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11 **UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF NEVADA**

12 In re:)
13) Bankruptcy Case No.: 15-10110-GS
14 AMERI-DREAM REALTY, LLC,)
15) Chapter 7
16 Debtor.)
17) Hearing Date: OST Pending
18) Hearing Time: OST Pending

19 **DECLARATION OF SAMUEL A. SCHWARTZ IN SUPPORT OF MOTION TO**
20 **COMPROMISE PURSUANT TO FEDERAL RULE OF BANKRUPTCY PROCEDURE 9019**

21 Samuel A. Schwartz, being duly sworn, deposes and says:

22 1. I, Samuel A. Schwartz, am a shareholder at Brownstein Hyatt Farber Schreck, LLP
23 (“BHFS”), and I am an attorney duly licensed to practice law in the State of Nevada, the United
24 States District Court for the District of Nevada, the Supreme Court of Illinois, the United States
25 District Court for the Northern District of Illinois, the Supreme Court of Florida, the United States
26 District Court for the Southern District of Florida, the Supreme Court of Arizona, the United States
27 District Court for the District of Arizona, the Bankruptcy Appellate Panel for the Ninth Circuit Court
28 of Appeals, the Ninth Circuit Court of Appeals, and the United States Supreme Court. I make this
29 declaration based on my own personal knowledge except as to those matters stated upon information
30 and belief, and as to those matters, I believe them to be true.

1 2. I am the retained counsel for Shelly D. Krohn, the successor Chapter 7 Trustee in the
2 above-referenced matter (the “**Trustee**”).

3
4 3. I submit this declaration in support of the Plaintiff’s Motion to Approve Compromise
5 Pursuant to Federal Rule of Bankruptcy Procedure 9019 (the “**Motion**”).

6
7 4. On January 9, 2015, Ameri-Dream Realty, LLC (the “**Debtor**”) filed a voluntary
8 petition for relief under Chapter 7 of the United States Bankruptcy Code in the United States
9 Bankruptcy Court for the District of Nevada.

10
11 5. Victoria L. Nelson was appointed as the Chapter 7 Trustee in the Debtor’s bankruptcy
12 case.

13
14 6. On May 21, 2015, the former trustee, Victoria L. Nelson, in her capacity as Chapter 7
15 Trustee for the Company, initiated that certain adversary proceeding against Elise Peladas-Brown
16 (“**Ms. Peladas-Brown**”), a former manager of the Debtor, in the United States Bankruptcy Court for
17 the District of Nevada, Adversary Case No. 15-01087-LEB, due to Ms. Peladas-Brown’s secret
18 embezzlement of over \$1 million in security deposits from the Debtor.
19

20
21 7. On or about December 22, 2016, previously named trustee, Victoria L. Nelson, in her
22 capacity as the former Chapter 7 Trustee of Debtor filed suit against XL America, Inc., XL
23 Insurance American, Inc., XL Select Professional, Pearl Insurance Group, LLC, and Greenwich
24 Insurance Group (collectively, the “**Defendants**”), in the United States District Court for the District
25 of Nevada, Case No. 2:16-cv-00060-JAD-GWF, seeking relief for various causes of action
26 including: (1) breach of contract; (2) breach of implied covenant of good faith and fair dealing;
27 (3) breach of fiduciary duty; (4) violations of NRS 686A.310; and (5) declaratory relief (hereinafter
28 the “**Lawsuit**”).
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1 8. On or about September 21, 2017, the court granted Defendant Greenwich Insurance
2 Group's motion to dismiss without prejudice as to the first, second, third, and fifth causes of action,
3 and the coverage-related portion of her fourth cause of action. The court further dismissed without
4 prejudice Defendant Pearl Insurance Group, LLC and XL America, Inc., XL Insurance American,
5 Inc., and XL Select Professional as to all causes of action granting leave to amend.
6

7
8 9. On or about October 12, 2017, Ms. Nelson filed her first amended complaint against
9 Defendants seeking relief for causes of action including: (1) violations of NRS 686A.310; (2) breach
10 of fiduciary duty to the Debtor; and (3) breach of fiduciary duty to tenants and customers of the
11 Debtor.
12

13
14 10. Thereafter, on or about January 19, 2018, Trustee Shelley D. Krohn was appointed as
15 the Successor Chapter 7 Trustee of the Debtor, in the place and stead of Victoria L. Nelson.
16

17 11. On June 4, 2018, the court entered an order dismissing the second and third claims for
18 relief in the first amended complaint with prejudice.
19

20 12. Now, Trustee and Defendants have entered into a settlement agreement (the
21 "**Settlement Agreement**") that resolves the disputes at issue in the Lawsuit. A true and correct copy
22 of the Settlement Agreement is attached hereto as **Exhibit 1**.
23

24 13. The principal terms of the Settlement Agreement are outlined below¹:

- 25 a) In consideration of a resolution of the dispute concerning the Lawsuit,
26 Defendants shall pay the Trustee the sum of \$15,000 (the "**Settlement**
27 **Payment**");
28

29
30 ¹ The description of the Settlement Agreement set forth herein is a summary only and does not modify or
31 otherwise affect the terms of the Settlement Agreement. To the extent of any conflict between the
32 Settlement Agreement and the description set forth herein, the Settlement Agreement shall control.
33 Capitalized terms used but not defined herein shall have the meaning set forth in the Settlement
34 Agreement.

1 b) Within five (5) days of payment as set forth above, the Parties shall
2 execute and file a stipulation and order for dismissal, with prejudice, of the
3 Lawsuit;

4
5 c) Defendants shall remit payment of the Settlement Payment to the Trustee
6 no later than thirty (30) days after entry of a final non-appealable order
7 approving the Settlement Agreement pursuant to FRBP 9019; and
8

9 d) The Trustee and Defendants shall execute mutual releases.
10

11 12. The Trustee and Defendants have negotiated and reached the Settlement Agreement
12 in good faith.

13 13. Trustee now files the Motion to obtain court approval of the Settlement Agreement
14 pursuant to FRBP 9019.
15

16 14. I believe that the Trustee would be successful if the claims alleged against Defendants
17 proceeded to trial. That said, the outcome of litigation is never certain.
18

19 15. I believe the Defendants' insurance policies were implicated by the actions of the
20 Debtor's principal.
21

22 16. I also recognize the Defendants have argued that they had no contractual relationship
23 with the Debtor.
24

25 17. If the Defendants are successful in arguing that they had no contractual relationship
26 with the Trustee or that Ms. Pelades-Brown's actions were not covered by the pertinent insurance
27 policies, then it is unlikely the Trustee would recover anything by way of the Lawsuit.
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1 18. The process of determining the applicable insurance coverage at issue in the Lawsuit
2 would likely also be fact-intensive and may involve a trial on the merits. The Settlement Agreement
3 avoids the uncertainty of further litigation and results in the recovery of \$15,000.
4

5 19. The Settlement Agreement avoids the expense, inconvenience, and delay that would
6 be involved in a trial on the merits and should be approved pursuant to FRBP 9019.
7

8 20. The Settlement Agreement is in the best interests of creditors because it will result in
9 the recovery of \$15,000 that can be distributed according to the priority scheme under Section 726.
10

11 21. The continued litigation of the claims related to the Lawsuit would have resulted in
12 increased administrative expenses and a reduced recovery for the Debtor's creditors.
13

14 22. For these reasons, I believe that the Settlement Agreement should be approved
15 pursuant to FRBP 9019.
16

17 Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true
18 and correct.
19

20 Dated December 3, 2018.

21 /s/ Samuel A. Schwartz, Esq.
22 Samuel A. Schwartz, Esq.
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EXHIBIT 1

EXHIBIT 1

SETTLEMENT AGREEMENT AND RELEASE

I. PARTIES

This Settlement Agreement and Release (hereinafter the "Agreement") is made and entered into as of the date this document has been executed in its entirety, by and among the following parties:

1. Plaintiff Shelley Krohn, in her capacity as the Chapter 7 Trustee of Ameri-Dream Realty, LLC, filed in the United States Bankruptcy Court for the District of Nevada, case no. 15-10110-LED, ("Plaintiff"); and

2. XL America, Inc., XL Insurance American, Inc., XL Select Professional, Pearl Insurance Group, LLC, and Greenwich Insurance Group ("Defendants"), as well as all past, present and future claims and underwriting service managers, agents, adjusters and independent adjusters, surveyors, assigns, insurers, reinsurers, and retrocessionaries, all of their parent companies, subsidiary companies, affiliated companies, and joint venturers, and all of their officers, directors, managing agents, agents, representatives, shareholders, partners, employees, attorneys, subrogees, indemnitees, members, managers, predecessors, successors and assigns (collectively the "Releasees").

3. Plaintiff and the Releasees are hereinafter sometimes referred to collectively as the "Parties."

II. RECITALS

4. On or about December 22, 2016, previously named plaintiff, Victoria Nelson, in her capacity as the Chapter 7 Trustee of Ameri-Dream Realty, LLC, filed suit against Defendants in the United States District Court for the District of Nevada, case no. 2:16-cv-00060-JAD-GWF, seeking relief for various causes of action including: (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 relief (hereinafter the "Lawsuit").

5. On or about September 21, 2017, the court granted Defendant Greenwich Insurance Group's motion to dismiss without prejudice as to the first, second, third, and fifth causes of action and the coverage-related portion of her fourth cause of action. The court further dismissed without prejudice Defendant Pearl Insurance Group, LLC and XL America, Inc., XL Insurance American, Inc., and XL Select Professional as to all causes of action granting leave to amend.

6. On or about October 12, 2017, previously named plaintiff, Victoria Nelson, in her capacity as the Chapter 7 Trustee of Ameri-Dream Realty, LLC, filed her first amended complaint against Defendants seeking relief for causes of action including: (1) violations of NRS 686A.310; (2) breach of fiduciary duty to Ameri-Dream Realty, LLC; and (3) breach of fiduciary duty to tenants and customers of Ameri-Dream Realty, LLC.

7. On or about January 19, 2018, Plaintiff Shelley Krohn was appointed as the Successor Chapter 7 Trustee of Ameri-Dream Realty, LLC, in the place and stead of Victoria Nelson.

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8. In consideration of the recitals and mutual covenants and agreements set forth herein, the adequacy of which is hereby acknowledged, the Parties hereby agree to resolve fully and finally as between them all claims and disputes that now exist or in the future may arise with respect to the Lawsuit.

9. It is understood that the settlement memorialized in this Agreement is a compromise of disputed claims, and nothing herein shall be construed as an admission of liability on the part of any Party to this Agreement. The Parties deny liability, but acknowledge the uncertainties and substantial cost of continued litigation.

Now, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

III. SETTLEMENT TERMS

10. Defendants agree to pay Plaintiff Fifteen Thousand Dollars and Zero Cents (\$15,000.00) to resolve Plaintiff's claims (hereinafter the "Settlement Payment"). Defendants agree to make payment within thirty (30) days of the Bankruptcy Court's entry of an Order approving the settlement.

11. Within five (5) days of payment as set forth above, the Parties shall execute and file a stipulation and order for dismissal, with prejudice, of the Lawsuit.

IV. RELEASES

12. Release of the Releasees: In consideration of the payment set forth above, the mutual covenants and agreements contained in this Agreement, and other sufficient and valuable consideration, Plaintiff does hereby fully release, acquit and forever discharge the Releasees from all manner of obligations, contracts, actions, causes of action, suits, debts, dues, sums of monies, accounts, fees, bonds, bills, damages, expenses, claims or demands, known or unknown existing on or before or after the effective date of this Agreement or otherwise that Plaintiff has or hereafter may have arising out of and/or related to the Lawsuit, including, but not limited to, any and all claims, whether presently known or unknown, arising out of the policy, claims handling, for all claims of breach of fiduciary duty, and/or for claims made under NRS 686A.310.

Release of Plaintiff: In consideration of the payments set forth above, the mutual covenants and agreements contained in this Agreement, and other sufficient and valuable consideration, the Releasees hereby fully release, acquit, and forever discharge Plaintiff, Plaintiff's agents, Victoria Nelson, Victoria Nelson's counsel, and Plaintiff's counsel from all manner of obligations, contracts, actions, causes of action, suits, debts, dues, sums of monies, accounts, fees, bonds, bills, damages, expenses, claims or demands, known or unknown existing on or before or after the effective date of this Agreement or otherwise that the Releasees have or hereafter may have arising out of and/or related to the Lawsuit. The release provided under this section shall include the right to file a proof of claim in the Debtor's bankruptcy case based upon the payment of the Settlement Payment pursuant to 11 U.S.C. § 501 or Bankruptcy Rule 3001.

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13. Mutual Release between Plaintiff and the Releasees: Plaintiff, in her capacity as the Chapter 7 Trustee of Ameri-Dream Realty, LLC, and the Releasees hereby release and forever discharge each other from all manner of obligations, contracts, actions, causes of action, claims, suits, debts, dues, sums of monies, accounts, fees, bonds, bills, damages, expenses, claims or demands, known or unknown, including but not limited to any and all claims, whether presently known or unknown, arising out of the Lawsuit.

14. All Parties to this Agreement acknowledge that this Agreement and all releases and waivers contained herein are intended to and do apply to all known or unknown, expected or unexpected risks, losses, damages, and/or injuries. The Parties agree that this waiver is a bargained-for provision of this Agreement and is supported by separate valuable consideration. Without this provision, the Parties would not enter into this Agreement. For this reason, the discovery by any Party, subsequent to the execution of this Agreement, of any facts not heretofore known to that Party, or that the facts or law upon which it relied in executing this Agreement were not as it believed them to be, shall not constitute grounds for declaring this Agreement void, voidable or otherwise unenforceable. The Parties further agree that all releases herein shall be effective upon payment as set forth above.

V. REPRESENTATIONS AND WARRANTIES

The Parties to this Agreement represent and warrant and agree with each other as follows:

15. The Parties have received independent legal advice from counsel of their own choice throughout all of the negotiations that preceded the execution of this Agreement, and they have executed this Agreement with the consent and advice of such independent legal counsel. Accordingly, this Agreement shall not be construed for or against any particular party.

16. The Parties executing this Agreement further represent and declare that they have carefully read this Agreement, know the contents thereof and are executing this Agreement voluntarily. The contents of this Agreement have been explained to the Parties by their attorneys.

17. This Agreement is the entire, complete, sole and only understanding and agreement of, by and between the undersigned pertaining to the subject matter expressed herein, and there are no independent, collateral, different, additional or other understandings or agreements, oral or written, or obligations to be performed, things to be done, or payments to be made, not described herein; and further, no promise, inducement or consideration not described herein has been made by any Party to this Agreement.

18. The Parties signing this Agreement, and each of them, acknowledge that they are over the age of 21 and are legally competent and authorized to sign this Agreement, which is intended to be a legally binding contract dealing with the release and conveyance of certain valuable important rights.

VI. MISCELLANEOUS PROVISIONS

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19. Plaintiff hereby warrants, represents, and covenants that any outstanding liens and/or other reimbursable amounts for legal services paid or rendered on behalf of Plaintiff and/or any other liens allegedly arising out of or in any way relate to the Lawsuit will be satisfied out of the Payment. Plaintiff further agrees to indemnify and hold harmless Releasees from any and all claims, actions and suits for damages, arising out of the failure to pay such liens or charges.

20. The Parties hereby agree that the terms and conditions within this Agreement are not mere recitals and that they each enter into this Agreement in good faith and after having had an opportunity to consult with counsel of their own choosing.

21. The Parties hereto participated jointly in the negotiation and preparation of this Agreement and each Party has had the opportunity to obtain the advice of legal counsel and to review, comment upon, and redraft this Agreement. Accordingly, it is agreed that no rule of construction shall apply against any Party or in favor of any Party. This Agreement shall be construed as if the Parties jointly prepared this Agreement and any uncertainty or ambiguity shall not be interpreted against any one Party and in favor of the other.

22. Plaintiff acknowledges full responsibility for paying or satisfying any and all income taxes or other taxes that are or may be due as a result of the sums paid pursuant to this Agreement. Plaintiff agrees to indemnify, defend and hold the Releasees harmless if any government authority seeks payment of liens, taxes, costs, assessments, penalties, damages, fees, interest, withholdings, or other losses due in connection with the sums paid hereunder, and further agree not to seek or make any claim against Releasees for compensation, recompense, damages, costs, interest, fees, assessments, withholdings, penalties or other losses due if a claim or determination is made by any government authority or any third party that appropriate money or taxes were not paid and/or appropriate withholdings were not made from all or part of the Settlement Payment paid hereunder.

23. All Parties to this Agreement shall execute and deliver any document which is reasonably necessary to achieve the goals and purposes of this Agreement.

24. Time is expressly declared to be of the essence as to this Agreement and every provision hereof in which time is an element.

25. This Agreement has been negotiated and entered into in the State of Nevada, and shall be governed by, construed and enforced in accordance with the laws of the State of Nevada, as applied to contracts made in Nevada and to be wholly performed in Nevada.

26. No breach of any provision hereof can be waived unless in writing. Waiver of any one breach of any provision hereof shall not be deemed to be a waiver of any other breach of the same or other provisions hereof. This Agreement may be amended only by written agreement executed by the parties-in-interest at the time of the amendment. If any written amendment is entered into, it shall modify only the provisions of this Agreement specifically addressed, and shall be deemed to incorporate by reference, unchanged, all remaining provisions of this Agreement.

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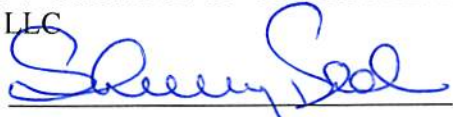
27. If any provision or any part of any provision of this Agreement shall for any reason be held to be invalid, unenforceable or contrary to public policy or any law, then the remainder of this Agreement shall not be affected thereby and shall remain in full force and effect, except that if the releases given in Section IV are found to be void or unenforceable, this entire Agreement shall be void.

28. The Parties to this Agreement acknowledge and agree that, except as provided herein, each of them shall bear their own costs, expenses, and attorney's fees arising out of the Lawsuit as well as the negotiation, drafting and execution of this Agreement.

29. This Agreement may be executed in one or more counterparts and may include multiple signature pages, all of which when taken together shall be deemed to be one instrument. Photocopies, facsimile copies or PDF files of original signature pages shall be deemed to have the same force and effect as the original.

DATED: 11/20/18

CHAPTER 7 TRUSTEE OF AMERI-DREAM REALTY, LLC

Signature: 

Printed Name: Shelley Krohn

DATED: 11/5/18

XL AMERICA, INC., XL INSURANCE AMERICA, INC., AND XL SELECT PROFES


SIONAL

By: _____

Printed name: Lee M. Santos

Title: Sr.Acct.Mgr./Senior Director Account Mgt.

DATED: _____

PEARL INSURANCE GROUP, LLC

By: _____

Printed name: _____

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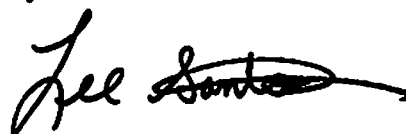
DATED: 11/5/18

Title: _____

GREENWICH INSURANCE COMPANY

By: _____

Reviewed and approved by:



Printed name: Lee M. Santos

Title: Sr.Acct.Mgr./Senior Director Account Mgt.

WILSON, ELSER, MOSKOWITZ,
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