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Attorneys for Defendants
XL AMERICA, INC., XL INSURANCE AMERICA, INC.,
XL SELECT PROFESSIONAL, PEARL INSURANCE GROUP, LLC

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,

**XL AMERICA, INC., XL INSURANCE
AMERICA, INC., XL SELECT
PROFESSIONAL, PEARL INSURANCE
GROUP, LLC'S MOTION TO DISMISS
PURSUANT TO FED. R. CIV. PRO. 12(B)(6)**

v.

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.

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

NOW COME Defendants XL America, Inc., XL Insurance America, Inc., XL Select Professional (collectively the "XL Entities") and Pearl Insurance Group, LLC ("Pearl"), by and through their counsel, for their Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(6) state as follows:

I. INTRODUCTION

This is an action brought by the Chapter 7 Bankruptcy Trustee for Ameri-Dream Realty,

1 LLC seeking indemnity coverage for the theft by one of Ameri-Dream Realty's members, Ms.
 2 Peledas-Brown. The Trustee is alleging breach of contract, breach of the duty of good faith and fair
 3 dealing, breach of fiduciary duty and violations of NRS 686A.310 based on Greenwich's denial of
 4 insurance coverage for the claims against Ms. Peledas-Brown. Specifically, the Complaint asserts
 5 that indemnity coverage should be afforded for the claims and subsequent judgment against Ms.
 6 Peledas-Brown because Ameri-Dream Realty and Mr. Brown were adjudicated as "innocent
 7 insureds."

8 In filing this suit, the Trustee has named not only Greenwich Insurance Company, the
 9 admitted errors and omissions insurer of Ameri-Dream Realty, but also several other entities that
 10 have no contractual relationship with Ameri-Dream Realty. The operative insurance policy is issued
 11 by Greenwich Insurance Company. Greenwich happens to be a member of XL America Companies
 12 and in that regard has relationships with other XL entities including XL America, Inc., XL Insurance
 13 America, Inc. and XL Select Professional. However, as admitted by the Complaint, the only entity
 14 with any insurance obligations to Ameri-Dream Realty is Greenwich. *See* Compl. at ¶33. Similarly,
 15 Defendant Pearl Insurance Group, LLC is not the insurer of Ameri-Dream and in fact has no
 16 corporate relationship to XL or Greenwich.

17 Because neither Pearl nor the XL Entities are the insurer of Ameri-Dream and have no
 18 contractual or fiduciary relationship to Ameri-Dream, the Trustees claims against Pearl and the XL
 19 Entities fail. Therefore, Pearl and the XL Entities respectfully request that the claims against them
 20 be dismissed with prejudice.

21 **II. FACTUAL BACKGROUND**

22 On May 21, 2015, the Trustee, in her capacity as Chapter 7 Trustee for the Ameri-Dream
 23 Realty initiated an adversary proceeding against Ms. Peladas-Brown in the United States Bankruptcy
 24 Court for the District of Nevada, Adversary Case No. 15-01087-LED (the "Peladas-Brown
 25 Adversary Complaint"). *See* Compl. at ¶27. The Peladas-Brown Adversary Complaint did not name
 26 Mr. Brown or Ameri-Dream Realty as defendants. *Id.* However, the Peladas-Brown Complaint did
 27 contain a request for a declaratory judgment that Ameri-Dream Realty and Mr. Brown were innocent
 28 and had no knowledge of Ms. Peladas-Brown's wrongdoings. *See* Compl. at ¶28. On October 27,

1 2015, the Bankruptcy Court entered an order granting summary judgment on all claims the Trustee
 2 had brought against Peladas-Brown, with findings of fact and conclusions of law. *See* Compl. at
 3 ¶30.

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

10 Greenwich issued a claims made and reported third party real estate agent errors and
 11 omissions policy to Named Insured Ameri-Dream Realty, LLC, policy number PEG9145932-6 and
 12 effective from June 14, 2013 through June 14, 2014 (the “Greenwich Policy”). *See* Compl. at ¶11.
 13 (A copy of the Greenwich Insurance Policy attached as Exhibit A.¹ Greenwich denied coverage
 14 under the Greenwich Policy for the Peladas-Brown Adversary matter. A copy of Greenwich’s denial
 15 letter is attached as Exhibit B.

16 Pearl was not a party to the Real Estate Errors & Omissions Policy issued to Ameri-Dream
 17 Realty, LLC. Pearl never entered into any contract directly with Ameri-Dream, LLC.
 18 Pearl did not make any coverage decisions, including but not limited to accepting or denying any
 19 claim, under the Greenwich Policy. Specifically, the Policy states that only Greenwich “agreed to
 20 pay for claims” under the Policy. *See* Compl. at ¶ 33.

21 Similarly, XL America, Inc., XL Insurance America, Inc. and XL Select Professional are not
 22 parties to the Greenwich Policy issued to Ameri-Dream Realty. The XL Entities never entered into
 23 any contract directly with Ameri-Dream, LLC. The XL Entities did not make any coverage
 24 decisions, including but not limited to accepting or denying any claims under the Greenwich Policy.

26 ¹ The Adversary Complaint references the Greenwich Policy but fails to attach the Policy as an Exhibit to the Adversary
 27 Complaint. By referencing the Greenwich Policy, the Greenwich Policy is incorporated into the Adversary Complaint
 28 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.”).

Again, the Complaint makes clear that only Greenwich “agreed to pay for claims” under the Policy. See Compl. at ¶ 33.

Nevertheless, the Trustee has brought claims against Pearl and the XL Entities asserting claims for: (1) breach of contract; (2) breach of implied covenant of good faith and fair dealing; (3) breach of fiduciary duty; (4) violations of NRS 686A.310; and (5) declaratory judgment. These claims are improper.

III. STANDARD OF REVIEW FOR MOTION TO DISMISS

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

IV. ARGUMENT

A. **Pearl and the XL Entities cannot be held liable for a breach of a contract (Count I) without being in privity of contract with Plaintiff.**

To prove a breach of contract claim a plaintiff must show four elements: (1) formation of a valid contract, (2) performance or excuse of performance by the plaintiff, (3) material breach by the defendant, and (4) damages. *Donell v. Fid. Nat’l Title Agency of Nev., Inc.*, 2012 U.S. Dist. LEXIS 66070, *24 (D. Nev. May 11, 2012). “The contract must be formed between the defendant and the plaintiff.” *Blades v. Wells Fargo Bank*, 2012 U.S. Dist. LEXIS 97234, *4 (D. Nev. July 12, 2012).

Plaintiff’s Complaint contains no allegations that he entered into any contract with Pearl. On the contrary, Plaintiff in paragraph 33 states “Pursuant to the terms of the Policy, *Greenwich* agreed to pay for claims, up to \$1,000,000.00, resulting from an act or omission in the performance of real estate services for which the insured (the Company) is obligated to pay.” Furthermore, a review of the Greenwich Policy attached as Exhibit A reveals that neither Pearl nor the XL Entities were party to any insurance contract with Ameri-Dream or Mr. Brown. Simply put, neither Pearl nor the XL Entities are mentioned as being a party to the insurance contract.

Therefore, Plaintiff's allegations of breach of contract should be dismissed against Pearl and the XL Entities for failing to state a claim upon which this Court can grant relief as Ameri-Dream and Pearl/the XL Entities not in privity of contract.

B. Pearl and/or the XL Entities cannot violate any implied covenants of good-faith or fair dealing (Count II) without the existence of a contract.

Nevada courts have recognized that all contracts impose a covenant of good-faith and fair dealing on contracting parties unless the parties expressly agree otherwise. *See generally, Nelson v. Heer*, 123 Nev. 217, 226 (Nev. 2007); *The State of Nev., Univ. and Cmty. Coll. Sys. v. Suttan*, 120 Nev. 972 (Nev. 2004). If a party breaches this covenant, then that gives rise to a bad-faith claim. *Id.* The Nevada Supreme Court has defined "bad faith" to mean "an actual or implied awareness of the absence of a reasonable basis for denying benefits of the [insurance] policy." *Allstate Ins. Co. v. Miller*, 212 P.3d 318, 324 (Nev. 2009)(quoting *Am. Excess Ins. Co. v. MGM*, 102 Nev. 601, 605 (Nev. 1986)). Showing that the insurer had no reasonable basis for denying or disputing a claim is necessary to establish a prima facie case for a bad-faith claim. *Powers v. United Services Auto. Ass'n and USAA Cas. Ins. Co.*, 114 Nev. 690, 703 (Nev. 1998).

The Trustee fails to establish a necessary element of a claim for breach of good-faith and fair dealing—that Ameri-Dream and Pearl/the XL Entities had entered into a contractual agreement establishing a relationship between them. Without a contract, Pearl and the XL Entities have absolutely no obligations or duties to Ameri-Dream, good-faith or otherwise.

The Trustee's claim of breach of the covenant of good-faith and fair dealing against Pearl should be dismissed because the Complaint fails to allege any facts demonstrating the existence of a contract from which this covenant arises between Ameri-Dream and Pearl/the XL Entities. Furthermore, Paragraph 33 of the Complaint correctly and expressly alleges that the only entities with any contractual obligation is Greenwich. Moreover, a review of Exhibit A clearly identifies the only parties to the contract, i.e. Ameri-Dream and Greenwich.

C. Nevada Law Does Not Recognize a Separate and Distinct Cause of Action for Breach of Fiduciary Duty As Plead in Count III.

The Trustee's third cause of action for breach of fiduciary duty is also based on the

Greenwich's denial of coverage under the Greenwich Policy. First, as discussed above, the Complaint specifically states in Paragraph 33 of the Complaint that only Greenwich had a duty to pay under the Policy. Moreover, as discussed above, neither Pearl nor the XL Entities are parties to any insurance contract with Ameri-Dream and therefore have no obligations to Ameri-Dream.

The Complaint correctly alleges in Paragraph 58 that a special relationship exists between an insurer and its insured. Nevada law holds that "an insurer's duty to its policyholder is ... 'akin' to a fiduciary relationship." *Powers v. U.S. Auto. Ass'n*, 114 Nev. 690, 962 P.2d 596, 602 (1998)). However, the Nevada Supreme Court in *Powers* declined to "adopt[] a new cause of action" for breach of fiduciary duty in the insurance context and instead "merely recogniz[ed] that breach of the fiduciary nature of the insurer-insured relationship is part of the duty of good faith and fair dealing." *Id.* at 603. Therefore, both factually and legally, Count III of the Complaint is duplicative of Count II of the Complaint and must be dismissed. Furthermore, for the reasons set forth above, no cause of action against Pearl and the XL Entities for breach of the duty of good faith and fair dealing can stand.

D. Pearl and the XL Entities Are Not Subject to Liability Under NRS 686A.310.

The Nevada Supreme Court has held that in determining what the legislature intended, the title of a statute may be considered in construing the statute. *A Minor v. Clark Co. Juvenile Ct. Servs.*, 87 Nev. 544, 548, 490 P.2d 1248, 1250 (1971). The title of NRS 686A.310 reads "Unfair practices in settling claims; liability of insurer for damages." The Nevada Supreme Court held that from a plain reading of its title, there is no indication that the legislature intended NRS 686A.310 to apply to other entities beyond insurers. *Albert H. Wohlers & Co. v. Bartgis*, 969 P.2d 949 (Nev. 1999). As discussed at length above, Paragraph 33 of the Complaint and Exhibit B expressly state that Greenwich is the insurer of Ameri-Dream Realty. The Complaint contains no allegations that Pearl and/or the XL Entities were parties to the insurance contract and/or were involved in any claims decisions. Therefore, because neither Pearl nor the XL entities is the insurer of Ameri-Dream, no liability can attach to Pearl and/or the XL entities pursuant to NRS 686A.310.

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E. Because No Insurer-Insured Relationship Exists Between Ameri-Dream and Pearl/the XL Entities, No Justiciable Controversy Exists in Connection with the Trustee's Request for Declaratory Judgment.

While the Declaratory Judgment Act therefore created a new procedural mechanism for removing the threat of impending litigation, it did not expand the jurisdiction of federal courts. *Skelly Oil Co. v. Phillips Petroleum Co.*, 339 U.S. 667, 671, 70 S.Ct. 876, 94 L.Ed. 1194 (1950). In particular, a federal court may only grant a declaratory judgment in “controversies which are such in the constitutional sense.” *Aetna Life Ins. Co. of Hartford, Conn. v. Haworth*, 300 U.S. 227, 240, 57 S.Ct. 461, 81 L.Ed. 617 (1937). To determine whether a declaratory judgment action presents a justiciable case or controversy, courts consider “whether the facts alleged, under all the circumstances, show that there is a substantial controversy, between parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.” *Md. Cas. Co. v. Pac. Coal & Oil Co.*, 312 U.S. 270, 273, 61 S.Ct. 510, 85 L.Ed. 826 (1941).

In this case, Ameri-Dream/the Trustee on the one hand and Pearl/the XL Entities on the other hand do not have any adverse legal interests. To determine whether the parties to a declaratory judgment action have adverse legal interests, the court first identifies the law underlying the request for a declaratory judgment. *Mylan Pharm., Inc. v. Thompson*, 268 F.3d 1323, 1330 (Fed. Cir. 2001); *Collin Cnty., Tex. v. Homeowners Ass'n for Values Essential to Neighborhoods*, (HAVEN), 915 F.2d 167, 171 (5th Cir.1990). It is necessary to first examine the underlying law because the Declaratory Judgment Act only creates new remedies, and therefore, the adverse legal interests required by Article III must be created by the authority governing the asserted controversy between the parties. *Shell Gulf of Mexico Inc. v. Center for Biological Diversity, Inc.*, 771 F.3d 632, 636 (9th Cir. 2014). When identifying the adverse legal interests arising from the law underlying the request for declaratory relief, courts examine both the persons who can assert rights under that law and those who have obligations under it. *Id.* citing *Collin Cnty.*, 915 F.2d at 171 (“Since it is the underlying cause of action of the defendant against the plaintiff that is actually litigated in a declaratory judgment action, a party bringing a declaratory judgment action must have been a proper party had the defendant brought suit on the underlying cause of action”).

1 As discussed at length above, Pearl and the XL Entities are simply the wrong parties. Ameri-
2 Dream had no contractual relationship with those parties. Moreover, the Complaint itself admits that
3 only Greenwich "agreed to pay for claims..." See Compl. at ¶33. Therefore, because no underlying
4 cause of action could lie against Pearl or the XL Entities, any request for Declaratory Judgment
5 against those defendants is improper.

6 **V. CONCLUSION**

7 WHEREFORE, Defendants Pearl Insurance Group, LLC, XL America, Inc., XL Insurance
8 America, Inc. and XL Select Professional respectfully request that this Court dismiss the claims
9 against them with prejudice pursuant to Federal Rule of Civil Procedure 12(b)(6) and award any and
10 all other relief this Court deems just and proper.

11 DATED this 23 day of December, 2015.

12 WILSON ELSEER MOSKOWITZ EDELMAN &
13 DICKER LLP

14 _____
15 Vernon A. Nelson, Jr., Esq.
16 Nevada Bar No. 6434
17 300 South 4th Street, 11th Floor
18 Las Vegas, Nevada 89101
19 Telephone: (702) 727-1400

20 Attorneys for Defendants
21 XL AMERICA, INC., XL INSURANCE
22 AMERICA, INC.,
23 XL SELECT PROFESSIONAL, PEARL
24 INSURANCE GROUP, LLC
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26
27
28

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 **XL AMERICA, INC., XL INSURANCE AMERICA, INC., XL SELECT PROFESSIONAL, PEARL INSURANCE GROUP, LLC'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 **claim 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



Lee Santos
Account Manager
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March 30, 2015

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Ameri-Dream Realty, LLC

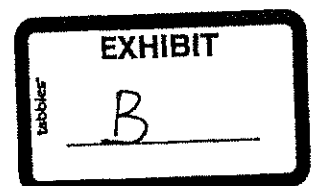
Claim Number: 3318283
Greenwich Insurance Company
Insured: Ameri-Dream Realty, LLC
Potential Claimant: Various
Property: Multiple

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.





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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