In addition to the exclusions elsewhere in this POLICY, the following exclusions apply to this Endorsement:

THIS COMPANY SHALL NOT BE LIABLE FOR ANY INCREASE OF LOSS RESULTING FROM:

1. Enforcement of any local or state ordinance or law regulating the construction, repair or demolition of buildings or structures; or
2. Interference at the described premises, by strikers or other persons, with rebuilding, repairing or replacing the property or with the reoccupancy of the premises; or
3. The suspension, lapse or cancellation of any lease, license, contract or order unless such suspension, lapse or cancellation results directly from the untenability of the premises, and then this COMPANY shall be liable for only such loss as affects the RENTAL VALUE of the premises during, and limited to, the PERIOD OF INDEMNITY covered under this Policy;

nor shall this COMPANY be liable for any other consequential or remote loss.

H. RENTAL VALUE:

FOR THE PURPOSES OF THIS ENDORSEMENT "RENTAL VALUE" IS DEFINED AS THE SUM OF:

1. The total anticipated gross rental income from tenant occupancy of the described property as furnished and equipped by the Insured, and;
2. The amount of all charges which are the legal obligation of the tenant(s) and which would otherwise be obligations of the Insured, and;
3. The fair RENTAL VALUE of any portion of said property which is occupied by the Insured.

In determining RENTAL VALUE due consideration shall be given to the rental experience before the date of damage or destruction and the probable experience thereafter had no loss occurred.

This Endorsement is subject to the Deductibles specified in the Declarations and does not increase any amounts or limits of insurance provided by this POLICY.

Nothing herein contained shall be held to vary, alter, waive or change any of the terms, limitations, exclusions or conditions of the POLICY, except as herein above set forth.

Endorsement No. 24 Additional Premium _____ Return Premium _____
Name of Insured JGB Vegas Retail Lessee, LLC

REPLACEMENT COST ENDORSEMENT
(Applicable To Real and Personal Property Except Stock
and Vacant Buildings)

1. The following Coinsurance Clause is made a part of this POLICY to apply only to the item(s) to which this Endorsement applies, which Coinsurance Clause supersedes and replaces the Coinsurance Clause, if any, otherwise applicable to such item(s), the provisions of this POLICY applicable only to such item(s) are amended to substitute the term "REPLACEMENT COST" (without deduction for depreciation, deterioration or obsolescence) for the term "ACTUAL CASH VALUE" wherever it appears in this POLICY, subject, however, in all other respects to the provisions of this endorsement and of the POLICY to which this Endorsement is attached.
2. This Endorsement shall not apply to stock and vacant buildings (RAW, IN PROCESS or FINISHED) or MERCHANDISE, including materials and supplies in connection therewith, property of others, household furniture or residential contents, or to manuscripts; or to paintings, etchings, pictures, tapestries, statuary, marbles, bronzes, antique furniture, rare books, antique silver, porcelains, rare glassware and bric-a-brac, or other articles of art, rarity or antiquity; or to any refractory lining or catalyst.
3. The COMPANY shall not be liable under this Endorsement for any loss:
 - a. occasioned directly or indirectly by enforcement of any ordinance or law regulating the use, construction, repair or demolition of any structure(s) unless such liability has been specifically assumed under this POLICY;
 - b. unless and until the damaged or destroyed property is actually repaired or replaced by the Insured with due diligence and dispatch, and in no event, unless repair or replacement is completed within two (2) years after the destruction or damage, or within such further time as the Company may during the two (2) years, in writing, allow.
4. COINSURANCE CLAUSE: It is expressly stipulated and made a condition of this POLICY that the Insured shall at all times maintain contributing insurance on each item of property, the REPLACEMENT COST of which is covered by this POLICY, to the extent of at least the Coinsurance percentage specified on the Declarations of the REPLACEMENT COST (without deduction for depreciation, deterioration or obsolescence) of such property at the time of the loss, and that failing to do so, the Insured shall to the extent of such deficit bear his, her or their proportion of any loss.

In the event that the aggregate claim for any loss is both less than \$10,000 and less than 2% of the total amount of insurance applicable to the property involved at the time such loss occurs, no special inventory or appraisal of the undamaged property shall be required, providing, that nothing herein shall be construed to waive application of the first paragraph of this clause.
5. The Insured may elect to make claim under this POLICY in accordance with its provisions, disregarding this Endorsement, except that the foregoing Coinsurance Clause applicable to the REPLACEMENT COST of said property shall apply; and the Insured may make further claim for any additional liability brought about by this Endorsement in accordance with its provisions, provided this COMPANY is notified in writing within one hundred and eighty (180) days after loss of the Insured's intent to make such further claim.

6. The COMPANY's liability for loss on a REPLACEMENT COST basis shall not exceed the lesser of the following amounts:
 - a. the amount of the POLICY applicable to the damaged or destroyed property;
 - b. the REPLACEMENT COST of the property or any part thereof with identical property or with like, kind and quality of such property on the same premises and intended for the same occupancy and use; or
 - c. the amount actually and necessarily expended in repairing or replacing said property or any part thereof.
7. APPORTIONMENT CLAUSE: The COMPANY shall not be liable under this POLICY including this Endorsement for a greater proportion of any loss than the amount of this POLICY applying to the property to which this Endorsement applies bears to the total amount of insurance on such property against the peril involved, whether or not such other insurance includes the extension of coverage provided under this endorsement, and whether such other insurance is collectible or not.
8. If the coverage on property under this POLICY be divided into two or more items, all of the foregoing shall apply separately to each item to which this Endorsement applies.

Nothing herein contained shall be held to vary, alter, waive or change any of the terms, limitations, exclusions or conditions of the POLICY, except as herein above set forth.

Endorsement No. 25 Additional Premium _____ Return Premium _____
Name of Insured JGB Vegas Retail Lessee, LLC

ROOF LIMITATION ENDORSEMENT

The coverage provided by this POLICY to which this Endorsement is attached is limited as respects direct physical loss or damage to ROOF SURFACING caused by WIND or NAMED WINDSTORM as defined in the POLICY.

- A. In case of loss, the basis of adjustment for damage to ROOF SURFACING that has been in place on an insured building or structure for fifteen (15) years or more will be ACTUAL CASH VALUE, at time and place of loss.
- B. The term "ROOF SURFACING" means: 1. the roofing material exposed to the weather; 2. the underlayment applied for moisture protection; 3. all materials used in securing the roof surfacing all flashings required in the replacement of the roof surfacing.
- C. This COMPANY shall not pay for COSMETIC DAMAGE to ROOF SURFACING caused by WIND or NAMED WINDSTORM regardless of age. For the purpose of this endorsement, the term "COSMETIC DAMAGE" means marring, pitting or other superficial damage that altered the appearance of the ROOF SURFACING, but such damage does not prevent the roof from continuing to function as a barrier to entrance of the elements to the same extent as it did before the COSMETIC DAMAGE occurred.

Nothing herein contained shall be held to vary, alter, waive or change any of the terms, limitations, exclusions or conditions of the POLICY, except as herein above set forth.

Endorsement No. 26 Additional Premium _____ Return Premium _____
Name of Insured JGB Vegas Retail Lessee, LLC

SCHEDULE OF LOCATIONS ENDORSEMENT

It is hereby understood and agreed that the following LOCATION(S) is (are) insured under this POLICY, subject to all terms, conditions, exclusions, limitations and stipulations of this POLICY.

<u>Location No.</u>	<u>Location</u>	<u>Values</u>
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As per Schedule of Locations on file with the Company as of policy inception.

Nothing herein contained shall be held to vary, alter, waive or change any of the terms, limitations, exclusions or conditions of the POLICY, except as herein above set forth.

Endorsement No. 27 Additional Premium _____ Return Premium _____
Name of Insured JGB Vegas Retail Lessee, LLC

SERVICE OF PROCESS CLAUSE ENDORSEMENT

In the event of failure of the Insurer to pay any amount claimed to be due hereunder, the Insurer, at the request of the Insured, will submit to the jurisdiction of a court of competent jurisdiction within the United States. Nothing in this condition constitutes or should be understood to constitute a waiver of the Insurer's rights to commence an action in any court of competent jurisdiction in the United States, to remove an action to a United States District Court, or to seek transfer of a case to another court as permitted by the laws of the United States or of any state in the United States. It is further agreed that service of process in such suit may be made upon counsel at:

**Legal Department
Starr Surplus Lines Insurance Company
399 Park Avenue
New York, NY 10022**

or his or her representative, and that in any suit instituted against the Insurer upon this policy, the Insurer will abide by the final decision of such court or of any appellate court in the event of an appeal.

Further, pursuant to any statute of any state, territory, or district of the United States which makes provision therefore, the Insurer hereby designates the Superintendent, Commissioner or Director of Insurance, or other officer specified for that purpose in the statute, or his or her successors in office, as its true and lawful attorney upon whom may be served any lawful process in any action, suit, or proceeding instituted by or on behalf of the Insured or any beneficiary hereunder arising out of this policy of insurance and hereby designates the above named Counsel as the person to whom the said officer is authorized to mail such process or a true copy thereof.

Nothing herein contained shall be held to vary, alter, waive or change any of the terms, limitations, exclusions or conditions of the POLICY, except as herein above set forth.

Endorsement No. 28 Additional Premium _____ Return Premium _____
Name of Insured JGB Vegas Retail Lessee, LLC

SPOILAGE ENDORSEMENT

Subject to the all terms, conditions, limitations, exclusions and stipulations of the POLICY to which this Endorsement is attached, not in conflict herewith, this POLICY is extended to cover direct physical loss or damage to property insured when such loss is due to spoilage from lack of power, light, heat, steam, or refrigeration as a result of a peril insured against.

The COMPANY's total liability in any one OCCURRENCE under this Endorsement shall in no event exceed **\$The Sublimit specified in the Declarations.**

This Endorsement is subject to the Deductibles specified in the Declarations and does not increase any amounts or limits of insurance provided by this POLICY.

Nothing herein contained shall be held to vary, alter, waive or change any of the terms, limitations, exclusions or conditions of the POLICY, except as herein above set forth.

Endorsement No. 29 Additional Premium _____ Return Premium _____
Name of Insured JGB Vegas Retail Lessee, LLC

TEMPORARY REMOVAL OF PROPERTY ENDORSEMENT

A. COVERAGE:

Subject to all terms, conditions, exclusions, limitations and stipulations of the Policy to which this Endorsement is attached, not in conflict herewith, this POLICY is extended to cover personal property of the Insured while removed from an INSURED LOCATION for repairs, for servicing, or to avoid threatened physical loss or damage by a peril insured against. This POLICY covers such property while at the premises to which such property has been moved; and for direct physical loss or damage as provided at the INSURED LOCATION from which such property was removed.

B. LIMIT OF LIABILITY:

The COMPANY's total liability in any one OCCURRENCE under this Endorsement shall in no event exceed \$The Sublimit specified in the Declarations.

C. ADDITIONAL EXCLUSIONS:

In addition to the exclusions elsewhere in the POLICY, the following exclusions apply to this Endorsement:

This Endorsement shall not apply to personal property:

1. removed from an INSURED LOCATION for normal storage, or for processing or preparation for sale or delivery;
2. covered elsewhere in this POLICY;
3. covered by other insurance.

This Endorsement is subject to the Deductibles specified in the Declarations and does not increase any amounts or limits of insurance provided by this Policy.

Nothing herein contained shall be held to vary, alter, waive or change any of the terms, limitations, exclusions or conditions of the Policy, except as herein above set forth.

Endorsement No. 30 Additional Premium _____ Return Premium _____
Name of Insured JGB Vegas Retail Lessee, LLC

**TERRORISM EXCLUSION
(FOR CERTIFIED ACTS OF TERRORISM UNDER THE TERRORISM
RISK INSURANCE ACT, AS AMENDED)**

This Policy excludes loss, damage, cost or expense, arising directly or indirectly as a result of a "certified act of terrorism" as defined by the Terrorism Risk Insurance Act of 2002, as amended ("the Act"), and any revisions or amendments thereto, regardless of any other cause or event contributing concurrently or in any other sequence to the loss.

For purposes of this endorsement and in compliance with the Act, "certified act of terrorism" shall mean an act that is certified by the Secretary of the Treasury in consultation with the Secretary of Homeland Security and the Attorney General of the United States, to be an act of terrorism pursuant to the Act. The criteria contained in that Act for a "certified act of terrorism" include the following:

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

However, if an act of terrorism results in a fire and the direct physical loss or damage to property insured hereunder located in any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, each of the United States Virgin Islands and any territory or possession of the United States, that, either pursuant to the Standard Fire Policy or otherwise, prohibits exclusions for acts of terrorism that result in fire, this Company will pay for the loss or damage caused by that fire. Such coverage for fire applies only to direct loss or damage to property insured hereunder and may be limited, in accordance with the Standard Fire Policy to the lesser of the actual cash value of the property at the time of the loss, or the amount which it would cost to repair or replace the property, without allowance for any increased cost of repair or replacement by reason of any ordinance or law, and without any compensation for business interruption, extra expense to continue business activities, or any other coverage for loss or damage other than direct physical loss or damage to the property insured hereunder.

With respect to fire resulting from any one or more acts of terrorism, this Company will not pay any amounts for which this Company is not responsible under the terms of the Act (including subsequent Congressional action pursuant to the Act) due to the application of Section 103 of the Act or any clause that results in a cap on our liability for payments for terrorism losses.

THE TERRORISM RISK INSURANCE ACT, AS AMENDED, CONTAINS A \$100 BILLION CAP THAT LIMITS U.S. GOVERNMENT REIMBURSEMENT AS WELL AS INSURERS' LIABILITY FOR LOSSES RESULTING FROM CERTIFIED ACTS OF TERRORISM WHEN THE AMOUNT OF SUCH LOSSES IN ANY ONE CALENDAR YEAR EXCEEDS \$100 BILLION. IF THE AGGREGATE INSURED LOSSES FOR ALL INSURERS EXCEED \$100 BILLION, COVERAGE MAY BE REDUCED.

Nothing herein contained shall be held to vary, alter, waive or change any of the terms, limitations, exclusions or conditions of the POLICY, except as herein above set forth.

Endorsement No. 31 Additional Premium _____ Return Premium _____
Name of Insured JGB Vegas Retail Lessee, LLC

TOTAL TERRORISM EXCLUSION

This Endorsement only applies in the United States of America and its Territories and Possessions. Notwithstanding any provision to the contrary within this Policy or any endorsement thereto, it is agreed that this Policy excludes loss, damage, cost, or expense of whatsoever nature directly or indirectly caused by, resulting from, or in connection with any act of terrorism regardless of any other cause or event contributing concurrently or in any other sequence to the loss.

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 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 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 any act of terrorism.

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 any act of terrorism.

However, if an act of terrorism results in a fire and the direct physical loss or damage to property insured hereunder located in any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, each of the United States Virgin Islands and any territory or possession of the United States, that, either pursuant to the Standard Fire Policy or otherwise, prohibits exclusions for acts of terrorism that result in fire, this Company will pay for the loss or damage caused by that fire. Such coverage for fire applies only to direct loss or damage to property insured hereunder and may be limited, in accordance with the Standard Fire Policy to the lesser of the actual cash value of the property at the time of the loss, or the amount which it would cost to repair or replace the property, without allowance for any increased cost of repair or replacement by reason of any ordinance or law, and without any compensation for business interruption, extra expense to continue business activities, or any other coverage for loss or damage other than direct physical loss or damage to the property insured hereunder.

With respect to fire resulting from any one or more "certified acts of terrorism" as defined under the Federal Terrorism Risk Insurance Act of 2002, as amended ("the Act"), this Company will not pay any amounts for which this Company is not responsible under the terms of the Act (including subsequent Congressional action pursuant to the Act) due to the application of Section 103 of the Act or any clause that results in a cap on our liability for payments for terrorism losses.

THE TERRORISM RISK INSURANCE ACT, AS AMENDED, CONTAINS A \$100 BILLION CAP THAT LIMITS U.S. GOVERNMENT REIMBURSEMENT AS WELL AS INSURERS' LIABILITY FOR LOSSES RESULTING FROM CERTIFIED ACTS OF TERRORISM WHEN THE AMOUNT OF SUCH LOSSES IN ANY ONE CALENDAR YEAR EXCEEDS \$100 BILLION. IF THE AGGREGATE INSURED LOSSES FOR ALL INSURERS EXCEED \$100 BILLION, COVERAGE MAY BE REDUCED.

Nothing herein contained shall be held to vary, alter, waive or change any of the terms, limitations, exclusions or conditions of the POLICY, except as herein above set forth.

Endorsement No. 32 Additional Premium _____ Return Premium _____
Name of Insured JGB Vegas Retail Lessee, LLC

TRADE OR ECONOMIC SANCTIONS ENDORSEMENT

This POLICY does not apply to the extent that trade or economic sanctions or other laws or regulations prohibit us from providing insurance, including, but not limited to, the payment of claims.

Nothing herein contained shall be held to vary, alter, waive or change any of the terms, limitations, exclusions or conditions of the POLICY, except as herein above set forth.

Endorsement No. 33 Additional Premium _____ Return Premium _____
Name of Insured JGB Vegas Retail Lessee, LLC

TRANSIT ENDORSEMENT

A. COVERAGE:

Subject to all terms, conditions, exclusions, limitations and stipulations of the POLICY to which this Endorsement is attached, not in conflict herewith, this POLICY is extended to cover direct physical loss or damage by a peril insured against to personal property of the Insured or their interest therein while such property is in due course of transit within and between the forty eight (48) contiguous states of the United States of America, the District of Columbia and Alaska.

B. LIMIT OF LIABILITY AND DEDUCTIBLE AMOUNTS:

The COMPANY's total liability in any one OCCURRENCE under this Endorsement shall in no event exceed the amount shown below and is subject to the following Deductible:

Limit of Liability	<u>\$The Sublimit</u>	Deductible Amount	<u>\$The Deductible</u>
any one OCCURRENCE	<u>specified in the</u>	any one OCCURRENCE	<u>specified in the</u>
	<u>Declarations.</u>		<u>Declarations.</u>

C. ADDITIONAL PROPERTY EXCLUSIONS:

In addition to the exclusions elsewhere in this POLICY, the following exclusions apply to this Endorsement:

This endorsement does not insure against loss or damage to:

1. The conveyance used as the mode of transportation including any part or equipment thereof or containers;
2. Property in export or import shipments;
3. Property shipped by mail or parcel post from the time it passes into the custody of the United States Postal Service;
4. Property while waterborne except while on ferries operated on the navigable waters of the Continental United States other than to and from Alaska; or,
5. Samples or merchandise while in the care, custody, or control of the Named Insured's salesmen or sales representatives.

D. ADDITIONAL PERIL EXCLUSIONS:

In addition to the exclusions elsewhere in this POLICY, the following exclusions apply to this Endorsement:

This Endorsement does not insure against loss or damage

1. with respect to vehicles operated by the Insured, by theft from a vehicle while unattended unless the portion of the vehicle containing the insured property is of entirely closed construction and, at the time of loss, the doors of which shall have been securely locked and the windows of which shall have been firmly closed, and the loss is a direct result of forcible entry of which there shall be visible evidence;
2. due to any fraudulent, dishonest or criminal act or omission by the Insured or a partner of the Insured; or by theft by any employee of the Insured, while working or otherwise, or by any person to whom the property is entrusted, but this exclusion does not apply to property in the custody of a carrier for hire;
3. by interruption of business, delay, loss of market or use, or indirect or consequential loss of any kind;
4. caused directly or indirectly by seizure or destruction under quarantine or customs regulations, confiscation by order of any government or public authority, or risks of contraband or illegal transportation or trade.

E. BASIS OF LOSS PAYMENT:

1. Valuation of Property:

The property shall be valued at the amount of invoice, including prepaid or advanced freight, if any, the profit or commission of the Insured as selling agent, and such other costs and charges as may have accrued and become legally due thereon since shipment. In the absence of an invoice, the property shall be valued at its ACTUAL CASH VALUE at point of shipment.

F. ADDITIONAL CONDITIONS:

1. Benefit to Bailee:

This insurance shall not inure directly or indirectly to the benefit of any carrier or other bailee.

2. All Subrogation provisions of this POLICY are superseded by the following:

- a. Impairment of Recovery Rights - Any act or agreement by the Insured before or after loss whereby any right of the Named Insured to recover in whole or in part for loss to property against any carrier for hire, bailee, or other party liable therefore, is released, impaired or lost, shall render the insurance null, but the COMPANY'S right to retain or recover the premium shall not be affected. The Insured, however, may, without prejudice to this insurance, accept the ordinary bills of lading by carriers for hire. The COMPANY is not liable for any loss which, without the written consent of the COMPANY, has been settled or compromised by the Insured.

- b. Right to Institute Legal Proceedings in Name of Insured -Upon payment of any loss or advancement or loan of money concerning the same, the Insured will at the request and expense of the COMPANY and through such counsel as the COMPANY may designate, make claim upon and institute legal proceedings against any carrier, bailee, or other parties believed to be liable for such loss, and will use all proper and reasonable means to recover the same.

G. DEBRIS REMOVAL EXCLUSION CLAUSE:

Neither the Debris Removal Clause nor Pollution and Contamination Clean-up Endorsement of this POLICY shall extend to cover expense of removal of debris or POLLUTANTS resulting from loss or damage to property in transit.

This Endorsement does not increase any amounts or limits of insurance provided by this Policy.

Nothing herein contained shall be held to vary, alter, waive or change any of the terms, limitations, exclusions or conditions of the POLICY, except as herein above set forth.

Endorsement No. 34 Additional Premium _____ Return Premium _____
Name of Insured JGB Vegas Retail Lessee, LLC

UNNAMED LOCATION COVERAGE ENDORSEMENT
(Real and Personal Property)

Subject to all terms, conditions, exclusions, limitations and stipulations of the POLICY to which this Endorsement is attached, not in conflict herewith, this POLICY is extended to cover Real and Personal Property at Unnamed Locations owned, leased or rented by the Insured but not specified in the Schedule of Locations.

The COMPANY's total liability under this Endorsement in any one OCCURRENCE shall in no event exceed **\$The Sublimit specified in the Declarations** at any one LOCATION.

This Endorsement shall not be construed as providing coverage at INSURED LOCATION(S) or LOCATIONS otherwise insured herein.

ADDITIONAL EXCLUSIONS:

In addition to the exclusions elsewhere in this POLICY, the following exclusions apply to this Endorsement:

THIS ENDORSEMENT DOES NOT INSURE AGAINST:

1. loss or damage caused by or resulting from FLOOD and/or EARTH MOVEMENT;
2. property while in transit or waterborne;
3. property while on the premises of any exhibition, exposition, fair or trade show;
4. TIME ELEMENT coverage for any unnamed location.

This Endorsement is subject to the Deductibles specified in the Declarations and does not increase any amounts or limits of insurance provided by this POLICY.

Nothing herein contained shall be held to vary, alter, waive or change any of the terms, limitations, exclusions or conditions of the POLICY, except as herein above set forth.

Endorsement No. 35 Additional Premium _____ Return Premium _____
Name of Insured JGB Vegas Retail Lessee, LLC

VALUABLE PAPERS AND RECORDS ENDORSEMENT

A. COVERAGE:

Subject to the all terms, conditions, limitations, exclusions and stipulations of the POLICY to which this Endorsement is attached, not in conflict herewith, this POLICY is extended to cover direct physical loss or damage, by a peril insured against, to VALUABLE PAPERS AND RECORDS while located at the PREMISES, it being a condition to any right of recovery hereunder that such VALUABLE PAPERS AND RECORDS shall be kept in appropriately protected receptacles at all times when the PREMISES are not open for business, except while such VALUABLE PAPERS AND RECORDS are in actual use.

This Endorsement applies while the VALUABLE PAPERS AND RECORDS are being conveyed outside the PREMISES and while temporarily within other PREMISES, except for storage.

This Endorsement applies while the VALUABLE PAPERS AND RECORDS are being removed to and while at a place of safety because of imminent danger of LOSS and while being returned from such place, provided the Insured gives written notice to the COMPANY of such removal within ten (10) days thereafter.

B. LIMIT OF LIABILITY:

The COMPANY'S total liability in any one OCCURRENCE for LOSS under this Endorsement shall in no event exceed **\$The Sublimit specified in the Declarations.**

C. ADDITIONAL EXCLUSIONS:

In addition to the exclusions elsewhere in this POLICY, the following exclusions apply to this Endorsement:

This Endorsement does not apply:

- a. to LOSS directly resulting from errors or omissions in processing or copying unless a covered peril ensues and then only for direct loss caused by such covered peril.
- b. to LOSS of property held as samples or for sale or for delivery after sale.
- c. to LOSS of property not specifically declared and described, if such property cannot be replaced with other of like kind and quality;

D. CONDITIONS:

The insured property may be owned by the Insured or held by the Insured in any capacity; provided the insurance applies only to the interest of the Insured in such property, including the Insured's liability to others, and does not apply to the interest of any other person or organization in any of said property unless included in the Insured's Proof of Loss.

E. VALUATION:

The limit of the COMPANY'S liability for LOSS shall not exceed the ACTUAL CASH VALUE of the property at time of LOSS nor what it would then cost to repair or replace the property with other of like kind and quality, nor the applicable limit of insurance stated in this Endorsement; provided, as respects property specifically described herein, the amount per article specified herein is the agreed value thereof for the purpose of this insurance.

The COMPANY may pay for the LOSS in MONEY or may repair or replace the property and may settle any claim for LOSS of the property either with the Insured or the owner thereof. Any property so paid for or replaced shall become the property of the COMPANY. The Insured or the COMPANY, upon recovery of any such property, shall give notice thereof as soon as practicable to the other and the Insured shall be entitled to the property upon reimbursing the COMPANY for the amount so paid or the cost of replacement.

Application of the insurance to property of more than one person shall not operate to increase the applicable limit of liability.

F. DEFINITIONS:

The following terms whenever used in this Endorsement shall mean:

- a. VALUABLE PAPERS AND RECORDS: Written, printed or otherwise inscribed document and records, including books, maps, films, drawings, abstracts, deeds, mortgages and manuscripts, but does not mean MONEY or SECURITIES;
- b. PREMISES: The interior of that portion of the building at the LOCATION which is occupied by the Insured for the Business purposes stated herein;
- c. MONEY: Currency, coins, bank notes and bullion; and travelers checks, register checks and money orders held for sale to the public;
- d. SECURITIES: All negotiable and non-negotiable instruments or contracts representing either MONEY or other property and includes revenue and other stamps in current use, tokens and tickets, but does not include MONEY.
- e. LOSS: Includes damage.

This Endorsement is subject to the Deductibles specified in the Declarations does not increase any amounts or limits of insurance provided by this POLICY.

Nothing herein contained shall be held to vary, alter, waive or change any of the terms, limitations, exclusions or conditions of the POLICY, except as herein above set forth.

Endorsement No. 36 Additional Premium _____ Return Premium _____

Name of Insured JGB Vegas Retail Lessee, LLC

It is hereby understood and agreed that as respects coverage provided by the Transit Endorsement, the following applies:

WAR AND TERRORISM EXCLUSION ENDORSEMENT

This endorsement applies outside the United States and its Territories and Possessions.

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 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 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 Underwriters 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 Assured.

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

Nothing herein contained shall be held to vary, alter, waive or change any of the terms, limitations, exclusions or conditions of the POLICY, except as herein above set forth.

Endorsement No. 37 Additional Premium _____ Return Premium _____
Name of Insured JGB Vegas Retail Lessee, LLC

POLICY AMENDMENT ENDORSEMENT

It is hereby understood and agreed that this POLICY is amended as follows:

1. **COMMERCIAL PROPERTY CONDITIONS (CP00900788):** Part H, **POLICY PERIOD, COVERAGE TERRITORY**, Items 2. b. and c. are deleted.
2. **REPLACEMENT COST ENDORSEMENT (PR054 09/14)**, Item 6 is amended to read as follows:
 6. The COMPANY's liability for loss on a REPLACEMENT COST basis shall not exceed the lesser of the following amounts:
 - a. the amount of the POLICY applicable to the damaged or destroyed property;
 - b. the REPLACEMENT COST of the property or any part thereof with identical property or with like, kind and quality of such property on the same premises and intended for the same occupancy and use; or
 - c. the amount actually and necessarily expended in repairing or replacing said property or any part thereof.
 - d. **Items a. through c. above are subject to the OCCURRENCE LIMIT OF LIABILITY ENDORSEMENT (PR044 02/12) provided herein.**
3. **PROPERTY COVERAGE FORM GENERAL CONDITIONS PR 002 (11/16), PROPERTY EXCLUDED, ITEMS D** is amended to read as follows:
 - d. Land, including excavations, grading, or filling, land values, landscaping, roads, lawns plants, standing timber, crops, atmosphere, any water course or body of WATER whether above or below ground including sediments and/or beds of any body of WATER, or the restoration or replacement of any of the above;

Nothing herein contained shall be held to vary, alter, waive or change any of the terms, limitations, exclusions or conditions of the POLICY, except as herein above set forth.

Endorsement No. 38 Additional Premium _____ Return Premium _____
Name of Insured JGB Vegas Retail Lessee, LLC

APPLICATION OF SUBLIMITS ENDORSEMENT

1. **Application To Insured Interests.** Each sublimit stated in this POLICY applies as part of, and not in addition to, the overall POLICY Limit of Liability for an OCCURRENCE insured hereunder. Each sublimit is the maximum amount potentially recoverable from all insurance layers combined for all insured loss, damage, expense, TIME ELEMENT or other insured interest arising from or relating to that aspect of the OCCURRENCE, including but not limited to type of property, construction, geographic area, zone, location, or peril.
2. **Application Within Perils.** If insured under this POLICY, any sublimit for EARTH MOVEMENT, FLOOD, WIND, or NAMED WINDSTORM is the maximum amount potentially recoverable from all insurance layers combined for all insured loss, damage, expense, TIME ELEMENT or other insured interest arising from or relating to such an OCCURRENCE. If FLOOD occurs in conjunction with WIND, NAMED WINDSTORM, or EARTH MOVEMENT, the FLOOD sublimit applies within and erodes the sublimit for WIND, NAMED WINDSTORM, or EARTH MOVEMENT.

This endorsement takes precedence over and, if in conflict with any other wording in the POLICY bearing on the application of sublimits, replaces that wording.

Nothing herein contained shall be held to vary, alter, waive or change any of the terms, limitations, exclusions or conditions of the POLICY, except as herein above set forth.

Endorsement No. 39 Additional Premium _____ Return Premium _____

Name of Insured JGB Vegas Retail Lessee, LLC

ADDITIONAL INSUREDS AND LOSS PAYEES ENDORSEMENT

ADDITIONAL INSUREDS and LOSS PAYEES do not have the same rights and obligations under this POLICY as a Named Insured, or FIRST NAMED INSURED, and this provision does not confer any such rights or obligations on ADDITIONAL INSUREDS or LOSS PAYEES. The term "ADDITIONAL INSUREDS" and "LOSS PAYEES" means persons or entities, other than the FIRST NAMED INSURED or any other Named Insured, to whom money or insurance proceeds is to be paid for a covered loss under this POLICY. An ADDITIONAL INSURED and LOSS PAYEE is not a FIRST NAMED INSURED or a Named Insured.

This provision does not apply to contractual requirements to add persons or entities as Named Insureds or additional Named Insureds. Such Named Insureds or additional Named Insureds can only be added to this POLICY by separate written endorsement.

1. If, pursuant to a written contract effective prior to the date of the loss in question, the Named Insured shown in the Declarations ("FIRST NAMED INSURED") is required to add a person or entity to this POLICY that was not already added:

- a. as an ADDITIONAL INSURED, then this POLICY shall be deemed to have been endorsed accordingly, subject to all other terms, conditions, limits of liability and exclusions of this POLICY, as such person or entity's interest may appear;
- b. as a LOSS PAYEE, then this POLICY shall be deemed to have been endorsed accordingly, subject to all other terms, conditions, limits of liability and exclusions of this POLICY and loss to covered property in which such LOSS PAYEE has an interest shall be adjusted with the Insured and payable jointly to the FIRST NAMED INSURED and such LOSS PAYEE;

and no written endorsement to this POLICY shall be required in order for this provision to be effective as to such person or entity subject to compliance with the following.

2. Pursuant to item 1. above and within ninety (90) business days after the COMPANY is notified of a loss which may be covered under this POLICY, the FIRST NAMED INSURED or its authorized representative shall:
 - a. provide the COMPANY with the identities of all persons or entities with interests in the property that is the subject of the loss; and
 - b. provide the COMPANY with copies of all contracts (predating the date of loss) requiring that such persons or entities be added to this POLICY as ADDITIONAL INSUREDS or LOSS PAYEES.
 - c. if the FIRST NAMED INSURED reasonably requires more than ninety (90) business days to produce the information required under paragraphs 2a and 2b above, the COMPANY will provide extensions of time that are reasonable and appropriate for the circumstances, however all such requests must be made in writing to the COMPANY.

3. If the FIRST NAMED INSURED or its authorized representative fails to comply with item 2. above, the COMPANY shall assume that there are no such persons or entities, and:
 - a. the COMPANY shall not be liable for any failure to take such person or entity's interest into account in the adjustment or payment of any loss; and
 - b. The COMPANY can only accept copies of those contracts which require the addition of a person or entity as an ADDITIONAL INSURED or LOSS PAYEE that are directly related to the property which is the subject of the loss. Providing the COMPANY with copies of any and all contracts requiring addition of a person or entity as an ADDITIONAL INSURED or LOSS PAYEE, or with bordereaux listings of all such persons and entities, at any time before, on, or after the date of a loss shall not constitute compliance with item 2. above.
4. This ADDITIONAL INSUREDS and LOSS PAYEES provision does not apply to the extent that trade or economic sanctions or other laws or regulations prohibit the COMPANY from providing insurance to such persons or entities, including, but not limited to, the payment of claims.

Nothing herein contained shall be held to vary, alter, waive or change any of the terms, limitations, exclusions or conditions of the POLICY, except as herein above set forth.

Endorsement No. 40 Additional Premium _____ Return Premium _____
Name of Insured JGB Vegas Retail Lessee, LLC

PRE-EXISTING DAMAGES EXCLUSION

This POLICY does not cover loss, damage, cost or expense, of whatever nature, arising directly or indirectly from an OCCURRENCE predating the inception of this POLICY, or any loss, damage, cost or expense which are, or are alleged to be, in the process of occurring as of the inception date of this POLICY ("PRE-EXISTING DAMAGE"). The burden of proving that any loss, damage, cost or expense arose from any OCCURRENCE during the POLICY Period shall be on the Insured.

In the event PRE-EXISTING DAMAGE to insured property has not been repaired or reinstated at the date of an OCCURRENCE during the POLICY Period:

Where insured property was an actual or constructive total loss prior to the OCCURRENCE during the POLICY Period, this POLICY does not cover loss, damage, cost or expense of whatever nature relating to that insured property.

In any other case, the amount that would have been required to repair any unrepaired PRE-EXISTING DAMAGE, assessed at the date of the settlement of the claim, will be deducted when calculating the loss, damage, cost or expense arising directly or indirectly from the OCCURRENCE.

Nothing herein contained shall be held to vary, alter, waive or change any of the terms, limitations, exclusions or conditions of the POLICY, except as herein above set forth.

APPENDIX A – NEW MADRID SEISMIC ZONE

Arkansas, counties of:

Arkansas, Ashley, Chicot, Clay, Craighead, Crittenden, Cross, Desha, Drew, Fulton, Grant, Greene, Independence, Izard, Jackson, Jefferson, Lawrence, Lee, Lincoln, Lonoke, Mississippi, Monroe, Phillips, Poinsett, Prairie, Pulaski, Randolph, Saline, Sharp, St. Francis, White, Woodruff

Illinois, counties of:

Alexander, Bond, Calhoun, Christian, Clark, Clay, Clinton, Coles, Crawford, Cumberland, Edwards, Effingham, Fayette, Franklin, Gallatin, Greene, Hamilton, Hardin, Jackson, Jasper, Jefferson, Jersey, Johnson, Lawrence, Macoupin, Madison, Marion, Massac, Monroe, Montgomery, Morgan, Perry, Pike, Pope, Pulaski, Randolph, Richland, Saline, Sangamon, Scott, Shelby, St. Clair, Union, Wabash, Washington, Wayne, White, Williamson

Indiana, counties of:

Crawford, Daviess, Dubois, Gibson, Greene, Knox, Lawrence, Martin, Orange, Perry, Pike, Posey, Spencer, Sullivan, Vanderburgh, Warrick

Kentucky, counties of:

Ballard, Breckinridge, Butler, Caldwell, Calloway, Carlisle, Christian, Crittenden, Daviess, Fulton, Graves, Hancock, Henderson, Hickman, Hopkins, Livingston, Logan, Lyon, Marshall, McCracken, McLean, Muhlenberg, Ohio, Simpson, Todd, Trigg, Union, Warren, Webster

Mississippi, counties of:

Alcorn, Benton, Bolivar, Calhoun, Carroll, Chickasaw, Choctaw, Clay, Coahoma, De Soto, Grenada, Holmes, Humphreys, Issaquena, Itawamba, Lafayette, Lee, Leflore, Lowndes, Marshall, Monroe, Montgomery, Oktibbeha, Panola, Pontotoc, Prentiss, Quitman, Sharkey, Sunflower, Tallahatchie, Tate, Tippah, Tishomingo, Tunica, Union, Warren, Washington, Webster, Yalobusha, Yazoo

Missouri, counties of:

Audrain, Bollinger, Butler, Callaway, Cape Girardeau, Carter, Cole, Crawford, Dent, Dunklin, Franklin, Gasconade, Howell, Iron, Jefferson, Lincoln, Madison, Maries, Marion, Miller, Mississippi, Montgomery, New Madrid, Oregon, Osage, Pemiscot, Perry, Phelps, Pike, Pulaski, Ralls, Reynolds, Ripley, Scott, Shannon, St. Charles, St. Francois, St. Louis, St. Louis City, Ste. Genevieve, Stoddard, Texas, Warren, Washington, Wayne

Tennessee, counties of:

Benton, Carroll, Cheatham, Chester, Crockett, Decatur, Dickson, Dyer, Fayette, Gibson, Hardeman, Hardin, Haywood, Henderson, Henry, Hickman, Houston, Humphreys, Lake, Lauderdale, Lawrence, Lewis, Madison, McNairy, Montgomery, Obion, Perry, Robertson, Shelby, Stewart, Tipton, Wayne, Weakley

APPENDIX B – PACIFIC NORTHWEST SEISMIC ZONES

Oregon, counties of:

Benton, Clackamas, Clatsop, Columbia, Coos, Curry, Douglas, Jackson, Josephine, Klamath, Lake, Lane, Lincoln, Linn, Marion, Multnomah, Polk, Tillamook, Washington, Yamhill

Washington, counties of:

Chelan, Clallam, Clark, Cowlitz, Grays Harbor, Island, Jefferson, King, Kitsap, Kittitas, Lewis, Mason, Pacific, Pierce, San Juan, Skagit, Snohomish, Thurston, Wahkiakum, Whatcom

British Columbia (includes Vancouver Island):

South of 50° N latitude and west of 120° W longitude

APPENDIX C - DEFINITION OF TIER 1 WIND COUNTIES

Alabama Counties of:

Baldwin
Mobile

FLORIDA:

Entire State

Georgia – Counties of:

Bryan	Glynn
Camden	Liberty
Chatham	McIntosh

Hawaii:

Entire State

Louisiana Parishes:

Assumption	St. Charles
Calcasieu	St. James
Cameron	St. John the Baptist
Iberia	St. Martin
Jefferson	St. Mary
LaFourche	St. Tammany
Orleans	Terrebonne
Plaquemines	Vermilion
St. Bernard	

Mississippi – Counties of:

Hancock
Harrison
Jackson

North Carolina – Counties of:

Beaufort	Jones
Bertie	New Hanover
Brunswick	Onslow
Camden	Pamlico
Carteret	Pasquotank
Chowan	Pender
Craven	Perquimans
Currituck	Tyrrell
Dare	Washington
Gates	
Hyde	

South Carolina – Counties of:

Beaufort	Georgetown
Berkeley	Horry
Charleston	Jasper
Colleton	

Texas – Counties of:

Aransas	Kenedy
Brazoria	Kleberg
Calhoun	Matagorda
Cameron	Nueces
Chambers	Orange
Galveston	Refugio
Harris*	San Patricio
Jefferson	Willacy

*Areas located wholly or partially within Designated Catastrophe Areas as defined by the Texas Department of Insurance.

Virginia Counties:**Independent Cities:**

Accomack	Chesapeake
Gloucester	Hampton
Isle of Wright	Newport News
James City	Norfolk
Lancaster	Poquoson
Mathews	Portsmouth
Middlesex	Virginia Beach
Northampton	Williamsburg
Northumberland	
Surry	
York	

Puerto Rico:

Entire Island



TO OUR BROKERS/AGENTS

IMPORTANT NOTICE - TO BE KEPT WITH POLICY

WHAT TO DO WHEN A LOSS OCCURS

1. Report as soon as practicable, every incident, loss or damage (LOSS NOTICES) which may become a claim to:

StarrPoolClaims@starrcompanies.com

2. Starr Specialty Lines Insurance Agency, LLC claims **CANNOT** be processed through any other facility and must be reported as indicated above.
3. Adjusters can **ONLY** be assigned by Starr Specialty Lines Insurance Agency, LLC Property Claims Department.

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EXHIBIT 2

CONFIDENTIAL FILED UNDER SEAL

EXHIBIT 2

EXHIBIT 3

EXHIBIT 3

OPP000133

PA 0662



HOTELS

Coronavirus patient visited conference at Mirage on Las Vegas Strip, had symptoms prior

Ed Komenda Reno Gazette Journal

Published 5:05 p.m. ET Mar. 11, 2020 | Updated 8:53 a.m. ET Mar. 12, 2020

LAS VEGAS – Three new coronavirus cases in Nevada include a New York woman in her 40s who attended a large conference on the Las Vegas Strip.

The hospitalized patient attended the Women in Power Summit from March 5-8 at the Mirage. She had had been exhibiting symptoms of COVID-19 during her travels to Las Vegas, according to the Southern Nevada Health District.

The health district said it is working with the Mirage and organizers of the summit to inform attendees and identify people who came in close contact with the individual.

There were more than 1,000 registered attendees. Officials are investigating if the woman visited any other properties on the strip.

"We want to know every single detail about where she had been during those days," said Fermin Leguen, district health officer for the Southern Nevada Health District.

On Wednesday, MGM Resorts International informed guests and employees that the Southern Nevada Health District has confirmed a COVID-19 case involving a guest at The Mirage.

"Upon learning of the individual's symptoms, Mirage staff worked in coordination with the state health district to implement MGM Resorts' health and safety protocol," MGM Resorts said in a statement.

Access to hotel room restricted

The company is coordinating with the Southern Nevada Health District to notify guests and employees who may have had close, prolonged contact with the patient. MGM is directing

<https://www.usatoday.com/story/travel/hotels/2020/03/11/coronavirus-patient-attending-las-vegas-conference-mirage/5025329002/>

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PA 0663

employees to follow all 14-day, self-quarantine requests.

MGM Resorts has deployed professional cleaners to sanitize the patient's room and eliminate the virus, the company said.

"Access to the room remains restricted as it undergoes this comprehensive cleaning and disinfectant process," the statement said.

Buffets to close this weekend

MGM Resorts will close buffets at seven Strip properties this weekend due to coronavirus concerns: ARIA, Bellagio, MGM Grand, Mandalay Bay, The Mirage, Luxor and Excalibur. Closures begin March 15.

"These changes are temporary and will be evaluated on a weekly basis," the company said in a statement to the USA TODAY Network.

Spread of the infection has also changed buffet procedures at Wynn Las Vegas. The buffet is now using culinary staff serve guests – eliminating the need for guests to touch serving utensils.

"In addition, we are routinely cleaning all hard surfaces and have placed hand sanitizing stations at the entrance for guests to utilize prior to entry," Wynn spokesperson Jesse Williams said in a statement. "All of our restaurants continue to maintain the highest possible standards of cleanliness."

Properties of Caesars Entertainment – the largest MGM competitor on the Strip – will keep buffets open.

"We are incorporating cleaning and hygiene protocols into the buffets as well as the rest of our operations across the company," the company said in a statement.

Total cases in Nevada: 7

Health officials announced three new cases of presumptive COVID-19 in Clark County Wednesday afternoon, bringing the total number of cases in Nevada to seven.

Along with the woman who stayed at the Mirage, two people tested positive after close contact with a previously reported case: A male in his 60s and a woman in her 70s both isolating at home.

3/6/2021

Coronavirus: Patient visited Mirage in Las Vegas, had symptoms prior

This is a developing story. Check RGJ.com for updates.

EXHIBIT 4

EXHIBIT 4

OPP000137

PA 0666

**COVID-19**

Stay at Home Order still in Effect. For the latest info, visit nvhealthresponse.nv.gov.

 NV.gov Nevada Governor Steve Sisolak   State Agencies State Jobs ADA Assistance



DECLARATION OF EMERGENCY FOR COVID-19

WHEREAS, Nevada Revised Statutes, Chapter 414, authorizes the Governor to issue a proclamation declaring a state of emergency when a natural emergency or disaster of major proportions has occurred within this state, and the assistance of state agencies is needed to supplement the efforts and capabilities of political subdivisions to save lives, protect property, and protect the health and safety of persons in this state, particularly through a coordinated response; and

WHEREAS, the Centers of Disease Control and Prevention (CDC) are responding to an outbreak of a respiratory illness that has since been confirmed in numerous countries, including the United States; and

WHEREAS, the respiratory disease has been named coronavirus disease 2019, abbreviated as COVID-19; and

WHEREAS, the World Health Organization declared the COVID-19 outbreak a pandemic; and

WHEREAS, the State of Nevada has been coordinating with the federal government, as well as local health authorities, health care facilities, and providers of health care to prepare for, and identify possible cases of COVID-19 in the State of Nevada; and

WHEREAS, the nearby states of California, Washington, Oregon, Arizona, and Utah have been impacted by COVID-19 and have already declared a state of emergency; and

WHEREAS, there are multiple confirmed and presumptive cases of COVID-19 in the State of Nevada; and

WHEREAS, there are multiple confirmed and presumptive cases of COVID-19 in the State of Nevada; and

WHEREAS, the Nevada Department of Health and Human Services is working with local health authorities to identify any other potential cases of COVID-19 in the State; and

WHEREAS, the Chief Medical Officer has reported that a public health emergency exists in the State; and

WHEREAS, the Governor has determined that the State of Nevada is experiencing events that require a coordinated response for the health and safety of the public; and

WHEREAS, Article 5, Section 1 of the Nevada Constitution provides: "The supreme executive power of this State, shall be vested in a Chief Magistrate who shall be Governor of the State of Nevada."

Page 1 of 3

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PA 0667

NOW, THEREFORE, I, Steve Sisolak, Governor of the State of Nevada, pursuant to the authority vested in me by the Constitution and laws of the State of Nevada, hereby declare an emergency and direct all state agencies to supplement the efforts of all impacted and threatened counties to save lives, protect property, and protect the health and safety of persons in this state. Under my authority, I will perform and exercise such other functions, powers, and duties as are necessary to promote and secure the safety and protection of the civilian population.


SECTION 1:	The State Emergency Operations Center be activated to coordinate a response to minimize the impacts, and prevent the further transmission of, COVID-19 to persons in this state; and
SECTION 2:	An Emergency Team be established to coordinate the response to COVID-19; and
SECTION 3:	The Emergency Team will consult with the Nevada Tribal Emergency Coordinating Council to ensure a coordinated response to COVID-19; and
SECTION 4:	The Administrator of the State Purchasing Division, pursuant to Nevada Administrative Code 333.114, to the extent necessary, may authorize an emergency purchase for any amount, or provide the using agency with written authorization for the emergency purchase, including, without limitation, a description of the justification for authorizing the emergency purchase, and suspend the standard procurement process to allow the purchase of food, supplies, services, and equipment; and
SECTION 5:	Law enforcement, including the Nevada Attorney General, will diligently monitor and investigate a coordinated increase in prices for goods or services, and particularly goods or services necessary for the health and safety of the public or that result in economic hardships, making false representations, "bait and switch" practices, failure to disclose material facts in conjunction with the sale of goods or services, or the use of coercion, duress, or intimidation in a transaction in violation of consumer protection laws; and
SECTION 6:	Law enforcement, including the Nevada Attorney General, will diligently ensure that persons or corporations act and perform in a lawful manner which ensures the safety, health, comfort, or repose of any considerable number of the public, do not offend public decency, or in any way renders a considerable number of persons insecure in life or the use of property.
SECTION 7:	This declaration will remain in effect until the Chief Medical Officer notifies the Governor that the health event has been abated and the Governor issues an order terminating the emergency.

Emergency Order Instructions



IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Nevada to be affixed at the State Capitol in Carson City, this 12th day of March, in the year two thousand twenty.


Governor of the State of Nevada


Secretary of State


Deputy Secretary of State

Executive	Legislature	Alerts	Select Language ▼
Governor	Legislature Website	Amber Alerts	 Has Met Section 508 WCAG 2.0 ADA Compliance
Lt. Governor	NELIS	Consumer Affairs	
Secretary of State	Legislature Meetings	Weather Alerts	
Attorney General	Find Your Legislator	211 - Service Information	
State Treasurer	Nevada State Senate	511 - Road Conditions	
State Controller	Nevada State Assembly	911 - Emergency Help	

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Version

EXHIBIT 5

CONFIDENTIAL FILED UNDER SEAL

EXHIBIT 5

EXHIBIT 6

EXHIBIT 6

OPP000169

PA 0671



**NEVADA
HEALTH
RESPONSE**

FOR IMMEDIATE RELEASE

April 29, 2020

CONTACT: Meghan Delaney

Public Information Officer

pressroom@nvhealthresponse.nv.gov

**Prior to rolling out Roadmap to Recovery reopening plan for Nevada,
Gov. Sisolak announces extension Stay at Home directive with initial
easing of restrictions**

Carson City, NV — Today, one day before Governor Steve Sisolak rolls out his Nevada United: Roadmap to Recovery reopening plan, he announced that he has signed a directive extending a majority of the Stay at Home measures through mid-May, but will be easing some restrictions starting on May 1, 2020.

Nevada will continue to remain under the Stay at Home order, but this new directive signed today will allow Nevadans expanded outdoor and recreational activities and provide some relief for our small business owners. These changes include:

- All retail businesses will be allowed to operate under curbside commerce models, similar to curbside pickup currently allowed for restaurants and eateries
 - This now includes curbside for retail cannabis dispensaries
- Drive-in services are now permitted for places of worship, as long as congregants stay in a vehicle and maintain at least 6 feet of social distance from people not in their household
- Relaxing restrictions on outdoor activities, including golf, pickleball, and tennis, as long as they do it safely and in a way that prevents the spread of COVID-19

The loosening of restrictions listed above and in the directive will become effective on Friday, May 1, 2020. All other directives currently in effect will be extended through May 15, or until the state meets the necessary criteria set forth last week and consistent with the White House guidelines to demonstrate the state is making sufficient progress to slow the spread of COVID-19. If the State continues in a positive direction and meets the criteria, the start of the next phase could begin earlier than May 15. At that time, a Phase 1 directive will be issued.

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While Nevada has not yet met the reopening criteria, the decision to ease restrictions on certain retail operations and some outdoor activities before entering Phase 1 was based on the State's progress so far toward meeting the specific benchmarks, including positive case and hospitalization trends, along with testing and case contact tracing capacity.

"Nevadans have done an incredible job at staying home for our state, and as we work diligently to meet the reopening criteria, I wanted to begin some initial incremental changes that will make our full transition into Phase 1 smoother and positively impact our communities and small businesses," **said Gov. Sisolak**. "Our ability to enter the next phase and any subsequent phase of reopening will be determined by the continued commitment of Nevadans to follow aggressive social distancing guidance and requirements."

Under the extended directive, businesses that previously were directed to be closed will remain closed, including salons, barber shops, bars and casinos, among other things. Businesses that are deemed essential may still be open, and must still comply with strict social distancing standards and other safety measures to keep workers and clients safe.

Gov. Sisolak will present Nevada United: Roadmap to Recovery during a press conference on Thursday, where he will outline the projected phases and structure for how Nevada and local partners will navigate our way through this public health crisis. More details on the press conference will be released shortly.

DIRECTIVE 016 (signed today and attached) extend the following directives through May 15:

- 003 – Essential v. Non-Essential
 - With two amendments, as outlined above: curbside and delivery for nonessential retail, and curbside for retail cannabis dispensaries
- 004 – DMV auto extension
 - With an amendment that says any drivers' license or other card issued by the Department of Motor Vehicles that expires during the time that the DMV is closed to the public, the expiration date is extended for 90 days after the day the DMV offices reopen to the public.
- 006 – Open meeting law
- 007 – Social Gatherings
- 010 – Stay at Home #1
- 013 – Stay at Home #2
 - With the two amendments as outlined above: drive-in services are now permitted for places of worship, as long as congregants stay in a vehicle and maintain at least 6 feet of social distance from people not in their

household and relaxing restrictions on outdoor activities, including golf, pickleball, and tennis, as long as they do it safely and in a way that prevents the spread of COVID-19

***All other Directives remain in effect until the state of emergency is over or they have become obsolete by subsequent Directives.*

###



**NEVADA
HEALTH
RESPONSE**

Gov. Sisolak Guidance: Directive 016

April 29, 2020

Understanding Governor Sisolak's latest directive extending previous directives and making certain changes

Since the start of the COVID-19 crisis, Governor Sisolak has issued a series of orders intended to reduce interactions, minimize the risk of infection, and slow the rate of spread by limiting opportunities for interpersonal contact. This Directive extends the deadlines for many previous directives and loosens restrictions on certain activities. Below is some general guidance on what this new directive means and how it applies to you.

What is new in this directive?: The new Directive is the first step in the Nevada United: Roadmap to Recovery plan before the State officially enters Phase 1. It loosens some restrictions that were previously in place:

- All retail businesses previously identified as non-essential will be allowed to operate under curbside commerce models, similar to curbside pickup currently allowed for restaurants and eateries
 - This now includes curbside sales for retail cannabis dispensaries
- Golf, tennis, and pickleball activities may resume as long as they are they comply with social distancing, sanitation, and other requirements intended to prevent the spread of COVID-19
- Drive-up religious services are now permitted, as long as congregants stay in a vehicle and maintain at least 6 feet of social distance from people not in their household

Does this end the Stay at Home order?: No. This Directive extends the Stay at Home orders from previous directives to May 15, 2020, meaning Nevadans should stay at home except for necessary outings like going to work as an essential employee, buying groceries, picking up food or retail items from curbside pickup, or attending medical appointments.

Nevadans who wish to enjoy the great outdoors can still do so, including walking in your neighborhood or in a nearby park. Individuals should practice good social

distancing of at least 6 feet from other members of the public and avoid touching any outdoor equipment (like playground equipment) where the virus may be lurking. Congregating outdoors without maintaining safe social distancing is not permitted. We strongly encourage Nevadans to wear masks in public whenever possible.

What about gatherings?: The ban on gatherings of 10 more people in any indoor or outdoor public area still stands.

What does this mean for my leisure activities?: It means that some publicly accessible sporting and recreational venues and activities—golf, tennis, and pickleball—that were paused by [Directive 013](#) can reopen as long as they adhere to the all of the guidelines and conditions outlined by the previous directives, starting with [Directive 003](#) issued on March 20, 2020 and ending with today's [Directive 016](#), which loosens some of the restriction. All other activities referenced in Directive 013 are still prohibited for now.

It says publicly accessible above; can private golf and tennis clubs reopen?: Yes, as long as they follow the public health guidelines, they can absolutely reopen. However, clubhouses, bars, and amenities, like gyms, must remain closed.

What are some examples of best practices?: While golfing, don't share a golf cart with people outside your household. Be mindful of and try to avoid exposure to shared equipment or hard surfaces like flagsticks, bunker rakes, scorecards, etc. Specific guidance for golf courses can be found [HERE](#).

What if I would like to attend a faith based service?: During challenging times many people have relied on their faith. Places of worship have been encouraged to hold services via alternative means, like videos, streaming, or broadcast. The people that are performing these services should, of course, do so in a manner that they are practicing social distancing and are encouraged to wear facial coverings. Remember, the best thing we can do right now is to Stay Home for Nevada. Because we are trying to get everyone to stay home, and we have prohibited all gatherings over ten people, this is not yet the time to get people together to celebrate their faith. Nobody should be physically attending in-person, indoor worship services with ten or more people. However, drive-in services are now permitted, as long as congregants stay in a vehicle and maintain at least 6 feet of social distance from people not in their household.

What does this mean for certain businesses?: It means non-essential retailers that could not operate at all under previous directives can open for curbside, as well as home delivery services. Non-essential retailers must comply with Nevada State Occupational Safety and Health Administration (NV OSHA) measures to protect employees and customers. Retailers also need to comply with social distancing guidance from the [CDC](#), the Governor's Office, and any applicable Nevada state regulatory agency or board. For

a reminder of which businesses are considered non-essential, please see guidance [HERE](#), and for more information on how to safely operate curbside services, refer to this [GUIDANCE](#).

Additionally, retail cannabis dispensaries can now offer curbside sales, in addition to delivery services previously allowed under [Directive 003](#). Licensed cannabis retailers must continue to comply with all social distancing guidance from previous directives and NV OSHA guidance for protecting employees and customers. These retailers should also comply with any related guidance from the Cannabis Compliance Board.

Gaming operations are still closed until further notice.

Are smoke shops, breweries, and wine, beer, and liquor stores open?: Yes; non-essential retailers licensed to sell tobacco or alcohol on a take-away basis are now allowed to open for curbside or home delivery services only. Those retailers must comply with NV OSHA standards, local laws and regulations, and applicable licensing provisions.

Can I buy a new car, refrigerator, or couch?: This Directive extends the closure of showrooms to May 15, 2020. Those businesses have all been deemed essential, so all of the items that they sell can still be purchased. However, you'll have to use different forms of purchase, like shipping, curbside pickup, or home delivery.

I'm thinking about buying a new house. Can I see it?: Yes...but you'll have to look at pictures, take a virtual tour, and handle all of the paperwork (whenever possible) without seeing anyone in person. For now, "Open Houses" and in-person showings of single and multi-family homes that are occupied by renters are prohibited. You may still arrange to view an unoccupied house on an appointment basis.

Can I call my barber or stylist to come over?: No, not while this directive is in place. Not only does it put you both at risk of spreading the disease to one another and those that you're staying at home with, it could also cost them their license!

What else does this directive do?: [Directive 016](#) also extends other items covered in previous directives, like the changes to public meetings, and extension of legal deadlines and professional licensing requirements.

Additionally, for any drivers' license or other card issued by the Department of Motor Vehicles that expires during the time that the DMV is closed to the public, the expiration date is extended for 90 days after the day the DMV offices reopen to the public.

If I'm providing an essential good or service, what should I do?: Directives affecting essential businesses ([Directive 003](#) and [Directive 013](#)) haven't changed, except that

those directives are now extended through May 15, 2020. Essential businesses that are still providing goods or services need to make sure that foot traffic is kept to a minimum and ensure that social distancing standards are maintained. When going to these places, people need to be spaced out and as far away from each other as possible, especially when a line is forming. Those engaging in curbside commerce should review the Curbside Commerce Safety Protocols.

I've heard of essential businesses remaining open that aren't protecting their employees. What are we doing to protect those brave Nevadans?: The Nevada Occupational Safety and Health Administration, or OSHA for short, is ensuring that all open businesses are keeping their employees safe, adhering to proper social distancing, and keeping their workplaces clean. Call NV OSHA if you'd like to alert them of any unsafe conditions.

Please note, additional guidance on all of Governor Sisolak's emergency directives can be found [HERE](#).



**NEVADA
HEALTH
RESPONSE**

Gov. Sisolak Guidance: Directive 016 - Best Practices for Golf Courses
April 29, 2020

Understanding Governor Sisolak's Directive as it applies to best practices for Nevada Golf Facilities

Directive 016, issued on April 29, 2020, has relaxed some restrictions on leisure activities that had previously been paused. One of those activities in particular, was the shuttering of golf courses and driving ranges. All golf courses and driving ranges can now reopen, both public and private, but they can only do so if they follow and maintain best practices. Below are some general guidelines on what those are and how it applies to these facilities. Please note that these are not entirely exhaustive; they are the minimum mandatory requirements, and golf course should still work with their associations, both locally and nationally, to put additional necessary safeguards in place.

What are the mandatory minimums of safety that golf courses should follow?:

Golf Carts and Equipment:

- Only one (1) person per golf cart except for those who reside in the same household.
- Carts must be wiped down with disinfectant spray or wipes BEFORE and AFTER each round. This includes steering wheels, cart seats, arm rests, cart dashes, cup holders, gear shifts and cart keys.
- Pull carts and push carts must also be wiped down with disinfectant BEFORE and AFTER each round.
- Tees, towels, cart coolers, and bottled waters should be removed from carts.

- Sand bottles or scoops should be removed and golf course maintenance staff will need to address filling divots until further notice.

General Operations:

- Bag room areas will be cleaned and disinfected regularly.
- Pro Shops and clubhouses should be closed and locked. If pro shop is open for check-in there should not be any merchandise sales, and social distancing measures must be observed.
- Only take out food and beverages can be served – no in person dining.
- Players using driving range hitting stations should be at least six (6) feet apart from each other.

Is this all we have to do to reopen?: No, as mentioned before, this list is far from exhaustive. These are the minimum requirements. Every effort should be made by those courses that are reopening to protect both their players and their employees. When resuming operations, golf facilities still need to operate in a manner that maintains social distancing, limits gatherings of 10 or more, and puts into place as many cleaning measures as possible to limiting the spread of COVID-19.

As a general rule, employees and patrons who aren't feeling well should stay home. Golf courses should also check in frequently with their associations and the CDC for any updated guidance that is issued.

Golf is a great way to get exercise and can facilitate social distancing if done properly; the ultimate goal is to keep everyone safe while they're playing and to stop the spread of COVID-19.



**NEVADA
HEALTH
RESPONSE**

Curbside Commerce Safety Protocols **April 29, 2020**

How businesses and consumers can safely engage in curbside commerce while maintaining safe social distancing measures

These safety measures are designed to permit our essential and non-essential retailers of all sizes to provide curbside sales of their products while adhering to consistent protocols that protect the health of both customers and employees.

Given that COVID-19 is spread through interpersonal contact, retailers that wish to offer curbside service must comply with all Nevada State Occupational Safety and Health Administration (NV OSHA) requirements, [CDC guidelines](#), and the following safety protocols:

- Whenever possible, all sales transactions must take place in advance or via contactless payment as defined in the [March 20, 2020 Emergency Regulations](#).
- Each transaction should be with an individual customer, one at a time, outside, in a driveway or parking lot. Any product delivered curbside must be placed in the customer's vehicle by the retail employee. No hand-to-hand delivery of product is permitted.
- Retailers selling alcohol, tobacco, or cannabis products must comply with existing rules and regulations specific to those sales and must continue to conduct age verification as required by law.

TIP: Retailers should check IDs in as contactless a manner as possible, for example, by asking customers to place their ID against the glass of a vehicle's window or windshield.

- All employees should wear [face coverings](#) that cover their noses and mouths and disposable gloves when providing curbside service. Gloves should not be used for more than one (1) customer transaction.
- Customers interacting with retail employees should also wear a face covering whenever possible. Retailers may reserve their right to refuse service to any person not wearing a mask.

TIP: Customers should be responsible for opening or closing their vehicle's door or trunk to allow for contactless delivery of the items. Customers should otherwise remain in their cars for the duration of the transaction.

- Businesses must maintain traffic flow and should establish a designated "Curbside Commerce" area.
- Businesses are strongly encouraged to schedule specific pick-up times to avoid overflow traffic or impediments to normal street traffic.
- No business may set up outdoor tables, benches, or any type of seating for curbside customers.
- Participating businesses should decline the return of goods during curbside service and make alternative arrangements for returns/exchanges.



DECLARATION OF EMERGENCY

DIRECTIVE 016

WHEREAS, on March 12, 2020, I, Steve Sisolak, Governor of the State of Nevada issued a Declaration of Emergency to facilitate the State's response to the COVID-19 pandemic; and

WHEREAS, on March 13, 2020, Donald J. Trump, President of the United States declared a nationwide emergency pursuant to Sec. 501(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121-5207 (the "Stafford Act"); and

WHEREAS, since the March 12, 2020 Declaration of Emergency, I have issued fifteen Directives pursuant to that order to provide for the safety, wellbeing, and public health of Nevadans and the administration of the State of Nevada; and

WHEREAS, the ability of the novel coronavirus that causes COVID-19 to survive on surfaces for indeterminate periods of time renders some property unusable and contributes to contamination, damage, and property loss; and

WHEREAS, the propensity of the COVID-19 disease to spread via interpersonal contact precipitated the widespread closure of certain businesses and the imposition of limitations on other businesses; and

WHEREAS, on April 21, 2020, the National Governors Association issued guidance for a staged reopening that protects the public's health while laying a strong foundation for long-term economic recovery; and

WHEREAS, NRS 414.060 outlines powers and duties delegated to the Governor during the existence of a state of emergency, including without limitation, directing and controlling the conduct of the general public and the movement and cessation of movement of pedestrians and vehicular traffic during, before and after exercises or an emergency or disaster, public meetings or gatherings; and

WHEREAS, NRS 414.070 outlines additional powers delegated to the Governor during the existence of a state of emergency, including without limitation, enforcing all laws and regulations relating to emergency management and assuming direct operational control of any or all forces, including, without limitation, volunteers and auxiliary staff for emergency management in the State; providing

for and compelling the evacuation of all or part of the population from any stricken or threatened area or areas within the State and to take such steps as are necessary for the receipt and care of those persons; and performing and exercising such other functions, powers and duties as are necessary to promote and secure the safety and protection of the civilian population; and

WHEREAS, Article 5, Section 1 of the Nevada Constitution provides: "The supreme executive power of this State, shall be vested in a Chief Magistrate who shall be Governor of the State of Nevada;" and

NOW THEREFORE, by the authority vested in me as Governor by the Constitution and the laws of the State of Nevada and the United States, and pursuant to the March 12, 2020, Emergency Declaration,

IT IS HEREBY ORDERED THAT:

SECTION 1: To the extent this Directive conflicts with earlier Directives or regulations promulgated pursuant to the March 12, 2020 Declaration of Emergency, the provisions of this Directive shall prevail.

SECTION 2: Effective May 1, 2020, non-essential retail businesses identified in Directive 003 Emergency Regulation NAC 414.XXX(2)(d), NAC 414.XXX(2)(g), and NAC 414.XXX(2)(k) may resume retail sales on a curbside or home delivery basis only. Businesses reopening under this provision must adopt measures promulgated by the Nevada State Occupational Safety and Health Administration to minimize the risk of spread of COVID-19 including social distancing and sanitation measures, and abide by all other guidance promulgated pursuant to this Directive. To the extent practicable, businesses must provide services in a manner disallowing the formation of queues whereby persons congregate in a manner that violates the social distancing guidelines above. All businesses are encouraged to permit their employees to work from home to the maximum extent practicable.

SECTION 3. Section 5 of Directive 003 is hereby amended. Effective May 1, 2020, licensed cannabis dispensaries may engage in retail sales on a curbside pickup or home delivery basis pursuant to guidance that shall be issued by the Department of Taxation in conjunction with the Cannabis Compliance Board, and subject to all local ordinances or municipal code. Retail cannabis dispensaries must adopt measures promulgated by Nevada State Occupational Safety and Health Administration (OSHA) to minimize the risk of spread of COVID-19 including social distancing and sanitation measures. All retail cannabis dispensaries are encouraged to permit their employees to work from home to the maximum extent practicable.

SECTION 4: Directive 003, as amended herein is hereby extended until May 15, 2020, unless specifically terminated or extended by subsequent Directive.

SECTION 5: Directive 004 is hereby amended. Effective May 1, 2020, Department of Motor Vehicle (DMV) expiration dates referenced in Directive 004 for all commercial and commercial licenses, non-commercial and commercial instruction permits, identification cards, Driver Authorization Cards (DAC), vehicle or off-highway vehicle

registrations, motor carrier active and temporary credentials, or any other credentials issued by the DMV as required by state law that have expired or will expire during DMV public office closures due to the COVID-19 State of Emergency shall be extended for a period of 90 days from the date DMV offices reopen to the public. Directive 004 is further amended to provide that the expiration date on said licenses, permits, cards, and other DMV credentials expiring within 30 days after DMV offices reopen to the public shall be extended for an additional 60 days from the date DMV offices reopen to the public. Where possible, DMV customers are strongly encouraged to renew said licenses, permits, cards and other DMV credentials through DMV's website, portal, or kiosks.

SECTION 6: Directive 006 is hereby extended from April 16, 2020 to May 15, 2020, unless specifically terminated or renewed by subsequent Directive.

SECTION 7: Directive 007 is hereby extended until May 15, 2020, unless specifically terminated or extended by subsequent Directive.

SECTION 8: Directive 010 is hereby extended until May 15, 2020. Directive 010 is hereby modified to the extent that individuals may leave their residences for the additional purpose of picking up goods at non-essential retail businesses offering curbside delivery pursuant to Section 2 of this Directive. Recognizing that COVID-19 is still present in Nevada and highly contagious, Nevadans are advised that they are safer at home and should avoid interpersonal contact with persons not residing in their households to the extent practicable. To reduce the spread of COVID-19 via respiratory transmission, the Nevada public should utilize face coverings in public spaces.

SECTION 9: Section 2 of Directive 013 is hereby amended. Golf, tennis, and pickleball activities may resume on May 1, 2020 if they are able to operate in a manner that is consistent with social distancing guidelines, can do so without violating the provisions set forth in Directive 007, adopt sanitation measures intended to reduce the spread of COVID-19, and abide by all guidance promulgated pursuant to this Directive. This section shall not be construed to permit the reopening of businesses defined in Emergency Regulation NAC 414.XXX(2)(a) through NAC 414.XXX(2)(l), with the exception of retail businesses classified under NAC 414.XXX(2)(d), NAC 414.XXX(2)(g), and NAC 414.XXX(2)(k).

SECTION 10: Section 4 of Directive 013 is hereby amended. Effective May 1, 2020, places of worship may offer services on an in-car or drive-in basis, if these services allow occupants to remain in their vehicles, can be held in a manner consistent with social distancing guidelines, implement precautions intended to reduce the spread of COVID-19, and abide by other guidance promulgated pursuant to this Directive. The prohibition of ten or more persons for indoor services shall remain in effect for the duration that this Directive shall be in effect, unless specifically terminated or renewed by subsequent order.

SECTION 11: All other provisions of Directive 013 shall be extended to May 15, 2020, unless specifically terminated or renewed by subsequent order.

SECTION 12: The Nevada State Occupational Safety and Health Administration (OSHA) shall continue to ensure that businesses reopened pursuant to this Directive or otherwise operating during the state of emergency provide adequate protections to their workers and adopt sanitation protocols that minimize the risk of spread of COVID-19 among their workforce.

SECTION 13: Gaming operations, not including licensed online gaming or mobile wagering operations, shall remain closed until the Gaming Control Board determines that operations may safely resume. The Gaming Control Board shall promulgate guidance for a phased and incremental resumption of gaming operations, as well as criteria regarding when operations may resume.

SECTION 14: Previous Directives not specifically referenced herein remain in effect for the duration that this Directive shall remain in effect, unless specifically terminated or extended renewed by subsequent Directive.

SECTION 15: This Directive shall remain in effect until May 15, 2020, unless extended or terminated by a subsequent Directive promulgated pursuant to the March 12, 2020 Declaration of Emergency to facilitate the State's response to the COVID-19 pandemic.

SECTION 16: No provision of this Directive or any previously issued Directive shall be construed to impose a termination date on the Declaration of Emergency for COVID-19 issued on March 12, 2020. The Declaration of Emergency shall remain in effect until the Chief Medical Officer notifies the Governor that the health event has been abated and the Governor issues an order terminating the emergency.



IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Nevada to be affixed at the State Capitol in Carson City, this 29th day of April, in the year two thousand twenty.

Governor of the State of Nevada

Barbara K. Cegavske

Secretary of State

Scott M. Linder

Deputy Secretary of State

EXHIBIT 7

CONFIDENTIAL FILED UNDER SEAL

EXHIBIT 7

EXHIBIT 8

EXHIBIT 8



Nevada Governor Steve Sisolak



DECLARATION OF EMERGENCY DIRECTIVE 021 - PHASE TWO REOPENING PLAN

WHEREAS, in late 2019, the United States Centers for Disease Control and Prevention began monitoring an outbreak of respiratory illness caused by a novel coronavirus first identified in Wuhan, Hubei Province, China; and

WHEREAS, on February 11, 2020, the International Committee on Taxonomy of Viruses named this novel coronavirus "severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2);" and

WHEREAS, on February 11, 2020, the World Health Organization named the disease caused by SARS-CoV-2, "COVID-19;" and

WHEREAS, the World Health Organization advises that the novel coronavirus that causes COVID-19 virus is highly contagious, and spreads through respiratory transmission, and direct and indirect contact with infected persons and surfaces; and

WHEREAS, the World Health Organization advises that respiratory transmission occurs through both droplet and airborne transmission, where droplet transmission occurs when a person is within 6 feet of someone who has respiratory symptoms like coughing or sneezing, and airborne transmission may occur when aerosolized particles remain suspended in the air and is inhaled; and

WHEREAS, the World Health Organization advises that contact transmission occurs by direct contact with infected people or indirect contact with surfaces contaminated by the novel coronavirus; and

WHEREAS, some persons with COVID-19 may exhibit no symptoms but remain highly infectious; and

WHEREAS, on March 5, 2020, Clark County and Washoe County both reported the first known cases of COVID-19 in the State of Nevada; and

WHEREAS, on March 11, 2020, the World Health Organization declared COVID-19 a pandemic; and

WHEREAS, on March 12, 2020, I, Steve Sisolak, Governor of the State of Nevada issued a Declaration of Emergency to facilitate the State's response to the COVID-19 pandemic; and

WHEREAS, on March 13, 2020, Donald J. Trump, President of the United States declared a nationwide emergency pursuant to Sec. 501(b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121-5207 (the "Stafford Act"); and

WHEREAS, on March 14, 2020, I formed a medical advisory team to provide medical guidance and scientifically based recommendations on measures Nevada could implement to better contain and mitigate the spread of COVID-19; and

WHEREAS, infectious disease and public health experts advised that minimizing interpersonal contact slows the rate at which the disease spreads, and is necessary to avoid overwhelming healthcare systems, commonly referred to as "flattening the curve"; and

WHEREAS, since the March 12, 2020 Declaration of Emergency, I have issued 20 Directives pursuant to that order to provide for the safety, wellbeing, and public health of Nevadans and the administration of the State of Nevada; and

WHEREAS, the Directives promulgated to reduce interpersonal contact and promote social distancing

to flatten the curve; and

WHEREAS, data showed that Nevada was one of the top five states in the United States for social distancing; and

WHEREAS, Nevada's medical experts indicate that the rate at which COVID-19 is spreading in the State of Nevada has effectively slowed to a level that does not jeopardize the state's healthcare system due, in part, to Nevadans following strict social distancing measures individually and pursuant to Directives I issued pursuant to the March 12, 2020, Declaration of Emergency; and

WHEREAS, although the danger to Nevadans from the COVID-19 disease has abated, the disease has not been eliminated and measures that protect safety, wellbeing, and public health of Nevadans must remain in effect; and

WHEREAS, on April 21, 2020, the National Governors Association issued guidance for a staged reopening that protects the public's health while laying a strong foundation for long-term economic recovery; and

WHEREAS, on April 30, 2020, I introduced the *Nevada United: Roadmap to Recovery* plan that outlined a phased approach to reopening Nevada businesses and industry; and

WHEREAS, the *Nevada United: Roadmap to Recovery* plan set forth a collaborative partnership between state and local governments that included the formation of the Local Empowerment Advisory Panel ("LEAP") to serve as a resource to local governments and local communities; and

WHEREAS, on May 9, 2020, the State of Nevada entered Phase One of the *Nevada United: Roadmap to Recovery* plan; and

WHEREAS, in the 19 days since Nevada entered Phase One, our state has experienced a consistent and sustainable downward trajectory in the percentage of positive COVID-19 cases, a decrease in the trend of COVID-19 hospitalizations, and a decline in our cumulative test positivity rate from a maximum rate of 12.2% on April 24, 2020 to 6.3% on May 27, 2020 with a 33-day downward trend; and

WHEREAS, the LEAP develops statewide guidelines for social distancing and phased reopening in consultation with local health authorities and other subject matter experts; and

WHEREAS, [NRS 414.060](#) outlines powers and duties delegated to the Governor during the existence of a state of emergency, including without limitation, directing and controlling the conduct of the general public and the movement and cessation of movement of pedestrians and vehicular traffic during, before and after exercises or an emergency or disaster, public meetings or gatherings; and

WHEREAS, [NRS 414.070](#) outlines additional powers delegated to the Governor during the existence of a state of emergency, including without limitation, enforcing all laws and regulations relating to emergency management and assuming direct operational control of any or all forces, including, without limitation, volunteers and auxiliary staff for emergency management in the State; providing for and compelling the evacuation of all or part of the population from any stricken or threatened area or areas within the State and to take such steps as are necessary for the receipt and care of those persons; and performing and exercising such other functions, powers and duties as are necessary to promote and secure the safety and protection of the civilian population; and

WHEREAS, the Nevada Attorney General opined in Opinion Number 95-03 that in times of emergency when the Governor's authority under Nevada Revised Statutes Chapter 414 is in effect, the powers of political subdivisions to control business activity is limited; and

WHEREAS, [NRS 414.060\(3\)\(f\)](#) provides that the administrative authority vested to the Governor in times of emergency may be delegated; and

WHEREAS, Article 5, Section 1 of the Nevada Constitution provides: "The supreme executive power of this State, shall be vested in a Chief Magistrate who shall be Governor of the State of Nevada;" and

NOW, THEREFORE, by the authority vested in me as Governor by the Constitution and the laws of the State of Nevada and the United States, and pursuant to the March 12, 2020, Emergency Declaration,

IT IS HEREBY ORDERED THAT:

SECTION 1:	To the extent this Directive conflicts with earlier Directives or regulations promulgated pursuant to the March 12, 2020 Declaration of Emergency, the provisions of this Directive shall prevail.
	Consistent with the <i>Nevada United: Roadmap to Recovery</i> plan for a federally supported,

SECTION 2:	state managed, and locally executed reopening approach, county governments are hereby delegated the authority to impose additional COVID-19 related restrictions on businesses and public activities. Restrictions imposed by county government may exceed the standards imposed by Declaration of Emergency Directives or set forth under the LEAP guidelines, but in no case shall county-guidelines be more permissive than the provisions of this Directive.
SECTION 3:	Businesses may adopt practices that exceed the standards imposed by Declaration of Emergency Directives, guidelines promulgated by the Nevada State Occupational Safety and Health Administration (NV OSHA) or LEAP guidelines, but in no case shall business practices be more permissive than the provisions of this Directive or those imposed by NV OSHA and the LEAP.
SECTION 4:	Businesses performing non-retail services, including without limitation, legal services, accounting services, or real estate services, are encouraged to conduct business telephonically or virtually to the greatest extent practicable. These businesses are encouraged to permit employees to work from home to the greatest extent practicable.
SECTION 5:	For the purposes of this Directive, "vulnerable persons" are defined as those who are at heightened risk of complications from COVID-19 disease, and include: <ol style="list-style-type: none"> 1. Individuals who are 65 years of age and older; 2. Individuals with chronic lung disease or moderate to severe asthma; 3. Individuals who have serious heart conditions; 4. Individuals who are immunocompromised; 5. Pregnant women; or 6. Individuals determined to be high risk by a licensed healthcare provider.
SECTION 6:	All vulnerable persons are strongly encouraged to stay at home to the greatest extent possible, except when necessary to provide, support, perform, or operate necessary activities, minimum basic operations, critical government functions, necessary travel, or essential businesses.
SECTION 7:	The phrase "social distancing" references guidance promulgated by the United States Centers for Disease Control and Prevention, including without limitation, maintaining at least six feet of physical distancing from other individuals. The phrase "sanitation requirements," "sanitation measures," and "sanitation guidelines" includes without limitation, washing hands with soap and water for at least twenty seconds as frequently as possible, using hand sanitizer, covering coughs or sneezes (into the sleeve or elbow, not hands), regularly cleaning high-touch surfaces, and not shaking hands.
SECTION 8:	All Nevadans are strongly encouraged to stay in their residences to the greatest extent possible. Recognizing that COVID-19 is still present in Nevada and highly contagious, Nevadans are advised that they are safer at home and should avoid interpersonal contact with persons not residing in their households to the extent practicable. Nevadans are urged to avoid travel to the greatest extent practicable. To reduce the spread of COVID-19 via respiratory transmission, the Nevada public should utilize face coverings in public spaces.
SECTION 9:	Pursuant to NRS 441A.180 , persons testing positive for COVID-19 shall stay at home and "self quarantine" for a minimum of two weeks, except as necessary to care for themselves or seek medical care. Persons determined to be in contact with an individual who tested positive for COVID-19 must quarantine and stay at home for two weeks, or until a negative test result has been received.
SECTION 10:	Section 1 of Directive 007 is hereby further amended to provide that effective 12:01 am on May 29, 2020, the Nevada general public shall not gather in groups of more than fifty in any indoor or outdoor area subject to the limitations of this section, whether publicly owned or privately owned where the public has access by right or invitation, express or implied, whether by payment of money or not. Section 3 of Directive 007 shall remain in force.
	Communities of worship and faith-based organizations, including without limitation, churches, synagogues, mosques, and temples, are strongly encouraged to offer online and drive-up services to the greatest extent possible. Effective 12:01 am on May 29, 2020, consistent with other Directives on public gatherings, houses of worship may conduct indoor in-person services in a manner so that no more than fifty persons are gathered, and all social distancing requirements are satisfied. This limitation shall not apply to houses of worship offering drive-up services pursuant to Section 10 of

SECTION 11:	<p>Directive 010. Houses of worship offering in-person, in-person services are encouraged to follow the guidelines promulgated by the LEAP, as well as the following provisions that are consistent with other Directives on public gatherings:</p> <ol style="list-style-type: none"> 1. Seating must be arranged to ensure a minimum of six feet of separation between congregants who do not reside in the same household. 2. Participants, including leaders and staff, are encouraged to utilize face coverings to the greatest extent practicable. 3. Houses of worship are encouraged to stagger services so that the entrance and egress of congregants for different services do not result in a gathering greater than fifty persons, and to provide proper sanitation between services.
SECTION 12:	<p>All employers must take proactive measures to ensure compliance with the social distancing and sanitation guidelines. All employers shall continue to require employees who interact with the public to wear face coverings, to the maximum extent possible, and shall abide by all other guidelines promulgated by NV OSHA.</p>
SECTION 13:	<p>All businesses must adopt measures that meet or exceed the standards promulgated by NV OSHA to minimize the risk of spread of COVID-19. All businesses are encouraged to permit their employees to work from home to the maximum extent practicable. NV OSHA shall continue to ensure that businesses reopened pursuant to this Directive or otherwise operating during the state of emergency provide adequate protections to their workers and adopt sanitation protocols that minimize the risk of spread of COVID-19 among their workforce. NV OSHA shall enforce all violations of its guidance, protocols, and regulations.</p>
SECTION 14:	<p>All employers are encouraged to consult guidelines issued by the LEAP for industry-specific information for operating in the phased reopening under the <i>Nevada United: Roadmap to Recovery</i> plan. The LEAP guidelines will be posted on the Nevada Health Response website at https://nvhealthresponse.nv.gov/.</p>
SECTION 15:	<p>To the maximum extent practicable, employers and employees are strongly encouraged to incorporate the following protocols into their business operations:</p> <ol style="list-style-type: none"> 1. Encourage customers to wear face coverings 2. Continue to encourage telework, whenever possible and feasible with business operations 3. Return to work in phases 4. Close common areas where personnel are likely to congregate and interact, or enforce strict social distancing protocols 5. Strongly consider special accommodations for personnel who are members of a vulnerable population 6. Encourage employees to do a self-assessment each day in order to check if they have any COVID-19 type symptoms, for example, fever, cough or shortness of breath 7. Practice hand hygiene 8. Perform frequent enhanced environmental cleaning of commonly touched surfaces 9. Implement separate operating hours for vulnerable populations 10. Provide signage advising the public of appropriate social distancing within the facility, including six feet of social distancing from other individuals; and 11. Provide readily available hand sanitizer or other sanitizing products for employees and customers
SECTION 16:	<p>All employers operating under Phase Two are encouraged to accommodate vulnerable persons and workers caring for a child whose school or place of care is closed, or childcare provider is unavailable, for reasons related to COVID-19, by promoting telecommuting or other remote work options, flexible schedules, or other means. To the greatest extent possible, employers should extend similar accommodations to workers who live in the same household as a vulnerable person. Upon request, all employers covered by the Families First Coronavirus Response Act ("FFCRA") must provide leave to eligible employees as provided by the Act. Employers covered by the FFCRA must notify covered employees seeking accommodations of their eligibility. The provisions of this Section shall be in effect for the duration that the March 12, 2020 Declaration of Emergency shall be in effect, unless specifically terminated by a subsequent Directive.</p>
	<p>All businesses that engage in retail sales may continue to provide retail sales on a curbside or home delivery basis, or allow onsite customer access, with a maximum</p>

SECTION 17:	occupancy of 50% based on listed fire code capacity. Businesses are strongly encouraged to promote home delivery, curbside delivery, walk-up, drive-through, or window service whenever possible. Businesses must adopt measures promulgated by NV OSHA to minimize the risk of spread of COVID-19 including social distancing and sanitation measures, and abide by all other guidance promulgated pursuant to this and other Directives. To the maximum extent practicable, businesses must provide services in a manner disallowing the formation of queues whereby persons congregate in a manner that violates the social distancing guidelines above. All businesses are encouraged to permit their employees to work from home to the maximum extent practicable. Retail businesses operating in open-air malls or strip malls are expressly permitted to operate under the conditions set forth in this Directive.
SECTION 18:	Effective 12:01 am on May 29, 2020, indoor malls may open to the public, and allow retail businesses to operate. Businesses engaged in retail sales at indoor malls are subject to the same restrictions as retail businesses operating at other locations, as provided in Section 17 of this Directive. Mall operators shall discourage the public from congregating by removing or prohibiting access to indoor and outdoor seating, except at food courts. Food courts may reopen to customers, but must abide by all restrictions imposed on restaurants pursuant to Section 25 of this Directive, including without limitation, sanitation protocols, and social distancing seating requirements.
SECTION 19:	The limitations imposed on drive-in movie theaters in Section 14 of Directive 018 are hereby amended to provide that concession stands may serve food and drinks on a prepackaged basis only.
SECTION 20:	Effective 12:01 am on May 29, 2020, non-retail indoor venues, including without limitation, indoor movie theaters, bowling alleys, or arcades may reopen to the public. Indoor movie theaters operating pursuant to this section must ensure that occupancy shall not exceed the lesser of 50% of the listed fire code capacity or fifty persons, and implement measures to ensure that all social distancing requirements are satisfied. All other businesses operating pursuant to this section must ensure that occupancy shall not exceed 50% of the listed fire code capacity, and implement measures to ensure that all social distancing requirements are satisfied. Businesses operating pursuant to this Section shall limit food and beverage sales to prepackaged products only.
SECTION 21:	Effective 12:01 am on May 29, 2020, non-retail outdoor venues, including without limitation, miniature golf facilities, amusement parks, theme parks may reopen to the public. Businesses operating pursuant to this section must ensure that occupancy shall not exceed 50% of the listed fire code capacity, and implement measures to ensure that all social distancing requirements are satisfied.
SECTION 22:	Effective 12:01 am on May 29, 2020, musical performances, live entertainment, concerts, competitions, sporting events, and any events with live performances may resume, but shall remain closed for public attendance. Events held pursuant to this section may be recorded, filmed, streamed or broadcast to the public. Live events ordinarily regulated by the Nevada Athletic Commission or the Nevada Gaming Control Board must be approved by the applicable board prior to the event. All other live events under this Section must be approved by the Nevada Department of Business & Industry, Division of Industrial Relations prior to the event. Events held pursuant to this Section must additionally comply with all guidance promulgated by NV OSHA.
SECTION 23:	Nail care salons and hair salons licensed by the Nevada Board of Cosmetology and barber shops licensed by the State Barber's Health and Sanitation shall continue to operate under the Phase One conditions set forth in Section 16 of Directive 018.
	Effective 12:01 am on May 29, 2020, estheticians and salons or businesses that provide aesthetic skin services, including without limitation, facials, hair removal, tanning, eyelash services, professional make-up artist services, eyebrow threading, and salt therapy, may reopen to the public pursuant to all protocols and guidelines promulgated by the Nevada State Board of Cosmetology and LEAP, as well as the following provisions: <ol style="list-style-type: none"> 1. Partitions or walls between each chair or workstation are strongly encouraged. 2. Establishments with walls or partitions between stations or chairs may utilize all stations, but under no circumstances may more than one customer or client be seated at any given station or chair. 3. Establishments without walls or partitions between stations must only seat customers or clients at every other station or chair, or arrange stations or chairs so that a minimum of 6 feet of separation between customers is maintained.

SECTION 24:	<p>4. Establishments must not accept customers or clients on a walk-in basis, and estheticians and technicians must not serve or accept appointments for more than one customer at any given time.</p> <p>5. Customers waiting for appointments must wait outside the facility and must practice social distancing by maintaining a minimum of 6 feet of separation between customers not residing in the same household.</p> <p>6. Make-up application services must use disposable tools or sanitize tools between customers.</p> <p>7. Estheticians, technicians, and other employees must wear face coverings while interacting with customers and clients. Customers and clients should wear face coverings to the extent practicable.</p> <p>8. These businesses must follow the Enhanced Sanitation Guidelines for Salons in Response to COVID-19 issued by the Nevada State Board of Cosmetology. The Board is directed to take action, including the closure of salons and businesses, for all actions by licensees not in compliance with these Guidelines for Response to COVID-19.</p> <p>9. With the exception of pool usage pursuant to Section 29 of this Directive, steam rooms, saunas, portable saunas, vapor baths, salt therapy rooms, hot tubs, and other communal facilities shall remain closed to the public.</p>
SECTION 25:	<p>Restaurants and food establishments shall continue to operate under the Phase One conditions set forth in Section 17 of Directive 018, but may additionally utilize tables and serve food within the bar area. Establishments operating under this provision shall abide by the following provisions:</p> <ol style="list-style-type: none"> 1. Establishments shall require employees to wear face coverings, and should encourage customers to wear face coverings to the maximum extent practicable. 2. Areas within establishments that promote congregation, including without limitation, dance floors, arcade areas, billiards, and similar activities shall remain closed to the public. 3. Customers may sit at and be served at bar tops only if bar top seating is limited such that barstools are spaced a minimum of six feet apart from other barstools of other customers not in the same party. 4. Buffets, cafeterias, and self-serve dining facilities shall remain closed until further notice.
SECTION 26:	<p>Section 18 of Directive 018 is hereby amended to provide that effective 12:01 am on May 29, 2020, breweries, distilleries, and wineries not licensed to serve food may open to the public subject to the following provisions:</p> <ol style="list-style-type: none"> 1. Bartenders, waitresses, and other employees must wear face coverings. 2. The maximum occupancy of these establishments during Phase Two shall not exceed 50% of the listed fire code capacity. 3. Tables, booths, or seats must be spaced, or customers seated a minimum of 6 feet apart from other customers not in the same party. Customers sitting at a table or booth must only be served via table service and may not order from the bar top area. 4. Customers may sit at and be served at bar tops only if bar top seating is limited such that barstools are spaced a minimum of six feet apart from other barstools of other customers not in the same party. 5. Customers waiting to dine onsite must wait outside the establishment until they can be seated and must practice social distancing by maintaining a minimum of 6 feet of separation between customers not residing in the same household or in the same party. 6. Breweries, distilleries, and wineries must continue to operate in a manner consistent with worker safety guidelines promulgated by the NV OSHA.
SECTION 27:	<p>The following non-essential businesses shall remain closed during Phase Two of the <i>Nevada United: Roadmap to Recovery</i> plan:</p> <ol style="list-style-type: none"> 1. Nightclubs 2. Day clubs 3. Brothels 4. Adult entertainment facilities
	<p>Effective 12:01 am on May 29, 2020, gyms, fitness facilities, and fitness studios, including but not limited to dance and yoga studios, remain open to the public. Gyms</p>

SECTION 28:	<p>including but not limited to dance and yoga studios, may reopen to the public. Gyms, fitness facilities, and fitness studios that provide services to ten or fewer people at a time may reopen only if they are able to provide services in a manner that does not violate social distancing protocols. Establishments providing services to more than ten patrons at a time shall limit customer access so as not to exceed a maximum occupancy of 50% based on listed fire code capacity. All gyms, fitness facilities, and fitness studios must, without exception, abide by all protocols promulgated by NV OSHA, including sanitation protocols. In addition to the protocols promulgated by NV OSHA and the LEAP, all gyms, fitness facilities, and fitness studios must abide by the following provisions:</p> <ol style="list-style-type: none"> 1. Employees, trainers, and instructors must wear face coverings to the maximum extent practicable, and facilities should encourage patrons to wear face coverings to the maximum extent practicable. 2. Regardless of listed fire code capacity, facilities must limit access to patrons to ensure that occupancy at any given time does not become sufficiently dense so as to violate social distancing protocols. 3. Equipment must be regulated to ensure a minimum of six feet of social distancing between users, and equipment should be moved, designated inoperable, or turned off to ensure that social distancing standards are maintained. 4. Group fitness classes must be limited to ensure at least six feet of separation between participants. 5. Contact sports, including without limitation, martial arts, basketball, wrestling, and boxing may only be offered in a manner where participants do not physically contact other participants, or activities that require participants to perform within six feet of each other. 6. Locker rooms, showers, steam rooms, saunas, portable saunas, vapor baths, salt therapy rooms, hot tubs, and other communal facilities, not to include restrooms, shall remain closed to the public. 7. Pools may open to patrons, but all pool usage is subject to the provisions of Section 29 of this Directive. 8. Child care facilities in gyms must remain closed.
SECTION 29:	<p>Effective 12:01 am on May 29, 2020, all public aquatic venues, may reopen to the public. For the purposes of this Directive, "public aquatic venues" shall include without limitation venues operated and managed by city and county governments; apartment complexes; home owners associations (HOAs); membership clubs including gyms or other privately owned aquatic centers accessible to the public through paid memberships or fees; schools; and hotels, motels, resorts, time-shares, and other guest lodging facilities. Facilities reopening pursuant to this section must abide by the following provisions:</p> <ol style="list-style-type: none"> 1. Capacity at all public aquatic venues shall be limited to a maximum occupancy of 50% based on listed fire code capacity. 2. A minimum of six feet of social distancing between users is required in the pool, the pool deck, and any other areas at the facility. This limitation shall not apply to persons residing in the same household. 3. Hot tubs shall remain closed to the public. 4. Attendees should be encouraged to bring their own towels, equipment, and arrive and minimize the time spent in the facility by arriving and leaving wearing their swimsuit. 5. Public aquatic venues with locker rooms shall limit access to lockers and locker rooms, but should maintain public restrooms and shower facilities and limit the number of users at any one time. 6. Deck layouts and furniture in standing and seating areas must be arranged to maintain social distancing standards of at least six feet of separation between persons. This requirement shall not apply to persons residing in the same household. 7. In addition to the provisions above, aquatic schools offering swim lessons must require instructors to wear face coverings to the maximum extent practicable, and limit access to one parent or guardian per student. 8. Water parks shall control access to the public to ensure that the occupancy does not exceed 50% capacity based on applicable fire code or is sufficiently high that social distancing standards are violated. Water parks shall limit locker room access to restroom usage only. All employees must wear face coverings to the maximum extent practicable. Consumption of water park must be limited to

2020-05-28 - COVID-19 Declaration of Emergency Directive 021 - Phase Two Reopening Plan (Attachments)
 extent practicable. Concession sales at water parks must be limited to prepackaged foods only.

9. In addition to the provisions above, all public aquatic venues are encouraged to abide by all other guidelines promulgated by the LEAP.

Effective 12:01 am on May 29, 2020, museums, art galleries, zoos, and aquariums may reopen to the public. Capacity at these facilities shall be limited to the lesser of 50%

SECTION 30:

based on listed fire code capacity or fifty persons. Interactive exhibits which encourage touching must remain closed and inaccessible to the public. Facilities operating pursuant to this Section must ensure that employees wear face coverings and shall abide by all other guidelines promulgated by NV OSHA.

Effective 12:01 am on May 29, 2020, body art and piercing facilities may reopen to the public, subject to the following provisions:

SECTION 31:

1. Capacity at these facilities shall be limited to a maximum occupancy of 50% based on listed fire code capacity.
2. Partitions or walls between each workstation are strongly encouraged.
3. Establishments with walls or partitions between workstations may utilize all stations, but under no circumstances may more than one customer or client be seated at any given station or chair.
4. Establishments without walls or partitions between stations must ensure that a minimum of 6 feet of separation between customers is maintained.
5. Establishments must not accept customers or clients on a walk-in basis, and artists must not serve or accept appointments for more than one customer at any given time.
6. Customers waiting for appointments must wait outside the facility and must practice social distancing by maintaining a minimum of 6 feet of separation between customers not residing in the same household.
7. Artists, employees, and customers must wear face coverings at all times. Body art and piercings that require mask removal, including without limitation, work around the mouth and nose are prohibited.
8. Access must be limited to customers only; persons accompanying customers must not be inside the facility while services are performed.
9. Artists and facilities operating pursuant to this section must abide by all sanitation and other guidelines promulgated by NV OSHA.

Effective 12:01 am on May 29, 2020, trade schools and technical schools may reopen to the public. Occupancy in classrooms and instructional areas at schools operating

SECTION 32:

pursuant to this Section shall be limited to the lesser of 50% of maximum occupancy of based on listed fire code capacity or fifty persons, and must abide by all guidelines promulgated by NV OSHA. These provisions shall not be construed to limit the reopening plans of Nevada System of Higher Education institutions, schools under county school districts, charter schools, and the University School for Profoundly Gifted Students.

SECTION 33:

Summer camps may continue to operate pursuant to all applicable licensure, regulatory, and statutory requirements and are encouraged to following guidelines issued by the LEAP.

Effective 12:01 am on May 29, 2020, massage therapists, massage establishments, and other professionals licensed by the Nevada State Board of Massage Therapy may reopen to the public subject to the following provisions:

SECTION 34:

1. Massage establishments must follow all NV OSHA and Nevada State Board of Massage Therapy sanitization guidelines.
2. Massage therapists, masseuses, and other employees must wear face coverings at all times. Establishments should strongly encourage customers to wear face coverings to the maximum extent practicable.
3. Massage therapists and massage establishments must not accept customers or clients on a walk-in basis, and must not serve or accept appointments for more than one customer at any given time.
4. Customers waiting for appointments must wait outside the facility and must practice social distancing by maintaining a minimum of 6 feet of separation between customers not residing in the same household.
5. Out-call or in-home service are permitted, subject to all sanitation protocols and face covering requirements provided in this section.

6. Establishments, including day and overnight spas, may reopen for massage

Establishments, including day and overnight spas, may reopen for massage services as allowed in the Phase 2 Directive. Spas or other establishments that open in Phase 2 must close and prohibit use of steam rooms, saunas, portable saunas, vapor baths, salt therapy rooms, hot tubs, and any other communal facilities (except for pools as allowed in the Phase 2 Directive).

7. Persons licensed by the Nevada State Board of Massage Therapy must abide by all guidelines promulgated by the Board. The Board is directed to impose disciplinary measures against licensees who violate this provision.

SECTION 35: Directive 002 and Section 021 of Directive 018 are hereby terminated. The Nevada Gaming Control Board shall promulgate requirements for a phased and incremental resumption of gaming operations, with openings commencing no sooner than 12:01 am June 4, 2020. Failure of a gaming licensee to comply with any such requirements shall be considered injurious to the public health, safety, morals, good order and general welfare of the inhabitants of the State, and constitute a failure to comply with this Directive. The Nevada Gaming Control Board is hereby authorized to enforce this Directive as necessary, including, but without limitation, pursuing disciplinary action to limit, condition, suspend, and/or revoke a license, and/or impose a monetary fine against a licensee in accordance with the Gaming Control Act.

SECTION 36: Cannabis dispensaries shall continue to operate under the Phase One conditions set forth in Section 22 of Directive 018.

SECTION 37: Previous Directives not specifically referenced herein remain in effect for the duration specified in those specific Directives or subsequent extensions, unless specifically terminated or extended renewed by subsequent Directive. Directive 018 and all Directives incorporated by reference within Directive 018 with specific expiration dates are extended until June 30, 2020.

SECTION 38: Pursuant to [NRS 414.060\(3\)\(f\)](#), I hereby delegate to state agencies, and each county of this state, to include the consolidated municipality of Carson City, and local municipalities, the authority to adopt additional protective measures intended to combat the spread of COVID-19, including without limitation, stay at home and face covering orders, so long as those measures are at least as restrictive as those imposed by all Directives promulgated pursuant to the Declaration of Emergency for COVID-19 issued on March 12, 2020. Additional restrictive measures adopted by counties and municipalities may be implemented without additional approval by the State.

SECTION 39: Pursuant to [NRS 414.060\(3\)\(f\)](#), I hereby authorize all local, city, and county governments, and state agencies to enforce this Directive and regulations promulgated thereunder, including but not limited to, suspending licenses, revoking licenses, or issuing penalties for violating business, professional, liquor, tobacco, or gaming licenses issued by the local jurisdiction for actions that jeopardize the health, safety, or welfare of the public; conduct which may injuriously affect the public health, safety, or welfare; conduct that may be detrimental to the public peace, health, or morals; or any other applicable ordinance or requirement for such a license.

SECTION 40: The State of Nevada shall retain all authority vested in the Governor pursuant to NRS Chapter 414.


SECTION 41: This Directive shall remain in effect through June 30, 2020, unless terminated or extended by a subsequent Directive promulgated pursuant to the March 12, 2020 Declaration of Emergency to facilitate the State's response to the COVID-19 pandemic.

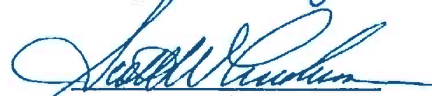
COVID-19 EMERGENCY DIRECTIVE 021 ORDERS



IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Nevada to be affixed at the State Capitol in Carson City, this 28th day of May, in the year two thousand twenty.


Governor of the State of Nevada


Secretary of State


Deputy Secretary of State

Re-Opening Response Plan (7/1/2020)

Executive

[Governor](#)

[Lt. Governor](#)

[Secretary of State](#)

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Legislature

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EXHIBIT 9

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EXHIBIT 9

EXHIBIT 10

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EXHIBIT 10

EXHIBIT 11

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EXHIBIT 11

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EXHIBIT 19

EXHIBIT 20

CONFIDENTIAL FILED UNDER SEAL

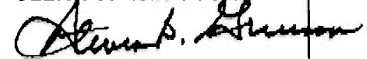
EXHIBIT 20

EXHIBIT 21

EXHIBIT 21

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*Attorneys for Plaintiff Nevada Property
1 LLC d/b/a The Cosmopolitan of Las Vegas*

DISTRICT COURT

CLARK COUNTY, NEVADA

NEVADA PROPERTY 1 LLC d/b/a THE
COSMOPOLITAN OF LAS VEGAS

Plaintiff,

vs.

FACTORY MUTUAL INSURANCE
COMPANY, XL INSURANCE AMERICAN,
INC., WESTPORT INSURANCE
CORPORATION, AMERICAN
GUARANTEE & LIABILITY INSURANCE
COMPANY, and DOES 1-20

Defendants.

Case No.: A-21-831049-B

Dept. No.: 16

**NOTICE OF ENTRY OF ORDER
DENYING DEFENDANTS FACTORY
MUTUAL INSURANCE COMPANY, XL
INSURANCE AMERICA, INC., AND
AMERICAN GUARANTEE &
LIABILITY INSURANCE COMPANY'S
MOTION TO DISMISS AND
DEFENDANT WESTPORT
INSURANCE CORPORATION'S
MOTION TO DISMISS**

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that an ORDER
DENYING DEFENDANTS FACTORY MUTUAL INSURANCE COMPANY, XL
INSURANCE AMERICA, INC., AND AMERICAN GUARANTEE & LIABILITY
INSURANCE COMPANY'S MOTION TO DISMISS AND DEFENDANT WESTPORT

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1 **INSURANCE CORPORATION'S MOTION TO DISMISS** was entered in the above entitled
2 matter on September 1, 2021, a copy of which is attached hereto.

3 Dated this 1st day of September, 2021.

4 KEMP JONES, LLP

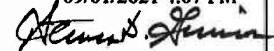
5
6 /s/ Don Springmeyer
Don Springmeyer, Esq. (#1021)
Michael J. Gayan, Esq. (#11135)
3800 Howard Hughes Parkway, 17th Floor
Las Vegas, Nevada 89169

8
9 *Attorneys for Plaintiff Nevada Property*
10 *1 LLC d/b/a The Cosmopolitan of Las Vegas*

11
12 **CERTIFICATE OF SERVICE**

13
14 I hereby certify that on the 1st day of September, 2021, I served a true and correct copy
15 of the foregoing **NOTICE OF ENTRY OF ORDER DENYING DEFENDANTS**
16 **FACTORY MUTUAL INSURANCE COMPANY, XL INSURANCE AMERICA, INC.,**
17 **AND AMERICAN GUARANTEE & LIABILITY INSURANCE COMPANY'S MOTION**
18 **TO DISMISS AND DEFENDANT WESTPORT INSURANCE CORPORATION'S**
19 **MOTION TO DISMISS** via the Court's electronic filing system to all parties on the e-service
20 list.

21
22 /s/ Ali Augustine
An Employee of Kemp Jones, LLP
23
24
25
26
27
28


CLERK OF THE COURT

1 **ORDR**
2 **DUANE MORRIS LLP**
3 **DOMINICA C. ANDERSON (SBN 2988)**
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7 **DISTRICT COURT**
8
9 **CLARK COUNTY, NEVADA**

10 **NEVADA PROPERTY 1 LLC d/b/a THE**
11 **COSMOPOLITAN OF LAS VEGAS,**

12 **Plaintiff,**

13 **vs.**

14 **FACTORY MUTUAL INSURANCE**
15 **COMPANY, XL INSURANCE AMERICA,**
16 **INC., WESTPORT INSURANCE**
17 **CORPORATION, AMERICAN**
18 **GUARANTEE & LIABILITY INSURANCE**
19 **COMPANY, and DOES 1-20**

20 **Defendants.**

Case No.: A-21-831049-B

Dept. No.: XVI

ORDER DENYING DEFENDANTS
FACTORY MUTUAL INSURANCE
COMPANY, XL INSURANCE
AMERICA, INC., AND AMERICAN
GUARANTEE & LIABILITY
INSURANCE COMPANY'S MOTION TO
DISMISS AND DEFENDANT
WESTPORT INSURANCE
CORPORATION'S MOTION TO
DISMISS

21 Nevada Property 1 LLC d/b/a The Cosmopolitan of Las Vegas ("The Cosmopolitan") sued
22 Factory Mutual Insurance Company, XL Insurance America, Inc., American Guarantee & Liability
23 Insurance Company, and Westport Insurance Corporation (collectively "the Insurers") under
24 insurance contracts individually issued by each of the Insurers participating in the 2019-20
25 Cosmopolitan property insurance program (the "Policies"). The Complaint alleges causes of action
26 for: (1) Breach of Contract; (2) Declaratory Relief; (3) Violation of the Nevada Unfair Claims
27 Practices Act, N.R.S. 686A.310; and (4) Breach of the Covenant of Good Faith and Fair Dealing.

28 Factory Mutual, XL, and American Guarantee jointly moved to dismiss the Complaint, and
Westport filed a separate motion to dismiss and joined the motion filed by the other Insurers. The
Cosmopolitan filed a joint opposition to the respective dismissal motions, and the Insurers replied.
The Court held oral argument on June 16, 2021.

1 After review and consideration of the points and authorities on file herein and oral argument
2 of counsel, the Court issued a Minute Order denying the Insurers' Motions to Dismiss. Pursuant to
3 that Minute Order, the Court invited the parties to submit a detailed "Order, Findings of Facts, and
4 Conclusions of Law."

5 **STANDARD OF REVIEW**

6 On a motion to dismiss for the failure to state a claim for relief, this Court construes the
7 pleadings liberally and draws every fair intendment in favor of Plaintiff. See, Brown v. Keller, 97
8 Nev. 582, 636 P.2d 874 (1981). When tested by NRCP 12(b)(5) motion to dismiss for failure to
9 state a claim upon which relief can be granted, the factual allegations of the complaint must be
10 accepted as true. See, Hynds Plumbing & Heating Co. v. Clark County School District, 94 Nev.
11 776, 587 P.2d 1331 (1978). Thus, a trial court may dismiss a complaint only if it appears to a
12 certainty that the Plaintiff can prove no set of facts which would entitle him relief. See, Bergman v.
13 Boyce, 109 Nev. 670, 856 P.2d 560 (1993).

14 **FINDINGS OF FACT**

15 Plaintiff owns and operates The Cosmopolitan, a 6,000,000 square foot casino and resort
16 located in Las Vegas. (Complaint ("Compl."), ¶¶ 1, 16, 24.) In general, Plaintiff filed this lawsuit
17 seeking coverage under its property insurance policies for alleged economic losses sustained as the
18 result of closures designed to stem the spread of COVID-19. Plaintiff alleges that, as a result of the
19 COVID-19 pandemic and the SARS-CoV-2 virus, The Cosmopolitan could "no longer be used for
20 its intended purpose during the closure period and lost both its physical and economic
21 functionality." (*Id.*, ¶ 7.) Plaintiff further alleges that COVID-19 and the SARS-CoV-2 virus in the
22 air and on surfaces made The Cosmopolitan unsafe, dangerous and unusable. (*Id.*, ¶¶ 4, 5 and 39.)

23 Each of the insurance policies issued by the Insurers generally "cover[] property, as
24 described in this Policy, against ALL RISKS OF PHYSICAL LOSS OR DAMAGE, *except as*
25 *hereinafter excluded ...*" (Compl., Exh. A at COMP00002) (italics added). In seeking insurance
26 coverage from the Insurers, Plaintiff generally alleges that COVID-19 and the SARS-CoV-2 virus
27 cause "physical loss or damage" to The Cosmopolitan. (Compl., ¶ 4 ["SARS-CoV-2 virions and
28 COVID-19 caused either physical loss of or damage to The Cosmopolitan (or both) by altering the

1 physical condition of The Cosmopolitan so that it was no longer safe or fit for occupancy or use.”.])

2 This Court is well aware that, as the instant action develops during discovery, there could be
3 an issue, as to the impact of SARS-CoV-2 and COVID-19 on buildings and interior surfaces and
4 whether such exposure amounts to an alteration of the property’s conditions resulting in direct
5 physical loss or physical damage. Consequently rendering properties such as hotels, its casinos and
6 restaurants unsafe and no longer habitable for normal use and thereby triggering coverage under the
7 Policies.

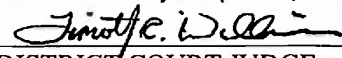
8 However, applying Nevada’s 12(b)(5) standard, Plaintiff has sufficiently pled a physical
9 loss or damage. For example, at paragraph 38 of the complaint, Plaintiff alleged, “The scientific
10 community has confirmed that SARS-CoV-2 virions and COVID-19 alter the conditions of
11 properties and buildings such that the premises are physically damages and no longer safe and
12 habitable for normal use.”

13 **CONCLUSIONS OF LAW**

14 It must be pointed out, whether Plaintiff’s factual assertions are true and will withstand
15 scrutiny under the assistance requirement pursuant to Hallmark v. Eldridge, 124 Nev. 492 (2008) is
16 reserved for another day. Notwithstanding, under the Nevada pleading standards pursuant to NRC
17 12(b)(5) this Court shall construe the pleadings liberally and accept the factual allegations as true.

18 Applying Nevada’s 12(b)(5) standard and accepting Plaintiff’s factual allegation as true, this
19 Court holds that Plaintiff has pled sufficient allegations to withstand the Insurers’ Motions to
20 Dismiss. Therefore, based on the foregoing, Defendants Factory Mutual Insurance Company, XL
21 Insurance America, Inc., and American Guarantee & Liability Insurance Company’s, Motion to
22 Dismiss as well as Defendant Westport Insurance Corporation’s Motion to Dismiss pursuant to
23 NRC 12(b)(5) shall both be **DENIED**. Defendants shall file their answers within fourteen (14)
24 days of entry of this order.

25 Dated this 1st day of September, 2021

26 
DISTRICT COURT JUDGE

MH

27 FF8 C4F FFE4 F39E
28 Timothy C. Williams
District Court Judge

1 Respectfully submitted,

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3 /s/ Dominica Anderson
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1 CSERV

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA

4
5
6 Nevada Property 1 LLC,
7 Plaintiff(s)

CASE NO: A-21-831049-B

8 vs.

DEPT. NO. Department 16

9 Factory Mutual Insurance
10 Company, Defendant(s)

11 **AUTOMATED CERTIFICATE OF SERVICE**

12 This automated certificate of service was generated by the Eighth Judicial District
13 Court. The foregoing Order was served via the court's electronic eFile system to all
14 recipients registered for e-Service on the above entitled case as listed below:

15 Service Date: 9/1/2021

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EXHIBIT 22

EXHIBIT 22

FILED
Superior Court of California
County of Los Angeles

MAR 18 2021

Sherri A. Carter, Executive Officer/Clerk
By Felipe Rojas Deputy

Ruling

Judge Theresa M. Traber, Department 47

HEARING DATE: **March 18, 2021**

TRIAL DATE: April 25, 2022

CASE: **Boardwalk Ventures CA, LLC v. Century-National Insurance Company, et al.**

CASE NO.: **20STCV27359**

MOTION FOR JUDGMENT ON THE PLEADINGS

MOVING PARTY: Defendant Century-National Insurance Company

RESPONDING PARTY(S): Plaintiff Boardwalk Ventures CA, LLC

CASE HISTORY:

- 07/21/20: Complaint filed.

STATEMENT OF MATERIAL FACTS AND/OR PROCEEDINGS:

Plaintiff operates a restaurant in Hermosa Beach and is insured by a commercial policy issued by Defendant. Plaintiff alleges that it has made a covered claim for losses due to the "necessary suspension" of its operations due to Covid-19 and that Defendant has refused to pay the claim.

Defendant moves for judgment on the pleadings.

RULING:

Defendant's motion for judgment on the pleadings is DENIED.

DISCUSSION:

Motion for Judgment on the Pleadings

Defendant invokes CCP § 438 as a basis for its motion, and therefore the requirements for a statutory motion for judgment on the pleadings apply.

Meet and Confer

The Declaration of Attorney Karen E. Adelman demonstrates that Defendant engaged in the meet-and-confer process required for a statutory motion for judgment on the pleadings. (CCP § 439.)

Time to File a Motion for Judgment on the Pleadings

When a defendant files a motion for judgment on the pleadings, the following timing applies:

The motion provided for in this section may be made only after one of the following conditions has occurred:

(2) If the moving party is a defendant, and the defendant has already filed his or her answer to the complaint and the time for the defendant to demur to the complaint has expired.

(CCP § 438(f)(2).)

Here, Defendant filed its answer to the complaint on August 24, 2020. The time to demur to the complaint, which was filed on July 21, 2020, has also expired. Thus, this motion is timely.

Defendant's Request for Judicial Notice

Defendant requests that the Court take judicial notice of (1) Exhibit 1 to Plaintiff's complaint in this action; (2) Executive Order N-33-20 issued by California Governor Gavin Newsom on March 19, 2020; and (3) Public Order Under City of Los Angeles Emergency Authority issued by Los Angeles Mayor Eric Garcetti on March 19, 2020.

Request No. 1 is GRANTED per Evidence Code § 452(d) (court records). Request Nos. 2 and 3 are GRANTED per Evidence Code § 452(c) (official act of executive department).

Plaintiff's Request for Judicial Notice

Plaintiff requests that the Court take judicial notice of (1) an "ISO" (Insurance Services Office, Inc.) circular dated July 6, 2006 on "New Endorsements Filed to Address Exclusion of Loss Due to Virus or Bacteria"; and (2) a minute order in an unrelated Orange County case.

Request No. 1 is DENIED. Plaintiff has offered no explanation of any basis to take judicial notice of this document.

Request No. 2 is also DENIED. Requesting judicial notice of an unpublished opinion of a California court "circumvents the rule" that unpublished California court

opinions are not to be cited or relied upon by the Court or a party, with certain recently added exceptions not applicable here. (*People v. Webster* (1991) 54 Cal.3d 411, 428 n.4 [citing former appellate rule CRC 977(a), (b), now codified as CRC 8.1115].) Although Plaintiff is correct that this Orange County Superior Court decision does not strictly fall within the purview of CRC 8.1115, as it is not an appellate opinion or an opinion of the appellate division, there is nevertheless no justifiable reason to take judicial notice of this opinion, for the reasons discussed in connection with Plaintiff's Supplemental Request for Judicial Notice.

Plaintiff's Supplemental Opposition and Supplemental Request for Judicial Notice

Without seeking leave to do so, Plaintiff filed a supplemental opposition and a supplemental request for judicial notice, less than nine days before the hearing date, and after Plaintiff already filed its opposition. These papers have not been considered.

Moreover, even if the Court considered this supplemental opposition – which is merely a vehicle to get an unpublished federal district court order in front of the Court – and the accompanying supplemental request for judicial notice of that unpublished order, it would be DENIED. The fact that an unpublished federal district court order supports Plaintiff's reasoning is not relevant to this Court's decision, and there is no reason to take judicial notice of irrelevant matter. (*Gbur v. Cohen* (1979) 93 Cal.App.3d 296, 301 [“[J]udicial notice . . . is always confined to those matters which are relevant to the issue at hand.”].) If Plaintiff's reasoning is sound and consistent with binding precedent, an unpublished federal district court decision that is also consistent with binding precedent adds little to the persuasiveness of Plaintiff's reasoning. Likewise, if Plaintiff's reasoning is unsound and inconsistent with binding precedent, no unpublished federal decision will make it more sound. (The same is true, of course, of the numerous unpublished federal district court decisions relied upon by Defendant. Those cases, unlike California cases, may properly be cited and relied upon for their persuasive value in this Court, but they have little persuasive value, if any, beyond their reliance on – and correct interpretation of – actual binding California precedent.)

Analysis

The showing required for a judgment on the pleadings to be granted is as follows:

(1) The motion provided for in this section may only be made on one of the following grounds:

(B) If the moving party is a defendant, that either of the following conditions exist:

(i) The court has no jurisdiction of the subject of the cause of action alleged in the complaint.

(ii) The complaint does not state facts sufficient to constitute a cause of action against that defendant.

(CCP § 438(c)(1)(B).)

Plaintiff alleges two causes of action against this Defendant: (1) declaratory relief; and (2) appraisal. Defendant argues that both of these causes of action fail to state facts sufficient to constitute a cause of action against it. (CCP § 438(c)(1)(B)(ii).

The rules applicable to demurrers also apply to motions for judgment on the pleadings. (*County of Orange v. Association of Orange County Deputy Sheriffs* (2011) 192 Cal.App.4th 21, 32.)

A motion for judgment on the pleadings is properly granted when the “complaint does not state facts sufficient to constitute a cause of action against that defendant.” (Code Civ. Proc., § 438, subd. (c)(1)(B)(ii).) The grounds for the motion must appear on the face of the challenged pleading or from matters that may be judicially noticed. (Code Civ. Proc., § 438, subd. (d).) The trial court must accept as true all material facts properly pleaded, but does not consider conclusions of law or fact, opinions, speculation, or allegations contrary to law or facts that are judicially noticed.

(*Stevenson Real Estate Services, Inc. v. CB Richard Ellis Real Estate Services, Inc.* (2006) 138 Cal.App.4th 1215, 1219-1220.)

Plaintiff's Coverage Under Defendant's Policy

In the complaint, Plaintiff seeks a declaration that it is entitled to coverage under Defendant's policy. (Complaint ¶ 41.) If it prevails in seeking this declaration, Plaintiff then seeks an order compelling an appraisal of its losses. (¶ 45.)

Defendant argues that, as a matter of law, Plaintiff cannot allege the “direct physical loss of or damage to property” required for coverage under the policy.

Plaintiff alleges such physical losses or damage based on COVID-19, as follows:

23. COVID-19 is a disease caused by the SARS-CoV-2 Virus (“Virus”). The Virus can be present outside the human body in viral fluid particles, and can be transmitted and active on inert physical surfaces for a period of time. The Virus can and does remain capable of being transmitted and active on floors, walls, furniture, desks, tables, chairs, countertops, computer keyboards, touchscreens, cardboard packages, food items, surgical and medical equipment, faucets, refrigerators, freezers, and other items of property for a period of time.

24. The Virus can be transmitted by way of human contact with surfaces and items of physical property on which the Virus particles are physically present. It can further be transmitted by human to human contact and interaction, and through airborne particles emitted into the air.

25. Specifically, the Virus can be transmitted through airborne particles emitted into the air at the Subject Property, and can be transmitted from human to human contact or the lack of physical distancing at the Subject Property.

26. The presence of the Virus particles renders items of physical property unsafe, and impairs its value, usefulness and normal function.

27. The presence of any of the Virus particles causes direct physical harm to property, direct physical loss to property, and direct physical damage to property. As such, the presence of any of the virus particles renders any premises unsafe, including the Subject Property, thereby rendering [sic] the property's value, usefulness and/or normal function.

28. The presence of people infected with the Virus particles renders physical property in their vicinity unsafe and unusable, resulting in direct physical loss to that property, including the Subject Property.

Defendant argues that these allegations are insufficient as a matter of law. What is clear from both parties' briefs (and Plaintiff's requests for judicial notice), however, is that no California court has issued any opinion that is binding on this Court interpreting the policy language at issue in the context of losses due to COVID-19. Defendant, for example, cites a litany of unpublished federal district court cases in support of the proposition that courts applying California law have "uniformly dismissed lawsuits like the instant action, holding that neither the virus that causes COVID-19 nor the government's response to the pandemic causes a 'direct physical loss of or damage to property' within the scope of a policy's Business Income or Extra Expense coverage." (Motion, at p. 9.) These courts' interpretations of binding California case law as applied to the policy language at issue, however, is not binding on this Court.

In the procedural context of a judgment on the pleadings, as in the context of a demurrer, Plaintiff's allegations must be accepted as true, and the grounds for the motion for judgment on the pleadings must appear on the face of the complaint or matters that are judicially noticeable. (CCP § 438(d); *Hightower v. Farmers Ins. Exchange* (1995) 38 Cal.App.4th 853, 858.) In the insurance context, this means that the insurer "must establish conclusively that [the policy] language unambiguously negates beyond reasonable controversy the construction alleged in the body of the complaint." (*George v. Automobile Club of Southern California* (2011) 201 Cal.App.4th 1112, 1127.)

Here, Defendant has not shown that its interpretation unambiguously negates Plaintiff's alleged construction of the policy. As noted above, Plaintiff alleges physical losses and damage to the property based on the ability of the virus to be "transmitted and active on floors, walls, furniture, desks, tables, chairs, countertops, computer keyboards, touchscreens, cardboard packages, food items, . . . faucets, refrigerators, freezers, and other items of property for a period of time." (§ 23; *see also* §§ 26-28 [discussed above].) Defendant has cited no binding authority that has determined, as a matter of law, that these allegations are insufficient. To determine that these allegations were insufficient, the Court would have to go beyond the four corners of the complaint and matters judicially noticeable to conclude that the physical losses alleged in the complaint do not qualify as losses under the policy. This cannot be accomplished without disregarding the allegations that the Court must accept as true at this stage.

In terms of the authority that is binding on this Court, Defendant's primarily argument is based on the general principle that the phrase "direct physical loss of or damage to property" requires a "distinct, demonstrable, physical alteration of the property." (*MRI Healthcare Ctr. of Glendale, Inc. v. State Farm Gen. Ins. Co.* (2010) 187 Cal.App.4th 766, 778-779.) The application of this principle to the novel question of "physical loss" due to the virus that causes COVID-19, however, is not as straightforward as Defendant suggests. For example, in *MRI Healthcare*, the court reasoned that the MRI machine at issue failed to satisfactorily "ramp up" following a rainstorm due to the "inherent nature of the machine itself rather than actual physical 'damage.'" (*Id.* at 780.) The court also reasoned that, "[f]or there to be a 'loss' within the meaning of the policy, some *external force* must have acted upon the insured property to cause a *physical change* in the condition of the property . . ." (*Ibid.*, emphasis in original.) The MRI machine at issue merely required a "different combination" of wires to operate, and therefore the insured had not shown any physical loss to the machine. (*Ibid.*) The application of this reasoning to Plaintiff's allegations is not clear cut. Nor is the application straightforward when considering a case in which a database did not suffer "physical loss" because a database – unlike a restaurant location – cannot "be said to have a material existence, be formed out of tangible matter, or be perceptible to the sense of touch." (*Ward General Ins. Services, Inc. v. Employers Fire Ins. Co.* (2003) 114 Cal.App.4th 548, 556.) Likewise, the insured in *Doyle v. Fireman's Fund Ins. Co.* (2018) 21 Cal.App.5th 33 did not allege any harm whatsoever to the property at issue (counterfeit wine), in contrast to the Plaintiff's allegations of loss here.

Ultimately, Defendant's litany of cases has not convinced the Court that, when accepting Plaintiff's allegations as true and giving them the necessary liberal construction, Plaintiff has failed to allege valid causes of action for declaratory relief and appraisal.

Defendant also argues that other provisions of the policy, such as the civil authority provision, do not provide coverage as a matter of law. (Motion, at p. 14.) However, to the extent that Plaintiff's causes of action are based on multiple policy provisions, they cannot be challenged by way of demurrer, or a motion for judgment on the pleadings, if any portion of these causes of action states a valid claim. (*Adelman v.*

Associated Int'l Ins. Co. (2001) 90 Cal.App.4th 352, 359.) As discussed above, the Court has determined that Plaintiff's allegations are sufficient to state a cause of action for declaratory relief and the accompanying cause of action for appraisal.

Accordingly, the motion for judgment on the pleadings is DENIED.

Moving party to give notice, unless waived.

IT IS SO ORDERED.

Dated: March 18, 2021



Theresa M. Traber
Judge of the Superior Court

Any party may submit on the tentative ruling by contacting the courtroom via email at Smedept47@lancourt.org by no later than 4:00 p.m. the day before the hearing. All interested parties must be copied on the email. It should be noted that if you submit on a tentative ruling the court will still conduct a hearing if any party appears. By submitting on the tentative you have, in essence, waived your right to be present at the hearing, and you should be aware that the court may not adopt the tentative, and may issue an order which modifies the tentative ruling in whole or in part.

EXHIBIT 23

EXHIBIT 23

OPP000555

PA 0729

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

JDS Construction Group, LLC, and
9 Dekalb Fee Owner LLC,

Plaintiffs,

v.

Continental Casualty Company,

Defendant.

Case No. 2020 CH 5678

Calendar 2

ORDER

RAYMOND W. MITCHELL, Circuit Judge.

Defendant Continental Casualty Company moves for reconsideration of an August 12, 2021 decision denying Defendant's motion to dismiss Plaintiffs JDS Construction Group, LLC and 9 Dekalb Fee Owner LLC's first amended complaint pursuant to section 2-615 of the Illinois Code of Civil Procedure.

The August 12, 2021 Order denied Defendant's motion to dismiss Plaintiffs' complaint, because that complaint explicitly alleges "physical loss or damage" to the insured property based on the presence of SARS CoV-2, the virus that causes COVID-19. As an initial matter, Defendant devoted a significant portion of its motion to reconsider to argue that I had mistakenly applied Illinois law and that the August Order somehow "created a conflict with New York law." However, at the hearing on the reconsideration motion, Defendant's counsel conceded that the legal standard articulated in the August 12, 2021 Order was, in fact, the correct one. New York and Illinois law are in accord, and courts in both states have adopted identical interpretations of the policy-triggering language "direct physical loss or damage." *See* 8/12/21 Order at 3.

Defendant has cited numerous decisions from New York and Illinois, asserting that courts in both jurisdictions have uniformly — or, at least, overwhelmingly — concluded that the presence of the virus does not trigger coverage under a policy requiring "direct physical loss of or damage to property." In fact, Defendant has cited to COVID coverage cases in which I too have dismissed complaints. *See, e.g., MTDB Corp. d/b/a Striker Lanes v. American Automobile Ins. Co.*, No. 20 CH 5257 (Ill. Cir. Ct. Cook Cnty. July 16, 2021); *Royale Bezjian Bros.*,

Inc. v. Pekin Ins. Co., No. 20 CH 4954 (Ill. Cir. Ct. Cook Cnty. July 16, 2021). Of course, trial court decisions, particularly those untested on appeal, have no precedential value. But more importantly, whatever inference can be drawn from any particular dismissal necessarily depends on the allegations in the complaint and the arguments advanced by counsel in that specific case. In the *MTDB*, for example, the complaint merely alleged a probability of the presence of the virus, and did not contain specific, detailed allegations that the virus in any way altered the subject property. The same is true for the complaint in *Bezjian*.

What is remarkable about Defendant's reconsideration motion is that it is bereft of even a single citation to the Plaintiffs' complaint. The complaint alleges not only the presence of the virus on the insured premises, but also how the virus droplets were conveyed to solid surfaces and into the air and HVAC system, causing structural damage and alteration to the property:

46. First, respiratory droplets (*i.e.*, droplets larger than 5-10 μm) expelled from infected individuals land on, attach, and adhere to surfaces and objects. In doing so, they structurally change the property and its surface by becoming a part of that surface. This structural alteration makes physical contact with those previously safe, inert surfaces (*e.g.*, fixtures, handrails, furniture) unsafe.

* * * *

52. When the coronavirus and COVID-19 attach to and adhere on surfaces and materials, they become a part of those surfaces and materials, converting the surfaces and materials to fomites. This represents a physical change in the affected surface or material, which constitutes physical loss and damage.
53. Merely cleaning surfaces may reduce but does not altogether eliminate the risk of transmission amongst people. There may be surfaces with residual infectious virus, and aerosolized infectious particles. In other words, disinfection is temporary at best; however, a space may remain contaminated if an aerosol is present, and immediately become contaminated thereafter if another infected person is present in the area. This contamination will provide a constant modality for infection to people.

* * * *

99. When individuals carrying the coronavirus breathe, talk, cough, or sneeze, they expel aerosolized droplet nuclei that remain in the air and, like dangerous fumes, make the premises unsafe and affirmatively dangerous. In addition, the coronavirus physically alters the air. Air inside buildings that was previously safe to breathe but can no longer safely be breathed due to coronavirus and COVID-19, has undergone a physical alteration.
100. Coronavirus droplets have been conveyed from infected persons (whether symptomatic, pre-symptomatic, or asymptomatic) to solid surfaces, including but not limited to furniture, doors, floors, bathroom facilities, equipment, and supplies, and into the air and HVAC system at Plaintiffs' properties, causing damage and alteration to physical property and ambient air at the premises. Aerosolized coronavirus has entered the air in Plaintiffs' properties.
101. The presence of the coronavirus and COVID-19, including but not limited to coronavirus droplets or nuclei on solid surfaces and in the air at insured property, has caused and will continue to cause direct physical damage to physical property and ambient air at the premises. Coronavirus, a physical substance, has attached and adhered to Plaintiff's properties, and by doing so, altered that property. Such presence has also directly resulted in loss of functionality of that property.

Compl. ¶¶ 46, 52-53, 99-101. A complaint need only set forth the ultimate facts to be proved. *City of Chicago v. Beretta U.S.A. Corp.*, 213 Ill. 2d 351, 369 (2004). Most importantly, a court must take as true and construe the allegations in the light most favorable to the plaintiff and draw all reasonable inferences in the plaintiff's favor. *Young v. Bryco Arms*, 213 Ill. 2d 433, 441 (2004).

Defendant's counsel argues that it does not matter what Plaintiffs alleged in their complaint because a virus like SARS-CoV-2 can *never* trigger coverage since it can just be wiped off. How do I know that? Counsel suggests that it is a "fact" subject to judicial notice, but at least in Illinois, only commonly known facts beyond reasonable dispute are subject to judicial notice. Ill. R. Evid. 201(b). Hard to imagine that emerging "facts" about a *novel* coronavirus would satisfy that standard. There is far from universal agreement on how the virus attaches to

surfaces and the effectiveness of efforts to remove the virus.¹ More importantly, it is procedurally improper to introduce facts from outside the complaint in a motion to dismiss brought under section 2-615. *See, e.g., Seith v. Chi. Sun-Times, Inc.*, 371 Ill. App. 3d 124, 133 (1st Dist. 2007) (section 2-615 is strictly limited to the four corners of the complaint). Indeed, the complaint alleges that “[m]erely cleaning surfaces may reduce but does not altogether eliminate the risk of transmission” and that “disinfection is temporary at best.” Compl. ¶ 53. On a motion to dismiss, that allegation must be accepted as true. Introducing a “fact” that contradicts an allegation of a complaint is never a basis for dismissal. Resolving such a fact conflict is what trials are for.

There seems to be some suggestion that the August 12, 2021 Order must be wrong because so many other courts have reached a contrary conclusion. Economists refer to this as an appeal to “herding behavior”—a process by which group-think replaces individual decision-making. As set out above, I do not quarrel with the contrary decisions (my own included), but those decisions are not helpful in determining whether the facts alleged in this complaint satisfy the legal standard, a standard which Defendant now concedes was correctly articulated. Judges are not sheep, and I do not decide a case by counting noses. Further, the “herd” can be wrong. *See, e.g., A. Daughety et al., “Stampede to Judgment: Persuasive Influence and Herding Behavior by Courts,” 1 American Law and Economics Review 158 (Fall 1999) (analyzing a cascade of decisions among various circuits of United States Court of Appeals on a single point of law later invalidated by the United States Supreme Court).* As I have said, I always welcome motions to reconsider because I approach the judicial role with humility and a recognition of my own limitations. After full briefing and argument on this motion to reconsider, I am more convinced now than ever as to the correctness of my original decision. As a consequence, the August 12, 2021 Order stands.

¹ *See, e.g., N. Cimolai et al., “Environmental and Decontamination Issues for Human Coronaviruses and Their Potential Surrogates,” Journal of Medical Virology 2020; 92: 2498-2510; M. Aydogdu et al., “Surface Interactions and Viability of Coronavirus,” Journal of the Royal Society Interface 18: 20200798.*

III.

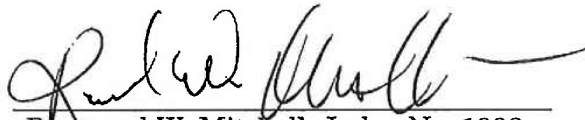
It is hereby ORDERED:

1. Defendant Continental Casualty Company's motion to reconsider the August 12, 2021 Order is DENIED.
2. The case is continued for a case management conference on November 17, 2021 at 10:30 a.m. for the purpose of setting a comprehensive schedule including a dispositive motion cut-off date and trial date.

Zoom Meeting ID: 940 2104 4687

Password: 296476

ENTERED,



Raymond W. Mitchell, Judge No. 1992

Judge Raymond W. Mitchell

OCT 25 2021

IRIS Y. MARTINEZ
Circuit Court - 1992

EXHIBIT 24

CONFIDENTIAL FILED UNDER SEAL

EXHIBIT 24

EXHIBIT 25

CONFIDENTIAL FILED UNDER SEAL

EXHIBIT 25

EXHIBIT 26

CONFIDENTIAL FILED UNDER SEAL

EXHIBIT 26

EXHIBIT 27

CONFIDENTIAL FILED UNDER SEAL

EXHIBIT 27