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XL SELECT PROFESSIONAL, PEARL INSURANCE GROUP, LLC,
GREENWICH INSURANCE GROUP

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEVADA

In re:
AMERI-DREAM REALTY, LLC
Debtor.

Case No.: 15-10110-led

Chapter 7

Adversary Proceeding No. 15-01183-led

VICTORIA NELSON, In Her Capacity As The
Chapter 7 Trustee Of AMERI-DREAM
REALTY, LLC,
Plaintiff,

**GREENWICH INSURANCE COMPANY'S
MOTION TO DISMISS PURSUANT TO
FED. R. CIV. PRO. 12(B)(6)**

v.

**Hearing Date: January 25, 2016
Hearing Time: 1:30 p.m.**

XL AMERICA, INC.; XL INSURANCE
AMERICA, INC.; XL SELECT
PROFESSIONAL; PEARL INSURANCE
GROUP, LLC; GREENWICH INSURANCE
COMPANY; and DOES I through X; and ROE
CORPORATE DEFENDANTS XI through XX,
Defendants.

NOW COMES Defendant Greenwich Insurance Company ("Greenwich") by and through its
counsel, for its Motion to Dismiss Pursuant to Fed. R. Civ. Pro. 12(b)(6) hereby states as follows:

I. INTRODUCTION

This is an action brought by the Chapter 7 Bankruptcy Trustee for Ameri-Dream Realty,
LLC seeking indemnity coverage for the theft by one of Ameri-Dream Realty's members, Ms.
Peledas-Brown. The Trustee is alleging breach of contract, breach of the duty of good faith and fair

1 dealing, breach of fiduciary duty and violations of NRS 686A.310 against Greenwich based on
2 Greenwich's denial of insurance coverage for the claims against Ms. Peledas-Brown. Specifically,
3 the Complaint asserts that indemnity coverage should be afforded for the claims and subsequent
4 judgment against Ms. Peledas-Brown because Ameri-Dream Realty and Mr. Brown were
5 adjudicated as "innocent insureds."

6 First, the underlying adversary action against Ms. Peledas-Brown was brought by the Chapter
7 7 Trustee. The Chapter 7 Trustee is an "Insured" under the Policy. Ameri-Dream Realty is the
8 Named Insured under the Policy. Exclusion I of the Greenwich Policy does not provide coverage for
9 claims "by or on behalf of any **Insured** against any other **Insured**." Therefore, Exclusion I of the
10 Policy bars coverage for any lawsuit by the Chapter 7 Trustee against an Insured, including but not
11 limited to Ms. Peledas-Brown.

12 Second, the Insuring Agreement provides coverage only for those claims "that the **Insured**
13 becomes legally obligated to pay as **damages** and **claims expenses** by reason of an act or omission
14 including **personal injury** in the performance of **real estate services** by the **Insured**." The
15 underlying adversary action was solely against Mr. Peladas-Brown. In the adversary action it was
16 adjudicated that Ms. Peledas-Brown's conduct was dishonest, intentional and fraudulent. Thus, the
17 Policy does not provide coverage for the judgment against Ms. Peledas-Brown pursuant to Exclusion
18 C and Exclusion D. It was further adjudicated that Ameri-Dream Realty and Mr. Brown were
19 "innocent of all claims asserted" in the adversary action against Ms. Peledas-Brown. No claim was
20 ever brought against Mr. Brown and/or Ameri-Dream. Therefore, there are no claims against Mr.
21 Brown and/or Ameri-Dream Realty for which those insured would "become legally obligated to pay
22 as **damages**" as the Chapter 7 Trustee adjudicated that no claims can or will be brought against Mr.
23 Brown and/or Ameri-Dream Realty and therefore the Insuring Agreement of the Policy is not
24 triggered with respect to the innocent insureds.

25 Third, now that the Chapter 7 Trustee has adjudicated that Ms. Peladas-Brown's theft began
26 in February 2013, four months before the inception of the Policy, subparagraph 4 of the Insuring
27 Agreement, which is a condition precedent to coverage, would operate to preclude coverage for all
28 claims against Ms. Peladas-Brown and for any indemnity demand by the Chapter 7 Trustee.

1 Last, even if this Court believes that the “insured v. insured” exclusion does not apply and
 2 the Insuring Agreement is triggered, Exclusion D of the Greenwich Policy applies to preclude
 3 coverage for any claims related to Ms. Peledas-Brown’s theft from Ameri-Dream Realty. Exclusion
 4 D expressly precludes coverage for “improper use of funds”, “personal profit to which the insured
 5 was not entitled”, and “failure to pay, collect or safeguard funds held for others...”

6 Therefore, the Greenwich Policy does not respond to any of the claims previously brought
 7 against Ms. Peladas-Brown. As such, the Complaint must be dismissed pursuant to Fed. R. Civ. Pro.
 8 12(b)(6).

9 **II. FACTUAL BACKGROUND**

10 **A. Ameri-Dream Realty, LLC**

11 Ameri-Dream Realty managed residential rental properties in which it received and held
 12 rental security deposits on behalf of customers’ tenants. *See* Compl. at ¶14. Ameri-Dream Realty
 13 was managed by John Brown (“Mr. Brown”) and his former wife Elsie Pelada-Brown. *See* Compl.
 14 at ¶13.

15 **B. The Greenwich Policy**

16 Greenwich issued a claims made and reported third party real estate agent errors and
 17 omissions policy to Named Insured Ameri-Dream Realty, LLC, numbered PEG9145932-6 and
 18 effective from June 14, 2013 through June 14, 2014 (the “Greenwich Policy”). *See* Compl. at ¶11.
 19 (A copy of the Greenwich Insurance Policy attached as Exhibit A.)¹

20 The Insuring Agreement of the Policy agrees to “pay on behalf of the **Insured** all sums in
 21 excess of the deductible that the **Insured** becomes legally obligated to pay as **damages** and **claims**
 22 **expenses** by reason of an act or omission including **personal injury** in the performance of **real**
 23 **estate services** by the **Insured**, provided that:”

- 24 1. The **claim** arising out of the act or omission must first be made against the
 25 **Insured** during the **policy period** or any applicable **extended reporting**
 26 **period**;

¹ The Adversary Complaint references the Greenwich Policy but fails to attach the Policy as an Exhibit. By referencing the Greenwich Policy, it is incorporated into the Adversary Complaint and is properly relied upon by Defendants in their Motion to Dismiss. *Wensley v. First Nat. Bank of Nevada*, 874 F.Supp.2d 95 (D. Nev. 2012) (“A court may, however, consider certain materials—documents attached to the complaint, documents incorporated by reference in the complaint, or matters of judicial notice—without converting the motion to dismiss into a motion for summary judgment.”).

2. The **claim** must be reported in writing to the **Company** during the **policy period** or within 60 days after the end of the **policy period** unless an **extended reporting period applies**;
3. Such act or omission was committed on or subsequent to the **retroactive date** specified in the Declarations; and
4. Prior to the inception date of this policy, no **Insured** had a basis to believe that such act or omission, or any related act or omission, might reasonably be expected to be the basis of a **claim**.

Except as provided in Section V.D., below, **claims expenses** are in addition to the limit of liability.

The Greenwich Policy defines "**Claim**" as "a demand for money or services naming the **Insured** by reason of an act or omission in the performance of **real estate services**."

The Greenwich Policy is also subject to several exclusions including the following applicable exclusion:

D. based on or arising out of:

1. the conversion, commingling, defalcation, misappropriation or improper use of funds or other property;
2. the gaining of any personal profit or advantage to which the **Insured** is not legally entitled; or
3. the inability or failure to pay, collect or safeguard funds held for others, unless the **insured** is acting in the capacity of a **short term escrow agent**.

I. by or on behalf of any **Insured** against any other **Insured**.

The Policy also contains Condition D "Innocent Insureds" which provides "If coverage of this policy would not apply because of Exclusion C or because of noncompliance with Condition B, such Exclusion or Condition will not apply to any **Insured** who did not commit, participate in, or have knowledge of any of the acts described in Exclusion C. and whose conduct did not violate Condition B."

C. The Peladas-Brown Adversary Complaint

On May 21, 2015, the Trustee, in her capacity as Chapter 7 Trustee for Ameri-Dream Realty initiated an adversary proceeding against Ms. Peladas-Brown in the United States Bankruptcy Court for the District of Nevada, Adversary Case No. 15-01087-LED (the "Peladas-Brown Adversary Complaint"). *See* Compl. at ¶27. The Peladas-Brown Adversary Complaint is attached as Exhibit

1 B. The Peladas-Brown Adversary Complaint did not name Mr. Brown or Ameri-Dream Realty as
2 defendants. *Id.* However, the Peladas-Brown Complaint did contain a request for a declaratory
3 judgment that Ameri-Dream Realty and Mr. Brown were innocent and had no knowledge of Ms.
4 Peladas-Brown's wrongdoings. *See* Compl. at ¶28.

5 On October 27, 2015, the Bankruptcy Court entered an order granting summary judgment on
6 all claims the Trustee had brought against Peladas-Brown, with findings of fact and conclusions of
7 law. *See* Compl. at ¶30. A copy of the Findings of Fact and Conclusions of Law from the Peladas-
8 Brown Adversary Action is attached as Exhibit C. The Bankruptcy Court made several conclusions
9 of law in the Peladas-Brown Adversary Action including the following:

10 5. Through improper action or wrongful conduct and without privilege, the Defendant
11 (Ms. Peladas-Brown) breached her fiduciary duties to the Company.

12 6. The Defendant had knowledge she was breaching her fiduciary duties, and acted
purposely and with malice and intent to injure the Company.

13 7. The tortious conduct of the Defendant proximately caused the damage to the
14 Company, because the Security Deposits were transferred for no consideration, and
the Defendant knew it.

15 8. The Defendant had a duty to the Company to use ordinary care when representing
16 the reasons for transferring the Security Deposits.

17 9. The Defendant breached her duty of care to the Company by falsely representing
18 the transfer of the Security Deposits was an appropriate transaction for the Company
19 to undertake.

20 10. Under Nevada law, the Defendant is required to safeguard the Security Deposits
21 on behalf of the tenants.

22 11. As a result of the Defendant's false representations of the appropriateness of the
23 wire transfers of the Security Deposits, the Company transferred the Security
24 Deposits for no consideration.

25 12. The Company suffered damages as a result of the transfer of the Security
26 Deposits, and those damages were caused by the Defendant's misrepresentations.

27 13. The tenants managed by the Company relied on the representations of the
28 Defendant that the Security Deposits were safe. As a result of those false
representations of the safety of the Security Deposits, nearly 1,000 tenants transferred
their money to the Company, even though the Defendant knew or should have known
that those payments would never be repaid, given the Defendant's plan to abscond
with the money.

14. The Company suffered damages as a result of the transfer of the Security Deposits
and those damages were proximately caused by the Defendant's misrepresentations
regarding the safety of the Security Deposits.

1 15. The Company was unaware at all times relevant to the Complaint that the Defendant conspired to abscond with the Security Deposits to the Philippines.

2 16. Mr. Brown was unaware at all times relevant to the Complaint that the Defendant conspired to abscond with the Security Deposits to the Philippines.

3 17. The Company and Mr. Brown are innocent of all claims asserted in the Complaint
4 against the Defendant.

5 **D. Ameri-Dream Realty's Notice of Claim to Greenwich**

6 Prior to the institution of the Peladas-Brown Adversary matter, on April 9, 2014 counsel for
7 Ameri-Dream and Mr. Brown sent a Notice of Claim letter to XL America regarding the actions of
8 Ms. Peladas-Brown. *See* Compl. at ¶32. On April 10, 2014, counsel for Ameri-Dream submitted a
9 claim report form under the Greenwich Policy providing additional notice of a claim. *See* Compl. at
10 ¶36. Upon initiation of the Adversary Proceeding on May 21, 2015, a Notice of Claim was once
11 again provided under the Greenwich Policy. *See* Compl. at ¶37.

12 Greenwich denied coverage under the Greenwich Policy for the Peladas-Brown Adversary
13 matter. A copy of Greenwich's denial letter is attached as Exhibit D.

14 It is important to note that Pearl Insurance Group, LLC ("Pearl") was not a party to the Real
15 Estate Errors & Omissions Policy issued to Ameri-Dream Realty, LLC. Pearl never entered into any
16 contract directly with Ameri-Dream, LLC.

17 Pearl did not make any coverage decisions, including but not limited to accepting or denying
18 any claim, under the Greenwich Policy. Specifically, the Policy states that if coverage is afforded,
19 only Greenwich "agreed to pay for claims" under the Policy. *See* Compl. at ¶ 33.

20 Similarly, XL America, Inc., XL Insurance America, Inc. and XL Select Professional
21 (collectively referred to as the "XL Entities") are not parties to the Greenwich Policy issued to
22 Ameri-Dream Realty. The XL Entities never entered into any contract directly with Ameri-Dream,
23 LLC. The XL Entities did not make any coverage decisions, including but not limited to accepting
24 or denying any claims under the Greenwich Policy. Again, the Complaint makes clear that only in
25 the event coverage is afforded, Greenwich "agreed to pay for claims" under the Policy. *See* Compl.
26 at ¶ 33.

27 **E. The Adversary Complaint Against Greenwich**

28 The Chapter 7 Trustee has brought claims against Greenwich asserting claims for: (1) breach

1 of contract; (2) breach of implied covenant of good faith and fair dealing; (3) breach of fiduciary
 2 duty; (4) violations of NRS 686A.310; and (5) declaratory judgment. The Adversary Action against
 3 Greenwich is premised on the false presumption that coverage was denied to Ameri-Dream Realty
 4 and Mr. Brown pursuant to Exclusion C of the Policy and because Mr. Brown and Ameri-Dream
 5 Realty were “innocent insureds”, such denial was improper.

6 **III. STANDARD OF REVIEW FOR MOTION TO DISMISS**

7 A court must dismiss a cause of action that fails to state a claim upon which relief can be
 8 granted. Fed. R. Civ. P. 12(b)(6); *see also Volcano Developers, LLC v. Bonneville Mortg.* 2012 U.S.
 9 Dist. LEXIS 1413, *9 (D. Nev. Jan. 4, 2012). When considering a motion to dismiss, the court must
 10 take all material allegations as true and construe them in the light most favorable to the plaintiff;
 11 however, the court is not required to accept conclusory allegations or unreasonable inferences of
 12 fact. *See Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001).

13 “Generally, a district court may not consider any material beyond the pleadings in ruling on a
 14 Rule 12(b)(6) motion. However, material which is properly submitted as part of the complaint may
 15 be considered on a motion to dismiss.” *Hal Roach Studios, Inc. v. Richard Feiner & Co.*, 896 F.2d
 16 1542, 1555 n. 19 (9th Cir.1990) (citation omitted). Similarly, “documents whose contents are alleged
 17 in a complaint and whose authenticity no party questions, but which are not physically attached to
 18 the pleading, may be considered in ruling on a Rule 12(b)(6) motion to dismiss” without converting
 19 the motion to dismiss into a motion for summary judgment. *Branch v. Tunnell*, 14 F.3d 449, 454 (9th
 20 Cir.1994). Moreover, under Federal Rule of Evidence 201, a court may take judicial notice of
 21 “matters of public record.” *Mack v. S. Bay Beer Distribs., Inc.*, 798 F.2d 1279, 1282 (9th Cir.1986).
 22 Otherwise, if the district court considers materials outside of the pleadings, the motion to dismiss is
 23 converted into a motion for summary judgment. *See Arpin v. Santa Clara Valley Transp. Agency*,
 24 261 F.3d 912, 925 (9th Cir.2001).

25 **IV. ARGUMENT**

26 This Court must decide whether under Nevada law, Greenwich had a duty to defend the
 27 Peladas-Brown Adversary Action and subsequently indemnify Ms. Peladas-Brown for the judgment
 28 of \$1,174,373.63 entered against her in the Peladas-Brown Adversary Action. Under Nevada law,

1 an insurer's duty to defend is determined by the language of its policy and the allegations in the
 2 complaint giving rise to the suit against its insured. *Rockwood Ins. Co. v. Federated Capital Corp.*,
 3 694 F.Supp. 772 (D. Nev. 1988); *see also Continental Cas. Co. v. City of Richmond*, 763 F.2d 1076
 4 (9th Cir. 1985).

5 Furthermore, under Nevada law, if there is no ambiguity, words will be given their usual and
 6 ordinary meaning. *Siggelkow v. Phoenix Ins. Co.*, 846 P.2d 303, 304 (Nev. 1993); *Dickenson v.*
 7 *Nevada*, 977 P.2d 1059, 1061 (Nev. 1982), cited in *INA v. Hilton Hotels U.S.A., Inc.*, 908 F.Supp.
 8 809 (D. Nev. 1995). An insurance policy must be considered as a whole to determine what was
 9 meant to be covered. *National Union Fire Ins. Co. v. Reno's Executive Air*, 682 P.2d 1380, 1383
 10 (Nev. 1984). A policy will be deemed ambiguous only if it is reasonably susceptible of two contrary
 11 interpretations. *Farmers Ins. Exchange v. Young*, 832 P.2d 376, 379 (Nev. 1992). However, Nevada
 12 courts will not look to extrinsic sources of intent to find ambiguity. *Id.* However, if the policy is
 13 ambiguous, a court should look to the intent of the parties, the subject matter of the policy and the
 14 circumstances surrounding its issuance before resolving the claimed ambiguity. *National Union*
 15 *Fire Ins. Co. v. Caesar's Palace Hotel & Casino*, 792 P.2d 1129, 1130 (Nev. 1990); *Reno's*
 16 *Executive Air*, 682 P.2d at 1383.

17 Finally, while ambiguities will generally be resolved in favor of the insured, Nevada courts
 18 will not rely on the rule of *contra proferentum* to create coverage where it is beyond the reasonable
 19 expectations of the insured. *Montana Refining Co. v. National Union Fire Ins. Co. of Pittsburgh*,
 20 918 F.Supp. 1395 (D. Nev. 1996). In this case, a number of exclusions and policy provisions serve
 21 to preclude coverage for the Adversary Action.

22 **A. Exclusion I, the Insured Versus Insured Exclusion, Precludes Any Coverage for**
 23 **Claims Against Ameri-Dream or Mr. Brown by the Ameri-Dream Chapter 7**
 24 **Trustee.**

25 The Greenwich Policy is a "third party liability policy"; that is, a policy that provides
 26 coverage for liability of the insured to third parties. Such policies provide broader coverage than
 27 typical first party property insurance policies, such as homeowners' policies, in which the insurer
 28 "promises to pay money to the insured upon the happening of an event, the risk of which has been

1 insured against.” *Montrose Chem. Corp. v. Admiral Ins. Co.*, 10 Cal.4th 645, 663, 42 Cal.Rptr.2d
 2 324, 913 P.2d 878 (1995). In third party liability policies, by contrast, the carrier “assumes a
 3 contractual duty to pay judgments the insured becomes legally obligated to pay as damages because
 4 of bodily injury or property damage caused by the insured.” *Id.*

5 Whereas first party insurance coverage is typically triggered by certain enumerated perils,
 6 e.g., physical and fortuitous events, the “right to coverage in the third party liability insurance
 7 context draws on traditional tort concepts of fault, proximate cause and duty.... [B]y insuring for
 8 personal liability, and agreeing to cover the insured for his own negligence, the insurer agrees to
 9 cover the insured for a broader spectrum of risks [than in first-party insurance policies].” *Id.* at 664,
 10 42 Cal.Rptr.2d 324, 913 P.2d 878 (emphasis omitted).

11 The Chapter 7 Trustee in this matter appears to misunderstand the practical difference
 12 between first party insurance and third party insurance. The Chapter 7 Trustee, who stands in the
 13 shoes of Ameri-Dream Realty, is seeking a payment from Greenwich directly to Ameri-Dream
 14 Realty. Third party insurance policies provide no such coverage. The claims against Ms. Peladas-
 15 Brown were unquestionable brought on behalf of Ameri-Dream Realty for loss to Ameri-Dream
 16 Realty. Each count of the Peladas-Brown Adversary Complaint expressly states that “The [Ameri-
 17 Dream Realty] suffered damages” as a result of the conduct of Ms. Peladas-Brown. *See e.g.* Exhibit
 18 B at ¶¶21, 27 and 31. Therefore, Ameri-Dream cannot directly recover insurance proceeds from the
 19 Greenwich third-party errors and omissions policy.

20 Not only does the very nature of the Greenwich Policy preclude payment of first party
 21 claims, Exclusion I of the Policy specifically precludes claims by one insured against another.
 22 Exclusion I of the Policy expressly states that Greenwich will not defend or pay any **claim** “by or on
 23 behalf of any **Insured** against any other **Insured**.” The Greenwich Policy defines “**Insured**” as
 24 follows:

25 Insured means:

- 26 1. the Named Insured;
- 27 2. any present or former partner, member, officer, director or employee for real
 estate services performed on behalf of the Named Insured;
- 28 3. any present or former independent contractor and their employees for real
 estate services performed on behalf of the Named Insured, but only if, prior to

- 1 the date a claim is made, the Named Insured had agreed to provide insurance
for the independent contractor's real estate services;
- 2 4. the estate, heirs, executors, administrators, assigns and legal representatives of
3 an Insured in the event of such Insured's death, incapacity, insolvency or
4 bankruptcy, but only for liability arising out of real estate services performed
5 by or on behalf of the Named Insured prior to such Insured's death, incapacity,
6 insolvency or bankruptcy; or
- 5 5. any real estate franchise corporation of which the Named Insured is a
franchisee, but only as respects the real estate franchise corporation's liability
6 for acts or omissions committed by an Insured on behalf of the Named
Insured.
- 7 6. the lawful spouse or qualifying domestic partner of any present or former
8 partner, member, officer, director, employee, or independent contractor, but
9 only for liability arising out of real estate services actually or allegedly
10 performed by such present or former partner, member, officer, director,
11 employee, or independent contractor on behalf of the Named Insured. The
Company will have no obligation to pay damages or claim expenses for any
12 claim arising from any act or service actually or allegedly provided by the
spouse or domestic partner of any individual to whom this policy otherwise
provides coverage.

13 Pursuant to Paragraph 4 of the Greenwich Policy's definition of "Insured", the Chapter 7
14 Trustee of Ameri-Dream Realty is an "**Insured**" under the Greenwich Policy. The Chapter 7
15 Trustee is a legal representative of Ameri-Dream Realty as a result of its bankruptcy. Specifically,
16 Paragraph 1 of the Complaint in this action states that "Ameri-Dream Realty, LLC (the "Company")
17 was a real estate sales and property management company based in Las Vegas, Nevada prior to
18 filing for relief under Chapter 7 of the United States Bankruptcy Code." See Ex. B. Paragraph 3 of
19 the Complaint further states that "The Plaintiff is the Court-appointed Chapter 7 Trustee over the
20 Company in Case No. 15-10110-LED, United States Bankruptcy Court for the District of Nevada."
21 Ex. B.

22 Courts have held that risks such as collusion and moral hazard are much greater for claims by
23 one insured against another insured on the same policy, than they are for claims by strangers;
24 therefore, liability policies typically exclude them from coverage. *Biltmore Associates, LLC v. Twin*
25 *City Fire Ins. Co.*, 572 F.3d 663, 670 (9th Cir. 2009). Allowing such claims would turn liability
26 insurance into casualty insurance, because the company, acting through its officers and directors,
27 would be able to collect from the insurance company for its own mistakes. *Id.* The exclusion protects
28 against collusion, and also against the risk of selling liability insurance for what amounts to a fidelity

1 bond. *Id.* If the exclusion were ignored, then those companies who only want to pay for protection
2 against third party claims they cannot control would have to bear the additional financial burden of
3 paying for claims over which companies have more control. *Id.* This is exactly what the Chapter 7
4 Trustee is attempting to do in the case at bar. The Chapter 7 Trustee is attempting to recover directly
5 for Ameri-Dream Realty for its officer's own theft, i.e. converting a third-party liability policy into a
6 fidelity bond policy.

7 In *Biltmore*, a trustee hired by assignee of the insured brought an action challenging the
8 insurer's denial of coverage. The district court dismissed the coverage action for failure to state a
9 claim under Rule 12(b)(6). The Ninth Circuit, under a *de novo* review of the dismissal, affirmed the
10 district court's ruling, but on different grounds. The Ninth Circuit found that the proper basis for
11 dismissal was the application of the insured versus insured exclusion. The *Biltmore* court found that
12 a post-bankruptcy debtor in possession acts in the same capacity as the pre-bankruptcy debtor for the
13 purpose of directors and officers liability insurance. *Id.* at 668. In so holding, the Ninth Circuit
14 looked at two issues: (1) what the insured versus insured exclusion means, and (2) how bankruptcy
15 law affects its application. *Id.*

16 In interpreting the insured v. insured exclusion in *Biltmore*, the Ninth Circuit concluded that
17 the "only question before us on the language of the exclusion is whether the underlying suit was
18 'brought or maintained on behalf of an Insured in any capacity.'" *Id.* at 669. First, the Ninth Circuit
19 noted that the underlying lawsuit alleged breach of fiduciary and statutory duties by the officers and
20 directors of the insured company. The Ninth Circuit further noted that "coverage is excluded if [the
21 Named Insured] sues them, and it did." The Ninth Circuit was not swayed by arguments that
22 ultimately the money would go to creditors, what mattered to the analysis was who was the plaintiff.
23 *Id.* Similar to *Biltmore*, the claims in this matter were brought on behalf of Ameri-Dream for losses
24 to Ameri-Dream, as established by the Peladas-Brown Complaint.

25 Next, the Ninth Circuit in *Biltmore* looked to whether the claim was instigated and continued
26 by the Insured. Unlike the Ameri-Dream Chapter 7 Trustee, *Biltmore* was not a designated insured
27 under the policy at issue. Nevertheless, the Ninth Circuit found that "*Biltmore* cannot jump into the
28 insureds' shoes to bring the lawsuit, out of their shoes to claim not to be suiting as though it were the

1 insureds and then back into their shoes to get compensatory and punitive damages for the insurers'
2 failure to cover their liabilities.” *Id.* at 670. To allow this matter to go forward in light of Exclusion
3 I would allow the Chapter 7 Trustee to take the same inconsistent position.

4 Furthermore, the Ninth Circuit in *Biltmore* concluded that the prefiling company and the
5 company as debtor after bankruptcy filing are the same entity. Therefore, the Ameri-Dream Chapter
6 7 Trustee cannot avoid the insured versus insured exclusion by asserting it holds some ubiquitous
7 role as a trustee.

8 Based on the foregoing, dismissal of the Complaint against Greenwich is appropriate under
9 Rule 12(b)(6) based on the application of Exclusion I, the insured versus insured exclusion.

10 **B. Regardless of the Application of Exclusion I, Greenwich Had No Defense or**
11 **Indemnity Obligations for the Peladas-Brown Adversary Action**

12 The only Insured sued in the Peladas-Brown Adversary Action was Ms. Peladas-Brown. The
13 allegations of the Peladas-Brown Adversary Action asserted that Ameri-Dream Realty, as part of its
14 business, received and held rental security deposits of its customers’ tenants. At the time of the
15 alleged conversion by Ms. Peladas-Brown, Ameri-Dream allegedly held in excess of \$1,200,000 of
16 security deposit monies.

17 It is alleged that in late March of 2014, Ameri-Dream discovered that significant funds were
18 missing from the bank account designated to hold tenant security deposits. At the time of the theft,
19 the Company held security deposits for more than 1,000 tenants. The Trustee asserted that Ms.
20 Peladas-Brown orchestrated various unauthorized transactions, unbeknownst to Ameri-Dream or her
21 co-manager and husband, John M. Brown, which transactions included the wire transfers of the
22 majority of the security deposits to the Philippines.

23 The Peladas-Brown Adversary Action further asserted that the security deposits were
24 disbursed to friends and family in need after the damage caused by Typhoon Haiyan in November of
25 2013. The Peladas-Brown Adversary Action asserts four causes of action against Ms. Peladas-
26 Brown: (1) Breach of Fiduciary Duty to Ameri-Dream; (2) Common Law Misrepresentation to
27 Ameri-Dream; (3) Negligent Misrepresentation to Ameri-Dream; and (4) Declaratory Judgment.

1. **Greenwich properly denied defense and indemnity coverage for the Peladas-Brown Adversary Action under Exclusion D and the prior knowledge provision of the Policy's Insuring Agreement. Coverage Was Precluded for the Peladas-Brown Adversary Action Pursuant to Exclusion D of the Policy.**

Exclusion D of the Policy precludes coverage, both defense and indemnity, for any claims "based on or arising out of":

1. the conversion, commingling, defalcation, misappropriation or improper use of funds or other property;
2. the gaining of any personal profit or advantage to which the **Insured** is not legally entitled; or
3. the inability or failure to pay, collect or safeguard funds held for others, unless the **insured** is acting in the capacity of a **short term escrow agent**.

The allegations in the Peladas-Brown Adversary Action explicitly allege that Ms. Peladas-Brown converted and misappropriated \$1.2 million in security deposits that Ameri-Dream was holding for its clients' tenants. The Peladas-Brown Adversary Complaint alleged that Ameri-Dream "discovered that significant funds were missing from the bank account designated to hold tenant security deposits." Specifically, the Peladas-Brown Adversary Complaint asserted that Ms. Peladas-Brown "orchestrated various unauthorized transactions ... which included the wire transfers of the majority of the Security Deposits to the Philippines."

Furthermore, the Bankruptcy Court entered Findings of Fact and Conclusions of Law in the Peladas-Brown Adversary Action which expressly found that Ms. Peladas-Brown failed to safeguard funds. Specifically, the Bankruptcy Court found, "Under Nevada law, [Ms. Peladas-Brown] is required to safeguard the Security Deposits on behalf of tenants." Ex. C at ¶10. "The tortious conduct of [Ms. Peladas-Brown] proximately caused the damage to the Company, because the Security Deposits were transferred for no consideration, and [Ms. Peladas-Brown] knew it." Ex. C at ¶7.

Under Nevada law, any exclusion must be narrowly tailored so that it "clearly and distinctly communicates to the insured the nature of the limitation, and specifically delineates what is and is not covered." *Griffin v. Old Republic Ins. Co.*, 122 Nev. 479, 485, 133 P.3d 251, 255 (2006) (internal quotation marks omitted). To preclude coverage under an insurance policy's exclusion

1 provision, an insurer must (1) draft the exclusion in “obvious and unambiguous language,” (2)
 2 demonstrate that the interpretation excluding coverage is the only reasonable interpretation of the
 3 exclusionary provision, and (3) establish that the exclusion plainly applies to the particular case
 4 before the court. *Powell*, 127 Nev. 252 P.3d at 674 (2011).

5 Exclusion D of the Greenwich Policy is written in an obvious and unambiguous manner. The
 6 only reasonable interpretation of Exclusion D is that no coverage is afforded for theft or conversion
 7 of security deposits. The entire Peladas-Brown Adversary Complaint is based on and arising out of
 8 Ms. Peladas-Brown’s misappropriation of security deposits. Moreover, Condition D of the Policy,
 9 “Innocent Insureds” expressly does not apply to Exclusion D.

10 **2. Coverage for the Peladas-Brown Adversary Action Is Precluded By the**
 11 **Prior Knowledge Provision of the Insuring Agreement.**

12 The Greenwich Policy is a claims made and reported policy, which provides coverage for
 13 claims “first made” against the Insured and reported in writing to Greenwich during the period of
 14 insurance or extended reporting period. Accordingly, “a predicate to claims-made coverage is that
 15 the insured neither knew of a claim nor could have reasonably foreseen that a known circumstance,
 16 act or omission might reasonably be expected to be the basis of a claim or suit.” Ronald E. Mallen
 17 & Jeffrey M. Smith, *Legal Malpractice*, § 35:14, at 84 (2008 ed.) (“Mallen”). This is the express and
 18 unambiguous intent of subparagraph 4 of the Insuring Agreement of the Greenwich Policy.

19 It is well-settled that an insurer issuing a claims made policy, such as the one at issue here,
 20 acts reasonably in excluding from coverage losses which are known at the time the policy incepts or
 21 which are so “probable or imminent” that they are “not proper subjects of insurance.” Leo R. Russ,
 22 *Couch on Insurance* § 102:8 (3d ed. 2009). *See also Truck Ins. Exch. v. Ashland Oil, Inc.*, 951 F.2d
 23 787, 791 (7th Cir. 1992) (use of prior knowledge exclusions in claims made policies is common and
 24 “uncontrovertially proper”). Here, the Prior Knowledge Provision of the Insuring Agreement
 25 provides coverage only if “prior to the inception date of this policy, no **Insured** had a basis to
 26 believe that such act or omission, or any related act or omission, might reasonably be expected to be
 27 the basis of a **claim**.”

28 Courts repeatedly have held that the language of the prior knowledge provision is

1 unambiguous, proper and applies an objective standard. For example, the United States Court of
2 Appeals for the Ninth Circuit, applying California law and interpreting nearly identical policy
3 language, adopted an objective reasonable person standard for evaluating whether an insured was
4 aware of acts that might be expected to be the basis of a claim. *Weddington*, 2009 WL 3028237, at
5 *1-2 (“[T]he use of the phrase ‘or could have reasonably foreseen’ indicates that coverage is
6 excluded where a claim was foreseeable from a reasonable, objective viewpoint”).

7 The Peladas-Brown Adversary Action specifically established that Ms. Peladas-Brown’s first
8 conversion of security deposits occurred on February 27, 2013, four months before the Greenwich
9 Policy inception. In addition, the Findings of Facts and Conclusions of Law establish that six
10 conversions of security deposits totaling \$245,793 were carried out by Ms. Peladas-Brown prior to
11 the inception of the Greenwich Policy on June 14, 2013. Ms. Peladas-Brown is an Insured under the
12 Policy. Ms. Peladas-Brown was aware of her conversion of security deposits prior to June 14, 2013
13 as established by the Chapter 7 Trustee in the Peladas-Brown Adversary Action.

14 Specifically, the Findings of Fact and Conclusions of Law entered in the Peladas-Brown
15 Adversary Action state that Ms. Peladas-Brown “knew or should have know that those payments
16 would never be repaid, given [Ms. Peladas-Brown]’s plan to abscond with the money.” Ex. C at ¶13.
17 The Bankruptcy Court further expressly found that Ms. Peladas-Brown had knowledge of her
18 wrongful conduct and found that “Defendant had knowledge she was breaching her fiduciary duties,
19 and acted purposefully and with malice and intent to injure the Company.” Ex. C at ¶6. As a result,
20 no coverage, either defense or indemnity, is afforded for the Peladas-Brown Adversary Action.

21 Moreover, a clear and plain reading of Condition D of the Policy expressly establishes that
22 the Innocent Insured condition is not applicable to the application of the Insuring Agreement of the
23 Policy. Thus, pursuant to application of Exclusion D and Subparagraph 4 of the Insuring
24 Agreement, no defense or indemnity coverage is provided for the Peladas-Brown Adversary Action,
25 regardless of whether Mr. Brown and Ameri-Dream were involved in her theft of security deposits.

26 ///

27 ///

28 ///

C. Even If Mr. Brown and Ameri-Dream's Innocent Insureds Status Overrode the Application of the Exclusions Discussed Herein, Neither Mr. Brown nor Ameri-Dream are "Legally Obligated to Pay" Any Judgments and Therefore The Insuring Agreement of the Greenwich Policy Is Not Triggered.

The Greenwich Policy is a third party policy that provides defense and indemnity coverage for covered third-party "claims" brought against an Insured. The Insuring Agreement of the Policy makes clear that Greenwich will only pay claims that "the Insured becomes legally obligated to pay as damages and claims expenses by reason of an act or omission ... in the performance of real estate services by the Insured." The Insuring Agreement further requires that the **claim** "first be made against the Insured during the policy period..." The Policy defines "**Claim**" as:

a demand for money or services naming the **Insured** by reason of an act or omission in the performance of **real estate services**. A claim also includes the service of suit or the institution of an arbitration proceeding against the **Insured**.

The only claim brought by the Chapter 7 Trustee is the adversary action brought solely against Ms. Peladas-Brown. An objective reading of the Peladas-Brown Adversary Action demonstrates that no claim was made or judgment entered against Mr. Brown or Ameri-Dream Realty.

By virtue of the Findings of Fact and Conclusions of Law entered in the Peladas-Brown Action, it is evident that not only were Mr. Brown and Ameri-Dream Realty not sued by the Chapter 7 Trustee, Mr. Brown and Ameri-Dream Realty are not and cannot be "legally obligated to pay damages" for Ms. Peladas-Brown's activities, which is required to trigger coverage under the Greenwich Policy. Specifically, the Bankruptcy Court made the following findings:

- The Company was unaware at all times relevant to the Complaint that the Defendant conspired to abscond with the Security Deposits to the Philippines. Conclusions of Law Exhibit C at ¶15.
- Mr. Brown was unaware at all times relevant to the Complaint that the Defendant conspired to abscond with the Security Deposits to the Philippines. Conclusions of Law Exhibit C at ¶16.
- The Company and Mr. Brown are innocent of all claims asserted in the Complaint against the Defendant. Conclusions of Law Exhibit C at ¶17.

1 By virtue of the Findings of Facts and Conclusions of Law requested by the Chapter 7
2 Trustee and entered by the Bankruptcy Court, neither Ameri-Dream Realty and/or Mr. Brown are
3 “legally obligated to pay” the approximate \$1.2 million in funds converted by Ms. Peladas-Brown.
4 In addition, the Bankruptcy Court concluded and held that the divorce decree between Ms. Peladas-
5 Brown and Mr. Brown requires Ms. Peladas-Brown to indemnify Mr. Brown and Ameri-Dream
6 Realty against any claims relating to the loss of the Security Deposits. Exhibit C at ¶14. Therefore,
7 because Mr. Brown and Ameri-Dream are not and could not be “legally obligated to pay” the
8 judgment in the Peladas-Brown Adversary Action, the Insuring Agreements of the Greenwich Policy
9 is not triggered.

10 **D. Exclusion D Bars Coverage for Any Recovery Sought by the Trustee.**

11 As discussed at length above, the damage for which this Complaint seeks recovery is the
12 judgment entered in the Peladas-Brown Adversary Action. The Peladas-Brown Adversary Action
13 named only Ms. Peladas-Brown as a defendant. Nevertheless, to the extent the Chapter 7 Trustee
14 attempts to assert that recovery is required for the theft of security deposits, such coverage would be
15 expressly precluded by Exclusion D of the Policy, even if Mr. Brown and/or Ameri-Dream were
16 named as defendants in a subsequent adversary action.

17 Exclusion D is clear and unambiguous. The only reasonable interpretation of Exclusion D is
18 that no coverage is afforded for theft or conversion of security deposits. Furthermore, no coverage is
19 afforded for any claim “based on or arising out of” “misappropriation or improper use of funds” or
20 “the inability to ... safeguard funds held for others.” Moreover, for the reasons outline herein,
21 Condition D of the Policy, “Innocent Insureds”, has no application to Exclusion D. Therefore, based
22 on the confirmed and entered Findings of Fact and Conclusions of Law, there are no claims against
23 Mr. Brown or Ameri-Dream Realty related to the \$1.2 million loss of security deposits that would
24 fall outside the ambit of Exclusion D. As a result, no coverage is afforded under the Greenwich
25 Policy and Complaint should be dismissed pursuant to Rule 12(b)(6).

26 **V. CONCLUSION**

27 WHEREFORE, Defendant Greenwich Insurance Company respectfully request that this
28 Court dismiss the claims against them with prejudice pursuant to Federal Rules of Civil Procedure

1 12(b)(6) and award any and all other relief this Court deems just and proper.

2 DATED this _____ day of December, 2015.

3 WILSON ELSEER MOSKOWITZ EDELMAN &
4 DICKER LLP

5 _____
6 Vernon A. Nelson, Jr., Esq.
7 Nevada Bar No. 6434
8 300 South 4th Street, 11th Floor
9 Las Vegas, Nevada 89101
10 Telephone: (702) 727-1400

11 Attorneys for Defendants
12 XL AMERICA, INC., XL INSURANCE
13 AMERICA, INC.,
14 XL SELECT PROFESSIONAL, PEARL
15 INSURANCE GROUP, LLC,
16 GREENWICH INSURANCE GROUP
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CERTIFICATE OF SERVICE

Pursuant to FRCP 5(b), I certify that I am an employee of WILSON ELSEER MOSKOWITZ EDELMAN & DICKER LLP, and that on this 23rd day of December, 2015, I served a true and correct copy of the foregoing **GREENWICH INSURANCE COMPANY'S MOTION TO DISMISS PURSUANT TO FED. R. CIV. PRO. 12(B)(6)** as follows:

- ☐ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada;
- ☒ via electronic means by operation of the Court's electronic filing system, upon each party in this case who is registered as an electronic case filing user with the Clerk;

Samuel A. Schwartz, Esq.
Schwartz Flansburg PLLC
Email: sam@nvfirm.com
Attorney for Chapter 7 Trustee, Victoria L. Nelson
- ☐ via hand-delivery to the addressees listed below;
- ☐ via facsimile;
- ☐ by transmitting via email the document listed above to the email address set forth below on this date:

BY: 
An Employee of
WILSON ELSEER MOSKOWITZ EDELMAN & DICKER LLP

EXHIBIT A

EXHIBIT A



Greenwich Insurance Company
Members of the XL America Companies

The company providing the insurance afforded by this coverage is indicated above.

REAL ESTATE PROFESSIONALS ERRORS AND OMISSIONS DECLARATIONS

THIS IS A CLAIMS MADE INSURANCE POLICY. PLEASE READ IT CAREFULLY.

PRODUCER: Pearl Insurance Group
PRODUCER #: 08938

POLICY NUMBER: PEG9145932-6

THIS IS A CLAIMS MADE POLICY. THE POLICY APPLIES ONLY TO THOSE CLAIMS THAT ARE FIRST MADE AGAINST THE INSURED DURING THE POLICY PERIOD. THE CLAIM MUST BE REPORTED IN WRITING TO THE COMPANY DURING THE POLICY PERIOD OR WITHIN 60 DAYS AFTER THE END OF THE POLICY PERIOD. CLAIM EXPENSES ARE IN ADDITION TO THE LIMIT OF LIABILITY. PLEASE REVIEW THIS POLICY CAREFULLY.

Item 1. **NAMED INSURED:**
Ameri-Dream Realty, LLC

Item 2. **ADDRESS:**
4875 W Nevso Dr
Las Vegas, NV 89103-3787

Item 3. **POLICY PERIOD:** FROM 06/14/2013 TO 06/14/2014
12:01 A.M. Standard Time at the address of the Named Insured as stated herein.

Item 4. **LIMITS OF LIABILITY**
A. Limits of Liability \$ 1,000,000 Each Claim \$ 1,000,000 Policy Aggregate
B. Fair Housing Discrimination Limit of Liability \$ 250,000 Aggregate

Item 5. **DEDUCTIBLE** \$ 5,000 Each Claim

Item 6. **PREMIUM:** \$ 6,243 *

Item 7. **RETROACTIVE DATE** 6/14/2007

Item 8. **NOTICES TO BE SENT TO:**
Report A Claim
XL Select Professional Claims
100 Constitution Plaza
17th Floor
Hartford, CT 06103
Material Changes
Pearl Insurance Group, LLC
1200 East Glen Avenue
Peoria Heights, IL 61616
1/800-447-4982

Item 9. **FORMS AND ENDORSEMENTS ATTACHED AT POLICY EFFECTIVE DATE:**
JPP-PF (04/11) Real Estate Errors & Omissions Policy Form
JPP-NV1 (06/05) Nevada Changes
JPP-134 (03/08) Open House Endorsement
JPP 101 (06/05) Additional Named Insured Endorsement
JPP 116 (03/07) Deductible Reduction Endorsement

DATE: 06/04/2013

Authorized Representative

Gary P. Pearl

President and CEO



IN WITNESS

GREENWICH INSURANCE COMPANY

REGULATORY OFFICE
505 EAGLEVIEW BOULEVARD, SUITE 100
DEPARTMENT: REGULATORY
EXTON, PA 19341-0636
PHONE: 800-688-1840

It is hereby agreed and understood that the following In Witness Clause supercedes any and all other In Witness clauses in this policy.

All other provisions remain unchanged.

IN WITNESS WHEREOF, the Company has caused this policy to be executed and attested, and, if required by state law, this policy shall not be valid unless countersigned by a duly authorized representative of the Company.



Seraina Maag
President



Toni Ann Perkins
Secretary

ENDORSEMENT # 1

This endorsement, effective 12:01 a.m., 06/14/2013 forms a part of Policy No. -PEG9145932-6- issued to Ameri-Dream Realty, LLC by Greenwich Insurance Company.

NEVADA CHANGES

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the following:

REAL ESTATE PROFESSIONALS ERRORS AND OMISSIONS POLICY

It is agreed that Section VI., CONDITIONS, paragraph M. of the policy, is deleted and replaced by the following:

M. Cancellation and Nonrenewal

1. This policy may be cancelled by the **Named Insured** by giving the **Company** written notice stating when, thereafter, such cancellation will be effective. If the **Named Insured** cancels, the earned premium will be calculated on a short rate basis.
2. This policy may also be cancelled by the **Company** by sending written notice to the **Named Insured** at the last address known to the **Company**. The **Company** will provide written notice at least 30 days before cancellation is to be effective, except for nonpayment of premium in which case the **Company** will provide 10 days written notice prior to cancellation. The earned premium will be calculated on a pro rata basis.
3. After this policy has been in effect for more than 60 days, or if this policy is a renewal, the **Company** may not cancel this policy unless cancellation is based on one or more of the following reasons:
 - a. Nonpayment of premium;
 - b. Conviction of the **Named Insured** of a crime arising out of acts increasing the hazard insured against;
 - c. Discovery of fraud or material misrepresentation in the obtaining of the policy or in the presentation of a **Claim** thereunder;
 - d. Discovery of an act or omission, or of a violation of any condition of the policy, which occurred after the first effective date of the current policy and which substantially and materially increases the hazard insured against;
 - e. A material change in the nature or extent of the risk occurring after the first effective date of the current policy, which causes the risk of loss to be substantially and materially increased beyond that contemplated at the time the policy was issued or last renewed;
 - f. A determination by the Nevada Commissioner of Insurance that continuation of the **Company's** present volume of premiums would jeopardize the **Company's** solvency or be hazardous to the interests of policyholders of the **Company**, its creditors or the public; or
 - g. A determination by the Commissioner that the continuation of the policy would violate, or place the **Company** in violation of, any provision of the Nevada Insurance Code.

4. The notice of cancellation will state the effective date and include a written explanation of the reason(s) for the cancellation.
5. The **Company** may choose not to renew this policy by delivering or mailing, by first class or certified mail, written notice to the **Named Insured** at the address last known by the **Company**. The notice of nonrenewal will state the effective and include a written explanation of the reason(s) for the nonrenewal. The **Company** will provide written notice of nonrenewal at least 60 days prior to the expiration of the **policy period**.
6. In the event notice of nonrenewal is not provided to the **Named Insured** at least 60 days prior to the expiration of the **policy period**, the **Named Insured** will be entitled to renewal of the policy under the same terms as in the expiring policy. This paragraph will not apply if the **Named Insured** has accepted replacement coverage or has requested or agreed to the nonrenewal.
7. If the **Company** conditions renewal of the policy on different terms or different rates, the **Company** will deliver or mail written notice of the different terms or rates to the **Named Insured** at least 30 days before those terms or rates become effective. The **Named Insured** may, within 30 days after receipt of such notice of the changes in the policy, cancel the policy. If the **Named Insured** elects to cancel the policy, the premium for the expired portion of the renewal policy will be calculated pro rata.
8. If a notice of cancellation or nonrenewal does not state the facts on which the **Company's** decision is based, the **Company** will supply such information within six (6) days after receipt of a written request by the **Named Insured**.
9. For the purpose of this policy, notice of cancellation, nonrenewal or renewal with different terms or rates given to the **Named Insured** pursuant to this paragraph M. will be deemed to be notice to all **Insureds** hereunder.

All other provisions of this policy remain unchanged.

ENDORSEMENT # 2

This endorsement, effective 12:01 a.m., 2013-06-14 forms a part of Policy No. -PEG9145932-6- issued to Ameri-Dream Realty, LLC by Greenwich Insurance Company.

OPEN HOUSE – PROPERTY DAMAGE COVERAGE ENDORSEMENT

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the following:

REAL ESTATE PROFESSIONALS ERRORS AND OMISSIONS POLICY

In consideration of the premium charged, it is agreed the policy is amended as follows:

1. Section III, **DEFINITIONS**, is amended to include the following:

Open House means an advertised designated time period (up to 3 hours) where multiple potential buyers have the opportunity to view the specified property that is listed for sale by the **Insured** while in the care, custody or control of the **Insured**.

2. Section IV, **EXCLUSIONS**, paragraph B is deleted in its entirety and replaced with the following:

B. based on or arising out of **property damage** except that this exclusion will not apply to **claims** arising out of **lock-box or open house**;

3. Item 4. In the Declarations, Limits of Liability is amended to add the following:

Open House Limit of Liability \$ _1,000,000____

4. Section V., **LIMITS OF LIABILITY AND DEDUCTIBLE**, is amended to include the following:

Open House Limit of Liability:

The "**Open House** Limit of Liability" as set forth above is a sub-limit included within, and not in addition to, the "each **claim**" and "Policy Aggregate" limits of liability and will not be considered as separate to such limits of liability.

All other provisions of this policy remain unchanged.

REALTORS® ERRORS & OMISSIONS CLAIM REPORT

Notice of each and every incident, claim, or suit is to be sent immediately to XL Insurance Company at the address shown below. Tips and procedures on reporting claims can be found on the enclosed form. Any claims questions can be answered by contacting the Claim Helpline 1-877-791-3777.

Firm Name: Ameri-Dream Realty, LLC

Contact Name: Elsie Peladas Brown

Address: 4875 W Nevso Dr

City: Las Vegas

State: NV

Zip: 89103-3787

Phone: ☐

Fax: ☐

E-mail: ☐

Policy #: – PEG9145932-6

Policy Period: 06/14/2013 – 06/14/2014

Name of Claimant:

Date of Occurrence:

Address of Property Involved:

Name of Agent Involved:

Type of Agent:

Listing

Selling

Buyers

Dual

Has the suit been received:

Yes

No

Date of Service:

Specific Nature of Incident:

Note: Include type of demand (verbal or written) for damages that may result and a copy of all written demands/legal documents if a lawsuit has been initiated/served.

Requested by:

Signature:

Date:

Mailing Address:

Rosanna Marra
Senior Claims Technician
XL Select Professional-Claims
100 Constitution Plaza, 17th Floor
Hartford, CT 06103
877-791-3777 [Phone]
860-548-9668 [Fax]

Email: rosanna.marra@xlgroup.com or vincent.catania@xlgroup.com

REALTORS® CLAIM REPORT TIPS & PROCEDURES

- Your policy requires that immediate written notice be given to the insurance company as soon as possible after receiving notification of a claim or potential incident.
- Please complete the enclosed Claim Report and forward with all demands, suits or other papers immediately to the address on the Claim Report. If reporting an "incident" the following information should be available but there is no need to include it with your initial report or letter.
- Create a claims/incident file consisting of the following for use by the claim department and its representatives:
 - Listing Agreement
 - Sales Contract
 - Closing Documents
 - Any correspondence, notes and phone messages related to the incident.
 - Copies of any written/oral side agreements with the claimant or codefendant.
- All parties involved with the claim/incident should prepare a chronological history of their participation and their understanding of the activities surrounding the claim/incident.
- Do not discuss the matter with anyone other than representatives of your insurer.
- Do not produce any of your records relative to this incident for inspection without clearance and/or approval from the insurer.
- The insurance company will retain appropriate counsel and will communicate with the named insured for all information regarding the claim/incident.

If you currently have the Deductible Reduction Endorsement JPP116 on your policy declarations page, please send the following documents in order for the endorsement to apply:

- A copy of the seller disclosure form that was signed by the seller and acknowledged in writing by the buyer prior to closing.
- Proof that a home warranty policy was purchased between the time the residential property was listed and up to and including 30 days after closing.
- A copy of the accredited written property inspection report that was performed on the property or a waiver of inspection in writing from the buyer.
- A copy of the sales contract that was utilized.



Greenwich Insurance Company
Indian Harbor Insurance Company



ENDORSEMENT # 3

This endorsement, effective 12:01 a.m., 06-14-2013 forms a part of Policy No. -PEG9145932-6- issued to Ameri-Dream Realty, LLC by Greenwich Insurance Company..

DEDUCTIBLE REDUCTION ENDORSEMENT

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

In consideration of the premium charged, it is hereby agreed **Section I. INSURING AGREEMENTS**, paragraph **B. Defense and Settlement** is deleted in its entirety and replaced with the following:

B. Defense and Settlement

The **Company** has the right and duty to defend any **claim** against the **Insured** even if allegations of the **claim** are groundless, false or fraudulent. Defense counsel will be designated by the **Company**, or at the **Company's** option, by the **Insured** with the **Company's** written consent and subject to the **Company's** guidelines. The **Company** is not obligated to pay any **damages** or **claim expenses** or to defend or to continue to defend any **claim** after the applicable limit of liability has been exhausted by payment of **damages**.

The **Company** will not settle any **claim** without the consent of the **Named Insured**. If the **Named Insured** refuses to consent to a settlement within the policy's applicable limit of liability that is recommended by the **Company** and acceptable to the claimant, then the **Company's** limit of liability for such **claim** will be the amount of **damages** for which the **claim** could have been settled plus all the **claims expenses** incurred up to the time the **Company** made its recommendation.

It is further agreed that **Section V. LIMITS OF LIABILITY AND DEDUCTIBLE**, paragraph **E. Deductible** is deleted in its entirety and replaced with the following:

E. Deductible

The deductible amount shown in item 5. In the Declarations is the **Insured's** obligation for each **claim** and applies to the payment of **damages** and **claim expenses**. The deductible will be paid by the **Named Insured**. The limits of liability set forth in the Declarations are in addition to and in excess of the deductible.

The **Insured's** obligation to pay the deductible amount stated in Section 5 in the Declarations will be reduced by 50% but not to exceed a maximum of \$5,000 for each **claim**

- 1) provided all of the following conditions are satisfied and evidence of such is provided to us when notice of claim is received:
 - a) a seller disclosure form was signed by the seller and acknowledged in writing by the buyer prior to closing;
 - b) a home warranty policy was purchased between the time the **residential property** was listed and up to and including 30 days after closing;
 - c) an accredited written property inspection report was performed on the property or waived in writing by the buyer;
 - d) a state or local board-approved standard sales contract was utilized

- 2) If a **claim** is resolved or concluded with the consent and knowledge of the **Named Insured** and the **Company**, within 1 year following the date that the **claim** is reported in writing to the **Company** the deductible amount stated in item 5. In the Declarations will be reduced by 50%, but not to exceed a maximum of \$5,000 for each **claim**.

If both E. 1 and 2 above apply, only one reduction applies.

All other provisions of this policy remain unchanged.

ENDORSEMENT # 4

This endorsement, effective 12:01 a.m., 06-14-2013 forms a part of Policy No. -PEG9145932-6- issued to Ameri-Dream Realty, LLC by Greenwich Insurance Company.

ADDITIONAL NAMED INSURED ENDORSEMENT

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement modifies insurance provided under the following:

REAL ESTATE PROFESSIONALS ERRORS AND OMISSIONS POLICY

In consideration of the premium charged it is agreed that Item 1. in the Declarations is amended to include the following:

AmeriDream Realty, LLC dba AmeriDream Realty

AmeriDream Realty, Inc. dba Century 21 AmeriDream Realty

AmeriDream Realty, LLC dba Century 21 AmeriDream Realty

All other provisions of this policy remain unchanged.



Greenwich Insurance Company
Members of the XL America Companies

REAL ESTATE PROFESSIONAL ERRORS AND OMISSIONS POLICY

NOTICE: THIS IS A CLAIMS MADE POLICY. THIS POLICY APPLIES ONLY TO THOSE CLAIMS THAT ARE FIRST MADE AGAINST THE INSURED DURING THE POLICY PERIOD. THE CLAIM MUST BE REPORTED IN WRITING TO THE COMPANY DURING THE POLICY PERIOD OR WITHIN 60 DAYS AFTER THE END OF THE POLICY PERIOD SHOWN IN THE DECLARATIONS UNLESS AN EXTENDED REPORTING PERIOD APPLIES. PLEASE REVIEW THIS POLICY CAREFULLY.

Words and phrases that appear in **bold print** have special meanings that are defined in Section III., **DEFINITIONS**.

I. INSURING AGREEMENTS

A. Coverage

The **Company** will pay on behalf of the **Insured** all sums in excess of the deductible that the **Insured** becomes legally obligated to pay as **damages** and **claims expenses** by reason of an act or omission including **personal injury** in the performance of **real estate services** by the **Insured**, provided that:

1. the **claim** arising out of the act or omission must first be made against the **Insured** during the **policy period** or any applicable **extended reporting period**;
2. the **claim** must be reported in writing to the **Company** during the **policy period** or within 60 days after the end of the **policy period** unless an **extended reporting period** applies;
3. such act or omission was committed on or subsequent to the **retroactive date** specified in the Declarations; and
4. prior to the inception date of this policy, no **Insured** had a basis to believe that such act or omission, or any related act or omission, might reasonably be expected to be the basis of a **claim**.

Except as provided in Section V.D., below, **claim expenses** are in addition to the limit of liability.

B. Defense and Settlement

Subject to the terms, conditions and exclusions in this policy, the **Company** has the right and duty to defend any **claim** against the **Insured** even if allegations of the **claim** are groundless, false or fraudulent. Defense counsel will be designated by the **Company**, or at the **Company's** option, by the **Insured** with the **Company's** written consent and subject to the **Company's** guidelines. The **Company** is not obligated to pay any **damages** or **claim expenses** or to defend or to continue to defend any **claim** after the applicable limit of liability has been exhausted by payment of **damages**.

The **Company** will not settle any **claim** without the consent of the **Named Insured**. If the **Named Insured** refuses to consent to a settlement within the policy's applicable limit of liability that is recommended by the **Company** and acceptable to the claimant, then the **Company's** limit of liability for such **claim** will be the amount of **damages** for which the **claim** could have been settled plus all the **claims expenses** incurred up to the time the **Company** made its recommendation.

If a **claim** is resolved or concluded with the consent and knowledge of the **Named Insured** and the **Company**, within 1 year following the date that the **claim** is reported in writing to the **Company**, the stated amount in Item 5. of the Declarations will be reduced by 50%, but not to exceed a maximum of \$5,000 per **policy period** for all such **claims** resolved or concluded.

C. Territory

This policy applies to an act or omission taking place anywhere in the world.

This policy shall not apply to any risk which would be in violation of the laws of the United States including, but not limited to, U.S. economic or trade sanction laws or export control laws administered by the U.S. Treasury, State, and Commerce Department.

D. Coverage Extensions

1. Fair Housing Discrimination

Fair Housing Discrimination Coverage Extension is subject to the deductible.

Subject to all other terms and conditions of this policy, this policy applies to **damages and claim expenses** by reason of a civil lawsuit arising out of **fair housing discrimination**. However, a separate aggregate "**fair housing discrimination** Limit of Liability" as set forth in Section V.C will apply to all **damages and claim expenses**.

2. Lock-box

Lock-box Coverage Extension is not subject to the deductible.

Subject to all other terms and conditions of this policy, this policy applies to **claims** arising out of use of a **lock-box**.

II. SUPPLEMENTARY PAYMENTS

Supplementary payments are not subject to the deductible and are in addition to the limits of liability.

A. Reimbursement of Expenses

The **Company** will reimburse the **Insured** up to \$750.00 a day, subject to a maximum of \$50,000.00 per **policy period**, for the **Insured's** actual loss of earnings for attendance, at the **Company's** request, at a trial, hearing or arbitration involving a **claim** against the **Insured**. The maximum amount payable per **claim**, regardless of the number of trials, hearings, mediations or arbitrations proceedings or number of **Insureds** shall be \$10,000.00.

B. Disciplinary Proceedings

The **Company** will reimburse the **Insured** up to \$15,000.00 per disciplinary proceeding, subject to a maximum of \$30,000.00 per **policy period**, for reasonable attorneys' fees and other necessary costs, expenses or fees resulting from the investigation or defense of a proceeding before a real estate licensing board as a result of an act or omission in the performance of **real estate services** by the **Insured** during the **policy period**.

C. Public Relations Advisory Services

The **Company** will reimburse the **Insured** up to \$15,000.00 per **public relations event**, subject to a maximum of \$50,000.00 per **policy period**, for reasonable **public relations expenses** incurred by the **Named Insured** for advisory services provided by a public relations firm to the **Named Insured** as a result of a **public relations event** which occurs during the **policy period**.

D. Subpoena Assistance

The **Company** will reimburse the **Insured** expenses incurred in responding to a subpoena that the **Insured** first receives and reports in writing to the **Company** during the **policy period** resulting from the performance of **real estate services** by the **Insured**. The **Company** will reimburse up to \$30,000.00 in expenses per subpoena. All subpoenas arising out of **related claims** shall constitute a single subpoena for the purposes of this section.

E. First Party Cyber Liability Coverage

The **Company** will reimburse the **Named Insured** up to \$25,000.00 per **policy period** for the cost of hiring a third-party consultant or adviser approved by the **Company**, including client notification costs, to mitigate the potential for **claims** arising from any security breach which results in the loss or theft of confidential client information.

Coverage shall be excess of and provide the same terms and conditions as all valid and collectible first-party cyber liability coverage provided to the **Insured** under any specific policy, Business Owners Policy or similar property coverage.

F. Not-for-Profit Directors Coverage

The **Company** will reimburse the **owner/broker** of the **Named Insured** up to \$15,000.00 per **claim** or \$30,000.00 per **policy period** for **damages or claims expenses** arising out of the **owner/broker's** activities as a Director or Officer of a **Not-for-Profit Organization**, provided that such activities have been previously disclosed to the **Company** in writing and accepted by the **Company**.

Coverage shall be excess of all valid and collectible Directors' and Officers' Liability Insurance, which has been issued to the **Not-for-Profit Organization**.

III. DEFINITIONS

Bodily injury means physical injury, sickness, or disease sustained by any person including death resulting from any of these at any time. Bodily injury also means mental illness, mental anguish, emotional distress, pain or suffering, or shock sustained by that person whether or not resulting from physical injury, sickness, disease or death of any person.

Claim means a demand for money or services naming the **Insured** by reason of an act or omission in the performance of **real estate services**. A claim also includes the service of suit or the institution of an arbitration proceeding against the **Insured**.

Claim expenses means:

1. fees charged by attorneys designated by the **Company** or designated by the **Insured** with the **Company's** prior written consent; and
2. all other reasonable and necessary fees, costs and expenses resulting from the investigation, adjustment, negotiation, arbitration, mediation, defense or appeal of a **claim**, if incurred by the **Company** or by the **Insured** with the **Company's** prior written consent; and
3. premiums on appeal bonds, attachment bonds or similar bonds, however, the **Company** is not obligated to apply for or furnish any such bond.

Claim expenses do not include fees, costs or expenses of employees or officers of the **Company**, salaries, commissions, loss of earnings or other remuneration by or to any **Insured**.

Company means the insurance company named in the Declarations.

Construction manager means a person providing the following services in connection with the construction, reconstruction and renovation of real property:

1. management of facility construction, reconstruction and renovation plans;
2. development and management of construction, reconstruction and renovation contracts and subcontracts;
3. development of loss control and risk management plans in connection with the construction, reconstruction or renovation.

Damages mean any compensatory sum which the **Insured** is legally obligated to pay as a result of an act or omission including a judgment, award or settlement. Damages do not include:

1. fines, sanctions or penalties;
2. punitive, exemplary, or treble damages, unless coverage for such **damages** is permissible under the applicable state law;
3. the return, reduction, or restitution of fees, commissions, expenses or costs for **real estate services** performed or to be performed by the **Insured**;
4. injunctive or declaratory relief.

Extended reporting period means the period of time after the end of the **policy period** for reporting **claims** to the **Company** in writing that are made against the **Insured** during the extended reporting period by reason of an act or omission which was committed prior to the end of the **policy period** and on or subsequent to the **retroactive date**, and is otherwise covered by this policy.

Fair housing discrimination means alleged violations of Title VIII of the Civil Rights Act of 1968 or the Fair Housing Amendment Act of 1988 and any similar federal, state or local ordinance.

Fungi means any type or form of fungus, including mold or mildew and any mycotoxins, spores, scents or byproducts produced or released by fungi.

Guaranteed sale listing contract means a written agreement between the **Named Insured** and the seller of a property in which the **Named Insured** agrees to purchase the property if it is not sold under the listing agreement within the time period specified in the agreement.

Insured means:

1. the **Named Insured**;
2. any present or former partner, member, officer, director or employee for **real estate services** performed on behalf of the **Named Insured**;

3. any present or former independent contractor and their employees for **real estate services** performed on behalf of the **Named Insured**, but only if, prior to the date a claim is made, the **Named Insured** had agreed to provide insurance for the independent contractor's **real estate services**;
4. the estate, heirs, executors, administrators, assigns and legal representatives of an Insured in the event of such Insured's death, incapacity, insolvency or bankruptcy, but only for liability arising out of **real estate services** performed by or on behalf of the **Named Insured** prior to such Insured's death, incapacity, insolvency or bankruptcy; or
5. any real estate franchise corporation of which the **Named Insured** is a franchisee, but only as respects the real estate franchise corporation's liability for acts or omissions committed by an Insured on behalf of the **Named Insured**.
6. the lawful spouse or qualifying domestic partner of any present or former partner, member, officer, director, employee, or independent contractor, but only for liability arising out of **real estate services** actually or allegedly performed by such present or former partner, member, officer, director, employee, or independent contractor on behalf of the **Named Insured**. The **Company** will have no obligation to pay **damages** or **claim expenses** for any claim arising from any act or service actually or allegedly provided by the spouse or domestic partner of any individual to whom this policy otherwise provides coverage.

Lock-box means a keyless entry system or similar device on property that the **Insured** has shown or listed for sale while the property is in the care, custody or control of the **Insured**.

Named Insured means the persons or entities specified in Item 1. in the Declarations.

Not-for-Profit Organization means an entity which qualifies as a nonprofit organization under Section 501(c)(3), (c)(4), (c)(6) or (c)(7) of the Internal Revenue Code of 1986, including amendments thereto. As used herein, **Not-for-Profit Organization** shall not include the **Named Insured** or any client of the **Named Insured**.

Owner/Broker means any natural person who has an ownership interest in the **Named Insured**.

Personal injury means injury other than **bodily injury**, arising out of one or more of the following offenses by reason of an act or omission by an **Insured** in the performance of **real estate services**:

1. false arrest, detention, or imprisonment;
2. malicious prosecution;
3. wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, where an **Insured** undertakes such action by or on behalf of its owner, landlord or lessor; or
4.
 - a. oral or written publication, in any manner, of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services; or
 - b. oral or written publication, in any manner, of material that violates a person's right of privacy; except oral or written publication in any manner which arises out of advertising, broadcasting or telecasting activities conducted by or behalf of any **Insured**.

Policy period means the period of time from the effective date shown in Item 3. in the Declarations to the earliest date of termination, expiration or cancellation of this policy.

Pollutants mean any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

Property damage means:

1. physical injury to tangible property, including all resulting loss of use of that property; or
2. loss of use or theft of tangible property that is not physically injured.

Property Manager means a person providing the following services in connection with the management of commercial or residential property:

1. development and implementation of management plans and budget;
2. oversight of physical maintenance of property;
3. solicitation, evaluation and securing of tenants and management of tenant relations, collection of rent and processing evictions;
4. development, implementation and management of loss control and risk management plans for real property;
5. development, implementation and management of contracts and subcontract (excluding property and liability insurance contracts) necessary to the daily functioning of the property; or
6. personnel administration and record keeping in connection with a managed property.

Property manager does not include a **construction manager**.

Property syndication means the formation of, or engagement in, a general or limited partnership, joint venture, unincorporated association or similar organization for the purpose of investment or gain from an interest in real property, including but not limited to a sale, exchange, trade or development of such real property, on behalf of others.

Public Relations Event means:

1. departure, incapacitation, illness or death of any partner, member, officer, director, or sole proprietor-owner of the **Named Insured**.
2. dissolution of the **Named Insured**.
3. violent act, kidnapping, sexual assault, criminal firearm use, or workplace accident resulting in negative local or national media coverage of the **Named Insured**.

Public Relations Expenses means reasonable fees and expenses incurred by the **Named Insured** for advisory services provided by a public relations firm to the **Named Insured** for up to 60 days following a **Public Relations Event**.

Real estate investment trusts means any trust, corporation, association or entity designed or used to permit investment in interests in real property, under which such interests are held and managed for the beneficial

owners of the trust or other entity, whether or not it qualifies for treatment as a real estate investment trust pursuant to 26 U.S.C. 856, 857 or 858 or any other provision of the United States Internal Revenue Code.

Real estate services means those professional services performed for others in the **Insured's** capacity as a real estate agent, real estate broker, leasing agent, **property manager**, real estate auctioneer, real estate appraiser, real estate consultant or counselor, **short term escrow agent**, **referral agent**, notary public, or member of a real estate accreditation, standards review or similar real estate board or committee. Real estate services shall also include real estate services performed for others by an **Insured** on or via the **Insured's** internet, e-mail, telecommunication or similar system.

Referral agent means a real estate agent whose services are limited to referring clients to an **Insured** for the purposes of commencing a real estate transaction, and do not include active solicitation or engagement in the sale of property.

Related claims mean all **claims** arising out of a single act or omission or arising out of related acts or omissions in the performance of **real estate services**.

Residential Property means a one to four family dwelling in which the **Insured** or others reside.

Retroactive date means the date, shown in Item 7. in the Declarations, on or after which an act or omission must have been committed for coverage under this policy to apply.

Short term escrow agent means an **Insured** performing the following services:

Receiving or holding funds in, or distributing funds from, an escrow or trust account when all such funds are received in the form of United States currency, certified or guaranteed check, or money order, held separately from the **Insured's** funds and where such funds are to be fully distributed within 12 months from the date received.

IV. EXCLUSIONS

The **Company** will not defend or pay any **claim**:

- A. based on or arising out of **bodily injury**;
- B. based on or arising out of **property damage** except that this exclusion will not apply to **claims** arising out of **lock-box**;
- C. based on or arising out of any dishonest, intentionally wrongful, fraudulent, criminal or malicious act or omission by the **Insured**; The **Company** will provide the **Insured** with a defense of such **claim** and pay **claim expenses** for any such suit which is brought alleging such dishonest, intentionally wrongful, fraudulent, criminal or malicious act or omission as a single allegation in a multiple allegation suit, provided any one allegation is covered under this policy. Criminal proceedings are not covered under this policy regardless of the allegations made against the **Insured**;
- D. based on or arising out of:
 - 1. the conversion, commingling, defalcation, misappropriation or improper use of funds or other property;
 - 2. the gaining of any personal profit or advantage to which the **Insured** is not legally entitled; or

3. the inability or failure to pay, collect or safeguard funds held for others, unless the **insured** is acting in the capacity of a **short term escrow agent**.

E. based on or arising out of:

1. any promises, warranties, or guarantees made by an Insured as to the future value or future income of any property; or
2. the valuation or performance of a business in conjunction with any property that is sold.

F. based on or arising out of:

1. nuclear reaction, contamination or radiation, including but not limited to radon, regardless of cause;
2. the actual, alleged or threatened emission, discharge, dispersal, seepage, release or escape of **pollutants** whether suddenly or over a period of time; or any injury, damage, payments, costs or expense incurred as a result of any testing for, monitoring, removal, containment, treatment, detoxification, neutralization or cleanup of **pollutants**;
3. lead, whether or not the lead was at any time: airborne as a particle; contained in or formed a part of a product, structure or other real or personal property; ingested or inhaled or transmitted in any fashion; or found in any form whatsoever; or
4. asbestos, whether or not the asbestos was at any time: airborne as a fiber, particle or dust; contained in or formed a part of a product, structure or other real or personal property; carried on clothing; ingested or inhaled or transmitted in any fashion; or found in any form whatsoever;

unless and only to the extent that, the **claim** results from the **Insured's** failure to disclose the existence of **pollutants**, asbestos, lead, or radon.

- G. based on or arising out of the actual, alleged or threatened inhalation of, ingestion of, contact with, exposure to, existence of, or presence of, any **fungi** or bacteria on or within a building or structure, including its contents, regardless of whether any other cause, event, material or product contributed concurrently or in any sequence to the injury or damage; or any loss cost or expenses arising out of the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, remediating or disposing of, or in any way responding to, or assessing the effects of, **fungi** or bacteria, by an insured or by any other person or entity.

- H. based on or arising out of discrimination, humiliation, harassment, or misconduct. This exclusion will not apply to **fair housing discrimination**;

- I. by or on behalf of any **Insured** against any other **Insured**;

- J. based on or arising out of **property syndication** or **real estate investment trusts**;

- K. based on or arising out of the purchase of property by, or the sale, leasing, appraisal, or property management of property developed, constructed or owned by:

1. any **Insured**;
2. any entity in which any **Insured** had a financial interest or a contemplated financial interest;

3. any entity which had a financial interest or a contemplated financial interest in the **Named Insured**; or
4. any entity which was under the same financial control as the **Named Insured**.

This exclusion will not apply to any **claim** based on or arising out of:

- i. the sale or leasing of real property that the **insured** did not construct or develop and in which the combined ownership interest of all **Insureds** was less than 20% at the time of sale or lease;
 - ii. the sale of **residential property** by an **Insured** who is the owner of such **residential property** and all of the following conditions are met in connection with such sale:
 - a. a seller disclosure form was signed by the **Insured** and acknowledged in writing by the buyer prior to closing;
 - b. an accredited written home inspection report was issued or waived in writing by the buyer; and
 - c. a state or local board-approved standard sales contract was utilized;
 - iii. the sale, listing or management of the **Named Insured's residential property** by another **Insured** who is not the owner of such **residential property**;
 - iv. the sale of real property owned by an **Insured** if the property was acquired by an **Insured** under a written **guaranteed sale listing contract**, and the title is held by an **Insured** for 12 months or less and the property was listed for sale continuously by an **Insured** from the date of acquisition to the date of resale; or
 - v. the management of property in which an **Insured's** or all **Insureds'** controlling, legal or beneficial interest at the time property management services were performed is less than 50%.
- L. based on, arising out of, or related to actual or alleged misappropriation of ideas, information or materials; improper gaining or misuse of copyrights or trademarks; improper gaining or misuse of confidential or proprietary information, materials or trade secrets; interference with actual or prospective business relationships, contracts or contractual relationships or unfair competition.
- M. based on or arising out of any anti-trust law violation or any agreement or conspiracy to restrain trade;
- N. based on or arising out of:
1. any advice or recommendations, including the failure to provide advice or recommendations, concerning the purchase of, or need for, any type of insurance, or
 2. The failure to purchase or maintain any type of insurance.
- O. based on or arising out of liability of others assumed by the **Insured** under any contract or agreement unless, and only to the extent that, such liability would have attached to the **Insured** even in the absence of such contract or agreement.
- P. based on or arising out of any actual or alleged violation of:
1. the Employee Retirement Income Security Act of 1974;
 2. the Securities Act of 1933;

3. the Securities Exchange Act of 1934; or

4. any state Blue Sky or Securities law;

or any rules, regulations or amendments issued in relation to such acts, or similar state or federal statutes or regulations, including any **claim** based upon common law principles of liability.

Q. based on or arising out of any activity relating to:

1. Right-of-Way Appraisal; or

2. Proposed Construction/Land Development appraisal or Vacant Land appraisal, unless the Proposed Construction/Land Development appraisal or Vacant Land appraisal is solely intended for private **residential property** use.

V. LIMITS OF LIABILITY AND DEDUCTIBLE

A. Limit of Liability - Each claim

Subject to paragraph B. below, the **Company's** limit of liability for **damages** for each **claim** will not exceed the amount stated in Item 4.A. in the Declarations for "Each **claim**."

B. Limit of Liability - Policy Aggregate

The **Company's** limit of liability for **damages** for all **claims** will not exceed the aggregate amount stated in Item 4.A. in the Declarations as the "Policy Aggregate."

C. Fair Housing Discrimination Limit of Liability

The "fair housing discrimination limit of liability" is an aggregate limit of liability that is included within, and is not in addition to, the "Policy Aggregate" limit of liability. The **fair housing discrimination** limit of liability" will not exceed the aggregate amount stated in Item 4.B. in the Declarations. **Claim expenses** are within and will reduce the "fair housing discrimination limit of liability."

D. Deductible

The deductible amount shown in item 5. In the Declarations is the **Insured's** obligation for each **claim** and applies to the payment of **damages** and **claim expenses**. The deductible will be paid by the **Named Insured**. The limits of liability set forth in the Declarations are in addition to and in excess of the deductible.

E. Multiple Insureds, Claims and Claimants

The limits of liability shown in the Declarations is the maximum amount the **Company** will pay under this policy for **damages** regardless of the number of **Insureds**, **claims** made or claimants. **Related claims** made against the **Insured** and reported in writing to the **Company** under this policy or under any renewal of this policy will be considered a single **claim** first made and reported to the **Company** during the **policy** period in which the earliest of the **related claims** was first made and reported in writing to the **Company**.

VI. CONDITIONS

A. Named Insured Sole Agent

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The **Named Insured** will be the sole agent and will act on behalf of all **Insureds** for the purpose of giving or receiving any notices, any amendments to or cancellation of this policy, for the completing of any applications and the making of any statements, representations and warranties, for the payment of any premium and the receipt of any return premium that may become due under this policy, for the payment of the deductible and the exercising or declining to exercise any right under this policy including the purchase of an **extended reporting period**.

B. Insured's Duties In the Event of a Claim or Potential Claim

1. In the event of a **claim**, the **Insured** must notify the **Company** in writing as soon as possible during the **policy period**, or any applicable **extended reporting period**, or within 60 days after the end of the **policy period**. Notice should be sent to the **Company** or to its authorized representative at the address stated in Item 8. in the Declarations.
2. If, during the **policy period**, the **Insured** becomes aware of any act or omission that may reasonably be expected to be the basis of a **claim** and if the **Insured**, during the **policy period**, provides the **Company** with written notice containing:
 - a. the specific act or omission;
 - b. the dates and persons involved;
 - c. the identity of anticipated or possible claimants;
 - d. the circumstances by which the **Insured** first became aware of the possible **claim**; and
 - e. potential damages or injury,

then any **claim** that is subsequently made against the **Insured** arising out of such act or omission will be deemed to have been made on the date such written notice was received by the **Company**. Notice should be sent to the **Company** or to its authorized representative at the address stated in Item 8. in the Declarations. The **Company** will provide pre-claims assistance with a potential **claim** if the **Insured** complies with the notification provision stated herein.

C. Assistance and Cooperation

1. the **Insured** will cooperate with the **Company** and upon the **Company's** request, attend hearings, depositions and trials and assist in effecting settlements, securing and giving evidence, obtaining the attendance of witnesses and in the conduct of suits and proceedings in connection with a **claim**.
2. the **Insured** will assist in the enforcement of any right of contribution or indemnity against any person or organization who or which may be liable to any **Insured** in connection with a **claim**.
3. the **Insured** will not, except at the **Insured's** own cost, voluntarily make any payment, assume or admit any liability or incur any expense without the written consent of the **Company**.

D. Innocent Insureds

If coverage of this policy would not apply because of Exclusion C. or because of noncompliance with Condition B., such Exclusion or Condition will not apply to any **Insured** who did not commit, participate in,

or have knowledge of any of the acts described in Exclusion C. and whose conduct did not violate Condition B.

E. Action Against the Company

1. No action may be brought against the **Company** concerning this policy unless, as a condition precedent to such action, the **Insured** has fully complied with all the terms of this policy, and the amount of the **Insured's** obligation to pay has been decided.
2. Such amount can be decided either by final judgment against the **Insured** after actual trial, or by written agreement among the **Insured**, the **Company**, and the claimant. Such action must be brought against the **Company** in 2 years, or during any applicable statute of limitations for bringing of such action, whichever is longer.
3. No person or entity has any right under this policy to include the **Company** in any action against the **Insured** to determine the **Insured's** liability, nor will the **Company** be brought into such action by the **Insured** or the **Insured's** representative.

F. Changes

Notice to any agent of the **Company's** or knowledge possessed by any other person will not effect a waiver or change in any part of this policy, and will not prevent or preclude the **Company** from asserting any right or provisions of this policy. None of the provisions of this policy will be waived, changed or modified except by written endorsement issued by the **Company** to form a part of this policy.

G. Assignment

The interest of the **Insured** under this policy may not be assigned without the **Company's** express written consent.

H. Bankruptcy or Insolvency

Bankruptcy or insolvency of the **Insured** or of the **Insured's** estate will not relieve the **Company** of any of its obligations under this policy.

I. Acquisitions and Mergers, and Other Material Changes

In the event of any merger, acquisition, or change in a franchise relationship, involving the **Named Insured**, or other material changes in the **Named Insured's** operations, there will be no coverage under this policy for any merger, acquisition, or material change until the change has been accepted in writing by the **Company** and the appropriate premium has been determined by the **Company**. Premium will be calculated in accordance with the **Company's** rules, rates, rating plans, premiums, and minimum premiums applicable to the insurance afforded herein.

J. Entire Contract and Application

By acceptance of this policy, the **Insured** warrants that the statements in the application are representations of the **Insured** and are deemed material to the underwriting and acceptance of coverage by the **Company**. This policy is issued in reliance on the accuracy of such representations. Any material misrepresentation or concealment by the **Insured** or the **Insured's** agent will render this policy null and void and will relieve the **Company** from all liability herein.

K. Other Insurance

This policy is excess over any other valid and collectible insurance, self-insurance or indemnification agreement available to the **Insured**, whether such other insurance, self-insurance or indemnification agreement is stated to be primary, contributory, excess, contingent or otherwise.

L. Examination of Books and Records

The **Company** may examine and audit the **Insured's** books and records as they relate to this policy at any time during the **policy period** and up to 3 years afterward.

M. Cancellation

This policy may be cancelled by the **Named Insured** by giving the **Company** prior written notice stating when such cancellation will be effective. If the **Named Insured** cancels, earned premium will be calculated on a short rate basis.

This policy may be cancelled by the **Company** by sending written notice to the **Named Insured** at the address last known to the **Company**. The **Company** will provide written notice at least 60 days before cancellation is to be effective except for nonpayment of premium in which case the **Company** will provide 10 days notice prior to cancellation. The premium will be computed on a pro rata basis.

Notice of cancellation will state the effective date and reason for cancellation. The **policy period** will end on that date. If notice is mailed, proof of mailing will be sufficient notice.

N. Subrogation

In the event of any payment under this policy, the **Company** will be subrogated in the amount of such payment to all of the **Insured's** rights of recovery against any person or organization. The **Insured** will execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The **Insured** will do nothing to prejudice such rights.

O. Liberalization

If during the **policy period**, the **Company** makes any modifications in the form of this policy that are intended to pertain to all **Insureds** that have such forms as part of their policy, and by which the insurance afforded could be expanded by endorsement of replacement of form without increase premium charge, then such expanded insurance applies to the **Insured** as of the date the revision is permitted for use by the relevant department of insurance.

VII. EXTENDED REPORTING PERIOD

A. Optional Extended Reporting Period

1. If this policy is terminated for any reason other than fraud, material misrepresentation or nonpayment of premium, the **Named Insured** may purchase an **extended reporting period**.
2. To exercise this right, the **Named Insured** must provide written notice to the **Company** within 60 days of the termination requesting the purchase of an **extended reporting period** and pay the premium due to the **Company**. The premium for the **extended reporting period** will be developed in accordance with the rules, rates, and rating plans then in effect for the **Company**.

3. The **extended reporting period** will be for a period of 1, 2, or 3 years or as otherwise required by the regulatory guidelines governing this type of insurance in the **Named Insured's** state.
4. The limit of liability applicable to the **extended reporting period** will be the limit of liability remaining under the terminated policy or as otherwise required by the regulatory guidelines governing this type of insurance in the **Named Insured's** state.
5. The **extended reporting period** will not apply to any pending **claim** or proceedings; any paid **claim**; any **real estate services** performed after the effective date of the **extended reporting period**; or **claims** that are covered under any other insurance available to the **Insured**, or that would be covered but for the exhaustion of the limits.

B. Retirement Extended Reporting Period

1. If, during the **policy period**, the **owner/broker** of the **Named Insured** stated in Item 1. of the Declarations permanently retires from the practice of **real estate services** for reasons not related to suspension or revocation of the **owner/broker's** professional license, or Death or Disability as described in Section C. below, and the **Named Insured** ceases operations the **Company** will provide a retirement **extended reporting period** as set forth below.
2. The retirement **extended reporting period** will start with the date of the **owner/broker's** retirement and ends when one of the following occurs:
 - a. The **owner/broker** resumes the practice of **real estate services**; the **owner/broker** may be eligible to purchase, at the **Company's** option, a policy from the **Company** to reinstate full prior acts coverage;
 - b. Any insurance is issued which replaces, in whole or in part, the coverage afforded by the retirement **extended reporting period**;
 - c. The limits of liability have been exhausted; or
 - d. Three (3) years have elapsed from the date of the **owner/broker's** retirement.
3. The additional premium for this option shall be waived if the **owner/broker** has been continuously insured by the **Company** under a real estate errors and omissions professional liability insurance policy for at least four (4) consecutive years
4. The **Company** will issue a retirement **extended reporting period** endorsement only if:
 - a. The **owner/broker** requests the endorsement no more than sixty (60) days after the date of the **owner/broker's** retirement, or sixty (60) days after the end of the **policy period**, whichever is earlier. Such request must include written notification of retirement;
 - b. The **owner/broker** has paid all premiums and deductibles due for this policy at the time the **owner/broker** requests a retirement **extended reporting period** endorsement; and
 - c. The **owner/broker** pays when due the additional premium for the endorsement.

5. The limit of liability applicable to the **extended reporting period** will be the limit of liability remaining under the terminated policy or as otherwise required by the regulatory guidelines governing this type of insurance in the **Named Insured's** state.
6. The **extended reporting period** will not apply to any pending claim or proceedings; any paid **claim**; any **real estate services** performed after the effective date of the **extended reporting period**; or **claims** that are covered under any other insurance available to the **Insured**, or that would be covered but for the exhaustion of the limits.

C. Death or Disability Extended Reporting Period

1. If, during the **policy period**, the **owner/broker** of the **Named Insured** stated in Item 1. of the

Declarations dies or become totally and permanently disabled and the **Named Insured** ceases operations, the **Company** will offer a Death or Disability **extended reporting period** at no charge. Totally and permanently disabled means that the **owner/broker** is completely incapable of rendering **real estate services**, and such disability:

- a. Has existed for not less than ninety (90) consecutive days; and
 - b. Is expected to be continuous, total, and permanent.
2. The death or disability **extended reporting period** will start on the date the **owner/broker** dies or becomes totally and permanently disabled, and will end when one of the following occurs:
 - a. The executor or administrator of the **owner/broker's** estate has been discharged;
 - b. The total and permanent disability ends, whether or not the **owner/broker** resumes practice;
 - c. Any insurance is issued which replaces, in whole or in part, the coverage afforded by the death or disability **extended reporting period** endorsement;
 - d. The limits of liability have been exhausted; or
 - e. Three (3) years have elapsed from the date of the **owner/broker's** death or total and permanent disability.
 3. The **Company** will issue a death or disability **extended reporting period** endorsement only if the **owner/broker** or the **owner/broker's** representative request it no more than ninety (90) days after the date of the **owner/broker's** death or total permanent disability, or ninety (90) days after the end of the **policy period**, whichever is later. Such request must include:
 - a. A copy of the certified death certificate; or
 - b. Written proof, certified by the **owner/broker's** attending physician, of total permanent disability including the date it occurred.
 4. The limit of liability applicable to the **extended reporting period** will be the limit of liability remaining under the terminated policy or as otherwise required by the regulatory guidelines governing this type of insurance in the **Named Insured's** state.

5. The **extended reporting period** will not apply to any pending **claim** or proceedings; any paid **claim**; any **real estate services** performed after the effective date of the **extended reporting period**; or **claims** that are covered under any other insurance available to the **Insured**, or that would be covered but for the exhaustion of the limits.

EXHIBIT B

EXHIBIT B

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Facsimile: (702) 385-2741
Proposed Attorneys for the Chapter 7 Trustee, Victoria L. Nelson

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEVADA

In re:)	CASE NO.: 15-10110-LED
)	
AMERI-DREAM REALTY, LLC,)	Chapter 7
)	
Debtor.)	
)	
<hr/>)	
VICTORIA NELSON, In Her Capacity As The)	
Chapter 7 Trustee Of AMERI-DREAM)	ADVERSARY PROCEEDING NO.
REALTY, LLC,)	
)	
Plaintiff,)	
)	
vs.)	
)	
ELSIE PELADAS-BROWN,)	
)	
Defendant.)	
<hr/>)	

COMPLAINT

The Chapter 7 Trustee, Victoria L. Nelson (the "Trustee"), by and through her attorneys, Schwartz Flansburg PLLC, sues Elsie Peladas-Brown (the "Defendant") for breach of fiduciary duty, common law misrepresentation, and negligent misrepresentation and states:

JURISDICTION, PARTIES AND VENUE

1
2 1. In 2014, the Defendant was a member, manager and property manager of Ameri-
3 Dream Realty, LLC (the “**Company**”), a real estate sales and property management company,
4 which was based in Las Vegas, Nevada, prior to filing for relief under Chapter 7 of the United
5 States Bankruptcy Code. The Company was family owned and operated prior to its collapse.
6
7 The Defendant was a member and manager for all time periods that are the subject of this
8 lawsuit.
9

10
11 2. The Company is a resident of the State of Nevada and conducted significant
12 business activities in the District of Nevada. The Defendant is believed to be a resident of the
13 State of Nevada, but upon information and belief, fled to Philippines.
14

15 3. The Plaintiff is the Court-appointed Trustee over the Company in Case No. 15-
16 10110-LED, United States Bankruptcy Court, for the District of Nevada (the “**Action**”).
17

18 4. This Court has supplemental jurisdiction over all claims in this case because they
19 are asserted in connection with the Trustee’s duties to recover assets on behalf of the estate, and
20 because the allegations in this lawsuit share a common nexus of facts with those in the Action.
21

22 5. This Court has personal jurisdiction over the Defendant and venue is proper in
23 the Bankruptcy Court for the District of Nevada because: a) the Defendant engaged in
24 significant business in this District; b) the Defendant’s wrongful conduct occurred in significant
25 part in this District; and c) the Company is a debtor before this Court, and holds the claims
26 asserted in this Complaint.
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General Overview

6. As part of its business, the Company managed residential rental properties (the “**Business**”). In the normal course of its Business, the Company received and held rental security deposits on behalf of its customers’ tenants. At the time of the wrongful actions asserted herein, the Company held in excess of \$1,200,000 of tenant security deposit money (the “**Security Deposits**”).

7. Under Nevada Revised Statutes Section 645.310(1), security deposits for tenants are to be retained until the termination of the underlying lease or rental transaction.

8. In late March of 2014, the Company discovered that significant funds were missing from the bank account designated to hold tenant security deposits. At the time of the theft, the Company held security deposits for more than 1,000 tenants.

9. The Trustee asserts the Defendant orchestrated various unauthorized transactions, unbeknownst to the Company or her co-manager and husband, John M. Brown (“**Brown**”), which transactions included the wire transfers of the majority of the Security Deposits to the Philippines.

10. The Trustee understands the Security Deposits were disbursed in the Philippines and are not recoverable. The Defendant apparently disbursed the Security Deposits to friends and family in need after the damage caused by Typhoon Haiyan in November of 2013. Typhoon Haiyan was reported to be one of the strongest storms ever recorded, with winds reaching or exceeding 195 miles per hour.

11. Mr. Brown had no knowledge of the Defendant’s scheme, and on May 4, 2015, was divorced from the Defendant. The divorce decree, which was uncontested, requires the Defendant to indemnify Mr. Brown and the Company from any claims of embezzlement or theft

1 relating to the loss of the Security Deposits. Mr. Brown has not been charged with a crime in
2 this matter, and is available to testify if called as a witness.

3
4 **Defendant's Knowledge**

5 12. At all times relevant to this Complaint, the Defendant was a member, manager
6 and the property manager for the Company. The Defendant was also a licensed real estate agent
7 and property manager in the State of Nevada, and a member of the Greater Association of Las
8 Vegas Realtors.
9

10
11 13. As a licensed realtor and property manager in the State of Nevada, the Defendant
12 is charged with the knowledge and responsibility of safeguarding the Security Deposits. It is
13 undeniable in light of the Defendant's licenses that she knew sending the Security Deposits to
14 the Philippines would be a violation of the law, and would cause her to lose her real estate
15 licenses, which licenses are now inactive. The Defendant also knew she had a duty to manage
16 the Security Deposits prudently and in a fashion that minimized risk.
17

18
19 14. In sum, the Defendant had the knowledge and the motive to breach her fiduciary
20 duties to the Company, its customers and its tenants, and in fact did breach by secretly
21 transferring the Security Deposits to the Philippines. The transfers of the Security Deposits
22 were made for no consideration at all, and the Defendant understood the Security Deposits
23 could not possibly be repaid.
24

25
26 15. As a result of the foregoing, the Trustee retained counsel and agreed to pay her
27 counsel a reasonable fee for their services.
28

29 16. All conditions precedent to the institution of this action have been performed,
30 waived or excused.
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Count I, Breach of Fiduciary Duty to the Company

17. The Plaintiff hereby realleges the allegations set forth in paragraphs 1 through 16, as if fully set forth herein.

18. As a manager of the Company, Defendant owed fiduciary duties to the Company.

19. Through improper action or wrongful conduct and without privilege, the Defendant breached her fiduciary duties to the Company.

20. The Defendant had knowledge she was breaching her fiduciary duties, and acted purposely and with malice and the intent to injure the Company.

21. The tortious conduct of the Defendant proximately caused the damage to the Company because the Security Deposits were transferred for no consideration, and the Defendant knew it.

WHEREFORE, Plaintiff, as the Trustee for the Company, demands judgment against the Defendant for the total amount of the Security Deposits, plus prejudgment and post-judgment interest, and such further relief that this Court deems to be appropriate and just.

Count II, Common Law Misrepresentation to the Company

22. The Plaintiff hereby realleges the allegations set forth in paragraphs 1 through 16, as if fully set forth herein.

23. The Defendant had a duty to the Company to use ordinary care when representing the reasons for transferring the Security Deposits.

24. The Defendant breached her duty of care to the Company by falsely representing the transfer of the Security Deposits was an appropriate transaction for the Company to undertake.

26. As a result of the Defendant's false representations of the appropriateness of the wire transfers of the Security Deposits, the Company transferred the Security Deposits for no consideration.

WHEREFORE, Plaintiff, in her capacity as the Trustee for the Company, hereby demands judgment against the Defendant for the total amount of the Security Deposits, plus prejudgment and post-judgment interest, and any additional relief that this Court deems to be appropriate and just.

28. The Plaintiff hereby realleges the allegations set forth in paragraphs 1 through 16, as if fully set forth herein.

30. In particular, the tenants managed by the Company relied on the representations of the Defendant that the Security Deposits were safe. As a result of these false representations of the safety of the Security Deposits, nearly 1,000 tenants transferred their money to the Company, even though the Defendant knew or should have known that those payments would never be repaid, given the Defendant's plan to abscond with the money.

1 31. The Company suffered damages as a result of the transfer of the Security
2 Deposits and those damages were proximately caused by the Defendant's misrepresentations
3 regarding the safety of the Security Deposits.
4

5 WHEREFORE, Plaintiff, in her capacity as the Trustee for the Company, hereby
6 demands judgment against the Defendant for the total amount of the Security Deposit, plus
7 prejudgment and post-judgment interest, and any additional relief that this Court deems to be
8 appropriate and just.
9

10
11 **Count IV, Declaration the Company and John M. Brown are Innocent**

12 32. The Plaintiff hereby realleges the allegations set forth in paragraphs 1 through
13 16, as if fully set forth herein.
14

15 33. The Company was unaware at all times relevant to this Complaint the Defendant
16 conspired to abscond with the Security Deposits to the Philippines.
17

18 34. Mr. Brown was unaware at all times relevant to this complaint the Defendant
19 conspired to abscond with the Security Deposits to the Philippines.
20

21 WHEREFORE, Plaintiff, in her capacity as the Trustee for the Company, hereby
22 demands a declaration from the Court that both the Company and Mr. Brown were unaware of
23 the Defendant's plan to transfer the Security Deposits to the Philippines, and are innocent of the
24 claims asserted in this Complaint.
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JURY WAIVER

The Plaintiff hereby waives trial by jury with respect to all issues so triable.

Respectfully submitted, May 21, 2015.

SCHWARTZ FLANSBURG PLLC

/s/ Samuel A. Schwartz

Samuel A. Schwartz, Esq.

Nevada Bar No. 10985

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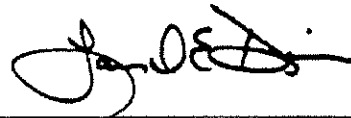
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Proposed Attorneys for Chapter 7 Trustee,

Victoria L. Nelson

EXHIBIT C

EXHIBIT C



Honorable Laurel E. Davis
United States Bankruptcy Judge



Entered on Docket
October 27, 2015

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Attorneys for the Chapter 7 Trustee, Victoria L. Nelson

UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF NEVADA

In re:) Case No.: 15-10110-LED
)
AMERI-DREAM REALTY, LLC,) Chapter 7
)
Debtor.)

) Adv. No.: 15-01087-LED
)
VICTORIA NELSON, In her Capacity As The)
Chapter 7 Trustee of AMERI-DREAM)
REALTY, LLC,)

Plaintiff,) Hearing Date: October 26, 2015
) Hearing Time: 1:30 p.m.
v.)

ELSIE PELADAS-BROWN,)
)
Defendant.)

**FINDINGS OF FACT AND CONCLUSIONS OF LAW ON
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**



Findings of Fact

4. The Plaintiff is the Court-appointed Trustee over the Company in Case No. 15-10110-LED, United States Bankruptcy Court, for the District of Nevada (the “**Action**”).

1 5. As part of its business, the Company managed residential rental properties (the
2 “**Business**”). In the normal course of its Business, the Company received and held rental
3 security deposits on behalf of its customers’ tenants. At the time of the Defendant’s wrongful
4 actions set forth herein, the Company held in excess of \$1,200,000 of tenant security deposit
5 money (the “**Security Deposits**”).

6 6. In late March of 2014, the Company discovered that significant funds were
7 missing from the bank account designated to hold tenant security deposits. At the time of the
8 theft, the Company held security deposits for more than 1,000 tenants.

9 7. The Defendant orchestrated various unauthorized transactions, unbeknownst to
10 the Company or her co-manager and ex-husband, John M. Brown (“**Mr. Brown**”), which
11 transactions included the wire transfers of the majority of the Security Deposits to the
12 Philippines.
13

14 8. Specifically, on the following dates, Brown transferred money from the
15 Company’s general account at JP Morgan Chase Bank and/or security deposit account at JP
16 Morgan Chase Bank to Unibank, Inc. Metro Philippines (the “**Philippines Bank**”):

17 a. On February 27, 2013, Brown transferred \$25,000 from the general
18 account to the Philippines Bank;
19

20 b. On May 14, 2013, Brown transferred \$50,000 from the security deposit
21 account to the Philippines Bank;
22

23 c. On April 10, 2013, Brown transferred \$49,263 from the security deposit
24 account to the Philippines Bank;

25 d. On April 17, 2013, Brown transferred \$24,600 from the security deposit
26 account to the Philippines Bank;
27

1 e. On May 17, 2013, Brown transferred \$97,930 from the security deposit
2 account to the Philippines Bank;

3 f. On May 24, 2013, Brown transferred \$49,000 from the security deposit
4 account to the Philippines Bank;

5 g. On June 25, 2013, Brown transferred \$71,500 from the security deposit
6 account to the Philippines Bank;

7 h. On July 18, 2013, Brown transferred \$35,000 from the security deposit
8 account to the Philippines Bank;

9 i. On September 10, 2013, Brown transferred \$7,670 from the security
10 deposit account to the Philippines Bank;

11 j. On September 23, 2013, Brown transferred \$18,700 from the security
12 deposit account to the Philippines Bank;

13 k. On September 27, 2013, Brown transferred \$23,255 from the security
14 deposit account to the Philippines Bank;

15 l. On October 9, 2013, Brown transferred \$10,020 from the security deposit
16 account to the Philippines Bank;

17 m. On October 22, 2013, Brown transferred \$13,960 from the security deposit
18 account to the Philippines Bank;

19 n. On October 24, 2013, Brown transferred \$11,700 from the security deposit
20 account to the Philippines Bank; and

21 o. On December 20, 2013, Brown transferred \$8,000 from the security
22 deposit account to the Philippines Bank.
23
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1 9. Including, but not limited to, the specific transactions listed above, the Defendant
2 embezzled a total of \$1,174,373.63 in Security Deposits from the Company.

3 10. On September 16, 2015, the Nevada Real Estate Commission held a hearing
4 regarding the Defendant's actions contained herein. At the Real Estate Commission hearing,
5 Brown's attorney, Mr. Lance Maningo, indicated Brown's acquiescence to the factual allegations
6 listed above, and admitted the funds were used to support Brown's family and friends in the
7 Philippines after catastrophic events.
8

9 11. The Security Deposits were disbursed in the Philippines and are not recoverable.
10 The Defendant disbursed the Security Deposits to friends and family in need after the damage
11 caused by Typhoon Haiyan in November of 2013. Typhoon Haiyan was reported to be one of
12 the strongest storms ever recorded, with winds reaching or exceeding 195 miles per hour.
13

14 12. Neither the Company nor Mr. Brown had any knowledge of the Defendant's
15 scheme, and on May 4, 2015, Mr. Brown was divorced from the Defendant.

16 13. The divorce decree, which was uncontested, requires the Defendant to indemnify
17 Mr. Brown and the Company from any claims of embezzlement or theft relating to the loss of the
18 Security Deposits.

19 14. Mr. Brown has not been charged with a crime in this matter.

20 15. At all times relevant to the Complaint, the Defendant was a member, manager and
21 the property manager for the Company. The Defendant was also a licensed real estate agent and
22 property manager in the State of Nevada, and a member of the Greater Association of Las Vegas
23 Realtors.
24

25 16. As a licensed realtor and property manager in the State of Nevada, the Defendant
26 is charged with the knowledge and responsibility of safeguarding the Security Deposits. It is
27

undeniable in light of the Defendant's licenses that she knew sending the Security Deposits to the Philippines would be a violation of the law, and would cause her to lose her real estate licenses, which licenses are now inactive. The Defendant also knew she had a duty to manage the Security Deposits prudently and in a fashion that minimized risk.

17. The Defendant had the knowledge and the motive to breach her fiduciary duties to the Company, its customers and its tenants, and in fact did breach such duties by secretly transferring the Security Deposits to the Philippines. The transfers of the Security Deposits were made for no consideration at all, and the Defendant understood the Security Deposits could not possibly be repaid.

Conclusions of Law

1. This Court has jurisdiction over this adversary proceeding and the Motion pursuant to 28 U.S.C. § 1334 and venue is proper in the District of Nevada pursuant to 28 U.S.C. § 1409(a).

2. This Court has supplemental jurisdiction over all claims in this case because they are asserted in connection with the Trustee's duties to recover assets on behalf of the estate, and because the allegations in this lawsuit share a common nexus of facts with those in the Action.

3. This Court has personal jurisdiction over the Defendant because: (i) the Defendant engaged in significant business in the District of Nevada; (ii) the Defendant's wrongful conduct occurred in significant part in the District of Nevada; and (iii) the Company is a debtor before this Court, and holds the claims asserted in the Complaint.

4. As a manager of the Company, the Defendant owed fiduciary duties to the Company.

5. Through improper action or wrongful conduct and without privilege, the

1 Defendant breached her fiduciary duties to the Company.

2 6. The Defendant had knowledge she was breaching her fiduciary duties, and acted
3 purposely and with malice and intent to injure the Company.

4 7. The tortious conduct of the Defendant proximately caused the damage to the
5 Company, because the Security Deposits were transferred for no consideration, and the
6 Defendant knew it.

7 8. The Defendant had a duty to the Company to use ordinary care when representing
8 the reasons for transferring the Security Deposits.

9 9. The Defendant breached her duty of care to the Company by falsely representing
10 the transfer of the Security Deposits was an appropriate transaction for the Company to
11 undertake.

12 10. Under Nevada law, the Defendant is required to safeguard the Security Deposits
13 on behalf of the tenants.

14 11. As a result of the Defendant's false representations of the appropriateness of the
15 wire transfers of the Security Deposits, the Company transferred the Security Deposits for no
16 consideration.

17 12. The Company suffered damages as a result of the transfer of the Security
18 Deposits, and those damages were caused by the Defendant's misrepresentations.

19 13. The tenants managed by the Company relied on the representations of the
20 Defendant that the Security Deposits were safe. As a result of those false representations of the
21 safety of the Security Deposits, nearly 1,000 tenants transferred their money to the Company,
22 even though the Defendant knew or should have known that those payments would never be
23 repaid, given the Defendant's plan to abscond with the money.
24
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26
27

1 14. The Company suffered damages as a result of the transfer of the Security Deposits
2 and those damages were proximately caused by the Defendant's misrepresentations regarding the
3 safety of the Security Deposits.

4 15. The Company was unaware at all times relevant to the Complain that the
5 Defendant conspired to abscond with the Security Deposits to the Philippines.

6 16. Mr. Brown was unaware at all times relevant to the Complaint that the Defendant
7 conspired to abscond with the Security Deposits to the Philippines.
8

9 17. The Company and Mr. Brown are innocent of all claims asserted in the Complaint
10 against the Defendant.
11

12 Submitted by:

13 SCHWARTZ FLANSBURG PLLC
14

15 By: /s/Samuel A. Schwartz

16 Samuel A. Schwartz, Esq., NBN 10985

17 Bryan A. Lindsey, Esq., NBN 10662

18 6623 Las Vegas Blvd. South, Suite 300

19 Las Vegas, NV 89119

20 Attorneys for the Chapter 7 Trustee, Victoria L. Nelson
21
22
23
24
25
26
27

SUBMISSION TO COUNSEL FOR APPROVAL PURSUANT TO LR 9021

In accordance with LR 9021, counsel submitting this document certifies that the order accurately reflects the court's ruling and that (check one):

☐ The court has waived the requirement set forth in LR 9021(b)(1).

☒ No party appeared at the hearing or filed an objection to the motion.

☐ I have delivered a copy of this proposed order to all counsel who appeared at the hearing, and any unrepresented parties who appeared at the hearing, and each has approved or disapproved the order, or failed to respond, as indicated below [list each party and whether the party has approved, disapproved, or failed to respond to the document]:

☐ I certify that this is a case under Chapter 7 or 13, that I have served a copy of this order with the motion pursuant to LR 9014(g), and that no party has objected to the form or content of this order.

APPROVED:

DISAPPROVED:

FAILED TO RESPOND:

SCHWARTZ FLANSBURG PLLC

By: /s/Samuel A. Schwartz

Samuel A. Schwartz, Esq., NBN 10985

Bryan A. Lindsey, Esq., NBN 10662

6623 Las Vegas Blvd. South, Suite 300

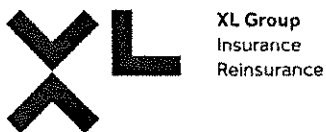
Las Vegas, NV 89119

Attorneys for the Chapter 7 Trustee, Victoria L. Nelson

###

EXHIBIT D

EXHIBIT D



Lee Santos
Account Manager
XL Select Professional
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March 30, 2015

Via E-Mail: rworks@mcdonaldcarano.com
& certified Mail

Ryan J. Works | Partner

MCDONALD CARANO WILSON LLP
2300 West Sahara Avenue, Suite 1200
Las Vegas, NV 89102
facsimile (702) 873-9966
rworks@mcdonaldcarano.com
C.O. John M. Brown, Jr. Broker
Ameri-Dream Realty, LLC

Claim Number: 3318283
Greenwich Insurance Company
Insured: Ameri-Dream Realty, LLC
Potential Claimant: Various
Property: Multiple

Dear Mr. Works:

This letter will acknowledge that XL Select Professional understands that you have been engaged to act as counsel for Ameri-Dream Realty, LLC, and its broker John M. Brown, in connection with the theft of security deposits held in trust on behalf of its customers. Additionally, you have advised that you and your firm are representing them in the recently filed Chapter 7 Bankruptcy case pending in the United States Bankruptcy Court District of Nevada, Case No. BK-S-15-10110-LED Chapter 7. Said case was filed Electronically on 3/6/2015. This information was provided to us via e-mail from your office. Please reference the claim number listed above when corresponding with our office.

This will serve to confirm our prior communications relative to the above captioned matter. Said lawsuit asserts certain Bankruptcy filings as well as Trustee issues regarding Ameri-Dream Realty, LLC and its principals. In addition there has been no Civil claims presented to us in said matter at this time.

We have reviewed the matter for coverage consideration under your Real Estate Errors & Omissions Policy with Greenwich Insurance Company numbered PEG9145932-6 and effective 6/14/2013 through 6/14/2014.

Greenwich Insurance Company, Indian Harbor Insurance Company, XL Insurance America, Inc.,
XL Insurance Company of New York, Inc., XL Select Insurance Company, XL Specialty Insurance Company





Page | 2

Based on the facts as presented to us we do not believe that there is coverage under the Real Estate Professionals Errors & Omissions policy due to said policy's definition of Damages which is;

"III. DEFINITIONS

Claim means a demand for money or services naming the Insured by reason of an act or omission in the performance of real estate services. A claim also includes the service of suit or the institution of an arbitration proceeding against the Insured.

Claim expenses means:

1. fees charged by attorneys designated by the Company or designated by the Insured with the Company's prior written consent; and
2. all other reasonable and necessary fees, costs and expenses resulting from the investigation, adjustment, negotiation, arbitration, mediation, defense or appeal of a claim, if incurred by the Company or by the Insured with the Company's prior written consent; and
3. premiums on appeal bonds, attachment bonds or similar bonds, however, the Company is not obligated to apply for or furnish any such bond.

Claim expenses do not include fees, costs or expenses of employees or officers of the Company, salaries, commissions, loss of earnings or other remuneration by or to any Insured.

Company means the insurance company named in the Declarations.

Damages mean any compensatory sum which the Insured is legally obligated to pay as a result of an act or omission including a judgment, award or settlement. Damages do not include:

1. fines, sanctions or penalties;
2. punitive, exemplary, or treble damages, unless coverage for such **damages** is permissible under the applicable state law;
3. the return, reduction, or restitution of fees, commissions, expenses or costs for **real estate services** performed or to be performed by the Insured;
3. injunctive or declaratory relief.

Insured means:

1. the Named Insured;
2. any present or former partner, member, officer, director or employee for real estate services performed on behalf of the Named Insured;



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3. any present or former independent contractor and their employees for real estate services performed on behalf of the Named Insured, but only if, prior to the date a claim is made, the Named Insured had agreed to provide insurance for the independent contractor's real estate services;
4. the estate, heirs, executors, administrators, assigns and legal representatives of an Insured in the event of such Insured's death, incapacity, insolvency or bankruptcy, but only for liability arising out of real estate services performed by or on behalf of the Named Insured prior to such Insured's death, incapacity, insolvency or bankruptcy; or
5. any real estate franchise corporation of which the Named Insured is a franchisee, but only as respects the real estate franchise corporation's liability for acts or omissions committed by an Insured on behalf of the Named Insured.
6. the lawful spouse or qualifying domestic partner of any present or former partner, member, officer, director, employee, or independent contractor, but only for liability arising out of real estate services actually or allegedly performed by such present or former partner, member, officer, director, employee, or independent contractor on behalf of the Named Insured. The Company will have no obligation to pay damages or claim expenses for any claim arising from any act or service actually or allegedly provided by the spouse or domestic partner of any individual to whom this policy otherwise provides coverage.

Named Insured means the persons or entities specified in Item 1. in the Declarations."

Conversion is not covered by said policy. In addition, the policy's exclusion D would further negate coverage for this matter as it reads;

"IV. EXCLUSIONS

The **Company** will not defend or pay any **claim**:

D. based on or arising out of:

1. the conversion, commingling, defalcation, misappropriation or improper use of funds or other property;
2. the gaining of any personal profit or advantage to which the **Insured** is not legally entitled; or
3. the inability or failure to pay, collect or safeguard funds held for others, unless the **insured** is acting in the capacity of a **short term escrow agent**."

Accordingly, based on the information as presented to us, the allegations of the claim, and the above noted exclusionary language and policy terms, there is no coverage for this loss. As such, we will be unable to assist you in this matter. Greenwich Insurance Company will not provide a defense or indemnification for this matter. As such, you will need to act to protect your interests.

We must also advise you that neither this letter nor any other action taken or omitted to be taken by Greenwich Insurance Company in connection with this claim shall be construed as a waiver



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of any of the terms, conditions, exclusions or provisions contained in the policy. Greenwich Insurance Company reserves the right to cite other coverage defenses should they become apparent in the future.

If you are aware of other factors or information that has not been made available to us, please either contact the undersigned or forward the materials to me so that I may determine whether to reconsider our position. In addition, please notify me immediately should there be any new information or complaints that contain allegations and claims different from those previously made, and upon which this coverage decision is made, and you feel those differing allegations or claims may be covered under the policy.

Please feel free to contact me with any questions or concerns you may have relative to the position outlined above, or any other issues you may have.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Lionel Santos' with a stylized flourish at the end.

Lionel (Lee) M. Santos
Account Mgr., XL Select Professional
Lionel.Santos@xlgroup.com

CC Pearl