

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

Quarles & Brady LLP  
One Renaissance Square  
Two North Central Avenue  
Phoenix, Arizona 85004  
TELEPHONE (602) 229-5200

Amy Levine Heiserman (#032486)  
[amy.heiserman@quarles.com](mailto:amy.heiserman@quarles.com)  
Brandon Gutschow (*pro hac vice forthcoming*)  
[brandon.gutschow@quarles.com](mailto:brandon.gutschow@quarles.com)  
Joseph Poehlmann (*pro hac vice forthcoming*)  
[Joseph.poehlmann@quarles.com](mailto:Joseph.poehlmann@quarles.com)

Office of the Attorney General  
Pascua Yaqui Tribe  
7777 S. Camino Huivisim, Bldg C  
Tucson, Arizona 85757  
Telephone 520-883-5106  
Alfred Urbina, Attorney General (#026389)  
[alfred.urbina@pascuayaqui-nsn.gov](mailto:alfred.urbina@pascuayaqui-nsn.gov)

Attorneys for Plaintiffs  
Pascua Yaqui Tribe and Pascua Yaqui Gaming  
Enterprises dba Casino Del Sol, Casino of the Sun,  
and Del Sol Marketplace

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF PIMA

- |   |  |
|---|--|
| <p>(1) Pascua Yaqui Tribe of Arizona, a Federally Recognized Indian Tribe; and</p> <p>(2) The Gaming Enterprise Division of the Pascua Yaqui Tribe dba Pascua Yaqui Gaming Enterprises, Casino Del Sol, Casino of the Sun, and Del Sol Marketplace,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">v.</p> <p>(1) Lexington Insurance Company;</p> <p>(2) Underwriters at Lloyd's - Syndicates ASC1414, XLC 2003, TAL 1183, MSP 318, ATL1861, KLN 510, AGR 3268, subscribing to Policy Number PJ193647;</p> <p>(3) Underwriters at Lloyd's - Syndicate: CNP 4444, subscribing to Policy Number PJ1900131;</p> <p>(4) Underwriters at Lloyd's - Aspen Specialty Insurance Company, subscribing to Policy Number PX006CP19;</p> | <p>NO. _____</p> <p><b>COMPLAINT FOR DECLARATORY JUDGMENT, BREACH OF CONTRACT, AND BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING</b></p> <p><b>JURY DEMAND</b></p> |
|---|--|

- 1 (5) Homeland Insurance Company of NY (One
- 2 Beacon);
- 3 (6) Hallmark Specialty Insurance Company;
- 4 (7) Underwriters at Lloyd's - Syndicates KLN
- 5 0510, ATL 1861, ASC 1414, QBE 1886,
- 6 MSP 0318, APL 1969, CHN 2015, XLC
- 7 2003, subscribing to Policy Number
- 8 PJ1933021;
- 9 (8) Underwriters at Lloyd's - Syndicate BRT
- 10 2987, subscribing to Policy Number PD-
- 11 10363-05;
- 12 (9) Endurance Worldwide Insurance Ltd t/as
- 13 Sompo International;
- 14 (10) Underwriters at Lloyd's – Syndicates KLN
- 15 0510, TMK 1880, BRT 2987, BRT 2988,
- 16 CNP 4444, ATL 1861, Neon Worldwide
- 17 Property Consortium, AUW 0609, TAL
- 18 1183, AUL 1274, subscribing to Policy
- 19 Number PJ1900067;
- 20 (11) Arch Specialty Insurance Company;
- 21 (12) Evanston Insurance Company;
- 22 (13) Allied World National Assurance Company;
- 23 (14) Liberty Mutual Fire Insurance Company;
- 24 (15) Landmark American Insurance Company;
- 25 (16) Specialty Risk Underwriters, LLC;
- 26 (17) XL Insurance America, Inc.,

Defendants.

22 Plaintiffs Pascua Yaqui Tribe (the “Tribe”) and the Gaming Enterprise Division of the  
23 Pascua Yaqui Tribe dba Pascua Yaqui Gaming Enterprises, Casino Del Sol, Casino of the  
24 Sun, and Del Sol Marketplace (the “Enterprise”) (together the “Plaintiffs”), through their  
25 undersigned attorneys, for their Complaint against the Defendants named below (the  
26 “Defendants” or the “Insurers”), allege as follows.

### 27 **I. NATURE OF THE ACTION**

28 1. Plaintiff Tribe is a federally recognized Indian Tribe located in Tucson, Arizona,

1 composed of approximately 22,000 enrolled members. The reservation consists of  
2 approximately 2,500 acres of land held in trust by the United States government, along with  
3 land held by the Tribe in fee. Within certain restrictions imposed by the United States  
4 government, the Tribe has jurisdiction over activities occurring on the reservation and has  
5 the right to economic and other benefits resulting from use of the reservation property and  
6 resources. Plaintiff Tribe also has several traditional communities in Pima, Pinal, and  
7 Maricopa Counties in Arizona, and has government offices located in the Town of  
8 Guadalupe in Maricopa County (together, the “Tribe’s Communities”).

9 2. Under the Indian Gaming Regulatory Act of 1988, federally recognized tribes are  
10 permitted to conduct Class III gaming operations on tribal land, subject to negotiation of a  
11 gaming compact with the affected state. These gaming operations provide invaluable  
12 revenue for the maintenance and operation of tribal institutions and governmental activities.  
13 The Tribe and the State of Arizona entered into the Gaming Compact of 1994 and later  
14 amended that compact on subsequent occasions. The Gaming Compact has been approved  
15 by the United States Department of the Interior and has permitted the Tribe to operate Class  
16 III gaming operations on tribal land for more than 27 years. The Tribe relies on revenue  
17 from its gaming operations and other commercial enterprises in order to provide services to  
18 the Tribe’s members.

19 3. Plaintiff Tribe owns, operates, and receives both business revenue and tax revenue  
20 from the Enterprise. The Enterprise includes: two casinos with table games, slots and bingo;  
21 restaurants; gift shop; RV park; indoor and outdoor live entertainment space; two hotels  
22 with spa and pools; a convention and event center with banquet operations; and a  
23 convenience store. The Enterprise is a popular destination for tourists, gaming enthusiasts,  
24 and event enthusiasts throughout Arizona and the United States. The Enterprise properties,  
25 however, have suffered direct physical loss or damage from the Coronavirus (a.k.a. the  
26 “COVID-19” or “SARS-CoV-2”), and the COVID-19 pandemic caused by the Severe  
27 Acute Respiratory Syndrome Coronavirus 2 (the “Pandemic”).

28 4. Plaintiff Tribe also owns, operates, and receives business revenues from the Tribe’s

1 Health Clinic (“Clinic”), which provides healthcare to the Pascua Yaqui community. The  
2 skilled and dedicated professionals at the Clinic provide a broad range of healthcare  
3 services, including medical, dental, behavioral health, pharmacy, laboratory services,  
4 therapy, fitness, diabetes prevention, wellness programs, and alternative medicine services.  
5 Due to the Coronavirus and the Pandemic, the Clinic has suffered direct physical loss or  
6 damage and, as a result, the Clinic’s ability to provide services has been severely hampered,  
7 causing a significant drop in business revenue.

8 5. Plaintiff Tribe also owns, operates, and receives business and tax revenues from  
9 other businesses located within the Tribe’s reservation as well as economic development  
10 activities located within the Tribe’s reservation. These businesses have suffered direct  
11 physical loss or damage due to the Coronavirus and the Pandemic, causing a loss in business  
12 and tax revenue for the Tribe.

13 6. For the policy period of July 1, 2019, to July 1, 2020, Plaintiffs purchased insurance  
14 coverage under two respective insurance agreements in a Tribal Property Insurance  
15 Program (the “TPIP”) prepared by Tribal First. Tribal First is a specialized program of  
16 Alliant Underwriting Services, Inc., a California corporation with its principal place of  
17 business in Newport Beach, California. Both agreements bind the parties under the terms  
18 of an identical form policy titled “Tribal First Policy Wording – TPIP USA FORM No. 15”  
19 (the “Form Policy”).

20 7. The TPIP is comprised of insurance policies from several insurance carriers, led  
21 by Defendant Lexington Insurance Company. The TPIP is comprised of various layers of  
22 coverage such that a particular insurer is responsible for losses that fall between specified  
23 amounts. At least some of these layers of coverage have aggregate limits of coverage that  
24 may be exhausted by losses of any one or more of insureds under the TPIP, such that if a  
25 loss of one tribe is paid, it reduces the insurance available in that layer to pay losses for  
26 other tribes.

27 8. Tribal First made this insurance program available to tribes and tribal entities  
28 throughout the United States. Tribal First maintains a list of insureds under the program,

1 including Plaintiffs, who are subject to the same overall aggregate policy limits for one or  
2 more particular layers of coverage. “Notice of Loss” must be made in writing to Tribal  
3 First.

4 9. The Form Policy provides coverage for “loss resulting directly from interruption  
5 of business, services, or rental value caused by direct physical loss or damage, as covered  
6 by this Policy to real and/or personal property insured by this Policy, occurring during the  
7 term of this Policy.”

8 10. Due to the Pandemic and the Coronavirus, Plaintiffs have suffered “direct physical  
9 loss or damage” to their properties and businesses. The Pandemic caused a loss of Plaintiffs’  
10 certain property covered under their respective Policies (“Property”), because the Pandemic  
11 made such property unusable, uninhabitable, and/or restricted for clients.

12 11. The Pandemic limited access, reduced usable space, and required the installation  
13 of physical barriers; it also increased the need to clean and sanitize at the Property. Plaintiffs  
14 undertook significant repair and remediation before use of the Property could be permitted  
15 without risking further physical loss or damage to property and injury to visiting patrons.

16 12. The loss is direct. Plaintiffs suffered loss of business income directly caused by the  
17 Coronavirus and the Pandemic, rendering the Plaintiffs’ Property uninhabitable or facing  
18 an imminent threat of uninhabitability, unusability, and/or restrictions.

19 13. The loss is physical. Due to the physical damage caused by the Coronavirus and  
20 the Pandemic, Plaintiffs’ Property was effectively uninhabitable, severely impacting  
21 business. The physical presence of the Coronavirus, the resulting damage to Plaintiffs’  
22 Property, and the probability of consequential illness for any patron rendered the Property  
23 uninhabitable, unusable, and/or restricted: the Pandemic prohibited access to the Property.

24 14. The loss experienced by Plaintiffs thus constitutes a loss as defined by the Form  
25 Policy. Plaintiffs experienced damage to the Property caused by the presence of the  
26 Coronavirus and by the Pandemic, which in turn caused loss of functionality and  
27 diminishment of usability. This in turn caused further loss to Plaintiffs.

28 15. The physical loss or damage incurred by Plaintiffs is capable of eventual repair,

1 but such repair is challenging and difficult. Some repairs have already been made, such as  
2 those listed in Paragraph 11.

3 16. Plaintiffs purchased “all risk” property coverage to protect themselves from loss or  
4 damage in the event that Plaintiff’s businesses had to suspend operations for reasons outside  
5 of Plaintiffs’ control, or if Plaintiffs had to act in order to prevent further property damage.  
6 Plaintiffs obtained this coverage through the Form Policy, which includes coverage for  
7 Property Damage, including insurance for Protection and Preservation of Property, as well  
8 as several so-called “Time-Element” coverages applying to disruption of business,  
9 including Business Interruption, Extra Expense, Ingress/Egress, Interruption by Civil  
10 Authority (“Civil Authority”), Contingent Time Element and Tax Revenue Interruption  
11 coverages.

12 17. Plaintiffs suffered a physical loss of property due to the damage caused by the  
13 actual or imminent presence of the Coronavirus and Pandemic-related closure orders  
14 (“Closure Orders”), and Plaintiffs incurred losses covered by Protection and Preservation  
15 of Property, Business Interruption, Extra Expense, Ingress/Egress, Civil Authority,  
16 Contingent Time Element and Tax Revenue Interruption provisions due to the Coronavirus  
17 and the Closure Orders.

18 18. Upon information and belief, Lexington and the other Insurers have, on a uniform  
19 basis, refused to pay claims for losses and costs due to the Coronavirus, the Pandemic, and  
20 the resultant Closure Orders covered by the insurance provisions, identified in this  
21 Complaint to Plaintiffs. Indeed, Lexington, through its affiliate at AIG Claims, Inc., has  
22 denied coverage for Plaintiffs’ claims under the Form Policy by the issuance of letters dated  
23 September 11, 2020 (the “Denial Letters”).

## 24 **II. PARTIES**

### 25 ***Plaintiffs***

26 19. The Tribe is a federally recognized Indian Tribe in Southern Arizona with its main  
27 office located at 7474 South Camino De Oeste, Tucson, Arizona 85746.

28 20. The Enterprise is a wholly owned division of the Tribe that is organized and exists

1 pursuant to the Tribe's laws.

2 ***Defendants***

3 21. Upon information and belief, Defendant Lexington Insurance Company  
4 ("Lexington") is a foreign insurance company organized under the laws of the State of  
5 Delaware, with its principal place of business in Boston, Massachusetts. Lexington is a  
6 wholly owned subsidiary of American International Group, Inc. ("AIG, Inc."). At all times  
7 relevant to this matter, Lexington was authorized to conduct and was conducting substantial  
8 and continuous business in Arizona, which caused events to occur in Pima County,  
9 including, but not limited to, selling and issuing property coverage to Plaintiffs. As a  
10 component of the Form Policy sold to Plaintiffs, Lexington issued Policy Nos.  
11 017471589/06, 38412453, 38412468, and 011660435/07 to Plaintiffs, effective July 1,  
12 2019, to July 1, 2020.

13 22. Upon information and belief, the various Defendant Syndicates of Underwriters at  
14 Lloyd's (together "Lloyd's") are foreign underwriters composed of separate syndicates, in  
15 turn comprised of entities known as "Names," which underwrite insurance in the market  
16 known as Lloyd's of London. Upon information and belief, the "Names" and syndicates  
17 are organized under the laws of the United Kingdom and are foreign citizens. At all times  
18 relevant to this matter, Lloyd's was authorized to conduct and was conducting substantial  
19 and continuous business in Arizona, which caused events to occur in Pima County,  
20 including, but not limited to, selling and issuing property coverage to Plaintiffs. As a  
21 component of the Form Policy sold to Plaintiffs, the underwriters identified in this  
22 paragraph issued Policy Nos. PJ193647, PJ1900131, PJ1933868, PJ1933255, PJ1900051,  
23 PX006CP19, PJ1933021, PD-10363-05, and PJ1900067 to Plaintiffs, effective July 1, 2019,  
24 to July 1, 2020.

25 23. Upon information and belief, Defendant Homeland Insurance Company of New  
26 York ("Homeland") is a foreign insurance company organized under the laws of the State  
27 of New York, with its principal place of business in Plymouth, Minnesota. Homeland is an  
28 underwriting company of OneBeacon Insurance Group, Ltd., which is a subsidiary of Intact

1 Financial Corporation. At all times relevant to this matter, Homeland was authorized to  
2 conduct and was conducting substantial and continuous business in Arizona, which caused  
3 events to occur in Pima County, including, but not limited to, selling and issuing property  
4 coverage to Plaintiffs. As a component of the Form Policy sold to Plaintiffs, Homeland  
5 issued Policy No. 798000237 to Plaintiffs, effective July 1, 2019, to July 1, 2020.

6 24. Upon information and belief, Defendant Hallmark Specialty Insurance Company  
7 (“Hallmark”) is a foreign insurance company organized under the laws of the State of  
8 Oklahoma, with its principal place of business in Dallas, Texas. At all times relevant to this  
9 matter, Hallmark was authorized to conduct and was conducting substantial and continuous  
10 business in Arizona, which caused events to occur in Pima County, including, but not  
11 limited to, selling and issuing property coverage to Plaintiffs. As a component of the Form  
12 Policy sold to Plaintiffs, Hallmark issued Policy Nos. 73PRX19A1B7 and 73PRX19A1EF  
13 to Plaintiffs, effective July 1, 2019, to July 1, 2020.

14 25. Upon information and belief, Defendant Endurance Worldwide Insurance Ltd t/as  
15 Sompo International (“Endurance”) is a foreign insurance company incorporated in  
16 England, with its principal place of business in London, England. At all times relevant to  
17 this matter, Endurance was authorized to conduct and was conducting substantial and  
18 continuous business in Arizona, which caused events to occur in Pima County, including,  
19 but not limited to, selling and issuing property coverage to Plaintiffs. As a component of  
20 the Form Policy sold to Plaintiffs, Endurance issued Policy No. PJ1900134 to Plaintiffs,  
21 effective July 1, 2019, to July 1, 2020.

22 26. Upon information and belief, Defendant Arch Specialty Insurance Company  
23 (“Arch”) is a foreign insurance company organized under the laws of the State of Missouri,  
24 with its principal place of business in Jersey City, New Jersey. At all times relevant to this  
25 matter, Arch was authorized to conduct and was conducting substantial and continuous  
26 business in Arizona, which caused events to occur in Pima County, including, but not  
27 limited to, selling and issuing property coverage to Plaintiffs. As a component of the Form  
28 Policy sold to Plaintiffs, Arch issued Policy No. ESP7303914-02 to Plaintiffs, effective July



1 1, 2019, to July 1, 2020.

2 27. Upon information and belief, Defendant Evanston Insurance Company  
3 (“Evanston”) is a foreign insurance company organized under the laws of the State of  
4 Illinois, with its principal place of business in Rosemont, Illinois. At all times relevant to  
5 this matter, Evanston was authorized to conduct and was conducting substantial and  
6 continuous business in Arizona, which caused events to occur in Pima County, including,  
7 but not limited to, selling and issuing property coverage to Plaintiffs. As a component of  
8 the Form Policy to Plaintiffs, Evanston issues Policy No. MKLV14XP012536 to Plaintiffs,  
9 effective July 1, 2019, to July 1, 2020.

10 28. Upon information and belief, Defendant Allied World National Assurance  
11 Company (“Allied”) is a foreign insurance company organized under the laws of the State  
12 of New Hampshire, with its principal place of business in New York, New York. At all  
13 times relevant to this matter, Allied was authorized to conduct and was conducting  
14 substantial and continuous business in Arizona, which caused events to occur in Pima  
15 County, including, but not limited to selling and issuing property coverage to Plaintiffs. As  
16 a component of the Form Policy sold to Plaintiffs, Allied issued Policy No. 0310-8171-1N  
17 to Plaintiffs, effective July 1, 2019, to July 1, 2020.

18 29. Upon information and belief, Defendant Liberty Mutual Fire Insurance Company  
19 (“Liberty”) is a foreign insurance company organized under the laws of the State of  
20 Massachusetts, with its principal place of business in Boston, Massachusetts. At all times  
21 relevant to this matter, Liberty was authorized to conduct and was conducting substantial  
22 and continuous business in Arizona, which caused events to occur in Pima County,  
23 including, but not limited to, selling and issuing property coverage to Plaintiffs. As a  
24 component of the Form Policy sold to Plaintiffs, Liberty issued a Policy to Plaintiffs,  
25 effective July 1, 2019, to July 1, 2020.

26 30. Upon information and belief, Defendant Landmark American Insurance Company  
27 (“Landmark”) is a foreign insurance company organized under the laws of the State of New  
28 Hampshire, with its principal place of business in Atlanta, Georgia. At all times relevant to

1 this matter, Landmark was authorized to conduct and was conducting substantial and  
2 continuous business in Arizona, which caused events to occur in Pima County, including,  
3 but not limited to, selling and issuing property coverage to Plaintiffs. As a component of  
4 the Form Policy sold to Plaintiffs, Landmark issued Policy Nos. LHQ424636, LHD424641  
5 and LHD424643 to Plaintiffs, effective July 1, 2019, to July 1, 2020.

6 31. Upon information and belief, at all times relevant to this matter, Defendant  
7 Specialty Risk Underwriters, LLC (“Specialty”) was a foreign insurance company  
8 authorized to conduct and was conducting substantial and continuous business in Arizona,  
9 which caused events to occur in Pima County, including but not limited to, selling and  
10 issuing property coverage to Plaintiffs. As a component of the Form Policy sold to  
11 Plaintiffs, Specialty issued Policy Nos. AQS-190987 and AQS-190984 to Plaintiffs,  
12 effective July 1, 2019, to July 1, 2020.

13 32. Upon information and belief, Defendant XL Insurance America, Inc (“XL”) was a  
14 foreign insurance company, with its principal place of business in Stamford, Connecticut.  
15 At all times relevant to this matter, XL was authorized to conduct and was conducting  
16 substantial and continuous business in Arizona, which caused events to occur in Pima  
17 County, including, but not limited to, selling and issuing property coverage to Plaintiffs. As  
18 a component of the Form Policy sold to Plaintiffs, XL issued Policy No.  
19 US00010377PR19A to Plaintiffs, effective July 1, 2019, to July 1, 2020.

### 20 **III. JURISDICTION AND VENUE**

21 33. The Court has subject matter jurisdiction over this case pursuant to the Arizona  
22 Constitution and A.R.S. § 12-123.

23 34. The value of this case exceeds \$10,000 dollars.

24 35. This Court has personal jurisdiction over all Defendants because they have done  
25 and/or are doing business in and/or caused events that are the subject matter of this lawsuit  
26 to occur in Pima County, Arizona.

27 36. Venue in Pima County is proper pursuant to A.R.S. § 12-401 because several  
28 defendants reside without the state and Plaintiffs reside in Pima County.

1 **IV. DISCOVERY TIER**

2 37. Pursuant to Arizona Rules of Civil Procedure, Rule 26.2 (c) (3), the Court should  
3 assign the case to Tier 3 because Plaintiffs request \$300,000 or more in damages.

4 **V. FACTUAL BACKGROUND**

5 **A. *The Insurance Agreements***

6 38. In return for the payment of substantial premiums, for the policy period July 1,  
7 2019, to July 1, 2020, Defendants Lexington, Lloyd’s, Homeland, Hallmark, Endurance,  
8 Arch, Evanston, Allied, Specialty, and XL (the “Tribe Insurers”) issued a policy (the “Tribe  
9 Policy”) to the Tribe under the TPIP prepared by Tribal First. **Exhibit A** is a true and correct  
10 copy of the Tribe Policy. Plaintiff Tribe has performed all of its obligations under the Tribe  
11 Policy, including the payment of all premiums.

12 39. The Tribe Policy contains a front cover page (page 1 of 387 of Exhibit A) with the  
13 Tribal First Logo and the title “Property Solutions: Recognizing the Past While Protecting  
14 the Future.” The next page (page 2 of 387) reads in relevant part, “Pursuant to Arizona  
15 Statutes . . . , this policy is issued by an insurer . . . .” The Tribe Policy contains also a back  
16 cover page (page 387 of 387): the top three fourths of the page are solid white with no  
17 markings, and the bottom of the page contains the Tribal First Logo, address, phone and fax  
18 numbers, and a certain license number. Beyond the Form Policy (pages 44 through 111 of  
19 387), the Tribe Policy contains various schedules, contracts, endorsements, and other  
20 documents. The Tribe does not possess and did not ever receive any other document  
21 purported to be part of (or in any way incorporated into) the Tribe Policy from Tribal First,  
22 Alliant, any Defendant, or any other legal or natural person.

23 40. In return for the payment of substantial premiums, for the policy period July 1,  
24 2019, to July 1, 2020, Defendants Lexington, Lloyd’s, Homeland, Hallmark, Endurance,  
25 Arch, Evanston, Allied, Liberty, Landmark, and Specialty (the “Enterprise Insurers”) issued  
26 a policy (the “Enterprise Policy”) to the Enterprise under the TPIP prepared by Tribal First.  
27 The Enterprise Policy identifies the Enterprise, party to the agreement, as “Pascua Yaqui  
28 Gaming Enterprises dba Casino del Sol.” **Exhibit B** is a true and correct copy of the

1 Enterprise Policy. Plaintiff Enterprise has performed all of its obligations under the  
2 Enterprise Policy, including the payment of all premiums.

3 41. The Enterprise Policy contains a front cover page (page 1 of 388 of Exhibit B) with  
4 the Tribal First Logo and the title “Property Solutions: Recognizing the Past While  
5 Protecting the Future.” The next page (page 2 of 388) reads in relevant part, “Pursuant to  
6 Arizona Statutes . . . , this policy is issued by an insurer . . . .” The Enterprise Policy contains  
7 also a back cover page (page 388 of 388): the top three fourths of the page are solid white  
8 with no markings, and the bottom of the page contains the Tribal First Logo, address, phone  
9 and fax numbers, and a certain license number. Beyond the Form Policy (pages 45 through  
10 112 of 387), the Enterprise Policy contains various schedules, contracts, endorsements, and  
11 other documents. The Enterprise does not possess and did not ever receive any other  
12 document purported to be part of (or in any way incorporated into) the Enterprise Policy  
13 from Tribal First, Alliant, any Defendant, or any other legal or natural person.

14 42. The Tribe is the first named insured of the Tribe Policy.

15 43. The Enterprise is the first named insured of the Enterprise Policy.

16 44. The Form Policy “insures Real and Personal Property within the United States of  
17 America” and covers damage to “all property of every description both real and personal.”

18 45. Coverage under the Form Policy extends to “Miscellaneous Unnamed Locations,”  
19 including “property at locations (including buildings, or structures, owned, occupied or  
20 which the Named Insured is obligated to maintain insurance)” within the United States.

21 46. Named Insureds or Insureds also include agencies, organizations, enterprises or  
22 individuals “for whom the Named Insured is required or has agreed to provide coverage, or  
23 as so named in the ‘Named Insured Schedule’ on file with Tribal First, . . . and which are  
24 owned, financially controlled or actively managed by the herein named interest.” Form  
25 Policy § 1.B. The Clinic is one such agency, organization or enterprise for whom Plaintiff  
26 Tribe is required or has agreed to provide coverage, and is owned, financially controlled, or  
27 actively managed by Plaintiff Tribe.

28 47. Under the Form Policy, “occurrence” is defined as “a loss, incident or series of

1 losses or incidents not otherwise excluded by this Policy and arising out of a single event  
2 or originating cause and includes all resultant or concomitant insured losses.”

3 48. In many parts of the world, property insurance is sold on a specific peril basis.  
4 Such policies cover a risk of loss if that risk of loss is specifically listed (e.g., hurricane,  
5 earthquake, H1N1, etc.). Most property policies sold in the United States, however,  
6 including those sold by Insurers, are all-risk property damage policies. These types of  
7 policies cover all risks of loss except for risks that are expressly and specifically excluded.

8 49. Under the Form Policy, under the heading “Perils Covered,” the Insurers promised  
9 that: “Subject to the terms, conditions and exclusions stated elsewhere herein, this Policy  
10 provides insurance against *all risk* of direct physical loss or damage occurring during the  
11 period of this Policy.” (emphasis added). Subject to the terms and conditions, none of which  
12 relieve the Insurers of their obligations for the claims made herein, the covered cause of  
13 loss under the Form Policy is therefore “all risk of direct physical loss or damage.”

14 50. Unlike many policies that provide business interruption and related coverages, the  
15 Form Policy does not include, and is not subject to, any exclusion for losses caused by  
16 viruses or communicable diseases.

17 51. The Defendants did not exclude or limit coverage for losses from the spread of  
18 virus in the Protection and Preservation of Property, Business Interruption, Extra Expense,  
19 Ingress/Egress, Civil Authority, Contingent Time Element, or Tax Revenue Interruption  
20 coverages of the Form Policy, or any other coverages of the Form Policy.

21 52. The Form Policy expressly excludes “fungus, mold(s), mildew or yeast,” as well  
22 as “spores or toxins” created or produced by such “fungus, mold(s), mildew or yeast.” The  
23 exclusion provides an exhaustive list that does not cover viruses, which are in a completely  
24 different biological category.

25 53. The Form Policy also contains an exclusion for “seepage, pollution, or  
26 contamination.” This exclusion does not refer or apply to a virus or communicable disease,  
27 nor does the Form Policy extend the undefined term “contamination” to viruses. This  
28 exclusion ends with a paragraph that reads in its entirety:

1           *However, if the covered property is the subject of direct physical loss or*  
2           *damage for which the Company has paid or agreed to pay, then this Policy*  
3           *(subject to its terms, conditions and limitations) insures against direct*  
4           *physical loss or damage to the property covered hereunder caused by*  
5           *resulting seepage and/or pollution and/or contamination.*

6           54. The Property is subject of direct physical loss or damage which the Insurers agreed  
7 to pay because the Form Policy “provides insurance against all risk of direct physical loss  
8 or damage.”

9           55. Losses due to the Pandemic are therefore a covered cause of loss and fall within  
10 the “Perils Covered” under the Policy.

11           56. The Property Damage coverage in Section II of the Form Policy includes  
12 “Protection and Preservation of Property” coverage that pays the cost of actions taken by  
13 insureds due to “actual or imminent physical loss or damage” to covered property. Form  
14 Policy § II.B.16. The Insurers agreed to pay “the expenses incurred by the Named Insured  
15 in taking reasonable and necessary actions for the temporary protection and preservation”  
16 of covered property. In this same provision, the Insurers require that insureds “shall  
17 endeavor to protect covered property from further damage” “[i]n the event of loss likely to  
18 be covered” by the Form Policy.

19           57. The Time Element coverages in Section III of the Form Policy include Business  
20 Interruption, Extra Expense, Ingress/Egress, Civil Authority, Contingent Time Element and  
21 Tax Revenue Interruption coverages, each of which applies here.

22           58. In the Form Policy, the Insurers agreed to pay for actual “Business Interruption”  
23 “loss resulting directly from interruption of business, services or rental value caused by  
24 direct physical loss or damage” to covered property during the “period of restoration.” Form  
25 Policy § III.A.1.

26           59. Insured Business Interruption losses include Gross Earnings, which are the sum of:  
27 (a) “total net sales,” plus (b) “other earnings derived from the operation of the business,”  
28 minus the cost of: (c) “merchandise sold including packaging,” (d) “materials and supplies  
consumed directly in supplying” services, and (e) services “purchased from outside (not  
employees of the Named Insured) for resale that does not continue under contract.” “No

1 other cost shall be deducted in determining gross earnings.”

2 60. Rental value is comprised of several categories of loss, including “total anticipated  
3 gross rental income from tenant occupancy.” “In determining rental value, due  
4 consideration shall be given to the experience before the date of loss or damage and the  
5 probable experience thereafter had no loss occurred.”

6 61. The period of restoration during which Business Interruption losses accrue begins  
7 “on the date direct physical loss occurs and interrupts normal business operations and ends  
8 on the date that the damaged property should have been repaired, rebuilt or replaced with  
9 due diligence and dispatch, but not limited by the expiration of this policy.”

10 62. As described below, the Plaintiffs’ business properties, as well as their tax-  
11 generating properties, have suffered direct physical loss or damage. Due to the physical loss  
12 or damage caused by the Coronavirus and the Pandemic, these properties became  
13 effectively or imminently uninhabitable and/or unusable by patrons and unsafe for their  
14 intended purpose and thus suffered physical loss or damage. The business functions of the  
15 Plaintiffs’ business properties, as well as their tax-generating properties, have been impaired  
16 due to this physical loss or damage. If the Plaintiffs were to conduct business as usual,  
17 COVID-19 and the Coronavirus would appear on the Property, the Property would suffer  
18 further damage, and patrons, guests, and others would get sick. This is a direct physical loss.  
19 In their current condition, the Plaintiffs cannot fully use their business properties and tax-  
20 generating properties for their business purposes, though Plaintiffs are engaging in  
21 remediation and repairs to make the properties fully usable once again.

22 63. Moreover, the presence of virus or disease constitutes physical damage to property,  
23 as the insurance industry has recognized since at least 2006. When preparing so-called  
24 “virus” exclusions to be placed in some policies, but not others, the insurance industry  
25 drafting arm, the Insurance Services Office (“ISO”), circulated a statement to state  
26 insurance regulators that included the following:

27 Disease-causing agents may render a product impure (change  
28 its quality or substance), or enable the spread of disease by their  
presence on interior building surfaces or the surfaces of

1 personal property. When disease-causing viral or bacterial  
2 contamination occurs, potential claims involve the cost of  
3 replacement of property (for example, the milk), cost of  
4 decontamination (for example, interior building surfaces), and  
5 business interruption (time element) losses. Although building  
6 and personal property could arguably become contaminated  
7 (often temporarily) by such viruses and bacteria, the nature of  
8 the property itself would have a bearing on whether there is  
9 actual property damage. An allegation of property damage may  
10 be a point of disagreement in a particular case.

11 64. ISO proposed form CP 01 40 07 06 titled “Exclusion for Loss Due To Virus Or  
12 Bacteria” which read, in relevant part, “We will not pay for loss or damage caused by or  
13 resulting from any virus, bacterium or other microorganism that induces or is capable of  
14 inducing physical distress, illness or disease.”<sup>1</sup> Upon information and belief, insurers who  
15 wish to exclude virus-caused damages have adopted this clause or variations thereof since  
16 2006.

17 65. Lloyd’s of London, of which several Defendants are underwriter members, has  
18 advised of the need for virus exclusions for more than a decade.<sup>2</sup> Lloyd’s of London wrote  
19 in 2008, “Some potentially affected policies may not have been written with such  
20 [pandemic] claims in mind and one possible response from the insurance industry is to  
21 clarify coverage intentions sooner rather than later.”

22 66. Defendants are sophisticated, large insurance companies, all with a multi-state  
23 clientele and some with an international clientele.

24 67. Upon information and belief, each Tribe Insurer reviewed the Form Policy and  
25 every applicable exclusion before becoming a party to the Tribe Policy, and each Enterprise  
26 Insurer reviewed the Form Policy and every applicable exclusion before becoming a party  
27 to the Enterprise Policy.

28 68. The Form Policy does not contain the word “pandemic,” the concept of pandemic,  
or any reference, whether direct or indirect, to such concept.

---

<sup>1</sup> Lucy E. Tufts, *A Brief Primer on Business Interruption Claims*, 40 Ala. Ass’n Just. J. 30, 31 (2020).

<sup>2</sup> <https://www.lloyds.com/news-and-insights/risk-reports/library/pandemic-potential-insurance-impacts> May 24, 2021



1       69. Apart from three references to “computer viruses,” the Form Policy does not  
2 contain the word “virus,” the concept of virus, or any reference, whether direct or indirect,  
3 to such concept.

4       70. “Loss,” in many provisions of the Form Policy, does not require physical alteration  
5 to the property.

6       71. The Form Policy does not require actual physical alteration as a condition  
7 precedent for coverage: in fact, some provisions explicitly govern imminent physical loss.

8       72. The Form Policy uses the undefined phrases “physical loss” and “physical  
9 damages” separately and disjunctively: nowhere in the Form Policy is one used  
10 interchangeably with the other.

11       73. The Plaintiffs suffered direct physical loss because the Pandemic rendered their  
12 Property unusable for its intended purpose and unsafe.

13       74. Additionally, Plaintiffs Property suffered direct physical damage in the manner  
14 described by ISO, and as a direct result of the Coronavirus infesting the air or imminently  
15 threatening to infest the air in the Property.

16       75. No exclusion applies to bar coverage.

17       76. Under the Form Policy, in addition to Business Interruption losses, the Insurers  
18 agreed to pay reasonable and necessary “Extra Expense” losses incurred to continue the  
19 normal operation of business “as nearly as practicable” following damage to covered  
20 property by a covered cause of loss during the “period of restoration.” Policy § III.A.2.

21       77. Under the Form Policy, the Insurers also agreed to provide Ingress/Egress  
22 coverage, which applies to loss sustained for up to 30 days when “direct physical loss or  
23 damage . . . occurring at property located within a 10 mile radius of covered property”  
24 prevents ingress to or egress from covered property. Policy § III.B.1.

25       78. Under the Form Policy, the Insurers further agreed to provide “Interruption by  
26 Civil Authority” coverage, which applies to loss sustained for up to 30 days when a civil  
27 authority issues an order under which access to covered property is “specifically prohibited”  
28 due to property damage “at a property located within a 10-mile radius of covered property.”

1 Policy § III.B.2. The Form Policy does not define “prohibited.” The Form Policy’s reference  
2 to prohibited access does not state “any access,” “all access,” “access for all persons,” or  
3 any similar language suggesting universal prohibition.

4 79. The Coronavirus and the Pandemic caused physical damage to property within a  
5 10-mile radius of the covered property of Plaintiffs. Damage caused by the presence of  
6 COVID-19, including within 10 miles of Plaintiffs’ properties, and the resulting threat of  
7 further damage to property and to health, prompted the issuance of several civil authority  
8 orders by the State of Arizona, Pima County, and the Tribe’s governing body. These Civil  
9 Orders in turn prohibited access to Plaintiffs’ Property by patrons and caused Plaintiffs to  
10 incur further loss.

11 80. In the Form Policy, the Insurers also agreed to “Contingent Time Element”  
12 coverage, which applies to losses caused by property damage at the properties of the  
13 suppliers or customers of Plaintiffs. Under these Contingent Time Element coverages, the  
14 Insurers agreed to pay losses for business interruption, rental income, or extra expenses due  
15 to property damage “at direct supplier or direct customer locations” that (a) prevents a  
16 supplier of goods or services to the Insureds from supplying such goods or services, or (b)  
17 prevents recipients of goods or services of the Insured from accepting those goods or  
18 services. Policy § III.B.4. The Coronavirus and the Pandemic caused physical damage to  
19 property of direct suppliers and direct customers, resulting in business interruption and  
20 rental income losses, as well as extra expenses, and the Form Policy provides coverage for  
21 these losses under the Contingent Time Element Coverage.

22 81. In the Form Policy, the Insurers further agreed to pay “Tax Revenue Interruption”  
23 losses “resulting directly from necessary interruption of sales, property or other tax revenue  
24 . . . collected by or due” insureds caused by damage to property which is not operated by  
25 insureds, “and which wholly or partially prevents the generation of revenue for the account  
26 of” insureds. Tax revenue covered by this provision includes “Tribal Incremental Municipal  
27 Services Payments,” as well as property tax and other tax revenue. Policy § III.B.5.

28 82. The time period for “Tax Revenue Interruption” coverage begins “with the date of

1 damage to the contributing property” and continues “for only the length of time as would  
2 be required with exercise of due diligence and dispatch to rebuild, replace or repair the  
3 contributing property,” but is “not limited by the expiration date” of the Policy.

4 83. The Coronavirus and the Pandemic caused physical damage to such “contributing  
5 property” resulting in the interruption of Tribal Incremental Municipal Services Payments,  
6 property tax, and other tax revenue.

7 84. Losses caused by the Coronavirus, COVID-19, the Pandemic and by the related  
8 Closure Orders issued by local, state, and tribal authorities therefore triggered the Protection  
9 and Preservation of Property, Business Interruption, Extra Expense, Ingress/Egress, Civil  
10 Authority, Contingent Time Element, and Tax Revenue Interruption coverage provisions of  
11 the Form Policy.

12 ***B. The Pandemic***

13 85. According to the Centers for Disease Control and Prevention (“CDC”), COVID-19  
14 is a disease caused by the Coronavirus contracted by humans: COVID-19 can cause severe  
15 illness and death. Certain groups, including older adults and people with underlying medical  
16 conditions, are at increased risk.<sup>3</sup>

17 86. SARS-CoV-2 is a betacoronavirus that is genetically related to several other  
18 zoonotic coronaviruses, including SARS-CoV-1, the etiological agent of SARS. SARS-  
19 CoV-2 causes coronavirus disease 2019 (COVID-19) in humans. SARS-CoV-2 has  
20 glycoprotein “spikes” that are able to bind to human angiotensin converting enzyme 2  
21 (ACE-2) receptors, which are present on human respiratory epithelial cells. After binding  
22 to ACE-2, the virus is able to enter the cells and make copies of itself, which are then  
23 released. These released infectious viral particles are then expelled in respiratory secretions  
24 as respiratory droplets into a multiphase, turbulent gas cloud during breathing, coughing,  
25 sneezing, talking, and singing. There are large and small respiratory droplets within the  
26 cloud. Large respiratory droplets can infect other people either directly, through direct  
27 contact with respiratory mucosal surfaces, or indirectly, by contaminating surfaces which

28 <sup>3</sup> <https://www.cdc.gov/coronavirus/2019-ncov/> (accessed May 19, 2021)

1 are then touched by another person who subsequently touches his or her mouth, nose, or  
2 eyes. The small droplets remain in the air as an aerosol, which can remain suspended in the  
3 air for hours, travel prolonged distances indoors along air currents induced by the heating  
4 and ventilation (“HVAC”) system, and travel from room to room, infecting people directly  
5 through contact with, and inhalation of, the aerosol. Particles from the aerosol can also  
6 contaminate surfaces.

7 87. The Coronavirus and coronavirus-containing respiratory droplets and nuclei are  
8 physical substances that are active on physical surfaces and are also emitted into the air.  
9 Such substances are not theoretical, intangible, or incorporeal, but rather have a material  
10 existence and are physically dangerous. Fomites, droplets, droplet nuclei, and aerosols  
11 containing the Coronavirus are dangerous physical substances that have a tangible  
12 existence.

13 88. The Coronavirus and COVID-19 spread “very easily” between people who are  
14 physically near each other (within about 6 feet). Infected people, whether showing  
15 symptoms or not, can spread the virus to others.<sup>4</sup>

16 89. The Coronavirus spreads most often by respiratory droplets or aerosol particles,  
17 i.e., particles formed when the droplets rapidly dry. People may also get COVID-19 by  
18 touching a surface that has the virus on it and then touching their own mouth, nose, or eyes.<sup>5</sup>

19 90. The Coronavirus and Coronavirus-containing droplets and aerosol particles are  
20 physical substances active in the air and on physical surfaces. Droplets can remain in the  
21 air for hours.<sup>6</sup>

22 91. The Coronavirus’s incubation period – *i.e.*, the time between exposure to the  
23 coronavirus and symptom onset -- can be up to 14 days (though some studies suggest that  
24 period may be up to 21 days), and most virus transmissions occur from persons who do not  
25 show symptoms.<sup>7</sup> Before infected individuals exhibit symptoms, *i.e.*, the so-called “pre-

---

26 <sup>4</sup> *Id.*

27 <sup>5</sup> *Id.*

28 <sup>6</sup> <https://www.cdc.gov/coronavirus/2019-ncov/science/science-briefs/sars-cov-2-transmission.html> May 24, 2021

<sup>7</sup> <https://www.cdc.gov/coronavirus/2019-ncov/> May 24, 2021

1 symptomatic” period, they are most contagious, as their viral loads will likely be very high,  
2 and they may not know they have become carriers. In addition, studies from the CDC and  
3 others estimate that between 40% to 70% of infected individuals may never become  
4 symptomatic (referred to as “asymptomatic” carriers). Pre- and asymptomatic carriers are  
5 likely unaware that they are spreading the coronavirus by merely touching objects and  
6 surfaces, or by expelling droplets into the air. The National Academy of Sciences has found  
7 that the majority of transmissions is attributable to people who are not showing symptoms,  
8 either because they are pre-symptomatic or asymptomatic.

9 92. The virus cannot be observed by the human eye without enhancement. No one can  
10 see the virus in the air, on one’s hands, or on a surface. This, of course, makes it difficult  
11 to eliminate the virus, or eradicate transmission, from air or surfaces. The presence of the  
12 virus is only observed through the infection rate in a particular area.

13 93. The presence of the virus in a community, evidenced by infection rates, makes it  
14 more probably true than not, that live virus has been transferred in the air and to objects and  
15 surfaces. SARS-CoV-2 spread is logarithmic.

16 94. Aerosol, droplet, and fomite transmission are the basis for social distancing, hand-  
17 washing, stay-at-home orders, home-shelter orders, distance learning, reduced capacity  
18 and/or occupancy limits, and other measures implemented in various executive orders,  
19 including the Closure Orders. The virus is physically present in the community, including  
20 in the air and on objects and surfaces. Aerosol and fomite transmission are real, and due to  
21 constant recontamination of air and surface areas, it is simply impossible to entirely  
22 eradicate the virus from indoor spaces and such surfaces.

23 95. The Coronavirus causes physical loss and damage by, among other things,  
24 destroying, distorting, corrupting, attaching to, and physically altering property, including  
25 its surfaces, and by rendering property unusable, uninhabitable, unfit for intended function,  
26 dangerous and/or unsafe. The Coronavirus has caused such physical loss and damage to  
27 Plaintiffs’ Property.

28 96. **First**, Coronavirus-containing respiratory droplets (*i.e.*, droplets larger than 5-10

1 μm) expelled from infected individuals land on, attach, and adhere to surfaces and objects.  
2 In doing so, they structurally change the property and its surface by becoming a part of that  
3 surface. This structural alteration makes physical contact with those previously safe, inert  
4 surfaces unsafe.

5 97. Viable Coronavirus can survive and be detected on a surface for weeks.<sup>8</sup> In a study  
6 by the U.S. National Institutes of Health, researchers found that the Coronavirus was  
7 detectable for up to three hours in aerosols, four hours on copper, up to 24 hours on  
8 cardboard, and up to three days on stainless steel and plastic surfaces.<sup>9</sup> Another study found  
9 that the Coronavirus remains active and dangerous on plastics for at least three days, while  
10 another reported that the coronavirus remained stable and viable for seven days on a range  
11 of common surfaces, including stainless steel, plastic, glass, and wood.<sup>10</sup> Another study  
12 even detected viable Coronavirus samples on stainless steel and glass for approximately  
13 one month if left at or around room temperature. All of these materials are used at Plaintiff's  
14 Property.

15 98. When the Coronavirus adheres to a surface, it becomes a part of the surface and  
16 materials, converting the surface and materials to "fomites."<sup>11</sup> This represents a physical  
17 change in the affected surface or material, which constitutes physical loss or damage.  
18 According to the World Health Organization ("WHO"), people can become infected with  
19 the Coronavirus by touching such objects and surfaces, then touching their eyes, nose, or  
20 mouth. This mode of transmission – indirect transmission via objects and surfaces – is  
21 known as "fomite transmission." As the WHO has noted, fomite transmission is "a likely  
22 mode of transmission for SARS-CoV-2" because studies have consistently confirmed the  
23

---

24 <sup>8</sup> <https://www.cdc.gov/coronavirus/2019-ncov/more/science-and-research/surface-transmission.html> May 24, 2021

25 <sup>9</sup> See <https://www.nih.gov/news-events/news-releases/new-coronavirus-stable-hourssurfaces>.

26 <sup>10</sup> See <https://www.nejm.org/doi/full/10.1056/nejmc2004973>;  
27 <https://www.medrxiv.org/content/10.1101/2020.05.07.20094805v1.full.pdf>;  
<https://virologyj.biomedcentral.com/articles/10.1186/s12985-020-01418-7>.

28 <sup>11</sup> See <https://www.who.int/news-room/comentaries/detail/transmission-of-sars-cov-2-implications-for-infection-prevention-precautions>.

1 existence of virus-laden droplets on objects and surfaces “in the vicinity of infected cases,”  
2 and because it is well known that other coronaviruses can be transmitted via fomite  
3 transmission.<sup>12</sup> And as a study of a COVID-19 outbreak published in the CDC’s Emerging  
4 Infectious Diseases journal identified, indirect transmission via objects such as elevator  
5 buttons and restroom taps is an important possible cause of a “rapid spread” of the  
6 coronavirus in a shopping mall in Wenzhou, China.<sup>13</sup>

7 99. Cleaning and sanitizing surfaces may reduce but does not eliminate the risk of  
8 transmission, and such reduction is only temporary.<sup>14</sup> There may be surfaces with residual  
9 infectious virus, and aerosolized infectious particles. A space may remain contaminated if  
10 an aerosol is present, and immediately become contaminated thereafter if another infected  
11 person is present in the area. This contamination will provide a constant modality for  
12 infection of people.

13 100. **Second**, when individuals carrying the Coronavirus breathe, talk, cough, or sneeze,  
14 they expel aerosolized droplet nuclei (*i.e.*, those smaller than 5  $\mu\text{m}$ ) that remain in the air  
15 and, like dangerous fumes, make the premises unsafe and affirmatively dangerous. This  
16 process alters the structural properties of air in buildings from safe and breathable to unsafe  
17 and dangerous.

18 101. Aerosol transmission is believed to be a common mode of transmission in many  
19 settings. Aerosols can be generated through simple breathing, as well as heavier breathing  
20 while, for example, exercising at a health club. According to research published in the  
21 Journal of the American Medical Association, a person who sneezes can release a cloud of  
22 pathogen-bearing droplets that can span as far as 23 to 27 feet.<sup>15</sup> If a person is infected with  
23 SARS-CoV-2, whether symptomatic or asymptomatic, infectious viral particles will be  
24 aerosolized into the air through their breathing. Infection clusters suggest that aerosol,

---

25  
26 <sup>12</sup> See <https://www.who.int/news-room/comentaries/detail/transmission-of-sars-cov-2-implications-for-infection-prevention-precautions>.

27 <sup>13</sup> See [https://wwwnc.cdc.gov/eid/article/26/6/20-0412\\_article](https://wwwnc.cdc.gov/eid/article/26/6/20-0412_article).

28 <sup>14</sup> <https://www.cdc.gov/coronavirus/2019-ncov/more/science-and-research/surface-transmission.html> May 24, 2021

<sup>15</sup> See <https://jamanetwork.com/journals/jama/fullarticle/2763852>.

1 droplet, and fomite transmission explain SARS-CoV-2 transmission amongst humans.

2 102. Airborne viral particles are known to spread into a building's HVAC system,  
3 leading to transmission of the coronavirus from person to person. One study found the  
4 presence of the Coronavirus within the HVAC system servicing hospital ward rooms of  
5 COVID-19 patients. This study detected SARS-CoV-2 RNA in ceiling vent openings, vent  
6 exhaust filters, and central ducts that were located more than 50 meters from the patients'  
7 rooms.<sup>16</sup> Based on this and other studies, the EPA has recommended that buildings improve  
8 their HVAC systems by, for example, air filtration and increasing ventilation with outdoor  
9 air.<sup>17</sup>

10 103. The actual or imminent presence of COVID-19 at a property causes physical loss  
11 and damage by necessitating remedial measures to avoid, reduce or eliminate the presence  
12 of cases of COVID-19 and the Coronavirus on site.

13 104. The actual or imminent presence of the Coronavirus, whether circulating or  
14 stagnant, changes the object, surface, or premises, in that it becomes dangerous to handle  
15 and/or enter, and cannot be used without burdensome remedial measures. Its use can only  
16 be restored with remedial action such as sufficient time for the contaminated air to be  
17 evacuated, as suggested by infectious disease experts.

18 105. The actual or imminent presence of cases of the Coronavirus at a property causes  
19 physical loss and damage by rendering a property that is usable and safe for humans into a  
20 property that, absent burdensome remedial measures, is unsatisfactory for use or unusable,  
21 uninhabitable, unfit for its intended function, and extremely dangerous and potentially  
22 deadly for humans. Remedial measures do not completely alleviate any of these negative  
23 consequences.

24 106. In addition, the actual or imminent presence of the Coronavirus on property creates  
25 the imminent threat of further damage to that property or to nearby property. For example,  
26 individuals who come into contact with respiratory droplets at one location by touching a

27 <sup>16</sup> See <https://www.researchsquare.com/article/rs-34643/v1>.

28 <sup>17</sup> <https://www.epa.gov/coronavirus/indoor-air-and-coronavirus-covid-19> 19 May 19,  
2021



1 surface will carry droplets and particles on their hands and deposit them on other surfaces,  
2 causing additional damage and loss.

3 **C. The Closure Orders**

4 **1. State of Arizona Civil Authority Closure Orders**

5 107. The threat and presence of the Coronavirus and the Pandemic have caused civil  
6 authorities throughout the country to issue orders requiring the whole or partial suspension  
7 of business at a wide range of establishments, including the Closure Orders issued by civil  
8 authorities with jurisdiction over Plaintiffs' businesses. These Closure Orders have directly  
9 affected Plaintiffs' businesses.

10 108. The threat and presence of the Coronavirus and the Pandemic constitute direct  
11 physical loss or damage to property, rendering that property actually or imminently  
12 uninhabitable and unusable by patrons, and has caused civil authorities across the United  
13 States to issue orders to suspend or restrict business at a wide range of establishments. Those  
14 authorities include Tribal authorities with direct jurisdiction over the Property. Indeed,  
15 many governmental bodies in their orders specifically found that the Coronavirus and the  
16 Pandemic directly and indirectly cause property damage. *See, e.g.*, N.Y.C. Emergency  
17 Exec. Order No. 100, at 2 (Mar. 16, 2020)<sup>18</sup> (“[T]he [Corona]virus physically is causing  
18 property loss and damage.”); N.Y.C. Emergency Exec. Order No. 103, at 1 (Mar. 25,  
19 2020)<sup>19</sup> (“[A]ctions taken to prevent [the] spread of [the Coronavirus] have led to property  
20 loss and damage.”); Harris Cty. Tex. Office of Homeland Security & Emergency Mgmt.,  
21 Order of Cty. J. Lina Hidalgo, at 2 (Mar. 24, 2020)<sup>20</sup> (“[The Coronavirus] causes property  
22 loss and damage due to its ability to attach to surfaces for prolonged periods of time” and  
23 due to its contagious nature and transmission through “person-to-person contact, especially  
24 in group settings.”); Napa Cty. Cal. Health & Human Service Agency, Order of the Napa

25 \_\_\_\_\_  
26 <sup>18</sup> <https://www1.nyc.gov/assets/home/downloads/pdf/executive-orders/2020/eo-100.pdf> May 20, 2021

27 <sup>19</sup> <https://www1.nyc.gov/assets/home/downloads/pdf/executive-orders/2020/eo-103.pdf> May 20, 2021

28 <sup>20</sup> <https://www.readyharris.org/Portals/60/documents/03-24-20-Stay-Home-Work-Safe-Order-by-the-County-Judge.pdf?ver=2020-03-24-150732-793> May 20, 2021

1 Cty. Health Officer at 2 (Mar. 18, 2020)<sup>21</sup> (“This Order is issued based on evidence of . . .  
2 the physical damage to property caused by the virus.”); City of Key West Fla. State of Local  
3 Emergency Directive 2020-03, at 2 (Mar. 21, 2020)<sup>22</sup> (“[T]he [Corona]virus is causing  
4 property damage due to its proclivity to attach to surfaces for prolonged periods of time  
5 . . . .”); City of Oakland Park Fla. Local Public Emergency Directive 2020-03, at 2 (Mar.  
6 19, 2020)<sup>23</sup> (COVID-19 is “physically causing property damage”); Colorado Dep’t of Pub.  
7 Health & Env’t, Amended Public Health Order No. 20-24, at 1 (Mar. 25, 2020)<sup>24</sup>  
8 (emphasizing the danger of “property loss, contamination, and damage” due to COVID-  
9 19’s “propensity to attach to surfaces for prolonged periods of time”); Sixth Supp. to San  
10 Francisco Mayoral Proclamation Declaring the Existence of a Local Emergency, at 2 (Mar.  
11 27, 2020) (“[T]he [Corona]virus physically is causing property loss or damage due to its  
12 proclivity to attach to surfaces for prolonged periods of time”); and City of Durham NC,  
13 Second Amendment to Declaration of State of Emergency, at 8 (effective Mar. 26, 2020)<sup>25</sup>  
14 (prohibiting entities that provide food services from allowing food to be eaten at the site  
15 where it is provided “due to the virus’s propensity to physically impact surfaces and  
16 personal property”).

17 109. Authorities in Arizona have issued several Closure Orders, which restrict and/or  
18 prohibit business activity.

19 110. Although the Tribe has a certain level of sovereignty and autonomy in managing  
20 the Pandemic, the vast majority of the Tribe and Enterprise’s visitors and patrons come  
21 from other parts of the State of Arizona subject to state and local government actions and  
22 decisions in managing the Pandemic.

23 \_\_\_\_\_  
24 <sup>21</sup> <https://www.countyofnapa.org/DocumentCenter/View/16687/3-18-2020-Shelter-at-Home-Order> May 20, 2021

25 <sup>22</sup> <http://cityofkeywest-fl.gov/DocumentCenter/View/1660/Emergency-Directive-2020-03?bidId=> May 20, 2021

26 <sup>23</sup> <https://oaklandparkfl.gov/DocumentCenter/View/8408/Local-Public-Emergency-Action-Directive-19-March-2020-PDF>

27 <sup>24</sup> [https://sjbpublichealth.org/wp-content/uploads/2020/03/Public\\_Health\\_Order\\_20-20\\_3-25-20.pdf](https://sjbpublichealth.org/wp-content/uploads/2020/03/Public_Health_Order_20-20_3-25-20.pdf)

28 <sup>25</sup> [https://durhamnc.gov/DocumentCenter/View/30043/City-of-Durham-Mayor-Emergency-Dec-Second-Amdmt-3-25-20\\_FINAL](https://durhamnc.gov/DocumentCenter/View/30043/City-of-Durham-Mayor-Emergency-Dec-Second-Amdmt-3-25-20_FINAL)

1 111. On March 11, 2020, Arizona Governor Douglas Ducey issued Executive Order  
2 2020-07<sup>26</sup> titled “Protective Measures to Protect against COVID-19” acknowledging that  
3 COVID-19 “is contagious and fatal.”

4 112. On March 19, 2020, the governor issued Executive Order 2020-09 titled “Limiting  
5 the Operations of Certain Businesses to Slow the Spread of COVID-19” closing bars, movie  
6 theatres, and on-site dining at restaurants in counties with at least one case of COVID-19.

7 113. During the week of March 1, 2020 to March 7, 2020, Pima County reported its first  
8 case of COVID-19. During the week of March 15, 2020 to March 21, 2020 (during which  
9 the governor issued Executive Order 2020-09), Pima County reported fifty-six cases of  
10 COVID-19. Every single week after March 1, 2020 up until the day of this filing, Pima  
11 County has reported COVID-19 cases with a peak of 9,212 cases the first week of 2021.<sup>27</sup>

12 114. On March 30, 2020, the governor issued Executive Order 2020-18 titled “Stay  
13 Home, Stay Healthy, Stay Connected: Physical Distancing to Mitigate COVID-19  
14 Transmission” ordering all individuals in the state, including “the elderly,” to “limit their  
15 time away from their place or residence or property” with few exceptions, including the use  
16 of “any services or products provided by Essential Businesses.”

17 115. On April 29, 2020, the governor issued Executive Order 2020-33 titled “Returning  
18 Stronger: Amending the Stay Home, Stay Healthy, Stay Connected Order” with the same  
19 order to all individuals in the state. Executive Order 2020-33 expired on May 15, 2020.

20 116. On May 4, 2020, the governor issued Executive Order 2020-34 titled “Building on  
21 COVID-19 Successes” authorizing dine-in services to resume on May 11, 2021.

22 117. On May 12, 2020, the governor issued Executive Order 2020-36 titled “Stay  
23 Healthy, Return Smarter, Return Stronger” repealing Executive Orders 2020-18 and 2020-  
24 34, and finding the ability to “slowly and strategically loosen some restrictions.” The  
25 governor advised all vulnerable individuals “to take reasonable steps to continue limiting  
26 their time away from their place of residence or property,” and members of their households

27 <sup>26</sup> This and all executive orders from the governor of Arizona are at  
28 <https://azgovernor.gov/executive-orders> (May 20, 2021)

<sup>27</sup> <https://webcms.pima.gov/cms/One.aspx?pageId=578441> (May 20, 2021 access)

1 to “take precautions to protect” them and be aware that they can “carry the virus back  
2 home.” Like previous orders, this order noted that “Arizonans have continued to act  
3 responsibly during this public health emergency.”

4 118. On June 17, 2020, the governor issued Executive Order 2020-40 titled “Containing  
5 the Spread of COVID-19: Continuing Arizona Mitigation Efforts” and ordering businesses  
6 to assist in efforts to contain the spread in accordance with Executive Order 2020-36.

7 119. Additionally, Executive Order 2020-40 required businesses to assist in efforts to  
8 “Contain the Spread” by adopting certain sanitation guidance.<sup>28</sup> This includes guidance  
9 from Arizona Department of Health Services, whose guidelines dated March 25, 2020  
10 specifically required specific surface sanitation measures in order to prevent the spread of  
11 COVID-19 in public places.

12 120. On June 29, 2020 the governor issued Executive Order 2020-43 titled “Pausing of  
13 Arizona’s Reopening: Slowing the Spread of COVID-19” observing the state was seeing  
14 increased numbers in COVID-19 cases at an exponential pace, listing the number of deaths,  
15 and finding a need for increased precautionary measures. The governor ordered that certain  
16 establishments, including bars (defined as “an entity who holds a series 6 or 7 liquor  
17 license”) pause operations until at least July 27, 2020. The order recognized the “economic  
18 consequences” of “such critical measures to protect public health” on businesses and gave  
19 two examples of such impacted businesses: bars and restaurants.

20 121. On July 23, 2020 the governor issued Executive Order 2020-52 titled  
21 “Continuation of Executive Order 2020-43: Slowing the Spread of COVID-19” extending  
22 Executive Order 2020-43’s provisions (“including those pausing business operations for  
23 certain businesses”) indefinitely with a review every two weeks, and observing that closure  
24 of certain businesses have resulted in slight improvements in slowing the spread.

25 122. On December 2, 2020, the governor issued Executive Order 2020-59, observing  
26 that “mandates and limitations on capacity of businesses have had a demonstrable effect on  
27 containing the spread,” maintaining closure orders under Executive Order 2020-23, and

28 <sup>28</sup> [https://azgovernor.gov/sites/default/files/eo\\_2020-40\\_contain\\_the\\_spread.pdf](https://azgovernor.gov/sites/default/files/eo_2020-40_contain_the_spread.pdf)

1 adding restrictions on public events of more than 50 people.

2 123. Three months later, on March 5, 2021, the governor issued Executive Order 2021-  
3 05 titled “Next Phase of COVID-19 Mitigation: Lifting Occupancy Limits Implemented due  
4 to COVID-19” which did not rescind closures of bars and prohibition to dine in at restaurants.

5 124. Arizona waited until March 26, 2021, for the governor to rescind previous orders  
6 by issuing Executive Order 2021-06 titled “New Phase of COVID-19 Mitigation: Business  
7 Guidelines Transition from Requirements to Recommendations.”

8 125. Although, after that date, Arizonans, including vulnerable and elderly individuals,  
9 were still under the governor’s order to stay home as needed. According to Statista, an  
10 international consumer data analyst, in 2010, 28% of casino visitors in the U.S. were 65 or  
11 older, and 61% were 50 or older.<sup>29</sup>

## 12 2. *Pima County Civil Authority Closure Orders*

13 126. On March 19, 2020, the Board of Supervisors of Pima County “passed a resolution  
14 declaring a state of emergency. . . . With that emergency declaration authority, the Board  
15 also passed a proclamation that prohibits the serving of food and beverages on the premises  
16 by restaurants, bars, and similar facilities . . . . Additionally, the Board . . . ordered closed,  
17 theaters, indoor performance centers, museums, gyms and fitness centers and studios, and  
18 similar facilities [as well as] bingo halls, bowling alleys, indoor climbing or jumping  
19 facilities, skating rinks and other similar recreational and entertainment facilities.”<sup>30</sup> The  
20 state of emergency was still in effect in December 2020.<sup>31</sup>

21 127. On May 13, 2020 and May 21, 2020, the board passed proclamations allowing  
22 businesses, including in the hospitality industry, to reopen with strict requirements to fight  
23 the Pandemic; each proclamation stated that “[f]ailure to comply with measures . . .  
24  
25

---

26 <sup>29</sup> [https://www.statista.com/statistics/188424/percentage-distribution-of-casino-](https://www.statista.com/statistics/188424/percentage-distribution-of-casino-visitors-in-the-us-by-age-2010/)  
27 [visitors-in-the-us-by-age-2010/](https://www.statista.com/statistics/188424/percentage-distribution-of-casino-visitors-in-the-us-by-age-2010/) accessed May 21, 2021

28 <sup>30</sup> <https://webcms.pima.gov/cms/One.aspx?portalId=169&pageId=537002> May 21,  
2021

<sup>31</sup> <https://webcms.pima.gov/cms/One.aspx?pageId=600833> May 24, 2021

1 subject[ed] an establishment to enforcement . . . .”<sup>32</sup>

2 3. ***Pascua Yaqui Tribe Civil Authority Closure Orders***

3 128. On March 17, 2020, by Resolution No. C03-66-20, the Pascua Yaqui Tribe issued  
4 a Declaration of Emergency due to the Coronavirus and the Pandemic.

5 129. On April 3, 2020, in response to the growing incidence of the Coronavirus in the  
6 State of Arizona and in Pima County, confirmed cases in the Tribe’s Communities, and the  
7 actual or imminent presence of the Coronavirus on the Property, the Tribe’s Chairman  
8 issued Executive Stay At Home Order No. 20-02, which, among other things, enacted a  
9 curfew between the hours of 8 P.M. and 6 A.M., closed non-essential public places,  
10 restricted gatherings, ordered that residents stay at home except as required for food,  
11 medical treatment, or safety, with a few exceptions (e.g., outdoor recreation, employment,  
12 cultural obligation); and ordered that social distancing, masks, and other protective  
13 measures be adhered to. The Order provided for enforcement by the Tribe’s Law  
14 Enforcement.

15 130. On May 17, 2020, in response to the continued increase in Coronavirus in the State  
16 of Arizona and in Pima County, the Tribe’s Communities, and the actual or imminent  
17 presence of the Coronavirus on the Property, the Tribe’s Chairman issued Executive Stay  
18 At Home Order No. 20-03 renewing the provisions of Executive Order No. 20-02. The  
19 Order provided for enforcement by the Tribe’s Law Enforcement.

20 131. On May 27, 2020, in response to the continued increase in Coronavirus in the State  
21 of Arizona and in Pima County, the Tribe’s Communities, and the actual or imminent  
22 presence of the Coronavirus on the Property, the Tribe by Resolution No. C05-121-20  
23 enacted Ordinance No, 26-20 titled “Ordinance of the Pascua Yaqui Tribe Enacting a  
24 Coronavirus Protection Order”<sup>33</sup> to expire on June 26, 2020, ordering that residents stay at  
25 home except as required for food, medical treatment, or safety, with a few exceptions (e.g.,

26 <sup>32</sup>

27 [https://onbase.pima.gov/publicaccess/CL/PublicAccessProvider.ashx?action=View  
Document&overlay=Print&overrideFormat=PDF](https://onbase.pima.gov/publicaccess/CL/PublicAccessProvider.ashx?action=ViewDocument&overlay=Print&overrideFormat=PDF) May 24, 2021

28 <sup>33</sup> [https://covid19.pascuayaqui-nsn.gov/wp-content/uploads/2020/05/extended-  
stay-at-home-order-5-27.pdf](https://covid19.pascuayaqui-nsn.gov/wp-content/uploads/2020/05/extended-stay-at-home-order-5-27.pdf) May 21, 2021

1 outdoor recreation, employment, cultural obligation); that non-essential public places be  
2 closed; that a curfew be in effect from 9 P.M. to 5 A.M.; and that necessary gatherings be  
3 restricted in size. The ordinance provided for enforcement by the Tribe’s Law  
4 Enforcement. On June 10, 2020, the Tribe, again in response to the continued increase in  
5 Coronavirus in the State of Arizona and in Pima County, the Tribe’s Communities, and the  
6 actual or imminent presence of the Coronavirus on the Property, by Resolution No. C06-  
7 131-20, enacted Ordinance No. 29-20 (“Ordinance of the Pascua Yaqui Tribe Enacting a  
8 Coronavirus Protection Order”)<sup>34</sup> to amend Ordinance No. 26-20: instead of a June 26, 2020  
9 ordinance expiration date, the ordinance was effective “until further action is taken by the  
10 Tribal Council.” The Ordinance provided for enforcement by the Tribe’s Law  
11 Enforcement.

12 132. On May 26, 2021, responding to decreased cases of Coronavirus in the State of  
13 Arizona, in Pima County, and in the Tribe’s Communities, the Tribe, by Resolution No.  
14 C05-142-21, enacted Ordinance No. 22-21 (“Ordinance of the Pascua Yaqui Tribe Enacting  
15 a Coronavirus Protection Order”) to amend Ordinance No. 26-20: lifting some, but not all,  
16 Coronavirus-related protections and restrictions. Social distancing, masks, and other  
17 protective measures remain in place.

18 ***D. The Impact of the Pandemic and the Closure Orders***

19 133. The actual or imminent physical presence of the Coronavirus and the immediate  
20 threat of further physical spread of the Coronavirus caused direct physical loss or damage  
21 by rendering the Property effectively or imminently uninhabitable and unusable for patrons,  
22 by impairing the function of the Property, and by causing the “interruption of business,  
23 services or rental value” during a “period of restoration.” Testing of individuals was not  
24 widely available in Spring 2020, but confirmed cases of the Coronavirus on the Pascua  
25 Yaqui reservation and in Arizona as a whole throughout the year, as well as confirmed  
26 positive cases on the Pascua Yaqui Reservation and in the State of Arizona as early as March

27 \_\_\_\_\_  
28 <sup>34</sup> <https://covid19.pascuayaqui-nsn.gov/wp-content/uploads/2020/06/Amending-Stay-at-Home-Order-6-10.pdf> May 21, 2021

1 2020<sup>35</sup>, confirmed the overwhelming likelihood of the actual or imminent physical presence  
2 of the virus on Plaintiffs' properties and on nearby properties.

3 134. The prolonged prevalence of the Coronavirus in the areas encompassing Plaintiffs'  
4 Property made it unavoidable that individuals with COVID-19 or otherwise carrying the  
5 Coronavirus, including employees, visitors, patrons, patients, and guests would be  
6 physically present at Plaintiff's Property on various dates since the earliest days of the  
7 Pandemic. Specifically, during the period of the Form Policy, individuals with COVID-19  
8 or otherwise carrying the Coronavirus entered Plaintiffs' Property. Over two thousand four  
9 hundred (2,400) confirmed positive cases were reported on the Tribe's reservation and  
10 within the Tribe's Communities in 2020<sup>36</sup>, including among Plaintiffs' employees, adding  
11 further impetus to the closure of Plaintiffs' Property; and more than one thousand five  
12 hundred (1,500) confirmed positive cases have been reported on the Tribe's reservation and  
13 within the Tribe's Communities to date in 2021<sup>37</sup>, including among Plaintiffs' employees.

14 135. Coronavirus-containing fomites (*i.e.*, inanimate objects), respiratory droplets, and  
15 nuclei from those individuals came into contact with, adhered to, and attached to the  
16 surfaces of the property upon which they landed.

17 136. Coronavirus or coronavirus-containing fomites, respiratory droplets, and nuclei  
18 physically altered the property to which they adhered, attached, or came into contact with  
19 including without limitation by altering the surfaces of that property and/or by making  
20 physical contact with those previously safe, inert materials dangerous. In addition, the  
21 Coronavirus physically altered the air. Air inside buildings that was previously safe to  
22 breathe but could no longer safely be breathed due to Coronavirus, has undergone a physical  
23 alteration.

---

24 <sup>35</sup> Upon information and belief, the Tribe's first confirmed positive COVID-19 case  
25 was March 2, 2020.

26 <sup>36</sup> 1,390 total COVID-19 cases in the Pascua Yaqui Tucson area communities (594 of  
27 those on the Pascua Yaqui Reservation), and 1,092 total COVID-19 cases in the  
28 Pascua Yaqui Guadalupe community.

<sup>37</sup> 645 total COVID-19 cases in the Pascua Yaqui Tucson area communities (274 of  
those on the Pascua Yaqui Reservation), and 856 total COVID-19 cases in the Pascua  
Yaqui Guadalupe community.



1 137. Coronavirus droplets have been conveyed from infected persons (whether  
2 symptomatic, pre-symptomatic, or asymptomatic) to solid surfaces, including but not  
3 limited to furniture, doors, floors, bathroom facilities, equipment, and supplies, and into the  
4 air and HVAC systems, causing damage and alteration to physical property and ambient  
5 air.

6 138. The presence of the Coronavirus, including but not limited to Coronavirus droplets  
7 or nuclei on solid surfaces and in the air, has caused and will continue to cause direct  
8 physical damage to physical property and ambient air.

9 139. The Coronavirus has caused a loss of functionality and use of the Property.

10 140. The Closure Orders also prohibited access to the Property. Those Closure Orders  
11 were issued by civil authorities in response to the physical presence of the Coronavirus at  
12 properties throughout Arizona, including property within a 10-mile radius of Plaintiffs'  
13 Property, and the imminent threat of further physical spread of the virus and resulting  
14 danger to individuals.

15 141. The Closure Orders and the property damage caused by the presence of the  
16 Coronavirus restricted the use of the Clinic and the Tribe's healthcare facilities by  
17 prohibiting access of potential patients for anything but essential health care services. These  
18 restrictions and conditions effectively eliminated the ability of patients to access health care  
19 facilities in order to obtain other services, significantly reducing patient flow and revenue.  
20 The restrictions and conditions also required increased spending by Plaintiffs for physical  
21 barriers, cleaning, sanitizing, and other measures aimed at remediating the physical  
22 presence of the virus, repairing the damage to property, and preventing further damage to  
23 property and patrons.

24 142. The Closure Orders and other property loss or damage caused by the Coronavirus  
25 at other properties restricted the use of the Property and Plaintiffs' businesses. The  
26 restrictions also resulted in increased spending by Plaintiffs for physical barriers, cleaning,  
27 sanitizing, and other measures aimed at remediating the physical presence of the virus,  
28 repairing the damage to property, and preventing further damage to property and patrons.

1           143. As a direct consequence of the Coronavirus, the Pandemic, and the Closure Orders,  
2 Plaintiff Enterprise closed completely on March 18, 2020, and only partially reopened with  
3 restricted capacity on June 3, 2020. In response to the Coronavirus and further Closure  
4 Orders, as well as additional evidence of the physical spread of Coronavirus, Plaintiff  
5 Enterprise closed again on December 7, 2020, and only partially reopened with restricted  
6 capacity on December 31, 2020. These closures not only affected the casino and restaurant  
7 operations but also hotel, conference services, entertainment services, and other operations  
8 on the properties.

9           144. Plaintiffs have instituted measures to repair the physical loss or damage, including  
10 the installation of physical barriers and increased cleaning and sanitizing at the Property.  
11 Thus, structural alterations, changes, and/or repairs have been made by Plaintiffs, and are  
12 continuing, so that Plaintiffs can continue their operations to the extent possible after  
13 experiencing direct property loss or damage caused by the Coronavirus and to avoid  
14 imminent threat of further property loss or damage.

15           145. Because the Coronavirus is still present throughout Arizona, it continues to pose  
16 an actual imminent threat to Plaintiffs and the Property.

17           146. The Closure Orders and the property damage caused by the Pandemic and the  
18 presence of the Coronavirus at the properties of suppliers and customers further harmed  
19 Plaintiffs' businesses. For example, area hotels, restaurants, and other businesses that  
20 facilitated travel by customers to Plaintiffs' Property experienced exposure to physical  
21 damage from the Coronavirus and were subject to the Closure Orders, leading to a lessened  
22 ability of customers to travel to Plaintiffs' establishments in order to enjoy the services  
23 offered. Similarly, tour operators and bus companies which normally brought patrons to  
24 Plaintiffs' Properties ceased to do so, and, when they later resumed, did so at a significantly  
25 reduced rate. These interruptions and reductions were due to physical loss or damage from  
26 the Coronavirus to the suppliers' and customers' property.

27           147. Property damage caused by the presence of the Coronavirus at other businesses  
28 and households in the Pascua Yaqui area, and the Closure Orders that resulted from that

1 property loss or damage, together with evidence of a significant infection rate near those  
2 properties, further harmed Plaintiffs' businesses by depriving Plaintiffs of tax revenue that  
3 would have been generated by economic activity conducted by those businesses and  
4 individuals. For example, tax revenue would have been collected from hotel occupancy on  
5 the reservation had potential patrons and businesses engaged in their normal level of  
6 economic activity – a level at which they would have engaged but for the physical loss or  
7 damage to property caused by the Coronavirus and the related Closure Orders.

8 148. As a result of COVID-19, the damage to Plaintiffs' Property, and the Closure Orders,  
9 Plaintiffs suffered losses covered by Protection and Preservation of Property, Business  
10 Interruption, Extra Expense, Ingress/Egress, Civil Authority, Contingent Time Element and  
11 Tax Revenue Interruption protections.

12 149. Plaintiff Tribe has performed all its obligations under the Tribe Policy including  
13 the timely payment of premiums.

14 150. Plaintiff Enterprise has performed all its obligations under the Enterprise Policy  
15 including the timely payment of premiums.

16 151. Plaintiff Tribe submitted a claim for loss to the Tribe Insurers under the Tribe  
17 Policy due to the presence of COVID-19 and the Closure Orders, and the Tribe Insurers  
18 denied that claim.

19 152. Plaintiff Enterprise submitted a claim for loss to the Enterprise Insurers under the  
20 Enterprise Policy due to the presence of COVID-19 and the Closure Orders, and the  
21 Enterprise Insurers denied that claim.

## 22 **VI. CLAIMS FOR RELIEF**

### 23 **FIRST CAUSE OF ACTION: DECLARATORY JUDGMENT**

#### 24 **(The Tribe against the Tribe Insurers)**

25 153. Plaintiffs incorporate the above paragraphs by reference.

26 154. This is a claim for relief for declaratory judgment pursuant to Ariz. R. Civ. P. 57  
27 and Ariz. Rev. Stat. § 12-1831. An actual and justiciable controversy exists between the  
28 Tribe and the Tribe Insurers concerning their respective rights and obligations under the

1 Tribe Policy.

2 155. The issuance of declaratory relief will terminate the controversy between the Tribe  
3 and the Tribe Insurers that gave rise to this action.

4 156. Therefore, this Court has the authority to issue a declaratory judgment concerning  
5 the respective rights and obligations of the Tribe and the Tribe Insurers under the Tribe  
6 Policy.

7 157. The Tribe seeks a declaratory judgment declaring that the Tribe Policy covers the  
8 losses the Tribe has suffered, including but not limited to Property Damage, Protection and  
9 Preservation of Property, Business Interruption, Extra Expense, Ingress/Egress, Civil  
10 Authority, Contingent Time Element, and Tax Revenue Interruption losses it has suffered.

11 158. The Tribe seeks a declaratory judgment declaring that the Tribe Insurers are  
12 responsible for fully and timely paying the Tribe for the full amount of the Tribe's covered  
13 losses incurred in connection with the Coronavirus, the Pandemic, and the related Closure  
14 Orders and the interruption of the Tribe's businesses stemming from the Pandemic.

15 159. The burden of proof is upon the Tribe Insurers to demonstrate that coverage is  
16 limited in any way under the Tribe Policy.

17 160. This claim arises out of contract, and the Tribe is therefore entitled to an award of  
18 attorneys' fees pursuant to A.R.S. § 12-341.01.

19 **SECOND CAUSE OF ACTION: DECLARATORY JUDGMENT**

20 **(The Enterprise against the Enterprise Insurers)**

21 161. Plaintiffs incorporate the above paragraphs by reference.

22 162. This is a claim for relief for declaratory judgment pursuant to Ariz. R. Civ. P. 57  
23 and Ariz. Rev. Stat. § 12-1831. An actual and justiciable controversy exists between the  
24 Enterprise and the Enterprise Insurers concerning their respective rights and obligations  
25 under the Enterprise Policy.

26 163. The issuance of declaratory relief will terminate the controversy between the  
27 Enterprise and the Enterprise Insurers that gave rise to this action.

28 164. Therefore, this Court has the authority to issue a declaratory judgment concerning

1 the respective rights and obligations of the Enterprise and the Enterprise Insurers under the  
2 Enterprise Policy.

3 165. The Enterprise seeks a declaratory judgment declaring that the Enterprise Policy  
4 covers losses the Enterprise has suffered, including but not limited to the Property Damage,  
5 Protection and Preservation of Property, Business Interruption, Extra Expense,  
6 Ingress/Egress, Civil Authority, Contingent Time Element, and Tax Revenue Interruption  
7 losses it has suffered.

8 166. The Enterprise seeks a declaratory judgment declaring that the Enterprise Insurers  
9 are responsible for fully and timely paying the Enterprise for the full amount of the  
10 Enterprises covered losses incurred in connection with the Coronavirus, the Pandemic, and  
11 the related Closure Orders and the interruption of the Tribe's businesses stemming from the  
12 Pandemic.

13 167. The burden of proof is upon the Enterprise Insurers to demonstrate that coverage  
14 is limited in any way under the Enterprise Policy.

15 168. This claim arises out of contract, and the Enterprise is therefore entitled to an  
16 award of attorneys' fees pursuant to A.R.S. § 12-341.01.

17 **THIRD CAUSE OF ACTION: BREACH OF CONTRACT**

18 **(The Tribe against the Tribe Insurers)**

19 169. Plaintiffs incorporate the above paragraphs by reference.

20 170. The Tribe Policy is a valid and enforceable contract.

21 171. The Tribe paid substantial premiums for the Tribe Policy and the promises of  
22 coverage contained therein.

23 172. The Tribe performed all of its obligations owed under the Tribe Policy or was  
24 excused from performance.

25 173. The Tribe Insurers denied the Tribe's claim and have refused to pay or otherwise  
26 honor their promises.

27 174. In denying coverage for any Property Damage, Protection and Preservation of  
28 Property, Business Interruption, Extra Expense, Ingress/Egress, Civil Authority, Contingent

1 Time Element, and Tax Revenue Interruption losses incurred in connection with the  
2 Coronavirus, the Pandemic, and related Closure Orders, the Tribe Insurers have breached  
3 the contract (that is, the Tribe Policy).

4 175. As a result, the Tribe has suffered and continues to suffer damages in an amount to  
5 be proven at trial.

6 176. This claim arises out of contract, and the Tribe is therefore entitled to an award  
7 of attorneys' fees pursuant to A.R.S. § 12-341.01.

8 **FOURTH CAUSE OF ACTION: BREACH OF CONTRACT**

9 **(The Enterprise against the Enterprise Insurers)**

10 177. Plaintiffs incorporate the above paragraphs by reference.

11 178. The Enterprise Policy is a valid and enforceable contract.

12 179. The Enterprise paid substantial premiums for the Enterprise Policy and the  
13 promises of coverage contained therein.

14 180. The Enterprise performed all of its obligations owed under the Enterprise Policy  
15 or was excused from performance.

16 181. The Enterprise Insurers denied the Enterprise's claim and have refused to pay or  
17 otherwise honor their promises.

18 182. In denying coverage for any Property Damage, Protection and Preservation of  
19 Property, Business Interruption, Extra Expense, Ingress/Egress, Civil Authority, Contingent  
20 Time Element, and Tax Revenue Interruption losses incurred in connection with the  
21 Coronavirus, the Pandemic, and related Closure Orders, the Enterprise Insurers breached  
22 the contract (that is, the Enterprise Policy).

23 183. As a result, the Enterprise has suffered and continues to suffer damages in an  
24 amount to be proven at trial.

25 184. This claim arises out of contract, and the Enterprise is therefore entitled to an  
26 award of attorneys' fees pursuant to A.R.S. § 12-341.01.

27  
28

1 **FIFTH CAUSE OF ACTION**

2 **BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING**

3 **(The Tribe against the Tribe Insurers)**

4 185. Plaintiffs incorporate the above paragraphs by reference.

5 186. The Tribe Policy is a valid and enforceable contract.

6 187. In Arizona, the law implies a covenant of good faith and fair dealing in every  
7 contract.

8 188. The Tribe has the right to a fair and prompt investigation, payment and/or  
9 settlement of its claims.

10 189. The Tribe Insurers failed to fully, fairly, and adequately investigate and adjust the  
11 Tribe's property claim, the Tribe's various business interruption claims, and other potential  
12 claims for damages. By failing to investigate the Tribe's claim, the Tribe Insurers breached  
13 the covenant of good faith and fair dealing to the Tribe.

14 190. By denying the Tribe's claims with no reasonable basis to do so, the Tribe Insurers  
15 breached the covenant of good faith and fair dealing. The Tribe Insurers were aware that  
16 they had no reasonable basis for denying the claims.

17 191. By artificially, laboriously attempting to infer a virus exclusion from the language  
18 of the Form Policy, the Tribe Insurers did not give the Tribe consideration, fairness, and  
19 honesty and thus breached the covenant of good faith and fair dealing to the Tribe.

20 192. As a result, the Tribe is entitled to consequential damages for the Tribe Insurers'  
21 breach of the Tribe Policy.

22 193. Consequential damages for breach of the Tribe Policy were reasonably  
23 contemplated by the parties when the Tribe Insurers issued the Tribe Policy.

24 194. Upon information and belief, the Tribe Insurers' wrongful denial of the Tribe's  
25 claim was part of the Insurers' regular practice to reduce their respective claim payments to  
26 insureds who purchased coverage under the TPIP across the United States. The Tribe  
27 Insurers engage in this practice for the express purpose of increasing their respective  
28 profitability.

1 195. The Tribe Insurers thus breached the covenant of good faith and fair dealing.

2 196. As a direct result of the Tribe Insurers' breach of the covenant of good faith and  
3 fair dealing, the Tribe has suffered and will continue to suffer significant losses and  
4 damages. The Tribe Insurers were consciously aware of the needs and rights of the Tribe  
5 and nevertheless ignored their obligations to the Tribe, thereby entitling the Tribe to an  
6 award of punitive damages.

7 197. This claim arises out of contract, and the Tribe is therefore entitled to an award of  
8 attorneys' fees pursuant to A.R.S. § 12-341.01.

9 **SIXTH CAUSE OF ACTION**

10 **BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING**

11 **(The Enterprise against the Enterprise Insurers)**

12 198. Plaintiffs incorporate the above paragraphs by reference.

13 199. The Enterprise Policy is a valid and enforceable contract.

14 200. In Arizona, the law implies a covenant of good faith and fair dealing in every  
15 contract.

16 201. The Enterprise has the right to a fair and prompt investigation, payment and/or  
17 settlement of its claims.

18 202. The Enterprise Insurers failed to fully, fairly, and adequately investigate and adjust  
19 the Enterprise's property claim, the Enterprise's various business interruption claims, and  
20 other potential claims for damages. By failing to investigate the Enterprise's claim, the  
21 Enterprise Insurers breached the covenant of good faith and fair dealing to the Enterprise.

22 203. By denying the Enterprise's claims with no reasonable basis to do so, the Enterprise  
23 Insurers breached the covenant of good faith and fair dealing. The Enterprise Insurers were  
24 aware that they had no reasonable basis for denying the claims.

25 204. By artificially, laboriously attempting to infer a virus exclusion from the language  
26 of the Form Policy, the Enterprise Insurers did not give the Enterprise consideration,  
27 fairness, and honesty and thus breached the covenant of good faith and fair dealing to the  
28 Enterprise.





1 and Preservation of Property, Business Interruption, Extra Expense,  
2 Ingress/Egress, Civil Authority, Contingent Time Element, and Tax Revenue  
3 Interruption losses incurred in connection with the Coronavirus, the  
4 Pandemic, and related Closure Orders and the interruption of their businesses  
5 stemming from the Pandemic are insured losses under the Tribe and  
6 Enterprise Policies; and

7 b. Defendants are obligated to pay for the foregoing losses incurred and to be  
8 incurred by the Plaintiffs related to the Coronavirus, the Pandemic, and  
9 related Closure Orders and the interruption of their businesses stemming from  
10 the Pandemic;

11 (3) Enter judgement on the Third and Fourth Causes of Action in favor of Plaintiffs  
12 and awarding damages for breach of contract in an amount to be proven at trial;

13 (4) Enter judgment on the Fifth and Sixth Causes of Action in favor of Plaintiffs and  
14 awarding damages including consequential and punitive damages in an amount to  
15 be proven at trial;

16 (5) Ordering Defendants to pay both pre- and post-judgment interest at the maximum  
17 legal rate on any amounts awarded;

18 (6) Ordering Defendants to pay reasonable attorneys' fees pursuant to A.R.S. § 12-  
19 341.01;

20 (7) Ordering Defendants to pay taxable costs pursuant to A.R.S. § 12-341;

21 (8) Order Defendants to pay reasonable attorneys' fees and other litigation costs,  
22 pursuant to the Form Policy, Tribe Policy, and Enterprise Policy;

23 (9) Ordering Defendants to pay multiple damages where required under state law; and

24 (10) Ordering such other equitable and further relief as this Court deems just and proper.

25 **JURY DEMAND**

26 Plaintiffs hereby demand a trial by jury on all issues so triable in this action.  
27  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

RESPECTFULLY SUBMITTED this 10th day of September, 2021.

QUARLES & BRADY LLP  
One Renaissance Square  
Two North Central, Ave.  
Phoenix, Arizona 85004

By: /s/ Amy Levine Heiserman  
Amy Levine Heiserman

Office of the Attorney General  
Pascua Yaqui Tribe  
7777 S. Camino Huivisim, Bldg C  
Tucson, Arizona 85757  
Alfred Urbina, Attorney General

Attorneys for Plaintiffs  
Pascua Yaqui Tribe and Pascua Yaqui  
Gaming Enterprises dba Casino Del Sol,  
Casino of the Sun, and Del Sol Marketplace