

No. 14-25-00063-CV

IN THE COURT OF APPEALS OF TEXAS FILED IN
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DEBORAH M. YOUNG
Clerk of The Court

MARIA L. RINCON, ROBERTO RINCON, and JOSE RINCON,

Plaintiffs – Appellants,

v.

**ACE AMERICAN INS. CO., ALLIED WORLD INS. CO., ASPEN
SPECIALTY INS. CO., CHUBB CUSTOM INS. CO., IRONSHORE
SPECIALTY INS. CO., LEXINGTON INS. CO., and UNITED
SPECIALTY INS. CO.,**

Defendants – Appellees.

**Appealed From the 164th Judicial District Court
of Harris County, Texas, Cause No. 2023-04154**

BRIEF OF APPELLANTS

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STATEMENT OF THE CASE

This is a lawsuit for damages and declaratory relief against an insurance company.¹ The Rincons sued seven insurance companies to collect on an arbitration award and judgment against their insured.² The insurance companies disputed coverage and challenged the Rincons' standing and capacity to sue. Six of the seven insurance companies filed a combined five motions to dismiss under Rule 91a.³ The trial court granted four of the five motions on July 18, 2023, and granted the remaining insurance company's motion for summary judgment on June 28, 2024.⁴ A final and appealable judgment issued on December 13, 2024, when the trial court granted the fifth Rule 91a motion.⁵ Since filing their Notice of Appeal and the Court's abatement of the case pending mediation, the Rincons have settled with all but one of the insurance companies, Defendant-Appellee Lexington Insurance Company.

¹ *See* 1 CR 1960-75; App-D.

² *See id.*

³ 2 CR 2240-58; 2 CR 2259-70; 2 CR 2277-301; 2 CR 2323-42; CR 2304-18. *See also* App-E.

⁴ 2 CR 2461-2470; 2 CR 2999.

⁵ 2 CR 3013; App-A.

STATEMENT REGARDING ORAL ARGUMENT

The Rincons do not request oral argument.

ISSUES PRESENTED

1. Under Texas law, third parties may enforce another person's liability insurance policy when they secure a judgment against the insured. Here, Lexington issued policies that covered its insured's liability for losing the Rincons' property. The Rincons obtained a judgment against the insured. As judgment creditors, do the Rincons have standing and capacity to sue Lexington to enforce the policies?

2. Under Texas law, a person who has obtained a judgment against an insured is deemed a third-party beneficiary of the insured's policy; this is a recognized exception to the law governing third-party beneficiaries. The Rincons obtained a judgment against Lexington's insured. Do they have standing and capacity to enforce the Lexington policies as third-party beneficiaries?

3. When an insured bailee is legally responsible for a third party's injury, Texas law treats the injured person as a third-party beneficiary under the insured's insurance policy. Here, the insureds were bailees who were legally responsible for the Rincons' property. They lost that property, injuring the Rincons in the hundreds of

thousands of dollars. Do the Rincons have standing and capacity to enforce Lexington's insured's policies as third-party beneficiaries?

4. Chapter 541 of the Texas Insurance Code provides a remedy for "unfair methods of competition or unfair or deceptive acts or practices" in the "business of insurance" on a claim "by an insured or beneficiary." The Rincons became third-party beneficiaries of the Lexington's insured's policies when they obtained a judgment against the insured. May the Rincons, as third-party beneficiaries of the policies, pursue a claim against Lexington under Section 541.060 of the Texas Insurance Code?

STATEMENT OF FACTS

A. Carlton Woods Holdings, LLC enters a bailment agreement with the Rincons.

The Rincons were members of The Club at Carlton Woods, which at the relevant time was owned and operated by Carlton Woods Holdings, LLC ("CWH").⁶ In 2010, the Club pitched a "Wine Locker Program" to the Rincons.⁷ Under this program, the Club would sell the

⁶ 2 CR 2842 (¶ 1); App-C at 5 (¶ 1).

⁷ *Id.* at ¶ 2.

Rincons fine bottles of wine, which it promised to safeguard in “wine lockers” so that the Rincons would have “a perpetual wine inventory” available to them when dining at the Club.⁸

The Rincons signed two identical wine-locker agreements. Over several years, the family purchased hundreds of thousands of dollars of wine under the program.⁹ Per the agreements, the Club was to secure the wine in the Rincons’ lockers at the Club.¹⁰ The Club controlled all access to members’ respective wine lockers.¹¹

In 2016, Jose Rincon asked to visit his family’s wine locker. The Club said it was only able to show him a portion of his family’s wines at the time because the key to the storage area where the more expensive wines were held was not onsite.¹² After further inquiries and investigations, the Rincons discovered that more than 200 bottles of

⁸ 2 CR 2842-43 (¶¶ 2-3); App-C at 5-6 (¶¶ 2-3).

⁹ *Id.* at ¶ 2.

¹⁰ 2 CR 2843 (¶ 3); App-C at 6 (¶ 3).

¹¹ *Id.*

¹² 2 CR 2845 (¶ 8); App-C at 8 (¶ 8).

their wine had disappeared.¹³ The Club did not provide an excuse that satisfied the Rincons.¹⁴

B. The Rincons arbitrate their claim against CWH. They prevail, and the Harris County District Court confirms the award.

In 2016, the Rincons sued CWH. The case went to arbitration. Former Texas Supreme Court Justice Harriett O'Neill, as arbitrator, heard witness testimony and considered documentary evidence during a three-day hearing.¹⁵

On November 17, 2021, Justice O'Neill issued a reasoned award in which she found for the Rincons on their claims for breach of the wine-locker agreements.¹⁶ Among other things, she found that the Club became the Rincons' bailee when it undertook to store the wine it had sold them.¹⁷ She also found that the Club breached the bailment contract.¹⁸

¹³ 2 CR 2860 (¶ 49); App-C at 23 (¶ 49).

¹⁴ 2 CR 2846 (¶ 9); App-C at 9 (¶ 9).

¹⁵ 2 CR 2838-40; App-C at 1-3.

¹⁶ 2 CR 2838-42; App-C at 1-5.

¹⁷ 2 CR 2854 (¶ 32); App-C at 17 (¶ 32).

¹⁸ *Id.* at ¶ 33.

Justice O’Neill awarded the Rincons a total of \$1,110,411.70 (damages, fees, and costs) plus pre- and post-judgment interest.¹⁹ Judge Scot Dollinger, presiding over the 189th District Court of Harris County, confirmed the award on January 19, 2022 and entered judgment accordingly.²⁰ CWH did not appeal.

C. Meanwhile, CWH held all-risk insurance policies issued by Lexington.

Lexington insured CWH under three “all-risk” insurance policies during the time frame when CWH lost the wine.²¹ The policy periods for these policies were April 1, 2013 – April 1, 2014 (the “2013 Policy”), April 1, 2014 – April 1, 2015 (the “2014 Policy”), and April 1, 2015 – 2016 (the “2015 Policy”) (collectively the “Policies”).²² As all-risk policies, the Policies cover “all risk of direct physical loss or damage” to property except those risks the Policies specifically excluded.²³

¹⁹ 2 CR 2841-42 (¶¶ 6-7); App-C at 4-5 (¶¶ 6-7).

²⁰ See 2 CR 2867-95; App-B.

²¹ See 1 CR 1643-714; 2 CR 1873-936; 2 CR 2063-2119; Apps-H, I, and J.

²² See 1 CR 1643, 2 CR 1874, 2 CR 2066; App-H at LEX 002, App-I at LEX 076, App-J at LEX 143.

²³ See 1 CR 1671-72 (§ 8), 2 CR 1895-96 (§§ 5-6); 2 CR 2072-73 (§§ 5-6); App-H at LEX 030-31 (§ 8), App-I at LEX 097-98 (§§ 5-6), App-J at LEX 149-50 (§5) (“This policy insures against all risk of direct physical loss or damage occurring during the Policy Term to property . . . except as hereinafter excluded”) and (§ 6) (listing excluded perils)).

Among other things, the Policies cover CWH’s loss of personal property belonging to third parties. Each provides limits of \$1 million of “Bailee Coverage” per occurrence.²⁴ The 2013 Policy extends coverage to personal property that “the Insured is responsible for.”²⁵ All three Policies contain provisions extending coverage to CWH’s “interest” in the “property of others in the Insured’s care, custody or control.”²⁶ In the 2014 and 2015 Policies, this interest covers

property of others in the Insured’s care, custody or control *including the Insured’s liability for such property* and including the costs to defend any allegations of liability for loss or damage to such property.²⁷

These two Policies go on to define how a third party’s property will be valued when lost. The basis for adjustment for “[p]roperty of others in the Insured’s care, custody or control” is one of the following methods:

1. the replacement cost new

²⁴ 1 CR 1655, 2 CR 1892, 2 CR 2069; App-H at LEX 014, App-I at LEX 094, App-J at LEX 146.

²⁵ 1 CR 1660 (§ 6.A.(3)); App-H at LEX 019.

²⁶ 1 CR 1660 § 6.A.(2)), 2 CR 1897 (§ 7.A.1), 2 CR 2074 (§ 7.A.1); App-H at LEX 019 (§ 6.A.(2)), App-I at LEX 099 (§ 7.A.1), App-J at LEX 151 (§ 7.A.1).

²⁷ 2 CR 1897 (§ 7.A.1), 2 CR 2074 (§ 7.A.1); App-I at LEX 099 (§ 7.A.1)), App-J at LEX 151 (§ 7.A.1)) (emphasis added).

2. the amount stipulated in the lease agreement
3. *Insured's contractual or legal liability*
4. the cost to repair.²⁸

Finally, all Policies also cover the costs to defend any claims of liability for others' property in the care, custody, or control of CWH "to the extent of the Insured's liability therefore, even if such claim or suit is groundless, false or fraudulent."²⁹

D. CWH and the Rincons file claims with Lexington; when Lexington denies coverage, the Rincons sue.

The Rincons' victory in arbitration kicked off a protracted collection effort. CWH sold the club and transferred all of its assets to its parent company.³⁰ CWH and the Rincons made claims on CWH's insurance policies, including the Lexington policies, and Lexington denied coverage.³¹ Eventually, in January 2023, the Rincons sued Lexington and the other insurance companies with which the Rincons have now settled.

²⁸ 2 CR 1911 (§ 11.G.3), 2 CR 2089 (§ 11.G.3); App-I at LEX 113 (§ 11.G.3)), App-J at LEX 166 (§ 11.G.3)) (emphasis added).

²⁹ 1 CR 1670 (§ F), 2 CR 1903 (§ G), 2 CR 2081 (§ G); App-H at LEX 029 (§ F), App-I at LEX 105 (§ G)), App-J at LEX 157 (§ G)).

³⁰ 2 CR 2842 (¶ 1); App-C at 5 (¶ 1).

³¹ *See, e.g.*, 1 CR 1353; App-D at 8 (Plaintiffs' Second Amended Petition).

In their Second Amended Petition (“Petition”), the Rincons alleged, among other things, that the Policies expressly include coverage for bailed property—including the wine—in the care, custody, or control of CWH and that they had standing to enforce the Policies and seek a declaratory judgment as to their rights under the Policies as judgment creditors and as third-party beneficiaries.³²

E. Lexington files a Rule 91a motion to dismiss challenging the Rincons’ standing and capacity to sue, and Judge Thornton grants it.

In the trial court, six of the insurance companies, including Lexington, filed Rule 91a motions to dismiss; the seventh insurance company filed a motion for summary judgment. Lexington’s Second Amended Motion to Dismiss (“Motion to Dismiss”), much like the dispositive motions of the insurance companies that have since settled, relied on several arguments. First, it took the position that the Policies do not provide bailee coverage and that they cover only the insured’s “interest” in the property of others under its care, custody, or control.³³ Lexington also argued that the Rincons could not enforce the Policies

³² 1 CR 1351-55; App-D at 6-10.

³³ 2 CR 2311-14; App-E at 8-11.

because there was no privity of contract and the Rincons were not third-party beneficiaries of the Policies.³⁴ Lexington asserted that the Rincons' status as judgment creditors did not make them third-party beneficiaries of the Policies because, according to Lexington, the Policies were solely first-party policies, and judgment creditors only had standing under the direct-action rule to sue insurers under third-party liability policies.³⁵ Lexington further argued that the direct-action rule is inapplicable unless policies contain language expressly permitting a judgment creditor to sue the insurance company.³⁶

In their Petition and in opposition to the dispositive motions, the Rincons took the position that the Policies covered their losses and that they had standing and capacity to sue the insurance companies.³⁷ The Rincons argued they were third-party beneficiaries of the Policies under multiple theories, including as judgment creditors of Lexington's insured.³⁸

³⁴ 2 CR 2308-12; App-E at 5-9.

³⁵ 2 CR 2311-14; App-E at 8-11.

³⁶ 2 CR 2315; 2 CR 2409-13; App-E at 5-6 and App-G at 5-9.

³⁷ 1 CR 1351-56, 2 CR 2218-30; App-D at 6-10, App-F at 5-17.

³⁸ 2 CR 2220-30; App-F at 7-17.

The Honorable Judge C. Elliott Thornton of the 164th Judicial District Court of Harris County granted the 91a motions to dismiss, as well as the motion for summary judgment. She dismissed all the Rincons' causes of action against Lexington in general orders that did not set out her reasoning.³⁹ Whatever the basis of Judge Thornton's ruling, it was error.

SUMMARY OF THE ARGUMENT

Because the trial court erred in dismissing the Rincons' claims, this Court should reverse the judgment. The Policies covered the Rincons' losses, and the Rincons have standing and capacity as third-party beneficiaries of the Policies both as judgment creditors against Lexington's insured and as bailors whose losses are contemplated under the Policies.

ARGUMENT

The trial court erred by ruling that the Rincons may not enforce the Policies or pursue a claim against Lexington under Chapter 540 of the Texas Insurance Code. The trial court's order granting dismissal

³⁹ See 2 CR 3013; App-A.

under Rule 91 should be reversed and a declaration issued in favor of the Rincons that the Policies cover the Rincons' losses, the Rincons can enforce the Policies against Lexington as judgment creditors and/or third-party beneficiaries, and the Rincons, as third-party beneficiaries of the Policies, may pursue their statutory claim for unjust settlement practices against Lexington.

A. Standard of Review

Texas courts review a dismissal under Rule 91a de novo.⁴⁰ A trial court may only dismiss causes of action under Rule 91a if they lack any basis in law or fact.⁴¹ A claim has “no basis in law” if the allegations, accepted as true, along with reasonable inferences, do not entitle the plaintiff to the relief sought.⁴² Whether a remedy is available to the claimant is a question of law.⁴³ A claim has “no basis in fact” only if no reasonable person could believe the facts asserted in the petition.⁴⁴

⁴⁰ *City of Dallas v. Sanchez*, 494 S.W.3d 722, 724 (Tex. 2016).

⁴¹ *See id.*; Tex. R. Civ. P. 91a.1.

⁴² Tex. R. Civ. P. 91a.1.

⁴³ *Sanchez*, 494 S.W.3d at 724.

⁴⁴ Tex. R. Civ. P. 91a.1.

Texas courts construe insurance policies just like any other contract.⁴⁵ The parties' intent must be determined by the policy's terms based on an examination of the entire agreement, with the goal of harmonizing and giving effect to all the policy's provisions.⁴⁶ When the language is subject to two or more reasonable interpretations, the construction that affords coverage will be adopted.⁴⁷ A trial court's construction of a contract is reviewed de novo.⁴⁸

As detailed below, the Rincons' pleading satisfies Texas's fair-notice pleading standards and survives attack under Rule 91a.

B. The trial erred in ruling that the Policies do not cover the risks at issue.

1. The Policies expressly cover bailments and anticipate covering the Rincons' damages.

The Rincons argued in the trial court, and argue here, that the Policies cover their damages, i.e., CWH's liability for their lost wine.

⁴⁵ *Nassar v. Liberty Mut. Fire Ins. Co.*, 508 S.W.3d 254, 257-58 (Tex. 2017).

⁴⁶ *Id.* at 258.

⁴⁷ *See id.*; *Blaylock v. American Guarantee Bank Liability Ins. Co.*, 632 S.W.2d 719, 721 (Tex. 1982).

⁴⁸ *Sundown Energy LP v. HJSA No. 3, Ltd. P'ship*, 622 S.W.3d 884, 888 (Tex. 2021).

Justice O’Neill, as arbitrator, ruled that CWH was the bailee of the wine, and Lexington has not disputed that ruling.⁴⁹

The Policies are “all-risk” policies that protect against all risks of loss or damage to property except those risks they exclude.⁵⁰ All-risk policies generally cover “all losses of a fortuitous nature that, in the absence of the insured's fraud or other intentional misconduct, is not expressly excluded in the agreement.”⁵¹ A policy exclusion must be clearly and expressly stated.⁵² The Policies do not exclude coverage of bailed property—either the insured’s or the bailors’ interest—nor do the Coverage sections of the Policies indicate that the covered losses listed are exclusive.⁵³

Rather, the Policies’ language expressly shows their intention to cover bailments. Each Policy provides limits of \$1 million per

⁴⁹ See 2 CR 2854 (¶¶ 32-33); App-C at 17 (¶¶ 32-33).

⁵⁰ See 1 CR 1671-72 (§§ 8-9), 2 CR 1895-96 (§§ 5-6), 2 CR 2072-73 (§§ 5-6); App-H at LEX 030-031 (§§ 8-9)), App-I at LEX 097-98 (§§ 5-6)), App-J at LEX 149-50 (§§ 5-6).

⁵¹ *SMI Realty Mgmt. Corp. v. Underwriters at Lloyd's, London*, 179 S.W.3d 619, 627 n.3 (Tex. App.—Houston [1st Dist.] 2005, pet. denied).

⁵² *Nat’l Union Fire Ins. Energy Co. v. Hudson Energy Co.*, 811 S.W.2d 552, 555 (Tex. 1991) (“If [the insurance company] wanted to exclude simultaneous piloting from the scope of coverage, then it was incumbent upon it to expressly and clearly state the exclusion in the policy.”)

⁵³ See 1 CR 1660, 1CR 1672-75, 2 CR 1895-97, 2 CR 2072-74; App-H at LEX 019, LEX 031-34, App-I at LEX 097-99, App-J at LEX 151-53.

occurrence in Bailee Coverage.⁵⁴ The 2014 and 2015 Policies state that they cover “the interest of the Insured” in, among other things, all personal “property of others in the Insured’s care, custody or control.”⁵⁵ While they do not define the Insured’s “interest,” the Policies specifically include in coverage “the Insured’s liability for such property.”⁵⁶ The 2014 and 2015 Policies also specify that “property of others in the Insured’s care, custody, or control” may be valued by, e.g., the “Insured’s contractual or legal liability.”⁵⁷

Similarly, the 2013 Policy covers the “interest” of the Insured in personal property of others “in the Insured’s care, custody, or control” as well as “Personal Property which the Insured is responsible for.”⁵⁸

⁵⁴ 1 CR 1655, 2 CR 1892, 2 CR 2069; App-H at LEX 014, App-I at LEX 094, App-J at LEX 146. A “bailee” is one “who receives personal property from another and has possession of but not title to the property · A bailee is responsible for keeping the property safe until it is returned to the owner.” *Black’s Law Dictionary* (12th ed. 2024).

⁵⁵ 2 CR 1897 (§ 7.A.1), 2 CR 2074 (§ 7.A.1); App-I at LEX 099 (§ 7.A.1), App-J at LEX 151 (§ 7.A.1).

⁵⁶ *See id.*

⁵⁷ 2 CR 1911 (§ 11.G.3); 2 CR 2089 (§ 11.G.3); App-I at LEX 113 (§ 11.G.3)), App-J at LEX 166 (§ 11.G.3).

⁵⁸ 1 CR 1660 (§ 6.A.(2), (3)); App-H at LEX 019 (§ 6.A.(2-3)). The 2013 Policy does not specifically address the valuation of bailed property but values property “not otherwise provided for” at “replacement cost.” *See* 1 CR 1676 (§ 6); App-H at LEX 035 (§6)).

Lexington's argument in the trial court that the Policies did not provide bailee coverage fails to give effect to and harmonize all the Policies' provisions.⁵⁹ Based on the policy language and each Policy's \$1 million limit for Bailee Coverage, the Policies can reasonably be interpreted as covering CWH's liability for losing the Rincons' property. Under Texas law, the Rincons' interpretation must be accepted.⁶⁰

2. The Policies provide both first-party and third-party coverage.

What an insurance policy covers should be determined by the policy's language.⁶¹ In the trial court, Lexington seemed to take the position that first-party and third-party coverage are mutually exclusive.⁶² It contended that the Policies provided first-party property coverage only and thus did not cover CWH's liability to third parties like the Rincons.⁶³

⁵⁹ See 2 CR 2311; App-E at 8; *Nassar*, 508 S.W.3d at 258 (citation omitted) ("Courts must 'examine the entire agreement and seek to harmonize and give effect to all provisions so that none will be meaningless.'").

⁶⁰ See *Blaylock*, 632 S.W.2d at 721.

⁶¹ See *Highlands*, 721 S.W.2d 469, 471 (Tex. App.—Houston [14th Dist.] 1986, writ ref'd n.r.e.) (citing *Glover v. Nat'l Ins. Underwriters*, 545 S.W.2d 755, 757 (Tex. 1977)).

⁶² See 2 CR 2313-14; App-E at 10-11.

⁶³ See *id.*

In fact, many insurance policies provide both property and liability coverage.⁶⁴ Automobile policies, for example, may provide both property and liability coverage.⁶⁵ A policy's inclusion of one type of coverage does not negate the possibility that the policy includes other types of coverage.⁶⁶

Here, the Policies provide both property and liability coverage. For example, all three Policies cover vendors' and contractors' interest in property "to the extent of the Insured's liability imposed by law or assumed by written contract."⁶⁷ That's liability coverage.⁶⁸ The Policies also "insure the costs and fees to defend any claim or suit . . . alleging physical loss or damage as insured against to property of others in the care, custody or control of the Insured."⁶⁹ There would be no need for

⁶⁴ *Highlands*, 721 S.W.2d at 471 (holding that the all-risk policies provided both property and liability coverage).

⁶⁵ *See Members Mut. Ins. Co. v. Hermann Hospital*, 664 S.W.2d 325, 327-328 (Tex. 1984).

⁶⁶ *See Highlands*, 721 S.W.2d at 471.

⁶⁷ 1 CR 1660 (§ 6.A.(5)), 2 CR 1897 (§ 7.A.2), 2 CR 2074 (§ 7.A.2); App-H at LEX 019 (§ 6.A.(5)), App-I at LEX 099 (§ 7.A.2)), App-J at LEX 151 (§ 7.A.2)).

⁶⁸ *See Members Mut. Ins. Co.*, 664 S.W.2d at 327 (defining liability insurance as insurance that covers damage the insured causes to third parties).

⁶⁹ 1 CR 1670 (§ F), 2 CR 1903 (§ G), 2 CR 2080 (§ G); App-H at LEX 029 (§ F), App-I at LEX 105 (§ G), App-J at LEX 157 (§ G).

this provision if the Policies provided only first-party coverage.⁷⁰

Lexington's characterization of the Policies as solely providing first-party coverage improperly negates these terms.⁷¹

The Policies' language shows that they cover CWH's liability for the Rincons' property, which CWH was responsible for and had in its care, custody, and control.⁷² To exclude coverage for bailments, Lexington would have to have expressed that intention "in clear and unambiguous language."⁷³ It did not do so; quite the contrary.

C. The trial court erred in ruling that the Rincons lacked standing and capacity to enforce the Policies.

The trial court judge erred in dismissing the case based on Lexington's arguments that the Rincons were not third-party beneficiaries of the Policies. These Policies specifically covered CWH's loss of bailments, and the Rincons were judgment creditors of

⁷⁰ See *Highlands*, 721 S.W.2d at 471-72.

⁷¹ See *Nassar*, 508 S.W.3d at 258.

⁷² See 1 CR 1660 (§ 6.A.(2), (3)), 2 CR 1897 (§ 7.A.1), 2 CR 1911 (§ 11.G.3), 2 CR 2074 (§ 7.A.1), 2 CR 2089 (§ 11.G.3); App-H at LEX 019 (§ 6.A.(2),(3)), App-I at LEX 099 (§ 7.A.1)) and LEX 113 (§ 11.G.3); App. J at LEX 151 (§ 7.A.1) and LEX 166 (§ 11.G.3).

⁷³ See *Nat'l Union Fire Ins. Energy Co.*, 811 S.W.2d at 555.

Lexington's insured. The trial court further erred by dismissing the Rincons' declaratory judgment action.

1. The Rincons may enforce the Policies as judgment creditors of liability policies.

Under Texas law, a judgment creditor has standing and capacity to enforce a liability policy even if the judgment creditor is not a party to the policy.⁷⁴ An “entity becomes a third party beneficiary to an insurance contract when it obtains a judgment against the insured; at that time, the entity becomes a third-party judgment creditor.”⁷⁵ By obtaining a judgment against the insured, the third party eliminates the concerns that give rise to the no-direct-action rule.⁷⁶ Here, the

⁷⁴ *Std. Fire Ins. Co. v. Sassin*, 894 F. Supp. 1023, 1027 (N.D. Tex. 1995) (citing *Dairyland Cnty. Mut. Ins. co. v. Childress*, 650 S.W.2d 770, 775-76 (Tex. 1983)) (a non-party to a policy who's a judgment creditor may enforce the policy); *Cowley v. Texas Snubbing Control, Inc.*, 812 F.Supp. 1437, 1445 (S.D. Miss. 1992) (applying Texas law) (judgment creditor of insured is considered a third-party beneficiary of insured's policy), *aff'd sub nom. Cowley v. Stapleton*, 15 F.3d 180 (5th Cir.), and cert. denied, 115 S. Ct. 80 (1994).

⁷⁵ *P.G. Bell Co. v. U.S. Fid. & Guar. Co.*, 853 S.W.2d 187, 189 (Tex. App.—Corpus Christi 1993, no writ) (emphasis added) (citing *Filley v. Ohio Cas. Ins. Co.*, 805 S.W.2d 844, 847 (Tex. App.—Corpus Christi, 1991, writ denied)); *accord Great Am. Ins. Co. v. Murray*, 437 S.W.2d 495, 496-97 (Tex. Civ. App.—Amarillo 1970, writ ref'd n.r.e.)).

⁷⁶ *See Turner v. Cincinnati Ins. Co.*, 9 F.4th 300, 309 (5th Cir. 2021) (citing *Ohio Cas. Ins. Co. v. Time Warner Ent. Co., L.P.*, 244 S.W.3d 885, 888-89 (Tex. App.—Dallas 2008, pet. denied)) (explaining the public policy concern that permitting a third party to sue the insurer before obtaining a judgment can create a conflict of interest for the insurer).

Rincons are judgment creditors and hence third-party beneficiaries of the liability Policies. The Rincons therefore have a right to enforce the Policies against Lexington.

(a) The Policies explicitly provide coverage for property of third parties for which CWH is or may become liable.

The Policies contemplate the insurance company's obligation to pay a judgment obtained by a third party for its property lost or damaged by CWH and to defend against such a suit.⁷⁷ These are the same scenarios under which courts have held that a judgment creditor may enforce the insured's policy.⁷⁸

Lexington argued in the trial court that the Policies were strictly first-party policies and that Texas does not recognize a judgment creditor as a third-party beneficiary under a first-party property policy,

⁷⁷ See 1 CR 1655 (§ AB), 1660 (§ 6.A.(2), (3)), 1670 (§ F); 2 CR 1892 (§ 3(c)), 2 CR 1897 (§ 7.A.1), 2 CR 1903 (§ G), 1911 (§ 11.G.3); 2 CR 2069 (§ 3(c)), 2074 (§ 7.A.1), 2080 (§ G), 2089 (§ 11.G.3). See also App-H at LEX 014, LEX 019 (§ 6.A.(2), (3)) LEX 029 (§ F); App-I at LEX 094, LEX 099 (§ 7.A.1), LEX 105 (§ G), LEX 113 (§ 11.G.3); App-J at LEX 146 (§ 3(c)), LEX 151 (§ 7.A.1), LEX 157 (§ G), LEX 166 (§ 11.G.3).

⁷⁸ See, e.g., *P.G. Bell*, 853 S.W.2d at 189; *Angus Chem Co. v. AMC Fertilizer*, 939 S.W.2d 138, 138 (Tex. 1997) (per curiam); *In re Essex Ins. Co.*, 450 S.W.3d 524, 525 (Tex. 2014) (orig. proceeding); *State Farm Cnty. Mut. Ins. Co. of Tex. v. Ollis*, 768 S.W.2d 722, 723 (Tex. 1989).

and therefore the Rincons lacked standing to sue the insurer under the direct-action rule.⁷⁹ This argument fails for several reasons.

First, in addition to providing first-party property coverage, the Policies contemplate CWH's obligations to bailors and other third parties. Lexington largely relied on *Debes*, an unpublished Beaumont case, for the property/liability insurance dichotomy it presented to the trial court.⁸⁰ The *Debes* court stated that the rule established in *P.G. Bell Co.*—that a judgment creditor becomes a third-party beneficiary to the policy—applies only in the context of liability policies.⁸¹ *Debes* quoted from *Highlands* to define property insurance policies as “intended solely to indemnify the insured for his actual monetary loss by the occurrence of the disaster[.]”⁸² But *Debes* did not implicate a key point made in *Highlands*: many policies provide both property and liability coverage.⁸³ The Policies here not only provided property

⁷⁹ See 2 CR 2313-14; App-E at 10-11.

⁸⁰ See 2 CR 2309-2310, 2312-13; App-E at 6-7, 9-11.

⁸¹ See *Debes v. Gen. Star Indem. Co.*, No. 09-12-00527-CV, 2014 Tex. App. LEXIS 7473, at *30, Tex. App.—Beaumont July 1, 2013, no pet.). This unpublished case can be found at App-K.

⁸² See *id.* (citing *Highlands Ins.*, 721 S.W.2d at 471).

⁸³ *Highlands Ins.*, 721 S.W.2d at 471.

coverage, but they contemplated Bailee Coverage and damages owed to third parties, defense of lawsuits filed in connection with bailments, and payment of judgments to third parties for lost property.⁸⁴

Unlike here, the insured in *Debes* did not owe any legal obligation to the plaintiff, and the case did not involve a bailment.⁸⁵ In *Debes*, a landlord sued the insurer to enforce a policy bought not by his tenant but by the wife of an officer of the corporate tenant that operated a night club out of the leased property.⁸⁶ The policy's named insured was the wife "dba" the club.⁸⁷ Among the facts considered by the court was the lack of any contractual obligation owed by the wife to the landlord.⁸⁸

Here, the 2014 and 2015 Policies specifically contemplate covering a judgment for property owned by a third party, and the 2013 Policy

⁸⁴ 1 CR 1655 (AB), 1 CR 1660 (6.A.(2), (3)), 1 CR 1670 (§ F); 2 CR 1892, 2 CR 1897 (§ 7.A.1), 2 CR 1903 (§ G), 2 CR 1911 (§ 11.G.3); 2 CR 2069, 2 CR 2074 (§ 7.A.1), 2 CR 2080 (§ G), 2 CR 2089 (§ 11.G.3). *See* these documents also at App-H at LEX 014 (AB), LEX 019 (§ 6.A.(2)-(3)), LEX 029 (§ F); App-I at LEX 094, LEX 099 (§ 7.A.1), LEX 105 (§ G), LEX 113 (§ 11.G.3); App-J at LEX 146, LEX 151 (§ 7.A.1), LEX 157 (§ G), LEX 166 (§ 11.G.3).

⁸⁵ *See Debes*, 2014 Tex. App. LEXIS 7473, at *30-31.

⁸⁶ *Id.* at *2-3.

⁸⁷ *Id.* at *2.

⁸⁸ *Id.* at *17-20.

more generally covers property for which the insured is “responsible.”⁸⁹

And here the insured, CWH, owed contractual obligations to the Rincons, the third parties seeking to enforce the Policies.⁹⁰

The rationale for permitting a third party to whom the insured owes obligations under a liability policy to enforce a judgment against the carrier, as explained by the *Debes* court, applies here:

The intent of the parties to a third-party liability contract is to indemnify, and if the third-party obtains a judgment, the policy confers a direct benefit to a third-party claimant injured by the insured. As such, a third-party claimant who has obtained a judgment against the insured for a covered loss under the third-party liability policy has been held to be a third-party beneficiary to the liability policy.⁹¹

It gets down to the Policies’ language, which provide coverage for CWH’s own property as well as its liability to third parties—including bailors like the Rincons.⁹²

⁸⁹ 1 CR 1660 (§ 6.A.(2), (3)), 2 CR 1897 (§ 7.A.1), 2 CR 1911 (§ 11.G.3), 2 CR 2074 (§ 7.A.1), 2 CR 2089 (§ 11.G.3); App-H at LEX 019 (§ 6.A.(2),(3)), App-I at LEX 099 (§ 7.A.1) and LEX 113 (§ 11.G.3); App-J at LEX 151 (§ 7.A.1) and LEX 166 (§ 11.G.3).

⁹⁰ See 2 CR 2842-43 (¶¶ 2-3), 2849 (¶ 20), 2852 (¶ 27); App-C at 5-6 (¶¶ 2-3), 12 (¶ 20), 15 (¶ 27)).

⁹¹ See *Debes*, *29-30 (citing *P.G. Bell*, 853 S.W.2d at 189).

⁹² See *Highlands Ins.*, 721 S.W.2d at 471.

(b) The Policies do not limit the Rincons' right to bring this suit.

The cases that state that a third party becomes a third-party beneficiary to a policy after obtaining a judgment against the insured do not set out additional requirements that the third party must meet to gain standing to pursue the insurance company; rather, the cases suggest that the right to enforce the policies as a third-party beneficiary comes about by operation of law.⁹³ That said, because the plaintiffs in nearly all these cases had not obtained a judgment against the insured before suing the insurer, the courts have ruled against them without further development of the issues.⁹⁴

One of the few cases in which a third party seeking to enforce a policy did comply with the requirement that he first obtain a judgment

⁹³ See, e.g., *P.G. Bell Co.*, 853 S.W.2d at 189; *Angus Chem Co.*, 939 S.W.2d at 138 (“In Texas, the general rule . . . is that an injured party cannot sue the tortfeasor's insurer directly until the tortfeasor's liability has been finally determined by agreement or judgment.”); *In re Essex Ins. Co.*, 450 S.W.3d at 525 (citing the general direct-action rule and barring an employee's claims for injury against his employer's insurance company because the employer had not yet been found liable); *Ollis*, 768 S.W.2d at 723 (“In *Great American Ins. Co. v. Murray*, 437 S.W.2d 264 (Tex. 1969), we held that a party injured by the insured is a third party beneficiary of a liability insurance policy. However, he cannot enforce the policy directly against the insurer until it has been established, by judgment or agreement, that the insured has a legal obligation to pay damages to the injured party”).

⁹⁴ See *id.*

is *P.G. Bell*. There the court held that the plaintiff was “standing in the shoes of [the insured]” after obtaining a judgment and “succeed[ed] to the rights, duties, and obligations of the insured.”⁹⁵ In the trial court, Lexington cited *P.G. Bell* as supporting its contention that the Rincons, though judgment creditors, “could only maintain suit against Lexington if the policies contained language explicitly conferring benefits, enforcement, and the right to a direct-action to third parties.”⁹⁶ But that’s not what the *P.G. Bell* court said.

What the court said in *P.G. Bell* was that third-party judgment creditors are bound by the policy’s terms.⁹⁷ The policy in that case expressly barred a direct action by a third party until a judgment had been obtained against the insured, at which time the third party would be entitled to seek recovery under the policy.⁹⁸ This provision restated the no-direct action rule that courts now follow as a matter of public policy.⁹⁹ *P.G. Bell* does not stand for the proposition that a third-party

⁹⁵ *P.G. Bell*, 853 S.W.2d at 193.

⁹⁶ See 2 CR 2315; App-E at 12.

⁹⁷ *P.G. Bell*, 853 S.W.3d at 189.

⁹⁸ See *id.* at 190.

⁹⁹ See *id.* at 189. See also *Turner*, 9 F.4th at 309 (explaining public policy justification for the common-law no-direct-action rule).

judgment creditor has no enforcement rights absent express permission in the policy; rather, the court merely held that the party seeking to enforce a policy is bound by the policy's provisions.¹⁰⁰

Nor do other Texas cases typically require specific policy language permitting the judgment creditor to enforce the policy for a covered loss.¹⁰¹ Yet in its Reply in support of its Motion to Dismiss, Lexington included an entire section under the subhead "A third-party 'judgment creditor' can only bring suit if a right to direct action is provided for in the policy."¹⁰² Lexington cited five cases, none of which stands for such a proposition. Three of the cases involved plaintiffs who sued the insurance company under liability policies without first obtaining a judgment against the insured.¹⁰³ In a fourth case, *Samford*, a judgment

¹⁰⁰ See *id.* The other case Lexington cited in its Motion to Dismiss had a similar no-direct action provision. See 2 CR 2314; App-E at 11, citing *Turner*, 9 F.4th at 312-13 (holding that third parties had standing to sue the insurance company when they had obtained default judgments against the insureds).

¹⁰¹ See, e.g., *Angus Chem Co.*, 939 S.W.2d at 138; *In re Essex Ins. Co.*, 450 S.W.3d at 525; *Ollis*, 768 S.W.2d at 723. It's not difficult to see where such a requirement would leave most judgment creditors.

¹⁰² See 2 CR 2409; App-G at 5. Lexington provides pin cites to only one of the cases it cites for this proposition. See *id.*

¹⁰³ See *Debes*, 2014 Tex. App. LEXIS 7473, at *3-4 (landlord sued the insurance carrier directly without obtaining a judgment against the insured); *Russell v. Hartford Cas. Ins. Co.*, 548 S.W.2d 737, at 739-40 (Tex. 1977) (third parties joined

(Continued)

creditor sought a recovery that exceeded the policy limits and brought claims against the insurer under *Stowers* for failing to accept his settlement offer.¹⁰⁴ The lawsuit was a stretch—and the case does not stand for the proposition that a judgment creditor may only bring a lawsuit against the insurance company if the policy language permits it to do so.¹⁰⁵

The fifth case Lexington cited in this section of its Reply, *Dairyland*, also does not support Lexington’s contention that judgment creditors may not bring direct actions absent express permission to do so in the policy.¹⁰⁶ In *Dairyland*, the Texas Supreme Court affirmed a judgment against an insurer in a suit brought by a judgment creditor.¹⁰⁷ The Court held that the plaintiffs had standing as legally intended third-party beneficiaries to enforce the insured’s liability policy based in part on Texas’s compulsory liability insurance requirements for

insurance company in a lawsuit against the insured without having obtained a judgment against the insured); *Bluth v. Neeson*, 127 Tex. 462, 463 (Tex. 1936) (plaintiff improperly joined the insurer in the lawsuit against the insureds).

¹⁰⁴ *Samford v. Allstate Ins. Co.*, 529 S.W.2d 84, 85-86 (Tex. Civ. App.—Corpus Christi, 1975, writ ref’d n.r.e.) (citing *G. A. Stowers Furniture Co. v. American Indemnity Co.*, 15 S.W.2d 544 (Tex. Comm’n App. 1929, holding approved)).

¹⁰⁵ *See id.*

¹⁰⁶ *See* 2 CR 2409-10; App-G at 5-6.

¹⁰⁷ *Dairyland Cnty. Mut. Ins. Co. of Tex.*, 650 S.W.2d at 775-76.

drivers.¹⁰⁸ This rationale is a far cry from an announcement that, as Lexington argued in the trial court, “[a] third-party ‘judgment creditor’ can only bring suit if a right to direct action is provided for in the policy.”¹⁰⁹ In fact, Lexington did not cite to one case involving judgment creditors in which a Texas court has established such a requirement.

2. The Rincons have standing to enforce the Policies as judgment creditors regardless of whether the Policies are first-party or third-party policies.

The Policies cover the Rincons’ losses, and the Rincons have obtained a judgment against Lexington’s insured; the Rincons are therefore third-party creditor beneficiaries of the Policies—regardless of whether the Policies are categorized as first-party or third-party policies.

The cases that address third parties’ standing to sue an insurer upon obtaining a judgment typically are in the context of liability policies, for good reason: a liability policy covers “damage the insured does to others.”¹¹⁰ The Policies here—however they are categorized—

¹⁰⁸ See *id.* at 775-76.

¹⁰⁹ See 2 CR 2409; App-G at 5.

¹¹⁰ See *In re Ill. Nat’l Ins. Co.*, 685 S.W.3d 826, 831 (Tex. 2024) (quoting *Members Mut. Ins. Co.*, 664 S.W.2d at 327).

also cover damage done to others, including the loss of others' property in the care, custody, or control of the insured and the cost to pay judgments for such losses.¹¹¹ CWH sustained an actual financial loss in the arbitration because of its loss of others' property.¹¹² Even if one could distinguish the Policies from typical liability policies, given the Policies' language and the existence of a judgment against the insured, prohibiting the Rincons from bringing suit against the insured would provide a windfall to the insurance company without serving any public policy purpose.

As judgment creditors, the Rincons became third-party beneficiaries of the Policies by operation of law—regardless of whether the Policies' language expressly shows an intention to confer a benefit on them. In the trial court, Lexington argued at length that the Rincons could not be creditor beneficiaries of the Policies because the Policies did not contain language specifically contemplating them as third-party

¹¹¹ See 1 CR 1660 (§ 6.A.(2), (3)), 2 CR 1897 (§ 7.A.1), 2 CR 1903 (§ G), 2 CR 1911 (§ 11.G.1), 2 CR 2074 (§ 7.A.1), 2 CR 2080 (§ G), 2 CR 2089 (§ 11.G.1); App-H at LEX 019 (§ 6.A.(2), (3)); App-I at LEX 099 (§ 7.A.1), LEX 105 (§ G), and LEX 113 (§ 11.G.1); App-J at LEX 151 (§ 7.A.1), LEX 157 (§ G), and LEX 166 (11.G.1).

¹¹² See 2 CR 2841 (¶ 6), 2 CR 2860 (¶ 49); App-C at 4 (¶ 6) and 23 (¶ 49)).

beneficiaries.¹¹³ But Lexington constructed this argument on cases like *Debes*, in which the third party had not obtained a judgment against the insured.¹¹⁴ Indeed, the unusual factual circumstances of *Debes* make it difficult to apply it to the facts here or elsewhere: without first obtaining a judgment against the insured, a landlord (who was not a bailor) who incurred losses caused by a fire could not directly sue an insurance company under a policy obtained by a non-party to the lease—a non-party who had never owed any contractual obligations to the landlord.¹¹⁵ Here, the insured did owe contractual obligations to the Rincons, and the Policies cover losses owed to a third party for loss of bailed property.¹¹⁶

¹¹³ See 2 CR 2309-12; App-E at 6-9.

¹¹⁴ See 2 CR 2310 and 2313; App-E at 7, 10, citing *Debes*, 2014 Tex. App. LEXIS 7473, at *11-12 (citing *Rivera v. S. Green Ltd. P'ship*, 208 S.W.3d 12, 22-23 (Tex. App.—Houston [14th Dist.] 2006, pet. denied) and *Ortega v. City Nat'l Bank*, 97 S.W.3d 765, 773 (Tex. App.—Corpus Christi 2003, no pet.), neither of which involved a plaintiff who had obtained a judgment against the insured).

¹¹⁵ See *Debes*, 2014 Tex. App. LEXIS 7473, at *2-3 and *13-14.

¹¹⁶ See 2 CR 2854 (¶ 33), App-C at 17 (¶ 33) (the arbitrator's finding that the Insured breached the contract); 1 CR 1655 (AB) ("Bailee Coverage"), 1 CR 1660 (§ 6.A. (2), (3)) (covering others' property for which the Insured is responsible), 2 CR 1892 ("Bailee Coverage"), 2 CR 1897 (§ 7.A.1) (covering the Insured's liability for bailed property), 2 CR 1911 (§ 11.G.3) (providing a method for valuing others' property in the Insured's care, custody, or control), 2 CR 2069 ("Bailee Coverage"), 2 CR 2074 (§ 7.A.1) (covering the Insured's liability for bailed property), 2 CR 2089

(Continued)

Other cases cited by Lexington in the trial court also are distinguishable because they do not involve a third party who has obtained a judgment against the insured.¹¹⁷ By operation of law—by virtue of having obtained a judgment against an insured whose Policies covered the losses for which the Rincons won an arbitration award—the Rincons are third-party beneficiaries.¹¹⁸

The concerns that led Texas to adopt the no-direct-action rule do not exist when a third party—under any kind of policy that covers the losses—has obtained a judgment. Because its insured’s liability to the Rincons has already been established in a judgment, Lexington does not face a conflict of interest in which it would have to defend both its insured and itself against the Rincons, and since the Rincons have

(§ 11.G.3) (providing a method for valuing others’ property in the Insured’s care, custody, or control). These same documents are available at App-H at LEX 014, LEX 019 (¶ 6.A.(2), (3)); App-I at LEX 094, LEX 099 (§ 7.A.1), LEX 113 (§ 11.G.3); App-J at LEX 146, LEX 151 (§ 7.A.1), LEX 166 (§ 11.G.3)).

¹¹⁷ See 2 CR 2309; App-E at 6, citing, e.g., *Cable Comm’ns Network, Inc. v. Aetna Cas. & Sur. Co.*, 838 S.W.2d 947, 950 (Tex. App.—Houston [14th Dist.] 1992, no writ), *Marine Creek Partners, Ltd. v. Caldwell*, 926 S.W.2d 793, 795 (Tex. App.—Fort Worth 1996, no writ), and *Tawes v. Barnes*, 340 S.W.3d 419, 425 (Tex. 2011), none of which involve judgment creditors.

¹¹⁸ See *P.G. Bell*, 853 S.W.2d at 189 (“[A]n entity becomes a third party beneficiary to an insurance contract when it obtains a judgment against the insured; at that time, the entity becomes a third party judgment creditor.”)

already obtained a judgment, there's no risk that the evidence of insurance coverage would prejudice a jury verdict against CWH.¹¹⁹

In fact, the Rincons could accomplish the same goal as they sought in the trial court via a turnover order. An insured's insurance policies are its assets.¹²⁰ Because the Rincons have a judgment against CWH, CWH's cause of action against Lexington for coverage could be the subject of an order under the Texas turnover statute.¹²¹ In *D&M Marine*, for example, the court required a debtor to transfer to a judgment creditor its unasserted claims against its insurer to satisfy the judgment.¹²² Preventing the Rincons, as judgment creditors, from

¹¹⁹ See *In re Ill. Nat'l Ins. Co.*, 685 S.W.3d at 835, n.5 (discussing the public policy concerns behind adoption of the common-law no-direct-action rule).

¹²⁰ *Id.* at 837.

¹²¹ See *Alexander Dubose Jefferson & Townsend LLP v. Chevron Phillips Chem. Co., L.P.*, 540 S.W.3d 577, 581 (Tex. 2018) (citations omitted) (describing the Texas turnover statute at Tex. Civ. Prac. & Rem. Code § 31.002(a)-(b)(1) as a “procedural device” to assist judgment creditors in reaching the judgment debtor’s property that may be “difficult to attach or levy on by ordinary legal process”); *In re Haz Mat Special Servs.*, No. 14-23-00320-CV, 2023 Tex. App. LEXIS 8501, at *6-7 (Tex. App.—Houston [14th Dist.] Nov. 9, 2023) (orig. proceeding) (citations omitted) (stating that “[a]n unadjudicated cause of action is generally considered ‘property’ subject to turnover by a court”).

¹²² *D&M Marine v. Turner*, 409 S.W.3d 853, 858 (Tex. App.—Fort Worth 2013, no pet.).

enforcing the Policies directly against Lexington simply introduces an unnecessary extra step in the process.

3. The Rincons also may enforce the Policies as bailors and third-party beneficiaries.

The Rincons—as the owners of personal property in CWH’s “care, custody, or control” and for which CWH is “responsible”—are creditor beneficiaries of CWH’s “Bailee Coverage” and thus have a right to enforce that coverage against Lexington, irrespective of the Rincons’ judgment against Lexington’s insured. This result comes about as a matter of law because in Texas bailors such as the Rincons are creditor beneficiaries of the bailee’s bailment coverage.¹²³

This principle has been applied to insurance contracts in numerous cases holding that the owner of identifiable property which has been insured for its full value by a bailee, trustee or agent, *may recover in a direct action against the insurer*, though the contract contains no language expressly stating that the loss is payable to the owner or that the contract is made for his benefit.¹²⁴

¹²³ See *Cumis Ins. Soc. v. Republic Nat’l Bank*, 480 S.W.2d 762, 764-65 (Tex. App.—Dallas 1972), writ ref’d n.r.e.).

¹²⁴ *Id.* at 767 (emphasis added) (citing numerous cases).

Thus the *Cumis* court allowed the third-party bailor to proceed directly against the insurance company on what appeared to be primarily a property policy even though the policy contained “no express provision one way or the other” and “no language expressly stating that the loss is payable to the owner [of the lost property, i.e., the bailor] or that the contract is made for his benefit.”¹²⁵

The court explained that an insurer’s payment to the insured “will create an independent right of action in favor of the property owner [i.e., the bailor] for the proceeds . . . since the insured would then hold the proceeds for the benefit of the owner.”¹²⁶ Under Texas law, this benefit creates the third-party-beneficiary relationship:

This new and beneficial legal relationship is a sufficiently direct benefit to give the owner the right to enforce performance of the contract.¹²⁷

Nothing more is required—no express language and no judgment.

The policy language in *Cumis* was less explicit about covering bailed property than the language of the Policies here. In *Cumis*, the

¹²⁵ *Id.* at 766-767. *See also id.* at 763-64 (discussing the policy’s terms and coverage).

¹²⁶ *Id.* at 767.

¹²⁷ *Id.* (citations omitted).

policy generally covered property “held by the Insured in any capacity, whether or not the Insured [was] liable therefor.”¹²⁸ Here, all three of the all-risk Policies contain limits for Bailee Coverage and contemplate covering bailed property and defending CWH in the event of a lawsuit alleging loss of others’ property in CWH’s care, custody or control—regardless of the viability of the lawsuit.¹²⁹

In *Cumis*, as here, the insured, as a bailee, had a contractual duty to account to the insured for property.¹³⁰ This duty sufficed to permit the third party to enforce the policy as a creditor beneficiary.”¹³¹ A direct recovery under a policy issued in the bailee’s name was justified under public policy because, among other things, it would not increase the carrier’s risk, i.e., the loss would be covered whether the insured or the third-party beneficiary brought the claim.¹³² Here, the risks

¹²⁸ *Id.* at 766.

¹²⁹ 1 CR 1655 (AB), 1 CR 1660 (§ 6.A.(2), (3)), 1 CR 1670 (§ F); 2 CR. 1892, 2 CR 1897 (§ 7.A.1), 2 CR 1903 (§ G), 2 CR 1911 (§ 11.G.3), 2 CR 2069, 2 CR 2074 (§ 7.A.1), 2 CR 2080 (§ G), 2 CR 2089 (§ 11.G.3). See copies at App-H at LEX 014, LEX 019 (§ 6.A.(2), (3)), LEX 029 (§ F); App-I at LEX 094, LEX 099 (§ 7.A.1), LEX 105 (§ G), LEX 113 (§ 11.G.3); App-J at LEX 146, LEX 151 (§ 7.A.1), LEX 157 (§ G), LEX 166 (§ 11.G.3)).

¹³⁰ *Cumis*, 480 S.W.2d at 767-68.

¹³¹ *See id.*

¹³² *Id.* at 768-79.

contemplated by the direct-action rule are further eliminated by the fact that the Rincons, unlike the plaintiff in *Cumis*, have already obtained a judgment against Lexington.

Lexington argued in the trial court that the coverage was only provided “for the interest of the Insured.”¹³³ But that’s not true. First, the Policies are all-risk policies that state they cover all risks except those excluded; none of the Policies exclude coverage of bailors’ interest in their own property, and the Coverage section does not limit coverage to the listed items.¹³⁴ Exclusions must be expressly stated.¹³⁵ Additionally, the Policies contain no provisions excluding the right of a third party to enforce them.¹³⁶

Even if language in the coverage sections states that the Policies cover CWH’s “interest” in various property, other language shows that

¹³³ See 2 CR 2311-12; App-E at 8-9. It did not explain why that matters. *See id.*

¹³⁴ See 1 CR 1660 (§ 6.A.(2), (3)), 1 CR 1671-72 (§§ 8-9) (“Perils Insured Against” and “Perils Excluded”), 2 CR 1895-96 (§§ 5 & 6) (“Perils Insured and “Perils Excluded”), 2 CR 1897 (§ 7) (“Coverage”), 2 CR 2072 (§§ 5 & 6) (“Perils Insured and “Perils Excluded”), 2 CR 2074 (§ 7) (“Coverage”); App-H at LEX 019 (§ 6.A.(2), (3)) and LEX 030-31 (§§ 8-9); App-I at LEX 097-98 (§§ 5-6)) and LEX 099 (§ 7); App-J at 149 (§§ 5 & 6) and LEX 151 (¶ 7).

¹³⁵ *Nat’l Union Fire Ins. Energy Co.*, 811 S.W.2d at 555.

¹³⁶ See Policies generally beginning at 1 CR 1643, 2 CR 1873, 2 CR 2063; App-H, App-I, App-J. *See also Cumis*, 480 S.W.2d at 766.

the Policies nevertheless covered the entire value of the Rincons' wine.¹³⁷ The 2013 Policy, while including a line item covering CWH's "interest" in bailed property, also elsewhere states that it covers personal property "which the Insured is responsible for."¹³⁸ CWH was responsible for the Rincons' wine.¹³⁹ The 2014 and 2015 Policies, while prefacing the Coverage list with language stating that they cover the insured's "interest," include in that interest "property of others in the Insured's care, custody or control *including the Insured's liability for such property.*"¹⁴⁰ These two Policies expressly contemplate paying the amount of a judgment for loss of bailed property, the 2013 Policy contemplates paying for others' property for which the Insured is responsible, and all three Policies cover defense costs in the event of a

¹³⁷ See *Nassar*, 508 S.W. 3d at 257-58 (policies must be read in their entirety so as to give effect and meaning to all the provisions).

¹³⁸ See 1 CR 1660 (§ 6.A.(3)); App-H at LEX 019 (§ 6.A.(3)).

¹³⁹ See 2 CR 2849 (¶ 20), 2854 (¶ 33), 2860 (¶ 49); App-C at 12 (¶ 20), 17 (¶ 33), 23 (¶ 49).

¹⁴⁰ 2 CR 1879 (§ 7.A.1), 2 CR 2074 (§ 7.A.1); App-I at LEX 099 (§ 7.A.1)), App-J at LEX 151 (§ 7.A.1)) (emphasis added).

suit by a bailor.¹⁴¹ These provisions further show that Lexington contemplated paying the Rincons' losses under the Policies.

4. Because the Rincons have standing and capacity to enforce the Policies, a justiciable controversy exists, and the Rincons may pursue their declaratory judgment action.

A declaratory judgment action is appropriate when there's a justiciable controversy regarding the parties' rights and status under an insurance policy.¹⁴² In the trial court, the Rincons sought a declaratory judgment that the Policies covered the insured for the amount of the arbitration award—including the attorney's fees and litigation costs awarded by Justice O'Neill—and that the Rincons had standing and

¹⁴¹ See *id.* (extending coverage to “costs to defend any allegations of liability for loss or damage” to property “in the Insured’s care, custody or control”); 1 CR 1660 (§ 6.A.(3)) (covering property the Insured is responsible for) and 1 CR 1670 (§ F) (covering costs to defend suits brought by bailors); 2 CR 1897 (§ 7.A.1) (covering “property of others in the Insured’s care, custody or control including the Insured’s liability for such property”), 2 CR 1903 (§ G) (covering costs to defend suits brought by bailors), 2 CR 2074 (§ 7.A.1) (covering “property of others in the Insured’s care, custody or control including the Insured’s liability for such property”), 2 CR 2080 (§ G) (covering costs to defend suits brought by bailors). See copies of these pages from the Clerk’s Record at App-H at LEX 019 (§ 6.A.(3)), LEX 029 (§ F); App-I at LEX 099 (§ 7.A.1), LEX 105 (§ G); App-J at LEX 151 (§ 7.A.1), LEX 157 (§ G)).

¹⁴² See Tex. Civ. Prac. & Rem. Code § 37.004(a); *Allstate Ins. v. Irwin*, 627 S.W.3d 263, 269 (Tex. 2021) (upholding invocation of the Declaratory Judgments Act to determine the parties’ status and responsibilities under an insurance policy).

capacity to pursue the insurance benefits as judgment creditors and third-party beneficiaries of the Policies.¹⁴³

In her order dismissing all the Rincons' causes of action against Lexington, Judge Elliott did not declare the parties' rights and status.¹⁴⁴ Presumably she dismissed the declaratory judgment action on the issue of standing and capacity. But because the Rincons have standing and capacity to enforce the policies and a justiciable controversy exists about those rights and status, this Court should reverse the trial court's order dismissing the Rincons' declaratory judgment action and issue the declarations the Rincons sought in the trial court.¹⁴⁵

D. The trial court erred by dismissing the Rincons' claims under Rule 91a.

Rule 91a allows courts to dismiss causes of action that lack any basis in law or fact. A claim has "no basis in fact" if no reasonable person could believe the facts pleaded.¹⁴⁶ A claim has "no basis in law"

¹⁴³ See 1 CR 1357-58; App-D at 12-13.

¹⁴⁴ See 2 CR 3013; App-A.

¹⁴⁵ See *NRG Exploration, Inc. v. Ranch*, 671 S.W.2d 649, 653 (Tex. App.—Austin, 1984, writ ref'd n.r.e.) ("This Court has the duty, in this declaratory judgment action, to render such judgment as the trial court should have rendered.").

¹⁴⁶ Tex. R. Civ. P. 91a.1.

if the allegations, taken as true together with reasonable inferences, do not entitle the claimant to the relief sought.¹⁴⁷

Lexington did not challenge the Rincons' factual allegations (nor could it, since the facts are enshrined in a judgment). Instead, it focused entirely on whether the claims had a basis in law. It never met its burden, but Judge Thornton granted its motion. This was error.

When a defendant challenges a claim's legal basis, Rule 91a does not authorize dismissal unless the plaintiff's recovery is "legally impossible."¹⁴⁸ This standard is demanding. It requires certainty about the possible outcome, since "one cannot say that a claim is foreclosed as a matter of law if the claim still has some support in Texas law."¹⁴⁹ In *Shire*, the court said that a claim is foreclosed if "binding precedent from the Texas Supreme Court [exists] on the precise facts presented in the case at hand" or if the Supreme Court could reach "only one

¹⁴⁷ *Id.*

¹⁴⁸ *In re Shire PLC*, 633 S.W.3d 1, 19 (Tex. App.—Texarkana 2021, no pet.).

¹⁴⁹ *Id.* at 27.

reasonable result” (as when a statute or contract “expressly negate[s]” the claim).¹⁵⁰ Many courts have adopted Shire’s approach.¹⁵¹

When the Rincons raised this issue in the trial court, Lexington did not cite a single binding Supreme Court case or textual provision expressly negating the Rincons’ claims.¹⁵² By contrast, the Rincons cited appellate decisions and copious language from the Policies supporting their claims.¹⁵³ Lexington’s Rule 91a motion may have raised contrary points, but it never showed with certainty that the claims were legally impossible. (And as detailed above, the Rincons’ arguments prevail.) As long as the Rincons’ claims are even arguably viable, they cannot be dismissed under Rule 91a. The trial court erred by granting Lexington’s

¹⁵⁰ *Id.*

¹⁵¹ *Parker v. Ohio Dev., LLC*, No. 04-23-00069-CV, 2024 Tex. App. LEXIS 2970, at *9 (Tex. App.—San Antonio Apr. 30, 2024, no pet. h.); *Longhorn Creek Ltd. v. Gardens of Connemara Ltd.*, 686 S.W.3d 418, 429 (Tex. App.—Dallas 2024, pet. filed); *Life v. Gino Morena Enters., LLC*, No. 08-23-00055-CV, 2023 Tex. App. LEXIS 5159, at *7 (Tex. App.—El Paso July 17, 2023, pet. denied); *Harpole v. Rains Cnty. Appraisal Dist.*, No. 12-22-00221-CV, 2023 Tex. App. LEXIS 3350, at *4 (Tex. App.—Tyler May 17, 2023, no pet.); *Williams v. Happy State Bank*, No. 07-22-00080-CV, 2023 Tex. App. LEXIS 3335, at *4 (Tex. App.—Amarillo May 17, 2023, pet. filed); *Howard v. Pine Tree I.S.D.*, No. 12-22-00222-CV, 2023 Tex. App. LEXIS 2864, at *4 (Tex. App.—Tyler Apr. 28, 2023, pet. denied).

¹⁵² See Reply generally, beginning at 2 CR 2405; App-G.

¹⁵³ See 2 CR 2227-32; App-F at 14-19.

Motion to Dismiss. Such error was harmful because it caused the rendition of an improper judgment.¹⁵⁴

E. The trial court erred by dismissing the Rincons' claims under Section 541 of the Texas Insurance Code.

Chapter 541 provides a remedy for “unfair methods of competition or unfair or deceptive acts or practices” in the “business of insurance” on a claim “by an insured *or beneficiary*.”¹⁵⁵ Indeed, “[a] plaintiff must be either a named insured or a third-party beneficiary of the policy out of which the claim arose to assert a claim under Chapter 541.”¹⁵⁶ As discussed above, the Rincon’s are third-party beneficiaries of the Policies because they are judgment creditors of Lexington’s insured and as bailors whose losses are contemplated under the Policies. As beneficiaries of the Policies, the Rincons may pursue their claims against Lexington under Chapter 541 of the Texas Insurance Code.

¹⁵⁴ See Tex. R. App. P. 44.1(a). See also *Horton v. Kan. City S. Ry. Co.*, 692 S.W.3d 112, 137 (Tex. 2024) (holding that the error does not “necessarily” have to have caused harm; “the question is whether the error ‘probably’ caused harm.”)

¹⁵⁵ Tex. Ins. Code § 541.060(a) (emphasis added); App-L.

¹⁵⁶ *Baldwin v. Mortg. Elec. Registration Sys.*, No. 4:19-CV-03921, 2020 U.S. Dist. LEXIS 131653, at *17 (S.D. Tex. 2020), report and recommendation adopted, No. 4:19-CV-03921, 2020 LEXIS 130568 (S.D. Tex. July 23, 2020) (citing *Pineda v. PMI Mortg. Ins. Co.*, 843 S.W.2d 660, 672 (Tex. App.—Corpus Christi 1992, no writ)).

F. The Rincons are entitled to recover their attorneys’ fees and costs.

Because the Rincons—as judgment creditors and as bailors whose loss of property is covered under the Policies—are entitled to enforce the Policies as third-party beneficiaries of the Policies, they are entitled to recover their legal costs and attorneys’ fees.¹⁵⁷ These include the fees awarded the Rincons by Justice O’Neill in the arbitration and the fees and costs incurred to enforce the Policies.¹⁵⁸

The Rincons are entitled to recover the attorneys’ and litigation costs awarded to them in the arbitration because the Policies cover the full extent of damages awarded against CWH, including attorneys’ fees and costs. Again, the policies are “all-risk” policies that provide coverage for “all risk of physical loss of or damage” to the property of others unless expressly excluded.¹⁵⁹ Nothing in the policies excludes coverage for the attorneys’ fees and costs awarded against CWH in

¹⁵⁷ *Dairyland*, 650 S.W.2d at 775-76.

¹⁵⁸ See 2 CR 2841 at ¶ 6; App. C at 4 (¶ 6).

¹⁵⁹ See 1 CR 1671-72 (§ 8), 2 CR 1895 (§ 5), 2 CR 2072 (§ 5); App-H at LEX 030 (§ 8), App-I at LEX 097 (§ 5), App-J at LEX 145 (§ 5).

connection with its bailment of the Rincons' wine.¹⁶⁰ In fact, the 2014 and 2015 Policies specifically state that the "basis of adjustment" for "property of others in the Insured's care, custody or control" "shall be" the "Insured's contractual or legal liability."¹⁶¹

The Rincons are entitled to recover their litigation costs and attorney's fees in their lawsuit against Lexington pursuant to Texas Civil Practice & Remedies Code § 38.001, et seq. and Texas Civil Practice & Remedies Code § 37.009 for declaratory judgment.

CONCLUSION

Lexington issued Policies that covered the Rincons' damages for CWH's loss of their property. Lexington has, through false dichotomies and selective citations from the Policies and case law, sought to avoid responsibility for paying a valid claim under its Policies just as its insured avoided paying the claim by selling all its assets. The Rincons here have done everything right: they've obtained a judgment against

¹⁶⁰ See 1 CR 1672-75 (§§ 9-10) ("Perils Excluded" and "Property Excluded"), 2 CR 1895-97 (§ 6) ("Perils Excluded"), 2 CR 2072-73 (§ 6) ("Perils Excluded"); App-H at LEX 031-34 (§§ 9-10), App-I at LEX 097-98 (§ 6), App-J at 149-150 (§ 6).

¹⁶¹ 2 CR 1911 (§ 11.G.3), 2 CR 2089 (§ 11.G.3); App-I at LEX 113 (§ 11.G.3), App-J at LEX 166 (§ 11.G.3).

Lexington's insured and sought payment for coverage for their bailed property that is explicitly provided under the Agreements. Under these circumstances—especially when the claimants would be entitled to obtain rights to pursue the policies under the turnover statute—third parties like the Rincons should be considered third-party beneficiaries of Policies covering their bailed property as a matter of law and permitted to seek payment under the Policies just as the judgment debtor could have done for the third parties' benefit. And, in the event of the insurance companies' avoidance of their obligations, third parties in the Rincons' position should be able to pursue a claim against them under Section 540 of the Insurance Code. Otherwise insurance companies will enjoy the premiums received from their insureds while avoiding liability, with or without their insured's complicity. Permitting a judgment creditor under these circumstances to recover directly from the insurer is simply efficient and proper.

PRAYER

Appellants Maria, Roberto, and Jose Rincon respectfully pray that the dismissal of their case be reversed, that the Court make the declarations sought in the Rincons' Petition, and render judgment on

the Rincons' entitlement to enforce the Policies against Lexington and pursue their claims under Section 541 of the Texas Insurance Code. In the alternative, the Rincons pray that the Court reverse the dismissals and remand the case to the trial court. In addition, the Rincons pray that they recover their costs of this appeal and such other and further relief to which they may be entitled at law or in equity.

Respectfully submitted,

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CERTIFICATE OF FILING AND SERVICE

I hereby certify that on November 6, 2025, I filed the foregoing instrument with the Clerk of the Court for the for the Fourteenth Court of Appeals. All counsel who are registered to use the Appellate Electronic Filing system will be served automatically. I further certify that, on the same day, I served an additional PDF copy upon the following recipients by email:

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CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the typeface and word-count requirements set forth in the Texas Rules of Appellate Procedure. This document also complies with the word-count limitations of TEX. R. APP. P. 9.4(i) because it contains 9,826 words, excluding any parts exempted by TEX. R. APP. P. 9.4(i)(1).

s/ Zachary W. Thomas
Zachary W. Thomas
Counsel for Plaintiffs – Appellants

Dated: November 6, 2025

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¹ The numbers inserted during preparation of the Clerk's Record overlap the Bates stamps of the three Lexington insurance policies, making both numbers largely illegible. For the Court's ease, Appellants have inserted the accurate Bates stamp numbers and Clerk's Record numbers below the illegible numbers.

TAB	DESCRIPTION
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V.

164th JUDICIAL DISTRICT

HARRIS COUNTY, TEXAS

3013

APP - B
CAUSE NO. 202180028

**MARIA L. RINCON, ROBERTO
RINCON, AND JOSE RINCON
Plaintiffs**

 V_2

**CARLTON WOODS HOLDINGS, LLC;
THE WOODLANDS LAND
DEVELOPMENT COMPANY, LP;
AND THE HOWARD HUGHES
CORPORATION**

Defendants

IN THE DISTRICT COURT

189th JUDICIAL DISTRICT

HARRIS COUNTY, TEXAS

FINAL JUDGMENT

On this day, the Court considered Defendants' motion for entry of judgment confirming the AAA Arbitration Award attached to this Judgment as Exhibit A. Plaintiffs filed this proceeding seeking to confirm the award as a final judgment. After considering the Petition, the Answer, the Award, and the Motion to Enter Judgment, the Court:

GRANTS the Motion, and makes and enters the following FINAL JUDGMENT:

The Court confirms the Award attached as Exhibit A as a FINAL JUDGMENT.

Plaintiffs recover against Carlton Woods Holdings, LLC as set forth in Exhibit A.

Plaintiffs take nothing against The Woodlands Land Development Company, LP.

Plaintiffs take nothing against Howard Hughes Corporation.

Separate and apart from the Award, the Court further ORDERS, ADJUDGES and DECREES that each party shall bears its own costs of Court in this Cause.

THIS IS A FULL AND FINAL JUDGMENT DISPOSING OF ALL ISSUES AND ALL PARTIES. ANY RELIEF SOUGHT NOT GRANTED HEREIN IS DENIED, AND THIS JUDGMENT IS FINAL AND APPEALABLE.

SIGNED, this _____ day of _____, 2022.

Signed:
1/19/2022

JUDGE PRESIDING

AMERICAN ARBITRATION ASSOCIATION
Commercial Arbitration Tribunal

In the Matter of the Arbitration between

Re:
Case Number: 01-16-0004-6030

CARLTON WOODS HOLDINGS, LLC

Claimant

vs.

MARIA L. RINCON, ROBERTO RINCON, AND JOSE RINCON

Respondents and Counter-Claimants

vs.

CARLTON WOODS HOLDINGS, LLC, THE CLUB AT CARLTON
WOODS

Counter-Respondents

AND

THE WOODLANDS LAND DEVELOPMENT COMPANY, LP, AND
THE HOWARD HUGHES CORPORATION

Third-Party Defendants

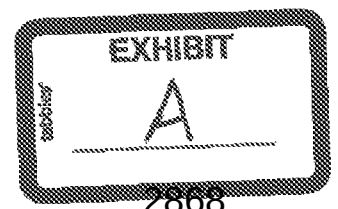
FINAL AWARD

I, THE UNDERSIGNED ARBITRATOR, having been designated in accordance with Article 18 of the Amended and Restated Membership Plan and Bylaws dated March 1, 2016 ("the Membership Plan"), which governs this proceeding between Claimant Carlton Woods Holdings, LLC ("CWH"), Respondents Maria L. Rincon ("Maria"), Roberto Rincon ("Roberto")

01-16-0004-6030

1

Exhibit A



and Jose Rincon ("Jose") (collectively, "the Rincos"), and Third-Party Defendants The Woodlands Land Development Company, L.P. ("TWLDC") and The Howard Hughes Corporation ("HHC") (collectively "the Third-Party Defendants"), having been duly sworn, and having duly heard the proofs and allegations of the parties, and having previously rendered an Interim Award on September 15, 2021 and an Amended Interim Award on September 24, 2021, do hereby AWARD as follows:

This arbitration is conducted in accordance with the AAA Commercial Arbitration Rules effective October 1, 2013, with substantive resolution of the disputes between the parties governed by and construed in accordance with the laws of the State of Texas. Given COVID-19 public health circumstances, the Arbitration Hearing (the "Hearing") was conducted virtually via Zoom pursuant to the Procedural Order for Conducting Virtual Arbitration Hearing (Arbitrator Order No. 24) and the Procedural Order for Conduct of Arbitration Hearing (Arbitrator Order No. 25). Although conducted virtually, the Hearing was deemed to take place in Harris County, Texas, the seat of the arbitration designated in the Membership Plan.

The Hearing commenced on Monday, June 19, 2021, and continued through Wednesday, July 21, 2021. CWH and HH appeared by their representative Peter Riley, WLDC appeared by its representative Todd Drake, and all three entities appeared by their counsel James H. Stilwell, Stilwell, Earl & Apostolskis LLP. Jose Rincon and Roberto Rincon appeared for the Rincos, who appeared by their counsel Gary J. Siller and Adam Diamond, Clark Hill PLC. Witness testimony and documentary evidence were offered and admitted. By agreement of the parties, the American Arbitration Association served as the Host for the virtual hearing and the official record of the proceedings was made using the Zoom platform's recording feature. A list of the exhibits that were admitted at the Hearing and those that were denied admission was documented

in AAA Official Exhibit List (Arbitrator Order No. 26) dated July 22, 2021, and made a part of the AAA case file as an official record of the proceeding.

At the conclusion of the Hearing, it was agreed that the parties would file post-hearing submissions on Friday, August 27, 2021, which the Arbitrator timely received. The record was not closed at the conclusion of the Hearing and remained open pending issuance of an interim award and the submission of evidence relating to attorneys' fees and costs, pursuant to the Fifth Amended Report of Arbitration Management Conference and Scheduling Order (Arbitration Order No. 23), paragraph 11.

The Interim Award issued on September 15, 2021, followed by an Amended Award issued on September 24, 2021. Pursuant to Arbitration Order No. 23, paragraph 11, the parties were afforded time to attempt to reach a stipulation on the issues of attorneys' fees and costs. In the event a stipulation could not be reached, a briefing schedule was set under which the record would close on October 18, 2021 and a Final Award would issue on or before November 17, 2021. The parties were unable to reach a stipulation, and requested permission to extend their respective submissions such that the record would close on October 25, 2021 and a Final Award would issue on or before November 24, 2021. The Arbitrator approved the parties' extension request, timely received the parties' submissions, and the hearing was declared closed on October 25, 2021.

I. Final Award

NOW, THEREFORE, having carefully considered the evidence, briefing, and legal authorities presented, together with the arguments of the parties' very able counsel, the Arbitrator hereby ORDERS, AWARDS, ADJUDGES and DECREES as follows:

Exhibit 2

1. The Wine Locker Agreements' terms apply to CWH's handling of the wines that it purchased for Roberto and Maria, and for Jose. In failing to protect and secure the wines purchased for and maintained in the Rincons' wine lockers, CWH breached the Wine Locker Agreements.
2. The evidence was insufficient to prove that CWH marked up the wines purchased for the Rincons in excess of the agreed 15%.
3. The Wine Locker Program created a bailment relationship, and CWH, as bailee, failed to prove that the disappearance of the Rincons' wines resulted from a cause consistent with due care.
4. CWH failed to establish its entitlement to declaratory relief.
5. The Rincons' allegations of theft were privileged when made and do not support CWH's claims for defamation, defamation *per se* or business disparagement.
6. The Rincons shall have and recover from CWH the following:
 - a. Actual damages in the amount of \$293,025 for Roberto and Maria's loss;
 - b. Actual damages in the amount of \$18,240 for Jose's loss;
 - c. Pre- and post-judgment interest on the Rincons' actual damages at the rate allowed by law;
 - d. The Rincons' reasonable and necessary, equitable and just, attorneys' fees and expenses in the amount of \$742,306.70.
7. The administrative fees and expenses of the American Arbitration Association totaling \$26,075.00, and the compensation and expenses of the Arbitrator totaling \$89,405.00, shall be borne by CWH. See AAA R-47(c). Therefore, CWH shall reimburse the Rincons the additional sum of \$56,840.00, representing that portion

of said fees and expenses in excess of the apportioned costs previously awarded by CWH.

8. This award disposes of the claims and counterclaims between the parties in this proceeding. Any claim that is not directly addressed in this Award is hereby denied.

The parties have requested the Arbitrator to provide the reasons for this ruling, which are as follows.

II. Reasons

A. Background

1. In July 2006, Roberto and Maria became members of The Club at Carlton Woods ("the Club") located in The Woodlands, Texas. At the time they joined, the Club was owned by Carlton Woods Holdings, LLC ("CWH" or "the Old Club"). On September 4, 2015, CWH sold the Club to CW Operating Company, Inc. ("CWO" or "the New Club") for \$25 million, and thereafter had no further involvement with the New Club or its management. The funds from the sale were directly deposited into the account of TWLDC, CWH's parent company. On May 13, 2016, TWLDC distributed \$25 million to HHC, its parent company.

2. In 2010, the Club offered its members a new amenity in the form of a member wine club, which Roberto, a collector of fine wines and champagnes, joined. On August 21, 2010, Roberto signed a Member Wine Locker Program Agreement ("Wine Locker Agreement" or "the Agreement") that bears his member number and is between the Club and "Roberto E. Kincon." Ex. J-1. He signed a virtually identical agreement on January 23, 2011, this time between the Club and "Kincon." Ex. J-2. According to Roberto and his son Jose, the 2011 agreement was intended for Jose's benefit, which the Club denies. As members of the Wine

Locker Program, Roberto and Maria purchased approximately 438 bottles of wine and champagne (collectively the "wine") from the Club for \$418,550. Of those, they contend 207 bottles are missing for which they paid \$306,093. Jose purchased approximately 84 bottles from the Club through the Wine Locker Program, of which 23 are alleged to be missing at a purchase price of \$18,240.

3. The Wine Locker Agreement provided, in pertinent part, as follows:

As a wine locker holder, you will now be considered a member of the [CWH] Wine Club. The benefits of this club will include

- Personalized wine list to be presented during each dining experience at the club. This will also serve as a perpetual wine inventory for your wine locker.

Policies

- Member Wine Locker purchase prices are only applicable when making purchase(s) solely for storage in Member Wine Locker
- Wine may not be purchased at Member Wine Locker Price during ordinary member dining
- Due to TABC laws, all wines must be purchased and consumed on club grounds
- A corkage fee of \$5.00 per bottle will be applied at the time of wine usage
- Pricing structure is as follows for wine purchases
Cost of Bottle + 15% + Applicable TABC Tax

Ex. J-1 (emphasis in original). According to the Agreement, the wines that the member purchased through the Club would be stored in the member's wine locker at the Club and would be consumed at the Club. CWH controlled all access to the members' wine lockers at the Club.

4. When the program was first implemented, members dining at the Club who wished to order from their personal lockers would be presented with a printed list of the wines stored in their locker. In 2012, the Club began using a digital application called Cellar Tracker, which permitted users to track the wine going into and out of their lockers. The Club connected

Cellar Tracker to iPads it owned and operated, which would be presented to members while dining at the Club so that they could digitally scroll through wines that were available from their lockers. The evidence was conflicting on whether the iPad reflected the actual number of particular vintage bottles in inventory and whether a member's selection of wine from the iPad contemporaneously removed the selected wine from the member's inventory.

5. When a member selected and consumed a bottle from their wine locker and a corkage fee was charged, the bottle would be described on a receipt (the "chit") that reflected the corkage fee charge. When no corkage fee was charged, the chit would not reflect the wine that was consumed. A member's chits were included in a detailed statement sent to the member each month for payment. Roberto and Jose testified that they relied on the monthly statements to keep track of their inventoried wine consumption. According to the Rincons, some 230 of the missing bottles were never listed on any chit or monthly statement. According to Steve Saltzman ("Saltzman"), the Club's General Manager and COO, the charging of corkage fees was intermittent at best, and so there was no way other than the Club's periodic "true-ups" to Cellar Tracker to determine what was available in the members' wine lockers. Saltzman also testified that the Club has never had a perpetual wine inventory system for the members' locker wines.

6. Luis Padilla ("Padilla") was the sommelier at the Club from 2010, when Cellar Tracker was implemented, until September 2013. He created Cellar Tracker accounts for Roberto and Jose using email addresses he created for them, and the contents of their lockers were uploaded into their digital inventories. Though the accounts belonged to the members, the Club had administrative access that allowed it to log in and add bottles that were purchased for members and to delete bottles that were removed from members' inventory. According to the Club, not every bottle of wine that was removed was contemporaneously logged out of

inventory. Instead, its regular practice was to periodically compare the Cellar Tracker database to the bottles that were physically present in a member's locker and perform a "true-up" that would reflect what was held in inventory. Padilla testified that he performed these true-ups every one to two months.

7. The evidence showed several occasions in which large numbers of bottles were removed from the Rincóns' Cellar Tracker inventory in a single day. For example, on the following dates the following numbers of bottles were removed:

May 25, 2013:	8 bottles
September 4, 2013:	88 bottles
September 11, 2013:	33 bottles
November 16, 2013:	8 bottles
March 25, 2014:	7 bottles
May 10, 2015:	36 bottles

The deletion of 121 bottles from the Rincóns' Cellar Tracker account in a 7-day period coincided with Padilla's last week of employment at the Club.

8. The Rincóns claim they discovered that some of their wines were missing when Jose went to the Club in 2016 with his father-in-law and asked to see the family's wine collection. According to Jose, he was shown 80 or 90 bottles that were kept in the wine locker on the main floor, but was told the more extensive (and expensive) collection that was maintained in the upstairs Eurocave (a temperature-controlled unit with a 200+ storage capacity) was not accessible because the manager, who had the key, was not around. Later, upon further inquiry, Jose was told that the entire Rincón inventory contained only 86 bottles in total. Jose then contacted Padilla, who had left the Club some three years earlier. Padilla provided the log-in usernames and passwords, which had not changed. At this point Jose, he claims for the first time, logged in to Cellar Tracker to review his inventory.

9. Jose, together with the Rincons' attorney, Gary Siller ("Siller"), subsequently met with Saltzman on May 2, 2016, and presented him with a Cellar Tracker printout highlighting the wine bottles the Rincons alleged had been stolen. Siller followed up with a demand letter on May 25, 2016, attaching the printout and stating, *inter alia*, that "the theft was also very recent as many of the bottles identified as stolen were observed as present at the Club in early January 2016." Ex. J-10. Unsatisfied with the response, Jose and Maria filed suit against the Old Club and the New Club on August 16, 2016, in Dallas County district court. Ex. C-16. They also asserted fraudulent transfer claims against TWLDC and HHC. Roberto first became a party to the dispute when this arbitration was filed on October 21, 2016.

B. The Present Dispute

10. CWH Claims. CWH seeks declaratory relief on various aspects of the Wine Locker Agreement and the Rincons' claims. It also asserts affirmative claims for defamation, defamation *per se* and business disparagement against Jose for falsely accusing the Club of theft, for which it seeks nominal damages.

11. CWH claims there was no contract between Jose and the Club related to the Wine Locker Program, and that its only agreement with Roberto was for the years 2010 and 2011, not beyond. Nonetheless, CWH contends, the Rincons received their wines. There are no bottles missing from the Rincons' inventory, CWH claims, only bottles that the Rincons consumed without being charged a corkage fee. According to CWH, the Rincons removed wine from the Club, had wine picked up from the Club and delivered to their homes, and used wine at events hosted at the Club and at their homes. CWH acknowledges that not every bottle that was removed was contemporaneously logged out of inventory, but it claims the Club's regular practice was to periodically compare the Cellar Tracker database to the bottles that were

physically present in a member's locker and perform a "true-up" that would reflect what was held in inventory. CWH explains that Cellar Tracker entries reflecting the removal of multiple bottles at one time were simply the result of true-ups that occurred after the Rincons had removed their wines from the Club.

12. CWH further contends the Rincons' claims are barred by the statute of limitations. According to CWH, the Rincons had access at all times to their wine inventory both by having access to their Cellar Tracker accounts and by being presented with a wine inventory list every time they dined at the Club. As a result, CWH contends, Roberto's claims regarding bottles either not entered into the Cellar Tracker inventory or removed from the inventory on or before October 21, 2012 (4 years before he first brought claims in this Arbitration) are barred, as are Jose's claims on or before August 29, 2012 (4 years before he first brought suit in District Court in Dallas). In addition, CWH claims it can have no liability for wine that went missing after the New Club took ownership on September 4, 2015.

13. According to CWH, the Rincons' demand letter to the New Club stating that many of the bottles identified as stolen had been observed as present at the Club in January 2016 is an admission against interest that bars any claims against CWH. Moreover, CWH claims, any theft that may have been committed by a Club employee before the sale would have been outside the course and scope of employment for which it bears no *respondent superior* liability.

14. CWH also disputes the Rincons' claims that CWH charged them an excessive mark-up on the wines it sold them under the Wine Locker Agreements, challenging both their proof and damages methodology.

15. To the extent it may be held responsible for any missing bottles or excessive markups, CWH asserts entitlement to a \$100,000 settlement credit arising out of the New Club's

settlement agreement by which it provided the Rincons three non-equity golf memberships (a \$150,000 value) for the price of one (\$50,000).

16. Finally, CWH, TWLDC and HCC deny the Rincons' fraudulent-transfer claims on the grounds that, at the time the Club was sold, CWH had no knowledge of the Rincons' claims and, even if it did, CWH's remaining assets after the sale were not unreasonably small nor was there reason to believe it would incur debts beyond its ability to pay as they became due.

17. Rincon Claims. The Rincons contend the Club breached the Wine Locker Agreements in two ways, by (a) charging for their wine purchases in excess of the agreed 15% mark-up fee, and (b) failing to protect the Rincons' property by tracking and monitoring the bottles, making them ripe for theft. The Rincons claim they did not discover the former until Padilla testified at his March 5, 2018 deposition that the Club charged a 35% mark-up, and did not learn about the latter until 2016 when a Club employee advised them that only 86 bottles were left in their inventory.

18. According to the Rincons, they kept track of their inventory by reviewing their monthly statements and accompanying chits that showed corkage fees and corresponding descriptions of the wines that were consumed. Any failure by the Club to charge corkage fees, they allege, constituted a breach of contract, removed an agreed upon safeguard for inventory tracking, and concealed the removal of bottles from the Rincons' wine locker. The Rincons deny removing wine from the Club, and deny that they consumed wine at Club-hosted events held at the Club or their home other than what was reflected on the Club's Banquet Event Orders.

19. The Rincons also claim that CWH defrauded them as potential judgment creditors by fraudulently transferring funds to TWLDC and HCC in violation of Texas Business & Commerce Code Sections 24.005 and 24.006. As a result, the Rincons request that the funds

transferred to TWLDC and HCC be clawed back so that CWH has the assets to pay any potential award in its favor or, alternatively, that an award be entered jointly and severally against CWH, TWLDC and HCC up to the full amount of the \$25 million purchase price for the assets.

B. Reasons for the Award

20. Wine Locker Agreement. Although the Club disputes the existence of a signed Wine Locker Agreement with Jose, the evidence showed that the Club in fact purchased wine for Jose that it charged to his membership account, charged him the bi-annual Wine Locker Agreement fee, and maintained a separate inventory for his wine purchases. Accordingly, the Wine Locker Agreement's terms apply to the Club's handling of the wines that it purchased for Jose. Nor did the Wine Locker Agreements expire the year after they were signed, as the Club contends. The Agreements themselves contain no such limitation, and the Club continued to purchase wines on the Rincons' behalf, charge their membership accounts and inventory their wines, as the Agreements provided, well beyond the one-year mark. As a result, the Club remained bound by the Wine Locker Agreement obligations.

21. Excessive Mark-Up. The Wine Locker Agreement provided that the Rincons would be charged the Club's cost for the bottles it purchased on their behalf, plus fifteen percent (15%) (the mark-up) and applicable TABC tax. Because the Club was unable to produce receipts for its wine purchases, the Rincons rely on two sources to quantify their excessive mark-up claim: (a) the report of Kathleen Banach ("Banach"), with Enservio, their designated expert witness, and (b) Padilla, who testified that the Club's mark-up was 35%.

22. Utilizing 2018 prices, Banach's report contained detailed spreadsheets listing various retail sources used to determine the value of the wines at issue, with a "low value," "average value," "high value," and "auction value" provided for each bottle. No source

documents or screenshots of the materials reviewed and relied upon in creating the valuation charts were produced. The Arbitrator agrees with CWH that the Enservio methodology is flawed in a number of respects. The lack of source materials renders Banach's estimates unverifiable *ipse dixit*. Moreover, what the wines could be purchased for from various sources in 2018 is no evidence of what the Club purchased the wines for between 2010 and 2005. The Rincóns' response—that the differential doesn't matter because wine values appreciate over time and thus mark-up calculations based on 2018 prices only work in the Club's favor—does not render the evidence any more probative or the methodology any less flawed. Jose testified that excess markup is difficult to detect and highly variable, depending on the wine's source, shipping and handling costs, and other factors. In sum, the Enservio report is insufficient to prove excessive mark-up.

23. Alternatively, the Rincóns rely on the deposition of Padilla, in which he stated that the Club charged a 35% mark-up. However, Padilla's summary statement to this effect had no foundational support, nor did he purport to have first-hand knowledge of what the Rincóns were actually charged by the Club. Though the Rincóns pleaded that Padilla "was the person who marked-up the price of the wine sold to the Rincóns" and that "[n]o one else was involved in purchasing the wine from outside the Club or marking it up," evidence was presented that Padilla supplied purchase invoices from the wine orders to the accounting department, and it was the accounting department that put together the charges, including any mark-ups and taxes, that were included in the Rincóns' monthly statements. Moreover, Padilla left the Club's employment in September 2013, after which he had no foundational knowledge regarding markups on the wines. The Arbitrator does not consider Padilla's bare deposition statement

sufficiently supported to carry probative value that the Club charged a 35% mark-up on the wines purchased for the Rincons.

24. Breach of Contract. The Rincons contend the Club breached the Wine Locker Agreement by failing to provide a perpetual wine inventory for their wines as promised. According to the Rincons, the Club failed to implement adequate tracking measures or basic checks and balances to protect and monitor the wine. The Rincons posit that Padilla, alone or together with others, stole the missing bottles, and believe that the theft continued with or without Padilla's assistance after he left the Club's employment.

25. The Club offered various explanations for the removal of wines from the Rincons' inventory. It claims many bottles were consumed by the Rincons at the Club, and the reason there is no written record to that effect is that the Club, as a courtesy, waived the corkage fee. The Club also contends the Rincons consumed wines during private Club-catered events held on and off Club property, that they periodically picked up bottles and removed them from the Club, and that some of the bottles were taken to be given as bribes to foreign officials.

26. Though the evidence was conflicting on what happened to the Rincons' wines, the preponderance was insufficient to show that the bottles' removal from the Rincons' wine locker was more likely than not attributable to any of these causes. The Rincons strenuously denied removing wine from the Club, which all seven members of their current and past security detail credibly corroborated, and the testimony of Padilla and others (Alex Caridad, Ivan Paiso) to the contrary was not credible, was internally conflicting and/or was otherwise nonprobative. As for private events that the Rincons hosted at the Club or their home, the Club's Banquet Event Orders (which documented all food, Club wine, and locker wine served at the events) do not support the Club's claim that the Rincons' locker wines were served beyond those that were

recorded thereon. And the Club's claim that the Rincons removed their wines from the Club to use as bribes to foreign officials is no more than rank speculation. In sum, the evidence was insufficient to prove that the Rincons' wine disappeared as a result of theft by Club employees, or by the Rincons' consumption or removal of wine from the Club.

27. The evidence did establish that the Club is no longer in possession of the Rincons' missing bottles and, with insufficient evidence to explain why, the Arbitrator concludes that the Club breached the Agreement by failing to safeguard the Rincons' wines purchased through the Wine Locker Program and to adequately track the wines from purchase to consumption, as the proper maintenance of a perpetual inventory would entail. In addition, CWH's occasional waiver of corkage fees did not comport with the Agreement's terms and removed a potential safeguard that would allow wine-locker members to monitor their consumption through monthly statements.

28. Admission against interest CWH claims the Rincons' May 25, 2016 demand letter stating that "many of the bottles stolen were observed as present at the Club in early January 2016," which was repeated in the suit filed in Dallas and purportedly acknowledged by the Rincons as true at the Hearing, constitutes an admission against interest that precludes their claim that CWH was responsible for their missing wines. The evidence showed that the statement was made after Jose had visited the Club, asked to see the Rincons' wine inventory, and was told that the vast majority of the collection was in the upstairs Eurocave, which was locked up and inaccessible because the person with the key was not present. Jose testified that he left with the impression that the Rincons' wines were intact and safe at the Club, and thus believed at the time that the wine theft must have occurred after CWH sold the Club. It was only

later that the Rincons learned that the majority of the missing wine bottles occurred prior to the sale.

29. CWH characterizes the statement as an "admission against interest," which is an exception to the hearsay rule for purposes of admissibility. The evidence was admitted at the Hearing and the Arbitrator has given the statement the weight it is due. To the extent CWH may have intended to characterize the statement as a judicial admission, it does not meet the legal requirements for establishing a binding admission.

30. Bailment. For a bailment to occur, there must be (a) delivery of personal property to another in trust, (b) acceptance of such delivery, (c) a contract that the trust will be carried out, and (d) an understanding under the contract that the property will be returned to the transferor. See *Sisters of Charity of the Incarnate Word v. Meaux*, 122 S.W.3d 428 (Tex. App.—Beaumont 2003, pet. denied). "In a bailment, a rebuttable presumption of negligence arises upon proof that the property was . . . not returned because the party in possession or control of an article is in the best position to care for it." *Sears, Roebuck & Co. v. Wilson*, 963 S.W.2d 166, 168-70 (Tex. App.—Fort Worth 1998, no pet.). To avoid liability as a matter of law, a bailee must affirmatively prove the damage resulted from some other cause consistent with due care.

31. CWH denies the existence of a bailment with respect to its wine storage program. Instead, CWH claims, the Wine Locker Agreement was a contract for periodic purchases of wine to be delivered to the Rincons for consumption at variable delivery dates, which is not a bailment. According to CWH, the Rincons did not deliver any wine to the Club, as a bailment requires, but paid money to the Club, which in turn sold them wine and associated services; therefore, the Rincons' claims sound in breach of contract, not bailment.

32. It is true that the purchase and pricing aspects of the wine program the Club describes were governed by the Wine Locker Agreement and sound in contract. But once the Club purchased the wines and the Rincos paid for them, they became the Rincos' property held in trust by the Club with the understanding that they would be returned to the Rincos for consumption. The evidence showed that the Club had exclusive control of all wine locker access, it was the Club's responsibility to track the wines from purchase to consumption, and wine locker members entrusted their wines to the Club for storage and safekeeping. The relationship between the parties in this regard is akin to that of a bailment or consignment in that the Rincos held ownership of the wines that CWH purchased on their behalf, and CWH had the obligation to account to the Rincos for their inventory.

33. The Cellar Tracker records show that hundreds of bottles of wine were recorded as removed from the Rincos' inventory during the Club's periodic true-ups. Because the wine locker program created a bailment relationship, the Club bore the affirmative burden to prove that the Rincos' wines were removed from their inventory as the result of a cause consistent with due care. That is, CWH bore the burden to demonstrate that the disappearances were attributable to some cause other than its own neglect, such as by the Rincos' consumption or receipt. As explained in ¶¶ 26---27, *supra*, whether the wine was removed by theft, accident or some other means, the Club failed to prove that its disappearance resulted from a cause consistent with due care. Accordingly, CWH's failure to secure, protect, and return the bottles of wine to the Rincos breached the bailment agreement.

34. Negligence. Because the Wine Locker Agreement described the Club's duties and responsibilities concerning the wine locker program, the Rincos' claims lie in breach of contract. Accordingly, the Rincos' negligence claims are denied.

35. Negligent hiring and supervision. For the reasons explained in ¶¶ 26–27, *supra*, the evidence was inconclusive and insufficient to show that the Rincons' wine disappeared from their wine lockers as a result of theft. Accordingly, the Rincons' claims for negligent hiring and supervision are denied.

36. Unjust Enrichment/Promissory Estoppel. Because the Wine Locker Agreement was an express contract, the Rincons' claims for unjust enrichment and promissory estoppel fail as a matter of law. *See Burlington N.R.R. v. Southwestern Elec. Power Co.*, 925 S.W.2d 92, 97 (Tex. 1988); *Subaru of America, Inc. v. David McDavid Nissan, Inc.*, 84 S.W.3d 212, 226 (Tex. 2002).

37. Conversion/Fraudulent Misrepresentation/DTPA. The evidence was insufficient to demonstrate that CWH converted the Rincons' property, made fraudulent representations in connection with the Wine Locker Program, or violated the Texas Deceptive Trade Practices Act.

38. Limitations. In general, a cause of action accrues, and limitations begin to run, "when a wrongful act causes some legal injury, even if the fact of injury is not discovered until later, and even if all resulting damages have not yet occurred." *S.V. v. R.V.*, 933 S.W.2d 1, 4 (Tex. 1996). Accrual is deferred in cases of fraud or when the wrongdoing is fraudulently concealed, and in discovery rule cases when the alleged wrongful act and resulting injury were inherently undiscoverable and objectively verifiable at the time they occurred. *Id.*

39. The longest limitations period applicable to the Rincons' claims is four years. *See* TEX. CIV. PRAC. & REM. CODE § 16.004(s) (governing breach of contract). The Rincons' injury occurred each time a bottle they did not consume was removed from their wine locker inventory, which was recorded in their Celler Tracker accounts during periodic true-ups. The Rincons first

filed suit claiming that their wines were stolen on August 16, 2016.¹ Four years prior to that date is August 16, 2012. Accordingly, the Rincóns' claims for bottles that went missing from their wine locker inventory before the applicable limitations period are time barred unless the equitable tolling doctrines of the discovery rule or fraudulent concealment apply.

40. The discovery rule may be invoked when the alleged injury is of a type that is "inherently undiscoverable." *Wagner & Brown, Ltd. v. Harwood*, 58 S.W.3d 732, 734-35 (Tex. 2001). "An injury is inherently undiscoverable if it is, by its nature, unlikely to be discovered within the prescribed limitations period despite due diligence." *Id.* The Rincóns exercised due diligence by keeping track of their wine inventory consumption through their monthly statements, the accuracy of which they had no reason to question. Padilla testified that when a discrepancy between the physical and electronic inventory was detected during the periodic true-ups, the Club conducted no investigation or inquiry. The Rincóns were never notified of any discrepancies, true-ups, or large deletions of wine from their inventory, nor were the missing bottles reported on the Rincóns' monthly statements. There is no documentation demonstrating consumption of the Rincóns' wines other than as reflected on the chits contained in the monthly statements, which is what the Rincóns reasonably relied on to monitor their inventory. All information regarding the missing wines was in the Club's possession and, with no notification by the Club of the inventory true-ups or discrepancies, the wines' disappearance was unlikely to be discovered within the prescribed limitations period despite the Rincóns' due diligence in checking their monthly statements. Accordingly, the discovery rule applies to toll limitations on the Rincóns' claims.

¹ Though Roberto's claims were first asserted some time later when this arbitration was filed, his claims relate back to those filed by his wife, Maria, who presumably held a community interest in the couple's wine inventory.

41. Fraudulent Transfer. On September 4, 2015, when CWH sold the Club and all of its assets to the New Club for \$25M, the sales proceeds were placed into escrow and wire transferred directly into the account of CWH's parent company, TWLDC, leaving CWH with a bank account balance of approximately \$255,000 based on its assessment of future outstanding commitments. Some eight months later, on May 12, 2016, TWLDC transferred \$25M to its parent company, HH. The transfer was in the form of a distribution because, according to HH, it had funded CWH's losses for years prior to the sale via capital contributions. In December 2016, CWH distributed the last funds in its account (approximately \$40,000) to TWLDC.

42. The Rincons claim the funds were fraudulently transferred to avoid payment of future potential creditors in violation of what is known as the "fraudulent transfer statute," which provides that:

(a) a transfer made or obligation incurred by a debtor is fraudulent as to a creditor, whether the creditor's claim arose before or within a reasonable time after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation:

(1) with actual intent to hinder, delay, or defraud any creditor of the debtor; or

(2) without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor:

a. was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or

b. intended to incur, or believed or reasonably should have believed that the debtor would incur, debts beyond the debtor's ability to pay as they became due.

TEX. BUS. COMM. CODE § 24.005. According to the Rincons, the statutory violation was twofold: (a) the transfers were made with actual intent to defraud CWH's creditors in violation of Section 24.005 (a)(1) and, (b) being in the form of a dividend or distribution, the transfers

were made without CWH's receipt of equivalent value in exchange in violation of Section 24.005 (a)(2). The Rincons also contend the transfer violated Section 24.006 of the Texas Business & Commerce Code, which provides that a transfer is fraudulent, irrespective of the transferor's intent, if the debtor makes the transfer without receiving reasonably equivalent value in exchange and the debtor was insolvent or became insolvent as a result of the transfer. TEX. BUS. COMM. CODE § 24.006.

43. When the funds were transferred by CWH to TWLDC in connection with the September 4, 2015 closing, neither CWH nor TWLDC knew of any claims by the Rincons. Thus, they could not have had actual intent to defraud the Rincons with the transfer.

44. When TWLDC made the May 12, 2016 distribution to HCC, the Rincons had notified the New Club's manager at the May 2, 2016 meeting that their wines were missing. Their allegations at the time, however, as reflected in their follow-up May 25, 2016 demand letter, were that the theft was "very recent" because the wines "were observed as present at the Club in early January 2016," when CWH was no longer the owner. This was insufficient to put TWLDC or HCC on notice of the Rincons' claims against CWH. Peter Riley, HCC's general counsel, testified that he first learned of the Rincons' claims in late May/early June 2016, when the New Club notified him that it would indemnify and defend CWH against any claims. It was not until August 16, 2016 that the Rincons directly brought claims against CWH by filing suit against CWH in Dallas District Court. The evidence was insufficient to show that either TWLDC or HCC made the May 12, 2016 transfer with actual intent to defraud the Rincons.

45. By December 2016, when CWH distributed the last funds in its account (approximately \$40,000) to TWLDC, it was aware of the Rincons' claims against CWH. But at that point, CWH was being indemnified and defended by the New Club, and it had put its

insurance carriers on notice of the Rincons' claims. With these protections in place, the evidence is insufficient to support a finding that the December 2016 final distribution was made with intent to defraud the Rincons.

46. The Rincons also claim that the above transfers violated Section 24.005 (s)(2) of the fraudulent transfer statute because they were in the form of a dividend or distribution for which CWH received no "reasonably equivalent value in exchange," leaving CWH with insufficient funds to satisfy potential future liabilities. To establish a Section 24.005 (s)(2) violation, the Rincons had to show that at the time of the transfer, the distributing party "(A) was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction," or "(B) intended to incur, or believed or reasonably should have believed that the debtor would incur, debts beyond the debtor's ability to pay as they became due." The evidence showed that, at the time of the September 4, 2015 transfer, CWH had indemnities from the New Club to cover post-closing liabilities, including suits by Members. It also had insurance policies to cover liabilities from pre-closing occurrences, and a bank account with approximately \$255,000. Those protections remained in place at the time of the May and December 2016 transfers. After the initial sale, CWH was no longer engaged in business or transactions other than winding down, and there was nothing to indicate it would incur debts beyond its ability to pay. Similarly, the evidence was insufficient to establish that CWH was either insolvent at the time of the transfers or became insolvent as a result, which is a required element for a Section 24.006 claim even if such a claim were viable in this context, which the Arbitrator need not decide. Accordingly, the Rincons' failed to prove that the disputed transfers were fraudulent when made.

47. ~~Defamation. Defamation Per Se. Business Disparagement:~~ CWH complains that Jose's oral complaint to Club management raising theft as a potential reason for the alleged missing bottles, and the Rincon attorney's subsequent demand letter raising the issue of theft, constitute *defamation, defamation per se and business disparagement*, for which it seeks to recover nominal damages.

48. When Jose complained about the missing bottles in his meeting with Club management, he was accompanied by his attorney in contemplation of potential legal action. The subsequent demand letter from counsel was in contemplation of litigation as well. Accordingly, the statements upon which CWH's *defamation, defamation per se and business disparagement* claims are based are protected by the litigation privilege and are not actionable. See, e.g., *Shell Oil Co. v. Writt*, 464 S.W.3d 656 (Tex. 2015); *Watson v. Kaminski*, 51 S.W.3d 825 (Tex.App.—Houston [1st Dist.] 2001, no pet.).

49. ~~Damages.~~ CWH having breached the Agreement by failing to safeguard the Rincons' wines purchased through the Wine Locker Program and adequately track the wines from purchase to consumption, the Rincons are entitled to recover direct damages for their loss. There was a total of 207 bottles, valued at \$306,320, missing from Roberto and Maria's inventory. Of those, Cellar Tracker noted 26 bottles, valued at \$8,295, as missing after the Club was sold on September 4, 2015, for which CWH was no longer responsible, leaving a value for the 180 bottles that went missing on CWH's watch of \$298,025. There was a total of 23 bottles missing from Jose's inventory, valued at \$18,240. Accordingly, Roberto and Maria may recover \$298,025 for their loss, and Jose may recover \$18,249 for his.

50. ~~Settlement Credit.~~ CWH asserts entitlement to a \$100,000 settlement credit arising out of the New Club's ("CWO's") settlement agreement with the Rincons, by which it

provided the Rincons three non-equity golf memberships (a \$150,000 value) for the price of one (\$50,000). See TEX. CIV. PRAC. & REM. CODE §§ 33.011, 33.012(b). The Rincons contest CWH's right to a settlement credit, contending that (a) the claims against CWH and CWO are distinguishable based on time period, and (b) the Rincons did not receive \$100,000 worth of benefit from their CWO settlement.

51. The Rincons' attempt to distinguish the claims based on time period finds no support in the settlement credit statute. However, CWH is entitled to no more credit than that which the Rincons actually received. Maria and Roberto claim they originally paid a \$95,000 refundable deposit for their membership, which their settlement with the Club allowed the Club to retain. The Rincons paid an additional \$50,000 in connection with the settlement, for a total of \$145,000 that the Rincons paid in exchange for the three non-equity golf memberships valued at \$150,000. CWH has not contested these calculations, leaving a net dollar-for-dollar value of the settlement to the Rincons of \$5,000. Though the Rincons contend the value of the settlement was far less due to restrictions placed on Roberto's use of the Club, the Arbitrator declines to factor such intangibles as the statute speaks in terms of "the sum of the dollar amounts of the settlement." Accordingly, CWH is entitled to a \$5,000 settlement credit against Roberto and Maria's recovery, for a total recovery of \$293,025.

III. Attorneys' Fees and Costs

52. Basis for award. As a threshold matter, CWH claims the Rincons may not recover attorneys' fees against it because there is no statutory basis for recovery of breach-of-contract/bailment attorneys' fees against an LLC, and there is no contract between CWH and the Rincons that would otherwise support such an award.

53. Texas law follows what is known as “the American Rule,” which does not allow recovery of attorneys’ fees unless authorized by statute or contract. *See Tony Gullo Motors I, L.P. v. Chapa*, 212 S.W.3d 299, 311 (Tex. 2006). As a matter of law, the Rincons may not recover attorneys’ fees against CWH, a Limited Liability Company, for their breach-of-contract claim based on Section 38.001 of the Texas Civil Practice and Remedies Code. *See Alta Mesa Holdings, L.P. v. Ives*, 488 S.W.3d 438, 452-53 (Tex.App.—Houston [14th Dist.] 2016, pet. denied)(holding attorneys’ fees are not recoverable against an LLC under TCPRC § 38.001); *see also* Arbitrator Order No. 10, dated December 27, 2018 (ordering the Rincons “to amend their pleading to remove their claim for attorneys’ fees against [CWH] based on Section 38.001 of the Civil Practice and Remedies Code.”). Neither may a fee award be based on the bailment claim on which the Rincons prevailed, which sounds in contract. *See Carter v. Flowers*, No. 02-10-00226-CV, 2011 Tex.App. LEXIS 7829, *3 (Tex.App.—Fort Worth 2011).

54. The Texas Declaratory Judgments Act, however, provides an independent statutory basis for a fee award in the Rincons’ favor. TEX. CIV. PRAC. & REM. CODE § 37.004(a). CWH sought extensive determinations of “its rights, status, and legal relations pursuant to a contract or other writings constituting a contract, namely the Wine Storage Agreement and related Membership Agreement, Plan and Bylaws.” *See, e.g., CWH Fourth Amended Statement of Claim*, III. In a declaratory judgment action, reasonable and necessary fees may be awarded “as are equitable and just.” *Ridge Oil Co., Inc. v. Guinn Inv., Inc.*, 148 S.W.3d 143, 161 (Tex. 2004); TEX. CIV. PRAC. & REM. CODE § 37.009 (“In any proceeding under this chapter, the court may award costs and reasonable and necessary attorney’s fees as are equitable and just.”). Moreover, either party to a declaratory judgment action—the party bringing the claim or the party defending against it—may be awarded attorneys’ fees. *Barshop v. Medina County*

Underground Water Dist., 925 S.W.2d 618, 637-38 (Tex. 1996); *Devon Energy Prod. Co. v. ECS Res.*, 450 S.W.3d 203, 218 (Tex.App.—Houston [14th Dist.] 2013, no pet.) (“[A] party defending a suit under the UDJA may be awarded its reasonable and necessary attorney’s fees.”). The claims on which the Rincos prevailed were, in large part, inextricably intertwined with the Rincos’ defense of, and their ability to prevail upon, the declarative rights that formed the basis of CWH’s UDJA claims. Accordingly, the Rincos are entitled to recover reasonable and necessary attorney’s fees as are equitable and just.²

55. **Segregation.** The Rincos request an award of attorneys’ fees and expenses in the amount of \$873,302, as supported by the Declaration of Gary J. Siller with detailed invoices attached (the “Siller Affidavit”). According to Mr. Siller, this represents the net amount of fees and expenses incurred after segregating and deducting \$62,315.25 attributable to the claims the Rincos settled or on which they did not prevail, *i.e.* the refund claim for the Rincos’ membership deposit, the claim for excessive markup of the locker wines, and the fraudulent transfer claims. Though the fee and expense recovery the Rincos seek exceeds the damages awarded, Mr. Siller explains that a large amount of legal work and expense was required for the primary claim on which it prevailed—recovery of the value of the Rincos’ missing wines—due to the Club’s conduct including, *inter alia*, its (a) insistence that the Rincos had consumed or removed the wines themselves, which required considerable time and effort to refute, (b) lack of adequate record keeping, which required an “exorbitant amount of time” to identify what wines were missing, (c) “disjointed, inconsistent, and vague” monthly statements that necessitated extensive research, and (d) use of Cellar Tracker as an inventory system that could not be relied upon. Moreover, Mr. Siller claims, in order to prevail the Rincos were required to defeat

² Because a statutory basis exists for a fee award, whether the New Club’s Amended and Restated Membership Plan and Bylaws provides an independent basis for such an award is immaterial.

CWH's myriad defenses and declaratory requests, which were inextricably intertwined with the Rincons' primary claims.

56. CWH contends the Rincons have failed to meet their burden to appropriately segregate their attorneys' fees. Specifically, CWH points to what it argues is unsegregated or split work related to (a) various claims against the New Club and related settlement, (b) researching and drafting of pleadings that contained unsuccessful claims, (c) discovery and related motions pertaining to the unsuccessful negligent-hiring claim, (d) the unsuccessful DTPA, Texas Theft Act, Affirmative Defenses, or claims for which fee recovery is not allowed, (e) the Rincons' own insurance claims with Chubb, (f) potential claims against the New Club's Board of Directors, (g) the unsuccessful excessive-markup claim, including related motions and work with expert witnesses, (h) unsegregated time for general trial preparation, including pre- and post-hearing briefing, exhibit preparation, and work related to the hearing, (i) the unsuccessful fraudulent-transfer claim, (j) the statute of limitations, and (k) charges for non-legal/purely administrative work. Finally, CWH argues that Mr. Siller did not sufficiently prove up the billing attorneys' and paralegals' qualifications such that the reasonableness of their hourly rates can be assessed.

57. As the party seeking recovery, it is the Rincons' burden to segregate their attorneys' fees between claims for which such fees are recoverable and those for which they are not. See *Tony Gullo Motors I, LP v. Chapa*, 212 S.W.3d 299 (Tex. 2006). After carefully reviewing the Siller Affidavit and detailed underlying invoices, including CWH's notations on those invoices, and considering the extent to which the successful and unsuccessful claims were, in significant part, inextricably intertwined, and factoring the nature and extent of the declarative relief that CWH sought and the Rincons had to defend, the Arbitrator agrees that the reductions

the Rincons applied do not adequately reflect the amount of fees attributable to non-recoverable claims. A significant portion of the pleadings, discovery, motions practice, pre- and post-hearing briefing, and the arbitration hearing was focused on proving excessive mark-up of the locker wines, theft of the wines by Padilla from which the negligent-hiring claim at least partly arose, and fraudulent transfer of the CWH sales proceeds to the New Club's parent companies—claims on which the Rincons did not prevail. Having reviewed the detailed invoices submitted, and taking notice of the course of the proceedings and the discounts the Siller Affidavit has already factored, the Arbitrator concludes that an additional 15% across-the-board reduction more closely approximates the work attributable to the non-recoverable claims. Applying this reduction results in a reasonable and necessary, equitable and just, award of \$742,306.70. Taking notice of the fees customarily charged in Harris County for similar legal services and the Clark Hill law firm's experience, reputation and ability, CWH's challenge regarding the billing attorneys' and paralegals' qualifications is denied.

This Final Award, which incorporates the Interim Award and Amended Interim Award, is in full settlement of all claims submitted in this arbitration. All claims not expressly granted are hereby denied.



.....
Hon. Harriet O'Neill, Arbitrator

Date: November 17, 2021

APP - C

AMERICAN ARBITRATION ASSOCIATION Commercial Arbitration Tribunal

In the Matter of the Arbitration between

Re:

Case Number: 01-16-0004-6030

CARLTON WOODS HOLDINGS, LLC

Claimant

vs.

MARIA L. RINCON, ROBERTO RINCON, AND JOSE RINCON

Respondents and Counter-Claimants

vs.

**CARLTON WOODS HOLDINGS, LLC, THE CLUB AT CARLTON
WOODS**

Counter-Respondents

AND

**THE WOODLANDS LAND DEVELOPMENT COMPANY, LP, AND
THE HOWARD HUGHES CORPORATION**

Third-Party Defendants

FINAL AWARD

I, THE UNDERSIGNED ARBITRATOR, having been designated in accordance with Article 18 of the Amended and Restated Membership Plan and Bylaws dated March 1, 2016 (“the Membership Plan”), which governs this proceeding between Claimant Carlton Woods Holdings, LLC (“CWH”), Respondents Maria L. Rincon (“Maria”), Roberto Rincon (“Roberto”)

and Jose Rincon (“Jose”)(collectively, “the Rincons”), and Third-Party Defendants The Woodlands Land Development Company, L.P. (“TWLDC”) and The Howard Hughes Corporation (“HHC”) (collectively “the Third-Party Defendants”), having been duly sworn, and having duly heard the proofs and allegations of the parties, and having previously rendered an Interim Award on September 15, 2021 and an Amended Interim Award on September 24, 2021, do hereby AWARD as follows:

This arbitration is conducted in accordance with the AAA Commercial Arbitration Rules effective October 1, 2013, with substantive resolution of the disputes between the parties governed by and construed in accordance with the laws of the State of Texas. Given COVID-19 public health circumstances, the Arbitration Hearing (the “Hearing”) was conducted virtually via Zoom pursuant to the Procedural Order for Conducting Virtual Arbitration Hearing (Arbitrator Order No. 24) and the Procedural Order for Conduct of Arbitration Hearing (Arbitrator Order No. 25). Although conducted virtually, the Hearing was deemed to take place in Harris County, Texas, the seat of the arbitration designated in the Membership Plan.

The Hearing commenced on Monday, June 19, 2021, and continued through Wednesday, July 21, 2021. CWH and HH appeared by their representative Peter Riley, WLDC appeared by its representative Todd Drake, and all three entities appeared by their counsel James H. Stilwell, Stilwell, Earl & Apostolakis LLP. Jose Rincon and Roberto Rincon appeared for the Rincons, who appeared by their counsel Gary J. Siller and Adam Diamond, Clark Hill PLC. Witness testimony and documentary evidence were offered and admitted. By agreement of the parties, the American Arbitration Association served as the Host for the virtual hearing and the official record of the proceedings was made using the Zoom platform’s recording feature. A list of the exhibits that were admitted at the Hearing and those that were denied admission was documented

in AAA Official Exhibit List (Arbitrator Order No. 26) dated July 22, 2021, and made a part of the AAA case file as an official record of the proceeding.

At the conclusion of the Hearing, it was agreed that the parties would file post-hearing submissions on Friday, August 27, 2021, which the Arbitrator timely received. The record was not closed at the conclusion of the Hearing and remained open pending issuance of an interim award and the submission of evidence relating to attorneys' fees and costs, pursuant to the Fifth Amended Report of Arbitration Management Conference and Scheduling Order (Arbitration Order No. 23), paragraph 11.

The Interim Award issued on September 15, 2021, followed by an Amended Award issued on September 24, 2021. Pursuant to Arbitration Order No. 23, paragraph 11, the parties were afforded time to attempt to reach a stipulation on the issues of attorneys' fees and costs. In the event a stipulation could not be reached, a briefing schedule was set under which the record would close on October 18, 2021 and a Final Award would issue on or before November 17, 2021. The parties were unable to reach a stipulation, and requested permission to extend their respective submissions such that the record would close on October 25, 2021 and a Final Award would issue on or before November 24, 2021. The Arbitrator approved the parties' extension request, timely received the parties' submissions, and the hearing was declared closed on October 25, 2021.

I. Final Award

NOW, THEREFORE, having carefully considered the evidence, briefing, and legal authorities presented, together with the arguments of the parties' very able counsel, the Arbitrator hereby ORDERS, AWARDS, ADJUDGES and DECREES as follows:

Exhibit 1

1. The Wine Locker Agreements' terms apply to CWH's handling of the wines that it purchased for Roberto and Maria, and for Jose. In failing to protect and secure the wines purchased for and maintained in the Rincons' wine lockers, CWH breached the Wine Locker Agreements.
2. The evidence was insufficient to prove that CWH marked up the wines purchased for the Rincons in excess of the agreed 15%.
3. The Wine Locker Program created a bailment relationship, and CWH, as bailee, failed to prove that the disappearance of the Rincons' wines resulted from a cause consistent with due care.
4. CWH failed to establish its entitlement to declaratory relief.
5. The Rincons' allegations of theft were privileged when made and do not support CWH's claims for defamation, defamation *per se* or business disparagement.
6. The Rincons shall have and recover from CWH the following:
 - a. Actual damages in the amount of \$293,025 for Roberto and Maria's loss;
 - b. Actual damages in the amount of \$18,240 for Jose's loss;
 - c. Pre- and post-judgment interest on the Rincons' actual damages at the rate allowed by law;
 - d. The Rincons' reasonable and necessary, equitable and just, attorneys' fees and expenses in the amount of \$742,306.70.
7. The administrative fees and expenses of the American Arbitration Association totaling \$26,075.00, and the compensation and expenses of the Arbitrator totaling \$89,405.00, shall be borne by CWH. *See* AAA R-47(c). Therefore, CWH shall reimburse the Rincons the additional sum of \$56,840.00, representing that portion

of said fees and expenses in excess of the apportioned costs previously incurred by CWH.

8. This award disposes of the claims and counterclaims between the parties in this proceeding. Any claim that is not directly addressed in this Award is hereby denied.

The parties have requested the Arbitrator to provide the reasons for this ruling, which are as follows.

II. Reasons

A. Background

1. In July 2006, Roberto and Maria became members of The Club at Carlton Woods (“the Club”) located in The Woodlands, Texas. At the time they joined, the Club was owned by Carlton Woods Holdings, LLC (“CWH” or “the Old Club”). On September 4, 2015, CWH sold the Club to CW Operating Company, Inc. (“CWO” or “the New Club”) for \$25 million, and thereafter had no further involvement with the New Club or its management. The funds from the sale were directly deposited into the account of TWLDC, CWH’s parent company. On May 13, 2016, TWLDC distributed \$25 million to HHC, its parent company.

2. In 2010, the Club offered its members a new amenity in the form of a member wine club, which Roberto, a collector of fine wines and champagnes, joined. On August 21, 2010, Roberto signed a Member Wine Locker Program Agreement (“Wine Locker Agreement” or “the Agreement”) that bears his member number and is between the Club and “Roberto E. Rincon.” Ex. J-1. He signed a virtually identical agreement on January 23, 2011, this time between the Club and “Rincon.” Ex. J-2. According to Roberto and his son Jose, the 2011 agreement was intended for Jose’s benefit, which the Club denies. As members of the Wine

Locker Program, Roberto and Maria purchased approximately 438 bottles of wine and champagne (collectively the “wine”) from the Club for \$418,550. Of those, they contend 207 bottles are missing for which they paid \$306,095. Jose purchased approximately 84 bottles from the Club through the Wine Locker Program, of which 23 are alleged to be missing at a purchase price of \$18,240.

3. The Wine Locker Agreement provided, in pertinent part, as follows:

As a wine locker holder, you will now be considered a member of the [CWH] Wine Club. The benefits of this club will include

- Personalized wine list to be presented during each dining experience at the club. This will also serve as a perpetual wine inventory for your wine locker.

Policies

- Member Wine Locker purchase prices are only applicable when making purchase(s) solely for storage in Member Wine Locker
- Wine may not be purchased at Member Wine Locker Price during ordinary member dining
- Due to TABC laws, all wines must be purchased and consumed on club grounds
- A corkage fee of \$5.00 per bottle will be applied at the time of wine usage
- Pricing structure is as follows for wine purchases
Cost of Bottle + 15% + Applicable TABC Tax

Ex. J-1 (emphasis in original). According to the Agreement, the wines that the member purchased through the Club would be stored in the member’s wine locker at the Club and would be consumed at the Club. CWH controlled all access to the members’ wine lockers at the Club.

4. When the program was first implemented, members dining at the Club who wished to order from their personal lockers would be presented with a printed list of the wines stored in their locker. In 2012, the Club began using a digital application called Cellar Tracker, which permitted users to track the wine going into and out of their lockers. The Club connected

Cellar Tracker to iPads it owned and operated, which would be presented to members while dining at the Club so that they could digitally scroll through wines that were available from their lockers. The evidence was conflicting on whether the iPad reflected the actual number of particular vintage bottles in inventory and whether a member's selection of wine from the iPad contemporaneously removed the selected wine from the member's inventory.

5. When a member selected and consumed a bottle from their wine locker and a corkage fee was charged, the bottle would be described on a receipt (the "chit") that reflected the corkage fee charge. When no corkage fee was charged, the chit would not reflect the wine that was consumed. A member's chits were included in a detailed statement sent to the member each month for payment. Roberto and Jose testified that they relied on the monthly statements to keep track of their inventoried wine consumption. According to the Rincons, some 230 of the missing bottles were never listed on any chit or monthly statement. According to Steve Saltzman ("Saltzman"), the Club's General Manager and COO, the charging of corkage fees was intermittent at best, and so there was no way other than the Club's periodic "true-ups" to Cellar Tracker to determine what was available in the members' wine lockers. Saltzman also testified that the Club has never had a perpetual wine inventory system for the members' locker wines.

6. Luis Padilla ("Padilla") was the sommelier at the Club from 2010, when Cellar Tracker was implemented, until September 2013. He created Cellar Tracker accounts for Roberto and Jose using email addresses he created for them, and the contents of their lockers were uploaded into their digital inventories. Though the accounts belonged to the members, the Club had administrative access that allowed it to log in and add bottles that were purchased for members and to delete bottles that were removed from members' inventory. According to the Club, not every bottle of wine that was removed was contemporaneously logged out of

inventory. Instead, its regular practice was to periodically compare the Cellar Tracker database to the bottles that were physically present in a member's locker and perform a "true-up" that would reflect what was held in inventory. Padilla testified that he performed these true-ups every one to two months.

7. The evidence showed several occasions in which large numbers of bottles were removed from the Rincons' Cellar Tracker inventory in a single day. For example, on the following dates the following numbers of bottles were removed:

May 25, 2013:	8 bottles
September 4, 2013:	88 bottles
September 11, 2013:	33 bottles
November 16, 2013:	8 bottles
March 25, 2014:	7 bottles
May 10, 2015:	36 bottles

The deletion of 121 bottles from the Rincons' Cellar Tracker account in a 7-day period coincided with Padilla's last week of employment at the Club.

8. The Rincons claim they discovered that some of their wines were missing when Jose went to the Club in 2016 with his father-in-law and asked to see the family's wine collection. According to Jose, he was shown 80 or 90 bottles that were kept in the wine locker on the main floor, but was told the more extensive (and expensive) collection that was maintained in the upstairs Eurocave (a temperature-controlled unit with a 200+ storage capacity) was not accessible because the manager, who had the key, was not around. Later, upon further inquiry, Jose was told that the entire Rincon inventory contained only 86 bottles in toto. Jose then contacted Padilla, who had left the Club some three years earlier. Padilla provided the log-in usernames and passwords, which had not changed. At this point Jose, he claims for the first time, logged in to Cellar Tracker to review his inventory.

9. Jose, together with the Rincons' attorney, Gary Siller ("Siller"), subsequently met with Saltzman on May 2, 2016, and presented him with a Cellar Tracker printout highlighting the wine bottles the Rincons alleged had been stolen. Siller followed up with a demand letter on May 25, 2016, attaching the printout and stating, *inter alia*, that "the theft was also very recent as many of the bottles identified as stolen were observed as present at the Club in early January 2016." Ex. J-10. Unsatisfied with the response, Jose and Maria filed suit against the Old Club and the New Club on August 16, 2016, in Dallas County district court. Ex. C-16. They also asserted fraudulent transfer claims against TWLDC and HHC. Roberto first became a party to the dispute when this arbitration was filed on October 21, 2016.

B. The Present Dispute

10. CWH Claims. CWH seeks declaratory relief on various aspects of the Wine Locker Agreement and the Rincons' claims. It also asserts affirmative claims for defamation, defamation *per se* and business disparagement against Jose for falsely accusing the Club of theft, for which it seeks nominal damages.

11. CWH claims there was no contract between Jose and the Club related to the Wine Locker Program, and that its only agreement with Roberto was for the years 2010 and 2011, not beyond. Nonetheless, CWH contends, the Rincons received their wines. There are no bottles missing from the Rincons' inventory, CWH claims, only bottles that the Rincons consumed without being charged a corkage fee. According to CWH, the Rincons removed wine from the Club, had wine picked up from the Club and delivered to their homes, and used wine at events hosted at the Club and at their homes. CWH acknowledges that not every bottle that was removed was contemporaneously logged out of inventory, but it claims the Club's regular practice was to periodically compare the Cellar Tracker database to the bottles that were

physically present in a member's locker and perform a "true-up" that would reflect what was held in inventory. CWH explains that Cellar Tracker entries reflecting the removal of multiple bottles at one time were simply the result of true-ups that occurred after the Rincons had removed their wines from the Club.

12. CWH further contends the Rincons' claims are barred by the statute of limitations. According to CWH, the Rincons had access at all times to their wine inventory both by having access to their Cellar Tracker accounts and by being presented with a wine inventory list every time they dined at the Club. As a result, CWH contends, Roberto's claims regarding bottles either not entered into the Cellar Tracker inventory or removed from the inventory on or before October 21, 2012 (4 years before he first brought claims in this Arbitration) are barred, as are Jose's claims on or before August 29, 2012 (4 years before he first brought suit in District Court in Dallas). In addition, CWH claims it can have no liability for wine that went missing after the New Club took ownership on September 4, 2015.

13. According to CWH, the Rincons' demand letter to the New Club stating that many of the bottles identified as stolen had been observed as present at the Club in January 2016 is an admission against interest that bars any claims against CWH. Moreover, CWH claims, any theft that may have been committed by a Club employee before the sale would have been outside the course and scope of employment for which it bears no *respondeat superior* liability.

14. CWH also disputes the Rincons' claims that CWH charged them an excessive mark-up on the wines it sold them under the Wine Locker Agreements, challenging both their proof and damages methodology.

15. To the extent it may be held responsible for any missing bottles or excessive markups, CWH asserts entitlement to a \$100,000 settlement credit arising out of the New Club's

settlement agreement by which it provided the Rincons three non-equity golf memberships (a \$150,000 value) for the price of one (\$50,000).

16. Finally, CWH, TWLDC and HCC deny the Rincons' fraudulent-transfer claims on the grounds that, at the time the Club was sold, CWH had no knowledge of the Rincons' claims and, even if it did, CWH's remaining assets after the sale were not unreasonably small nor was there reason to believe it would incur debts beyond its ability to pay as they became due.

17. Rincon Claims. The Rincons contend the Club breached the Wine Locker Agreements in two ways, by (a) charging for their wine purchases in excess of the agreed 15% mark-up fee, and (b) failing to protect the Rincons' property by tracking and monitoring the bottles, making them ripe for theft. The Rincons claim they did not discover the former until Padilla testified at his March 5, 2018 deposition that the Club charged a 35% mark-up, and did not learn about the latter until 2016 when a Club employee advised them that only 86 bottles were left in their inventory.

18. According to the Rincons, they kept track of their inventory by reviewing their monthly statements and accompanying chits that showed corkage fees and corresponding descriptions of the wines that were consumed. Any failure by the Club to charge corkage fees, they allege, constituted a breach of contract, removed an agreed upon safeguard for inventory tracking, and concealed the removal of bottles from the Rincons' wine locker. The Rincons deny removing wine from the Club, and deny that they consumed wine at Club-hosted events held at the Club or their home other than what was reflected on the Club's Banquet Event Orders.

19. The Rincons also claim that CWH defrauded them as potential judgment creditors by fraudulently transferring funds to TWLDC and HCC in violation of Texas Business & Commerce Code Sections 24.005 and 24.006. As a result, the Rincons request that the funds

transferred to TWLDC and HCC be clawed back so that CWH has the assets to pay any potential award in its favor or, alternatively, that an award be entered jointly and severally against CWH, TWLDC and HCC up to the full amount of the \$25 million purchase price for the assets.

B. Reasons for the Award

20. Wine Locker Agreement. Although the Club disputes the existence of a signed Wine Locker Agreement with Jose, the evidence showed that the Club in fact purchased wine for Jose that it charged to his membership account, charged him the bi-annual Wine Locker Agreement fee, and maintained a separate inventory for his wine purchases. Accordingly, the Wine Locker Agreement's terms apply to the Club's handling of the wines that it purchased for Jose. Nor did the Wine Locker Agreements expire the year after they were signed, as the Club contends. The Agreements themselves contain no such limitation, and the Club continued to purchase wines on the Rincons' behalf, charge their membership accounts and inventory their wines, as the Agreements provided, well beyond the one-year mark. As a result, the Club remained bound by the Wine Locker Agreement obligations.

21. Excessive Mark-Up. The Wine Locker Agreement provided that the Rincons would be charged the Club's cost for the bottles it purchased on their behalf, plus fifteen percent (15%) (the mark-up) and applicable TABC tax. Because the Club was unable to produce receipts for its wine purchases, the Rincons rely on two sources to quantify their excessive mark-up claim: (a) the report of Kathleen Banach ("Banach"), with Enservio, their designated expert witness, and (b) Padilla, who testified that the Club's mark-up was 35%.

22. Utilizing 2018 prices, Banach's report contained detailed spreadsheets listing various retail sources used to determine the value of the wines at issue, with a "low value," "average value," "high value," and "auction value" provided for each bottle. No source

documents or screenshots of the materials reviewed and relied upon in creating the valuation charts were produced. The Arbitrator agrees with CWH that the Enservio methodology is flawed in a number of respects. The lack of source materials renders Banach's estimates unverifiable *ipse dixit*. Moreover, what the wines could be purchased for from various sources in 2018 is no evidence of what the Club purchased the wines for between 2010 and 2105. The Rincons' response—that the differential doesn't matter because wine values appreciate over time and thus mark-up calculations based on 2018 prices only work in the Club's favor—does not render the evidence any more probative or the methodology any less flawed. Jose testified that excess markup is difficult to detect and highly variable, depending on the wine's source, shipping and handling costs, and other factors. In sum, the Enservio report is insufficient to prove excessive mark-up.

23. Alternatively, the Rincons rely on the deposition of Padilla, in which he stated that the Club charged a 35% mark-up. However, Padilla's summary statement to this effect had no foundational support, nor did he purport to have first-hand knowledge of what the Rincons were actually charged by the Club. Though the Rincons pleaded that Padilla "was the person who marked-up the price of the wine sold to the Rincons" and that "[n]o one else was involved in purchasing the wine from outside the Club or marking it up," evidence was presented that Padilla supplied purchase invoices from the wine orders to the accounting department, and it was the accounting department that put together the charges, including any mark-ups and taxes, that were included in the Rincons' monthly statements. Moreover, Padilla left the Club's employment in September 2013, after which he had no foundational knowledge regarding markups on the wines. The Arbitrator does not consider Padilla's bare deposition statement

sufficiently supported to carry probative value that the Club charged a 35% mark-up on the wines purchased for the Rincons.

24. Breach of Contract. The Rincons contend the Club breached the Wine Locker Agreement by failing to provide a perpetual wine inventory for their wines as promised. According to the Rincons, the Club failed to implement adequate tracking measures or basic checks and balances to protect and monitor the wine. The Rincons posit that Padilla, alone or together with others, stole the missing bottles, and believe that the theft continued with or without Padilla's assistance after he left the Club's employment.

25. The Club offered various explanations for the removal of wines from the Rincons' inventory. It claims many bottles were consumed by the Rincons at the Club, and the reason there is no written record to that effect is that the Club, as a courtesy, waived the corkage fee. The Club also contends the Rincons consumed wines during private Club-catered events held on and off Club property, that they periodically picked up bottles and removed them from the Club, and that some of the bottles were taken to be given as bribes to foreign officials.

26. Though the evidence was conflicting on what happened to the Rincons' wines, the preponderance was insufficient to show that the bottles' removal from the Rincons' wine locker was more likely than not attributable to any of these causes. The Rincons strenuously denied removing wine from the Club, which all seven members of their current and past security detail credibly corroborated, and the testimony of Padilla and others (Alex Caridad, Ivan Paleo) to the contrary was not credible, was internally conflicting and/or was otherwise nonprobative. As for private events that the Rincons hosted at the Club or their home, the Club's Banquet Event Orders (which documented all food, Club wine, and locker wine served at the events) do not support the Club's claim that the Rincons' locker wines were served beyond those that were

recorded thereon. And the Club's claim that the Rincons removed their wines from the Club to use as bribes to foreign officials is no more than rank speculation. In sum, the evidence was insufficient to prove that the Rincons' wine disappeared as a result of theft by Club employees, or by the Rincons' consumption or removal of wine from the Club.

27. The evidence did establish that the Club is no longer in possession of the Rincons' missing bottles and, with insufficient evidence to explain why, the Arbitrator concludes that the Club breached the Agreement by failing to safeguard the Rincons' wines purchased through the Wine Locker Program and to adequately track the wines from purchase to consumption, as the proper maintenance of a perpetual inventory would entail. In addition, CWH's occasional waiver of corkage fees did not comport with the Agreement's terms and removed a potential safeguard that would allow wine-locker members to monitor their consumption through monthly statements.

28. Admission against interest. CWH claims the Rincons' May 25, 2016 demand letter stating that "many of the bottles stolen were observed as present at the Club in early January 2016," which was repeated in the suit filed in Dallas and purportedly acknowledged by the Rincons as true at the Hearing, constitutes an admission against interest that precludes their claim that CWH was responsible for their missing wines. The evidence showed that the statement was made after Jose had visited the Club, asked to see the Rincons' wine inventory, and was told that the vast majority of the collection was in the upstairs Eurocave, which was locked up and inaccessible because the person with the key was not present. Jose testified that he left with the impression that the Rincons' wines were intact and safe at the Club, and thus believed at the time that the wine theft must have occurred after CWH sold the Club. It was only

later that the Rincons learned that the majority of the missing wine bottles occurred prior to the sale.

29. CWH characterizes the statement as an “admission against interest,” which is an exception to the hearsay rule for purposes of admissibility. The evidence was admitted at the Hearing and the Arbitrator has given the statement the weight it is due. To the extent CWH may have intended to characterize the statement as a judicial admission, it does not meet the legal requirements for establishing a binding admission.

30. Bailment. For a bailment to occur, there must be (a) delivery of personal property to another in trust, (b) acceptance of such delivery, (c) a contract that the trust will be carried out, and (d) an understanding under the contract that the property will be returned to the transferor. *See Sisters of Charity of the Incarnate Word v. Meaux*, 122 S.W.3d 428 (Tex. App.—Beaumont 2003, pet. denied). “In a bailment, a rebuttable presumption of negligence arises upon proof that the property was . . . not returned because the party in possession or control of an article is in the best position to care for it.”” *Sears, Roebuck & Co. v. Wilson*, 963 S.W.2d 166, 168-70 (Tex. App.—Fort Worth 1998, no pet.). To avoid liability as a matter of law, a bailee must affirmatively prove the damage resulted from some other cause consistent with due care.

31. CWH denies the existence of a bailment with respect to its wine storage program. Instead, CWH claims, the Wine Locker Agreement was a contract for periodic purchases of wine to be delivered to the Rincons for consumption at variable delivery dates, which is not a bailment. According to CWH, the Rincons did not deliver any wine to the Club, as a bailment requires, but paid money to the Club, which in turn sold them wine and associated services; therefore, the Rincons’ claims sound in breach of contract, not bailment.

32. It is true that the purchase and pricing aspects of the wine program the Club describes were governed by the Wine Locker Agreement and sound in contract. But once the Club purchased the wines and the Rincons paid for them, they became the Rincons' property held in trust by the Club with the understanding that they would be returned to the Rincons for consumption. The evidence showed that the Club had exclusive control of all wine locker access, it was the Club's responsibility to track the wines from purchase to consumption, and wine locker members entrusted their wines to the Club for storage and safekeeping. The relationship between the parties in this regard is akin to that of a bailment or consignment in that the Rincons held ownership of the wines that CWH purchased on their behalf, and CWH had the obligation to account to the Rincons for their inventory.

33. The Cellar Tracker records show that hundreds of bottles of wine were recorded as removed from the Rincons' inventory during the Club's periodic true-ups. Because the wine locker program created a bailment relationship, the Club bore the affirmative burden to prove that the Rincons' wines were removed from their inventory as the result of a cause consistent with due care. That is, CWH bore the burden to demonstrate that the disappearances were attributable to some cause other than its own neglect, such as by the Rincons' consumption or receipt. As explained in ¶¶ 26—27, *supra*, whether the wine was removed by theft, accident or some other means, the Club failed to prove that its disappearance resulted from a cause consistent with due care. Accordingly, CWH's failure to secure, protect, and return the bottles of wine to the Rincons breached the bailment agreement.

34. Negligence. Because the Wine Locker Agreement described the Club's duties and responsibilities concerning the wine locker program, the Rincons' claims lie in breach of contract. Accordingly, the Rincons' negligence claims are denied.

35. Negligent hiring and supervision. For the reasons explained in ¶¶ 26—27, *supra*, the evidence was inconclusive and insufficient to show that the Rincons' wine disappeared from their wine lockers as a result of theft. Accordingly, the Rincons' claims for negligent hiring and supervision are denied.

36. Unjust Enrichment/Promissory Estoppel. Because the Wine Locker Agreement was an express contract, the Rincons' claims for unjust enrichment and promissory estoppel fail as a matter of law. *See Burlington N.R.R. v. Southwestern Elec. Power Co.*, 925 S.W.2d 92, 97 (Tex. 1988); *Subaru of America, Inc. v. David McDavid Nissan, Inc.*, 84 S.W.3d 212, 226 (Tex. 2002).

37. Conversion/Fraudulent Misrepresentation/DTPA. The evidence was insufficient to demonstrate that CWH converted the Rincons' property, made fraudulent representations in connection with the Wine Locker Program, or violated the Texas Deceptive Trade Practices Act.

38. Limitations. In general, a cause of action accrues, and limitations begin to run, “when a wrongful act causes some legal injury, even if the fact of injury is not discovered until later, and even if all resulting damages have not yet occurred.” *S.V. v. R.V.*, 933 S.W.2d 1, 4 (Tex. 1996). Accrual is deferred in cases of fraud or when the wrongdoing is fraudulently concealed, and in discovery rule cases when the alleged wrongful act and resulting injury were inherently undiscoverable and objectively verifiable at the time they occurred. *Id.*

39. The longest limitations period applicable to the Rincons' claims is four years. *See* TEX. CIV. PRAC. & REM. CODE § 16.004(a) (governing breach of contract). The Rincons' injury occurred each time a bottle they did not consume was removed from their wine locker inventory, which was recorded in their Cellar Tracker accounts during periodic true-ups. The Rincons first

filed suit claiming that their wines were stolen on August 16, 2016.¹ Four years prior to that date is August 16, 2012. Accordingly, the Rincons' claims for bottles that went missing from their wine locker inventory before the applicable limitations period are time barred unless the equitable tolling doctrines of the discovery rule or fraudulent concealment apply.

40. The discovery rule may be invoked when the alleged injury is of a type that is "inherently undiscoverable." *Wagner & Brown, Ltd. v. Horwood*, 58 S.W.3d 732, 734-35 (Tex. 2001). "An injury is inherently undiscoverable if it is, by its nature, unlikely to be discovered within the prescribed limitations period despite due diligence." *Id.* The Rincons exercised due diligence by keeping track of their wine inventory consumption through their monthly statements, the accuracy of which they had no reason to question. Padilla testified that when a discrepancy between the physical and electronic inventory was detected during the periodic true-ups, the Club conducted no investigation or inquiry. The Rincons were never notified of any discrepancies, true-ups, or large deletions of wine from their inventory, nor were the missing bottles reported on the Rincons' monthly statements. There is no documentation demonstrating consumption of the Rincons' wines other than as reflected on the chits contained in the monthly statements, which is what the Rincons reasonably relied on to monitor their inventory. All information regarding the missing wines was in the Club's possession and, with no notification by the Club of the inventory true-ups or discrepancies, the wines' disappearance was unlikely to be discovered within the prescribed limitations period despite the Rincons' due diligence in checking their monthly statements. Accordingly, the discovery rule applies to toll limitations on the Rincons' claims.

¹ Though Roberto's claims were first asserted some time later when this arbitration was filed, his claims relate back to those filed by his wife, Maria, who presumably held a community interest in the couple's wine inventory.

41. Fraudulent Transfer. On September 4, 2015, when CWH sold the Club and all of its assets to the New Club for \$25M, the sales proceeds were placed into escrow and wire transferred directly into the account of CWH's parent company, TWLDC, leaving CWH with a bank account balance of approximately \$255,000 based on its assessment of future outstanding commitments. Some eight months later, on May 12, 2016, TWLDC transferred \$25M to its parent company, HH. The transfer was in the form of a distribution because, according to HH, it had funded CWH's losses for years prior to the sale via capital contributions. In December 2016, CWH distributed the last funds in its account (approximately \$40,000) to TWLDC.

42. The Rincons claim the funds were fraudulently transferred to avoid payment of future potential creditors in violation of what is known as the "fraudulent transfer statute," which provides that:

(a) a transfer made or obligation incurred by a debtor is fraudulent as to a creditor, whether the creditor's claim arose before or within a reasonable time after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation:

(1) with actual intent to hinder, delay, or defraud any creditor of the debtor; or

(2) without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor:

a. was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or

b. intended to incur, or believed or reasonably should have believed that the debtor would incur, debts beyond the debtor's ability to pay as they became due.

TEX. BUS. COMM. CODE § 24.005. According to the Rincons, the statutory violation was twofold: (a) the transfers were made with actual intent to defraud CWH's creditors in violation of Section 24.005 (a)(1) and, (b) being in the form of a dividend or distribution, the transfers

were made without CWH's receipt of equivalent value in exchange in violation of Section 24.005 (a)(2). The Rincons also contend the transfer violated Section 24.006 of the Texas Business & Commerce Code, which provides that a transfer is fraudulent, irrespective of the transferor's intent, if the debtor makes the transfer without receiving reasonably equivalent value in exchange and the debtor was insolvent or became insolvent as a result of the transfer. TEX. BUS. COMM. CODE § 24.006.

43. When the funds were transferred by CWH to TWLDC in connection with the September 4, 2015 closing, neither CWH nor TWLDC knew of any claims by the Rincons. Thus, they could not have had actual intent to defraud the Rincons with the transfer.

44. When TWLDC made the May 12, 2016 distribution to HCC, the Rincons had notified the New Club's manager at the May 2, 2016 meeting that their wines were missing. Their allegations at the time, however, as reflected in their follow-up May 25, 2016 demand letter, were that the theft was "very recent" because the wines "were observed as present at the Club in early January 2016," when CWH was no longer the owner. This was insufficient to put TWLDC or HCC on notice of the Rincons' claims against CWH. Peter Riley, HCC's general counsel, testified that he first learned of the Rincons' claims in late May/early June 2016, when the New Club notified him that it would indemnify and defend CWH against any claims. It was not until August 16, 2016 that the Rincons directly brought claims against CWH by filing suit against CWH in Dallas District Court. The evidence was insufficient to show that either TWLDC or HCC made the May 12, 2016 transfer with actual intent to defraud the Rincons.

45. By December 2016, when CWH distributed the last funds in its account (approximately \$40,000) to TWLDC, it was aware of the Rincons' claims against CWH. But at that point, CWH was being indemnified and defended by the New Club, and it had put its

insurance carriers on notice of the Rincons' claims. With these protections in place, the evidence is insufficient to support a finding that the December 2016 final distribution was made with intent to defraud the Rincons.

46. The Rincons also claim that the above transfers violated Section 24.005 (a)(2) of the fraudulent transfer statute because they were in the form of a dividend or distribution for which CWH received no "reasonably equivalent value in exchange," leaving CWH with insufficient funds to satisfy potential future liabilities. To establish a Section 24.005 (a)(2) violation, the Rincons had to show that at the time of the transfer, the distributing party "(A) was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction," or "(B) intended to incur, or believed or reasonably should have believed that the debtor would incur, debts beyond the debtor's ability to pay as they became due." The evidence showed that, at the time of the September 4, 2015 transfer, CWH had indemnities from the New Club to cover post-closing liabilities, including suits by Members. It also had insurance policies to cover liabilities from pre-closing occurrences, and a bank account with approximately \$255,000. Those protections remained in place at the time of the May and December 2016 transfers. After the initial sale, CWH was no longer engaged in business or transactions other than winding down, and there was nothing to indicate it would incur debts beyond its ability to pay. Similarly, the evidence was insufficient to establish that CWH was either insolvent at the time of the transfers or became insolvent as a result, which is a required element for a Section 24.006 claim even if such a claim were viable in this context, which the Arbitrator need not decide. Accordingly, the Rincons' failed to prove that the disputed transfers were fraudulent when made.

47. Defamation, Defamation *Per Se*, Business Disparagement: CWH complains that Jose's oral complaint to Club management raising theft as a potential reason for the alleged missing bottles, and the Rincon attorney's subsequent demand letter raising the issue of theft, constitute defamation, defamation *per se* and business disparagement, for which it seeks to recover nominal damages.

48. When Jose complained about the missing bottles in his meeting with Club management, he was accompanied by his attorney in contemplation of potential legal action. The subsequent demand letter from counsel was in contemplation of litigation as well. Accordingly, the statements upon which CWH's defamation, defamation *per se* and business disparagement claims are based are protected by the litigation privilege and are not actionable. *See, e.g., Shell Oil Co. v. Writt*, 464 S.W.3d 656 (Tex. 2015); *Watson v. Kaminski*, 51 S.W.3d 825 (Tex.App.—Houston [1st Dist.] 2001, no pet.).

49. Damages. CWH having breached the Agreement by failing to safeguard the Rincons' wines purchased through the Wine Locker Program and adequately track the wines from purchase to consumption, the Rincons are entitled to recover direct damages for their loss. There was a total of 207 bottles, valued at \$306,320, missing from Roberto and Maria's inventory. Of those, Cellar Tracker noted 26 bottles, valued at \$8,295, as missing after the Club was sold on September 4, 2015, for which CWH was no longer responsible, leaving a value for the 180 bottles that went missing on CWH's watch of \$298,025. There was a total of 23 bottles missing from Jose's inventory, valued at \$18,240. Accordingly, Roberto and Maria may recover \$298,025 for their loss, and Jose may recover \$18,249 for his.

50. Settlement Credit. CWH asserts entitlement to a \$100,000 settlement credit arising out of the New Club's ("CWO's") settlement agreement with the Rincons, by which it

provided the Rincons three non-equity golf memberships (a \$150,000 value) for the price of one (\$50,000). *See* TEX. CIV. PRAC. & REM. CODE §§ 33.011, 33.012(b). The Rincons contest CWH's right to a settlement credit, contending that (a) the claims against CWH and CWO are distinguishable based on time period, and (b) the Rincons did not receive \$100,000 worth of benefit from their CWO settlement.

51. The Rincons' attempt to distinguish the claims based on time period finds no support in the settlement credit statute. However, CWH is entitled to no more credit than that which the Rincons actually received. Maria and Roberto claim they originally paid a \$95,000 refundable deposit for their membership, which their settlement with the Club allowed the Club to retain. The Rincons paid an additional \$50,000 in connection with the settlement, for a total of \$145,000 that the Rincons paid in exchange for the three non-equity golf memberships valued at \$150,000. CWH has not contested these calculations, leaving a net dollar-for-dollar value of the settlement to the Rincons of \$5,000. Though the Rincons contend the value of the settlement was far less due to restrictions placed on Roberto's use of the Club, the Arbitrator declines to factor such intangibles as the statute speaks in terms of "the sum of the dollar amounts of the settlement." Accordingly, CWH is entitled to a \$5,000 settlement credit against Roberto and Maria's recovery, for a total recovery of \$293,025.

III. Attorneys' Fees and Costs

52. Basis for award. As a threshold matter, CWH claims the Rincons may not recover attorneys' fees against it because there is no statutory basis for recovery of breach-of-contract/bailment attorneys' fees against an LLC, and there is no contract between CWH and the Rincons that would otherwise support such an award.

53. Texas law follows what is known as “the American Rule,” which does not allow recovery of attorneys’ fees unless authorized by statute or contract. *See Tony Gullo Motors I, L.P. v. Chapa*, 212 S.W.3d 299, 311 (Tex. 2006). As a matter of law, the Rincons may not recover attorneys’ fees against CWH, a Limited Liability Company, for their breach-of-contract claim based on Section 38.001 of the Texas Civil Practice and Remedies Code. *See Alta Mesa Holdings, L.P. v. Ives*, 488 S.W.3d 438, 452-53 (Tex.App.—Houston [14th Dist.] 2016, pet. denied)(holding attorneys’ fees are not recoverable against an LLC under TCPRC § 38.001); *see also* Arbitrator Order No. 10, dated December 27, 2018 (ordering the Rincons “to amend their pleading to remove their claim for attorneys’ fees against [CWH] based on Section 38.001 of the Civil Practice and Remedies Code.”). Neither may a fee award be based on the bailment claim on which the Rincons prevailed, which sounds in contract. *See Carter v. Flowers*, No. 02-10-00226-CV, 2011 Tex.App. LEXIS 7829, *3 (Tex.App.—Fort Worth 2011).

54. The Texas Declaratory Judgments Act, however, provides an independent statutory basis for a fee award in the Rincons’ favor. TEX. CIV. PRAC. & REM. CODE § 37.004(a). CWH sought extensive determinations of “its rights, status, and legal relations pursuant to a contract or other writings constituting a contract, namely the Wine Storage Agreement and related Membership Agreement, Plan and Bylaws.” *See, e.g.*, CWH Fourth Amended Statement of Claim, III. In a declaratory judgment action, reasonable and necessary fees may be awarded “as are equitable and just.” *Ridge Oil Co., Inc. v. Guinn Invs., Inc.*, 148 S.W.3d 143, 161 (Tex. 2004); TEX. CIV. PRAC. & REM. CODE § 37.009 (“In any proceeding under this chapter, the court may award costs and reasonable and necessary attorney’s fees as are equitable and just.”). Moreover, either party to a declaratory judgment action—the party bringing the claim or the party defending against it—may be awarded attorneys’ fees. *Barshop v. Medina County*

Underground Water Dist., 925 S.W.2d 618, 637-38 (Tex. 1996); *Devon Energy Prod. Co. v. KCS Res.*, 450 S.W.3d 203, 218 (Tex.App.—Houston [14th Dist.] 2013, no pet.) (“[A] party defending a suit under the UDJA may be awarded its reasonable and necessary attorney’s fees.”). The claims on which the Rincons prevailed were, in large part, inextricably intertwined with the Rincons’ defense of, and their ability to prevail upon, the declarative rights that formed the basis of CWH’s UDJA claims. Accordingly, the Rincons are entitled to recover reasonable and necessary attorney’s fees as are equitable and just.²

55. Segregation. The Rincons request an award of attorneys’ fees and expenses in the amount of \$873,302, as supported by the Declaration of Gary J. Siller with detailed invoices attached (the “Siller Affidavit”). According to Mr. Siller, this represents the net amount of fees and expenses incurred after segregating and deducting \$62,315.25 attributable to the claims the Rincons settled or on which they did not prevail, *i.e.* the refund claim for the Rincons’ membership deposit, the claim for excessive markup of the locker wines, and the fraudulent transfer claims. Though the fee and expense recovery the Rincons seek exceeds the damages awarded, Mr. Siller explains that a large amount of legal work and expense was required for the primary claim on which it prevailed—recovery of the value of the Rincons’ missing wines—due to the Club’s conduct including, *inter alia*, its (a) insistence that the Rincons had consumed or removed the wines themselves, which required considerable time and effort to refute, (b) lack of adequate record keeping, which required an “exorbitant amount of time” to identify what wines were missing, (c) “disjointed, inconsistent, and vague” monthly statements that necessitated extensive research, and (d) use of Cellar Tracker as an inventory system that could not be relied upon. Moreover, Mr. Siller claims, in order to prevail the Rincons were required to defeat

² Because a statutory basis exists for a fee award, whether the New Club’s Amended and Restated Membership Plan and Bylaws provides an independent basis for such an award is immaterial.

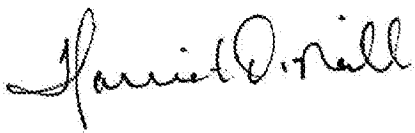
CWH's myriad defenses and declaratory requests, which were inextricably intertwined with the Rincons' primary claims.

56. CWH contends the Rincons have failed to meet their burden to appropriately segregate their attorneys' fees. Specifically, CWH points to what it argues is unsegregated or split work related to (a) various claims against the New Club and related settlement, (b) researching and drafting of pleadings that contained unsuccessful claims, (c) discovery and related motions pertaining to the unsuccessful negligent-hiring claim, (d) the unsuccessful DTPA, Texas Theft Act, Affirmative Defenses, or claims for which fee recovery is not allowed, (e) the Rincons' own insurance claims with Chubb, (f) potential claims against the New Club's Board of Directors, (g) the unsuccessful excessive-markup claim, including related motions and work with expert witnesses, (h) unsegregated time for general trial preparation, including pre- and post-hearing briefing, exhibit preparation, and work related to the hearing, (i) the unsuccessful fraudulent-transfer claim, (j) the statute of limitations, and (k) charges for non-legal/purely administrative work. Finally, CWH argues that Mr. Siller did not sufficiently prove up the billing attorneys' and paralegals' qualifications such that the reasonableness of their hourly rates can be assessed.

57. As the party seeking recovery, it is the Rincons' burden to segregate their attorneys' fees between claims for which such fees are recoverable and those for which they are not. *See Tony Gullo Motors I, LP v. Chapa*, 212 S.W.3d 299 (Tex. 2006). After carefully reviewing the Siller Affidavit and detailed underlying invoices, including CWH's notations on those invoices, and considering the extent to which the successful and unsuccessful claims were, in significant part, inextricably intertwined, and factoring the nature and extent of the declarative relief that CWH sought and the Rincons had to defend, the Arbitrator agrees that the reductions

the Rincons applied do not adequately reflect the amount of fees attributable to non-recoverable claims. A significant portion of the pleadings, discovery, motions practice, pre- and post-hearing briefing, and the arbitration hearing was focused on proving excessive mark-up of the locker wines, theft of the wines by Padilla from which the negligent-hiring claim at least partly arose, and fraudulent transfer of the CWH sales proceeds to the New Club's parent companies—claims on which the Rincons did not prevail. Having reviewed the detailed invoices submitted, and taking notice of the course of the proceedings and the discounts the Siller Affidavit has already factored, the Arbitrator concludes that an additional 15% across-the-board reduction more closely approximates the work attributable to the non-recoverable claims. Applying this reduction results in a reasonable and necessary, equitable and just, award of \$742,306.70. Taking notice of the fees customarily charged in Harris County for similar legal services and the Clark Hill law firm's experience, reputation and ability, CWH's challenge regarding the billing attorneys' and paralegals' qualifications is denied.

This Final Award, which incorporates the Interim Award and Amended Interim Award, is in full settlement of all claims submitted in this arbitration. All claims not expressly granted are hereby denied.



Hon. Harriet O'Neill, Arbitrator

Date: November 17, 2021

Exhibit 1

In the 164th
Judicial District Court of
Harris County, Texas

Texas law is well established that judgment creditors of an insured—like the Rincons here—have a right to stand in the shoes of the insured to enforce the insured’s liability insurance coverage. In this case, CWH’s all-risk policies with Defendants expressly cover CWH’s *liability* for negligently bailing the Rincons’ personal property. The policies do not merely cover CWH’s *own* property.

The Rincons also have standing as third-party beneficiaries because the policies expressly cover their “personal property” in CWH’s “care, custody, or control” or which CWH is “responsible for.” Other policy terms also demonstrate an intent to benefit the Rincons and other third parties whose personal property was bailed to CWH. Many Texas courts have found that the bailor whose property is covered has standing to enforce the coverage as a third-party beneficiary in such cases.

Because the Rincons are beneficiaries of the policies, they are owed a duty of good faith and fair dealing by Defendants, and they may sue for breach of that duty and for Defendants’ unfair or deceptive insurance practices under Chapter 541 of the Texas Insurance Code.

The Rincons thus seek payment of the judgment, plus other damages, from Defendants.

II. The Parties

The Rincons are individuals who reside in The Woodlands, Texas.

Defendant ACE American Insurance Company is a foreign corporation. It has appeared through counsel.

Defendant Allied World Insurance Company is a foreign corporation. It has appeared through counsel.

Defendant Aspen Specialty Insurance Company is a foreign corporation. It has appeared through counsel.

Defendant Chubb Custom Insurance Company is a foreign corporation. It has appeared through counsel.

Defendant Ironshore Specialty Insurance Company is a foreign corporation. It has appeared through counsel.

Defendant Lexington Insurance Company is a foreign corporation. It has appeared through counsel.

Defendant United Specialty Insurance Company is a foreign corporation with its principal place of business in Tarrant County, Texas. It has appeared through counsel.

III. Monetary Relief Sought

The Rincons seek monetary relief of \$1,110,411.70 plus the included judgment interest, treble damages up to three times this amount, attorneys' fees, costs, and pre- and post-judgment interest.

IV. Jurisdiction and Venue

This Court has specific personal jurisdiction over Defendants because they insured CWH in Texas and improperly denied coverage in Texas. This Court has general personal jurisdiction over United Specialty Insurance Company because it has its principal place of business in Texas and is thus "at home" there.

Venue is proper under Texas Civil Practice & Remedies Code § 15.002(a)(1) because the underlying arbitration occurred in Harris County, the final judgment was entered against CWH in Harris County, and coverage was improperly denied in Harris County.

V. Factual Background

A final judgment is entered against CWH in favor of the Rincons.

The Rincons were members of The Club at Carlton Woods (“Club”), which was owned and operated by CWH at the time of the underlying events in question. They maintained several wine lockers at the Club under two identical wine locker agreements. The Rincons kept hundreds of bottles of wine valued at hundreds of thousands of dollars in their wine lockers to enjoy when they visited the Club. After learning that hundreds of expensive bottles of wine went missing between 2013 and 2015, the Rincons sued CWH for damages under various legal theories.

The suit, which the Rincons brought in 2016, ended up in arbitration before the American Arbitration Association. The parties agreed to the appointment of former Texas Supreme Court Justice, Harriett O’Neill, as the arbitrator. CWH and its parent company, The Howard Hughes Corporation, were well represented in the arbitration by their chosen counsel, James H. Stilwell of Stilwell, Earl & Apostolakis LLP. During a three-day final hearing, Justice O’Neill heard witness testimony and considered documentary evidence. After the final hearing, both sides submitted post-final-hearing briefs on the legal and factual issues before the Arbitrator.

Justice O'Neill issued an exhaustive 28-page reasoned final award in which she found for the Rincons on their claims for breach of the wine locker agreements and bailment. She awarded the Rincons \$311,265 in actual damages (\$293,025 to Maria and Roberto Rincon, and \$18,240 to Jose Rincon), plus pre- and post-judgment interest at the legal rate, \$742,306.70 in attorneys' fees and litigation expenses, and \$56,840 in arbitration-related expenses. The award totaled \$1,110,411.70, exclusive of interest. A Harris County District Court confirmed the award.

**All-risk insurance policies insured by the Defendants
cover the damages awarded to the Rincons.**

When the wine was lost between 2013 and 2015, Defendants insured CWH under multiple all-risk insurance policies that cover the damages awarded against it. The policies include:

2013-2014 policy period

- ACE American Insurance Company Policy No. CXD 37838937002
- Allied World Insurance Company Policy No. 0308-2699-1A
- Aspen Specialty Insurance Company Policy No. PRA8YPM13
- Ironshore Specialty Insurance Company Policy No. 001203801
- Lexington Insurance Company Policy No. 038421982

2014-2015 policy period

- ACE American Insurance Company Policy No. CXD 37838937 003
- Allied World Insurance Company Policy No. 0308-2699-1A
- Lexington Insurance Company Policy No. 021469162

2015-2016 policy period

- Allied World Insurance Company Policy No. 0308-2699-1A
- Chubb Custom Insurance Company Policy No. 36015451
- Lexington Insurance Company Policy No. 021469162

- Lexington Insurance Company Policy No. LEX 08429940800
- United Specialty Insurance Company Policy No. USI 1547800

The policies all define the “Insured” as “The Howard Hughes Corporation and its affiliates, subsidiary, and associated companies and/or corporations and the insured’s interest in partnerships and joint ventures as now exist or may hereafter be constituted or acquired and any party in interest which the insured is responsible to insure.” As a subsidiary or affiliate of The Howard Hughes Corporation, CWH easily qualifies as an “Insured.”

As “all-risk” policies, the policies cover “all risk of physical loss of or damage to property” unless expressly excluded. No policy exclusions apply to the Rincons’ claims in this case.

In fact, the 2013-2014 policies expressly cover “(1) The interest of the Insured in real and personal property *of others* in the Insured’s care, custody, or control” and “(3) Real and Personal Property *which the Insured is responsible for....*” They go on to expressly insure against “*all risk of physical loss of or damage to property described herein ... except as hereinafter excluded*”—and no exclusion applies.

The 2014-2015 and 2015-2016 policies are much the same. They expressly cover “the interest of the Insured in [sic] following: ... property *of others* in the Insured’s care, custody or control”—“*including the Insured’s liability for such property and including the costs to defend any allegations of liability for loss or damage to such property....*” They also insure against “*all risk of direct physical loss or damage occurring during the Policy Term to property ... except as hereinafter excluded*”; and explain that “the basis of adjustment shall be ... [for] property of

others in the Insured's care, custody or control: ... 1. the replacement cost new 2. the amount stipulated in the lease agreement 3. *Insured's contractual or legal liability* 4. the cost to repair."

All the policies from all of the policy years provide \$1,000,000 worth of "Bailee Coverage" per occurrence. The ACE American Insurance Company policy from the 2013-2014 policy year also includes an express "Bailee Coverage Endorsement" that covers:

The interest of the Insured in real and personal property of others in the Insured's care, custody, or control *where the Insured has a Bailee exposure*. However, this policy shall respond to damage caused by a peril not otherwise excluded to real and personal property of others only after all other insurance has been exhausted, unless it has been determined that the Insured was *negligent and liable for damage* to real and personal property of others.

All the policies from all of the policy years also expressly cover "the costs and fees to defend any *claim or suit against the Insured ... alleging physical loss ... as insured against to property of others in the care, custody or control of the Insured to the extent of the Insured's liability therefore* [sic]..." There would be no need for these provisions unless the policies covered CWH's *liability* for negligently bailing the property of others, not just the risk of loss of CWH's *own* property.

A summary of the key insurance provisions is attached as Exhibit 1. The policies themselves are attached as Exhibits 1-A through 1-L.

**The Defendants wrongfully deny coverage for
the damages awarded to the Rincons.**

The Rincons' hard-fought victory in arbitration kicked off a protracted effort to collect the judgment—first, CWH sold off its only asset, the Club, and is now essentially just a shell company, then Defendants stonewalled.

After Justice O'Neill issued the final award, CWH made a claim to the Defendants through its broker, Lockton. Before bringing this suit, the Rincons likewise sent multiple demand letters to Defendants asking them to pay the final judgment entered against CWH.

Defendants' counsel sent a coverage-denial letter to the Rincons outlining various excuses for their non-coverage decision. The excuses included such things as: (1) the Rincons do not have "third-party beneficiary" status to enforce the insurance policies; (2) the "late notice" provisions in the policies preclude coverage because Defendants did not receive notice of the subject losses until after the arbitration award was rendered; (3) an exclusion having to do with "fraudulent or dishonest ... acts committed by the Insured or any of the Insured's employees" precludes coverage for the subject loss; and (4) the policies do not cover the attorneys' fees awarded to the Rincons because coverage for "defense costs" under the policies is limited to the *insureds'* defense costs. None of these excuses is valid.

For example, despite what Defendants claim, the Rincons *do* have standing to enforce and seek declaratory judgment under the insurance policies in question, either as judgment creditors of Defendants' insured, CWH, or as legally intended third-party beneficiaries of the policies. As judgment creditors, the law allows them

to stand in the shoes of CWH to enforce its coverage for its liability owed to the Rincons.

On top of having standing to enforce the liability coverage afforded by Defendants' insurance policies as judgment creditors of CWH, the Rincons have standing as legally intended third-party creditor beneficiaries of the policies. For this additional, independent reason, the Rincons may enforce the policies against Defendants.

The law is well established that late notice will not preclude coverage when there is no prejudice to the insurer. Here, Defendants suffered no prejudice because CWH was vigorously defended in the underlying arbitration proceeding by the licensed attorneys of its choice.

The "fraudulent or dishonest acts" exclusion that Defendants have invoked does not apply. Justice O'Neill expressly declined to find that the Club or its employees stole or converted the Rincons' property, made fraudulent representations in connection with the wine-locker program, or violated the DTPA. Instead, she found that CWH was liable for bailment because the Club failed to prove that the disappearance of the Rincons' wine resulted from a cause consistent with its due care:

[W]hether the wine was removed by theft, accident or some other means, the Club failed to prove that its disappearance resulted from a cause consistent with due care.

Award ¶ 33. Justice O'Neill's findings on the Rincons' bailment cause of action fall squarely within the scope of the various "Bailee Coverage" provisions of the policies.

Finally, despite what Defendants says, the policies *do* cover the full extent of damages awarded against CWH, including the Rincons' attorneys' fees and costs. Again, the policies are "all-risk" policies that provide coverage for "*all risk* of physical loss of or damage" to the property of others unless expressly excluded. Nothing in the policies excludes coverage for the attorneys' fees and costs awarded against CWH in connection with its bailment of the Rincons' wine.

In fact, the 2015-2016 policies specifically state that the "basis of adjustment" for the "property of others in the Insured's care, custody or control" "shall be" the "Insured's contractual or *legal liability*." And the ACE American Insurance Company policy from the 2013-2014 policy year includes an express "Bailee Coverage Endorsement" that covers the Insured's full "bailee exposure," which would include *all* amounts awarded against CWH in favor of the Rincons, whether damages, attorneys' fees, interest, or costs.

VI. Causes of Action

For purposes of each of their causes of action, the Rincons, as judgment creditors of CWH, stand in the shoes of the insured and have a right to enforce the policies against Defendants, along with CWH's rights under the policies and Texas law. Alternatively, the Rincons have standing to assert their causes of action as legally intended third-party beneficiaries under the subject insurance policies.

Count 1: Breach of Contract

The insurance policies insured by Defendants are valid and enforceable contracts between CWH and Defendants. Defendants breached the policies by

failing to provide coverage in accord with their terms. Defendants' breaches of contract have proximately caused the Rincons to suffer damages in the amount of the judgment awarded to them against CWH.

Count 2: Breach of the Duty of Good Faith and Fair Dealing (i.e., "Bad Faith")

There are valid insurance contracts between CWH and Defendants, which give rise to a duty of good faith and fair dealing on the part of Defendants. CWH or The Howard Hughes Corporation paid substantial insurance premiums for the privilege of having insurance coverage for bailment and other risks. Defendants breached their duty when they denied payment of policy benefits even though liability was reasonably clear. Defendants were obligated to adequately investigate CWH's and the Rincons' claims for payment of the judgment entered against CWH but failed to do so. Had Defendants adequately investigated, they would have known (or should have known) that their coverage of the claims and obligation to pay were reasonably clear because the all-risk policies provide broad coverage and no exclusions apply. Defendants' breaches proximately caused the Rincons damages because their judgment against CWH remains unpaid.

Count 3: Unfair or Deceptive Insurance Practices

Defendants knowingly engaged in prohibited "unfair" or "deceptive" insurance practices. These prohibited practices include:

- a. "[F]ailing to attempt in good faith to effectuate a prompt, fair, and equitable settlement of . . . a claim with respect to which the insurer's liability has become reasonably clear";
- b. "[F]ailing to promptly provide to a policyholder a reasonable explanation of the basis in the policy, in relation to the facts or

applicable law, for the insurer's denial of a claim or offer of a compromise settlement of a claim"; and

- c. "[R]efusing to pay a claim without conducting a reasonable investigation with respect to the claim."

TEX. INS. CODE §§ 541.060(a)(2), (3), (7); see also *id.* § 541.003.

Defendants' acts or practices were a producing cause of damages to the Rincons because their judgment against CWH remains unpaid. As a result, the Rincons have a right to recover their actual damages, treble damages of up to three times their actual damages, attorneys' fees, and court costs. See TEX. INS. CODE §§ 541.151, 541.152.

Count 4: Declaratory Judgment

The subject insurance policies provide coverage for the final judgment entered against CWH in favor of the Rincons. Defendants wrongfully denied coverage based on various excuses outlined above.

The Rincons seek a declaratory judgment that each of the policies provides coverage to CWH for the judgment entered against it in favor of the Rincons; that none of the policy exclusions apply; that the policies cover the actual damages, interest, attorneys' fees, and costs awarded to the Rincons; and that CWH's failure to notify Defendants of the loss did not prejudice them and thus does not excuse their obligation to pay.

The Rincons seek a declaration that they have standing and capacity to seek insurance benefits, either as judgment creditors of CWH or as legally intended third-party creditor beneficiaries under the subject policies.

The Rincons also seek a declaration that CWH is entitled to recover

insurance proceeds from Defendants for its own defense costs incurred in the underlying arbitration and confirmation actions.

VII. Attorneys' Fees

The Rincons are entitled to an award of their reasonable and necessary attorneys' fees incurred in pursuing this action under:

- Texas Civil Practice & Remedies Code § 38.001, *et seq.* for breach of contract.
- Texas Insurance Code § 541.152 for unfair or deceptive insurance practices.
- Texas Civil Practice & Remedies Code § 37.009 for declaratory judgment.

VIII. Conditions Precedent

All conditions precedent to the Rincons' claims have occurred or have been performed.

IX. Prayer

The Rincons pray for judgment against Defendants as set forth above and as follows:

1. For payment of the judgment entered against CWH in favor of the Rincons;
2. For treble damages because of Defendants' knowingly engaging in unfair or deceptive insurance practices;
3. For pre- and post-judgment interest at the applicable legal rate;
4. For reasonable and necessary attorneys' fees; and
5. For such other relief as the Court deems just and proper.

Dated: May 30, 2023

Respectfully submitted,

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Certificate of Service

This document was served on all counsel of record via the Court's electronic filing system on this 30th day of May, 2023.

/s/ Zachary W. Thomas

Zachary W. Thomas

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loss payees, or third-party beneficiaries of the Policies—commercial property policies providing a benefit only to the Insured.

To qualify as third-party beneficiaries, Plaintiff would have to prove—and bear the burden of proving—that the Policies clearly intend to benefit Plaintiffs and vest Plaintiffs with a legal right to sue for enforcement of the Policies. They do not. Reviewing the Policies as a whole, it is indisputable that they do not contain language suggesting an intent to confer a direct benefit on Plaintiffs or giving Plaintiffs a right to enforce the Policies. Plaintiffs’ alleged status as “judgment creditors” of an insured does not salvage their claims nor does the fact that the Policies provide liability coverage **to CWH**. Plaintiffs would only have the right to bring suit arising from CWH’s liability if the Policies were **third-party** liability policies providing enforcement rights to third parties. They are not. Instead, the Policies provide liability coverage to the named insureds and the named insureds only. Likewise, the fact that the Policies provide coverage **to CWH** for property of others in CWH’s care, custody, or control does not give Plaintiffs any rights under the Policy or the right to sue. Quite simply, Plaintiffs cannot establish the existence of a contract between them and Lexington or the right to enforce the Policies. Contractual liability is a prerequisite to Plaintiffs’ extracontractual claims and such claims are not viable against the insurers. Plaintiffs’ claims have no basis in law or fact and must be dismissed.

II. BACKGROUND

Lexington issued commercial property insurance policy No. 038421982 for policy period April 1, 2013 to April 1, 2014 and policy No. 021469162 for policy periods April 1, 2014 to April 1, 2015 and April 1, 2015 to April 1, 2016 to named insured The Howard Hughes Corporation (the “Policies”). *See* Lexington’s Original Answer (Lex Ans.), Exhibits 1-3

(LEX001-196); *see also* Second Am. Pet., Exhibit 1-E.² The Howard Hughes Corporation (“HHC”) is the named insured under each policy with coverage extending to HHC and its “affiliated, subsidiary, and associated companies and/or corporations and the Insured’s interest in partnerships and joint ventures as now exist or may hereafter be constituted or acquired and any party in interest which the insured is responsible to insure.” *See* Lex Ans., Exhibit 1 at LEX002, 012; Exhibit 2 at LEX076, 093; Exhibit 3 at LEX143, 145; *see also* Second Am. Pet., p.6.

While Plaintiffs allege that CWH is an insured under the Policies, Plaintiffs admittedly are neither named insureds nor listed as additional insureds in any of the Policies or the endorsements. *See* Second Am. Pet. p. 2, 6; *see also* Lex. Ans., Exhibits 1-3. Instead, Plaintiffs claim that as judgment creditors of CWH they “stand in the shoes of CWH to enforce its coverage[.]” Second Am. Pet., p. 8-9. Plaintiffs also claim that they are third-party beneficiaries because the Policies provide “bailee coverage” to CWH and because the Policies provide coverage for the property of others in the Insured’s care, custody, or control. Second Am. Pet., p. 2, 10. Plaintiffs’ allegations are incorrect as a matter of law. Because Plaintiffs cannot establish that they are party to any contract with Lexington, their claims have no basis in law or fact and must be dismissed.

² In ruling on a Rule 91a motion, the “court looks only to the ‘pleading of the cause of action, together with any pleading exhibits.’” *In re Farmers Tex. Cnty. Mut. Ins. Co.*, 604 S.W.3d 421, 425 (Tex. App.—San Antonio 2019, no pet.) (*citing* Tex. R. Civ. P. 91a.16); *Malik v. GEICO Advantage Ins. Co., Inc.*, No. 01-19-00489-CV, 2021 WL 1414275 (Tex. App.—Houston [1st Dist.] Apr. 15, 2021, pet. denied) (A trial court “must decide the motion based solely on the pleading of the cause of action, together with any pleading exhibits permitted by Rule 59.”) (emphasis added). Rule 59 permits a party to attach to its pleading or answer “[n]otes, accounts, bonds, mortgages, records, and all other written instruments, constituting, in whole or in part, the claim sued on, or the matter set up in defense[.]” Tex. R. Civ. P. 59. Lexington referred to and attached copies of the Policies in its Answer. Accordingly, the Policies “are deemed a part thereof for all purposes” and are properly considered in ruling on this Motion to Dismiss. *See Envision Realty Group, LLC v. Chuan Chen*, No. 05-18-00613-CV, 2020 WL 1060698, *3 (Tex. App.—Dallas Mar. 5, 2020, no pet.).

III. ARGUMENT AND AUTHORITIES

A. Standard regarding Rule 91a motions.

Rule 91a requires dismissal of any cause of action lacking a basis in law or fact. “A cause of action has no basis in law if the allegations, taken as true, together with inferences reasonably drawn from them, do not entitle the claimant to the relief sought.” Tex. R. Civ. P. 91a.1. “Courts have concluded that a cause of action has no basis in law under Rule 91a in at least two situations. In the first situation, the petition alleges too few facts to demonstrate a viable, legally cognizable right to relief. In the second situation, the petition alleges additional facts that, if true, bar recovery. In short, the plaintiff must plead sufficient facts to supply a legal basis for his claim but not so much that he affirmatively negates his right to relief. *Guillory v. Seaton, LLC*, 470 S.W.3d 237, 240 (Tex. App.—Houston [1st Dist.] 2015, pet. denied). “Though Rule 91a is not identical to Federal Rule of Civil Procedure 12(b)(6), several Texas Courts of Appeals have interpreted Rule 91a as essentially calling for a Rule 12(b)(6)-type analysis and have relied on case law interpreting Rule 12(b)(6) in applying Rule 91a.” *In re Butt*, 495 S.W.3d 455, 461 (Tex. App.—Corpus Christi–Edinburg 2016, no pet.)

“The elements of a breach-of-contract action are (1) the existence of a valid contract, (2) performance or tendered performance by the plaintiff, (3) breach of the contract by the defendant, and (4) damages sustained by the plaintiff as a result of the breach.” *See Mays v. Pierce*, 203 S.W.3d 564, 575 (Tex. App.—Houston [14th Dist.] 2006, pet. denied). “A plaintiff bears the burden of proving a valid, enforceable contract between him and the defendant.” *Burns v. White*, No. 14-20-00646-CV, 2022 WL 2311621, *6 (Tex. App.—Houston [14th Dist.] June 28, 2022, no pet.). Dismissal of a breach of contract claim is appropriate under Rule 91a when “no contract exist[s] between the parties” because the “breach of contract claim ha[s] no basis in law or fact[.]” *Id.* at *7 (affirming dismissal of a breach of contract claim under Rule 91a).

Contractual liability is a prerequisite for Plaintiff's claims for Breach of the Duty of Good Faith and Fair Dealing (Count 2) and Unfair or Deceptive Insurance Practices (Count 3). Plaintiffs are not named insureds, assignees, loss payees, or third-party beneficiaries of the Policies. Because Plaintiffs cannot establish any of the elements required to bring a breach of contract claim, their claim has no basis in law or fact. And because contractual liability is a prerequisite to each of Plaintiffs' extracontractual claims, those claims likewise fail.

B. Plaintiffs are strangers to the Policies.

"[P]rivacy is established by proving that the defendant was a party to an enforceable contract with either the plaintiff or a party who assigned its cause of action to the plaintiff." *OAIC Commercial Assets, L.L.C. v. Stonegate Vill., L.P.*, 234 S.W.3d 726, 738 (Tex. App.—Dallas 2007, pet. denied) (quoting *Redmon v. Griffith*, 202 S.W.3d 225, 239 (Tex. App.—Tyler 2006, pet. denied)). "Generally, a property-insurance policy is a personal contract between the insured and the insurer." *Ostrovitz & Gwinn, LLC v. First Specialty Ins. Co.*, 393 S.W.3d 379, 387 (Tex. App.—Dallas 2012, no pet.). Here, the Policies are commercial property insurance policies providing coverage for direct physical loss or damage to the named insured. *See* Lex Ans., Exhibit 1 at LEX002; Exhibit 2 at LEX076; Exhibit 3 at LEX143. The Policies define the "Insured" as "The Howard Hughes Corporation and its affiliated, subsidiary, and associated companies and/or corporations and the Insured's interest in partnerships and joint ventures as now exist or may hereafter be constituted or acquired and any party in interest which the insured is responsible to insure." *See* Lex Ans., Exhibit 1 at LEX002, 012; Exhibit 2 at LEX076, 093; Exhibit 3 at LEX143, 145. Plaintiffs do not qualify as "insureds" nor do Plaintiffs allege that they are named insureds, additional insureds, or loss payees under the Policies. On the contrary, Plaintiffs admit they are not insureds. *See* Am. Pet, p. 2, 6. Likewise, Plaintiffs have not pleaded

nor introduced any evidence of an assignment from HHC or CWH. *See generally id.* Accordingly, no privity of contract exists between Plaintiffs and Lexington.

C. Plaintiffs are not third-party beneficiaries to the Policies.

“Under Texas law, ‘a stranger to the policy generally cannot maintain a suit on the policy.’ *See Cable Comm’ns Network, Inc. v. Aetna Cas. & Sur. Co.*, 838 S.W.2d 947, 950 (Tex. App.—Houston [14th Dist.] 1992, no writ). ‘It is bedrock Texas law that a third-party to a contract may only recover on a contract if the contracting parties intended to secure some benefit to that third party and entered into the contract directly for the third party’s benefit.’ *Baldwin v. Mortgage Elec. Registration Sys., Inc.*, No. 4:19-CV-03921, 2020 WL 4227591, at *3 (S.D. Tex. June 8, 2020), report and recommendation adopted, No. 4:19-CV-03921, 2020 WL 4227468 (S.D. Tex. July 23, 2020). ‘The intention to contract for or confer a direct benefit to a third party must be clearly and fully spelled out in the agreement itself, or enforcement by the third party must be denied.’ *Debes v. Gen. Star Indem. Co.*, No. 09-12-00527-CV, 2014 WL 3384679, at *4 (Tex. App.—Beaumont July 10, 2014, no pet.). ‘In other words, the party claiming third-party beneficiary status will succeed or fail according to the terms of the contract.’ *Marine Creek Partners, Ltd. v. Caldwell*, 926 S.W.2d 793, 795 (Tex. App.—Fort Worth 1996, no writ). There is a presumption against conferring third-party status on non-contracting parties and all doubts must be resolved against conferring third-party status. *Tawes v. Barnes*, 340 S.W.3d 419, 425 (Tex. 2011). Accordingly,

[d]ue to the presumption against finding third-party beneficiaries to contracts, courts will generally deny third-party-beneficiary claims unless: (1) the obligation of the bargain-giver is fully spelled out, (2) it is unmistakable that a benefit to the third party was within the contemplation of the contracting parties, and (3) **the contracting parties contemplated that the third party would be vested with the right to sue for enforcement of the contract.**

Alvarado v. Lexington Ins. Co., 389 S.W.3d 544, 552 (Tex. App.—Houston [1st Dist.] 2012, no pet.) (emphasis added). “In determining whether a third party can enforce a contract, the intention of the contracting parties is controlling.” *Basic Capital Mgmt., Inc. v. Dynex Commercial, Inc.*, 348 S.W.3d 894, 900 (Tex. 2011) (quoting *MCI Telecommunications Corp. v. Tex. Utilities Elec. Co.*, 995 S.W.2d 647, 651 (Tex. 1999)). A non-party to the contract bears the burden of demonstrating its status as a third-party beneficiary. *Marine Creek*, 926 S.W.2d at 795.

There are two types of third-party beneficiaries: creditors and donees. *MCI Telecommunications*, 995 S.W.2d at 651. A party is “a donee beneficiary if the performance promised will, when rendered, come to him as a pure donation.” *Id.* Plaintiffs are clearly not donees nor do they allege to be. A party is a creditor beneficiary if the promised “performance will come to him in satisfaction of a legal duty owed to him by the promisee,” such as a contractual obligation. *Id.* “To qualify as a creditor beneficiary, the maker of the contract must not only have intended to confer a benefit upon the third party but it also must have intended for the third-party to have the right to enforce the agreement. Unless both intents are clearly and fully exhibited in the four corners of contract, the third party remains no more than an incidental beneficiary to the contract.” *Debes*, 2014 WL 3384679, at *4 (citing *Rivera v. S. Green Ltd. P’ship*, 208 S.W.3d 12, 23 (Tex. App.—Houston [14th Dist.] 2006, pet. denied) and *Ortega v. City Nat’l Bank*, 97 S.W.3d 765, 773 (Tex. App.—Corpus Christi 2003, no pet.)). “The fact that a person is directly affected by the parties’ conduct, or that he may have a substantial interest in a contract’s enforcement, does not make him a third-party beneficiary.” *Maddox*, 361 S.W.3d at 757 (internal citations omitted).

1. The Policies do not confer any benefits on Plaintiffs nor do the Policies grant Plaintiffs any enforcement rights, precluding third-party beneficiary status as a matter of law.

Reviewing the Policies as a whole, it is indisputable that the Policies do not suggest an intent to confer a direct benefit on Plaintiffs or give Plaintiffs a right to enforce the Policies. Indeed,

- Plaintiffs are not identified by name anywhere in the Policies;
- the Policies contain no language indicating they were entered into for Plaintiffs' benefit;
- the Policies contain no language contractually obligating Lexington to adjust losses with Plaintiffs or make a payment to Plaintiffs. On the contrary, the Policies plainly specify that losses will be adjusted with and payable to HHC³; and
- there is no language in the Policies indicating that Plaintiffs may sue to enforce the Policy to secure performance of a legal obligation owed to Plaintiffs.

Plaintiffs allege they are third-party beneficiaries of the Policies because the Policies provide coverage **to the Insured** for property in an insured's care custody or control and because the Policies allegedly provide bailee coverage. *See* Second Am. Pet., p. 6-7. Plaintiff is incorrect that the Policies provide bailee coverage. While there is a limit of liability for "bailee coverage" no such coverage is provided under the terms of the Policies or in any endorsement. *Compare* LEX19-28 *with* LEX14; LEX 94 *with* LEX99-104; LEX146 *with* LEX151-155. The "care, custody, and control" language relied upon by Plaintiffs does not evidence any intent to confer a benefit on Plaintiffs and critically does not provide Plaintiffs with a right to sue for enforcement. Indeed, the provisions are clear that coverage is only being provided for the "interest of the Insured":

³ *See* Lex Ans., Exhibit 1 at LEX19; Exhibit 2 at LEX116; Exhibit 3 at LEX169.

6. COVERAGE

Except as hereinafter excluded, this policy covers:

A. Real and Personal Property

- (1) The interest of the Insured in all real and personal property including but not limited to property owned, used, leased or intended for use by the Insured, or hereafter constructed, erected, installed, or acquired, including while in course of construction, erection, installation, and assembly. In the event of loss or damage, this Company agrees to accept and consider the Insured as sole and unconditional owner of improvements and betterments, notwithstanding any contract or leases to the contrary.
- (2) The interest of the Insured in real and personal property of others in the Insured's care, custody, or control.

Lex. Ans. At LEX019 (emphasis added).

7. Coverage

This policy insures the interest of the Insured in following:

A. Real and Personal Property

1. All Real and Personal Property owned, used, or intended for use by the Insured, acquired by the Insured, property of others in the Insured's care, custody or control including the Insured's liability for such property and including the costs to defend any allegations of liability for loss or damage to such property; including but not limited to the following:

Id. at LEX099; LEX151 (emphasis added). Plaintiffs have now amended their petition three times. Each amendment, including the Second Amended Petition, fails to identify any language giving Plaintiffs a right to enforce the Policies. **This failure precludes Plaintiffs from establishing third-party beneficiary status.** *See Alvarado*, 389 S.W.3d at 552 (Third party beneficiary status requires, among other elements, establishing that “**the contracting parties contemplated that the third party would be vested with the right to sue for enforcement of the contract.**”). While Plaintiffs may have a “substantial interest” in enforcement of the Policies, without language granting them a right to enforce the Policies, they remain nothing more than incidental beneficiaries lacking the ability to sue for enforcement of the Policies. *See Debes*, 2014 WL 3384679, at *4.

2. Any liability coverage provided to CWH does not give Plaintiffs the right to bring suit under the Policies.

Plaintiffs maintain that as “judgment creditors” of CWH, Plaintiffs “have a right to stand in the shoes of the insured to enforce the insured’s liability insurance coverage.” Am. Pet p. 2, 8-9. Plaintiff’s argument is based on a fundamental misunderstanding of the difference between first-party property coverage (which is at issue here) and third-party liability policies. “The purpose of first-party insurance is to reimburse the insured for losses that he incurs as a result of injury to himself or damage to property that he owns or leases.” *Debes*, 2014 WL 3384679, at *10. First-party policies “are intended solely to indemnify the insured for his actual monetary loss by the occurrence of the disaster.” *Id.* On the other hand,

Third-party insurance ‘requires the insurer to perform its duty to indemnify not directly to the insured[,] but directly, on the insured’s behalf, to a third-party claimant injured by the insured’s conduct. The intent of the parties to a third-party liability contract is to indemnify, and if the third-party obtains a judgment, the policy confers a direct benefit to a third-party claimant injured by the insured. As such, a third-party claimant who has obtained a judgment against the insured for a covered loss under the third-party liability policy has been held to be a third-party beneficiary to the liability policy.

Id. at *10. Thus, the distinction between first-party and third-party liability policies is to whom the insured’s obligations flow. If the obligations flow to the insured, the policy is a first-party policy. By comparison, if the obligations flow to a third-party for the insured’s benefit, the policy is a third-party liability policy.

In the third-party insurance context, a person injured by the insured is permitted, in certain circumstances, to proceed directly against the insurer after the insured’s liability has been established by final judgment. *Farmers Ins. Exch. v. Rodriguez*, 366 S.W.3d 216, 223 (Tex. App.—Houston [14th Dist.] 2012, rev. denied) (citing *State Farm Cnty. Mut. Ins. Co. of Tex. v. Ollis*, 768 S.W.2d 722, 723 (Tex. 1989)). This is known as the direct-action rule. However, even in the third-party insurance context, courts only permit direct action against the insurer if the

subject policy contains language expressly authorizing a direct action⁴ and if all other policy conditions are met. *See P.G. Bell Co. v. U.S. Fid. & Guar. Co.*, 853 S.W.2d 187, 190 (Tex. App.—Corpus Christi 1993, no writ); *see also Turner v. Cincinnati Ins. Co.*, 9 F.4th 300, 312-13 (5th Cir. 2021) (considering whether default judgment satisfied the policy’s “no-action clause” to permit maintenance of the suit).

The direct-action rule is inapplicable to first-party policies. *See Debes*, 2014 WL 3384679, at *10. This makes sense logically: because the insurer’s obligations in a first-party policy extend only to the insured, there is no obligation subject to enforcement by a third-party. Reviewing the Policies, it is apparent they are first-party policies, not third-party policies. The Policies do not contain language authorizing direct action following judgment or any other language allowing for enforcement of the Policies by anyone other than the Insured—the Howard Hughes Corporation. *See generally* Lexington’s Answer, Exhibits 1-3. In fact, the Policies confirm that any loss shall only be adjusted and payable to HHC or as directed by HHC:

Loss, if any, shall be adjusted with and payable to The Howard Hughes Corporations or their order, whose receipt shall constitute a release in full of all liability under this policy with respect to such loss.

See Lex Ans., Exhibit 1 at LEX019.

Loss, if any, will be adjusted with and payable to The Howard Hughes Corporation or as may be directed by The Howard Hughes Corporation. Additional insured interests will also be included in loss payment as their interest may appear when named as additional named insured, lender, mortgagee and/or loss payee in the Certificates of Insurance on file with the Insurer.

⁴ Sufficient direct-action language generally provides, “No action shall lie against the Company unless...the amount of the **Insured’s** obligation to pay shall have been fully determined...by judgment against the **Insured** after actual trial....Any person or organization or the legal representative thereof who has secured such judgment or written agreement shall thereafter be entitled to recover under this policy to the extent of the insurance afforded by this policy.” *Debes*, 2014 WL 3384679 at *10.

See Lex Ans., Exhibit 2, LEX116; Exhibit 3 at LEX169. Plaintiffs could only maintain suit against Lexington if the policies contained language conferring benefits, enforcement, and the right to a direct-action to third parties. See *P.G. Bell*, 853 S.W.2d 187; *Turner*, 9 F.4th at 312-13. They do not nor have Plaintiffs identified any such language.

Plaintiffs bear the burden of establishing third-party beneficiary status and all presumptions must be resolved against Plaintiffs. Plaintiffs' allegations—devoid of any required enforcement language—are insufficient to meet the high burden of proving third-party beneficiary status. Plaintiffs are not third-party beneficiaries to the Policies. No enforceable contract exists between Plaintiffs and Lexington and Plaintiffs' breach of contract claim must be dismissed.

D. Plaintiffs' repackaged declaratory judgment action fails for the same reasons and because no justiciable controversy exists.

Plaintiffs seek a declaration that the “policies provides [*sic*] coverage to CWH for the judgment entered against it in favor of the Rincons” and “that the policies cover the actual damages, interest, attorneys' fees, and costs awarded to the Rincons.” Second Am. Pet. p. 12. Plaintiffs' claim for declaratory relief is merely a repackaged version of their contract claim. Compare Second Am. Pet. at Count 1 with Count 4. Because Lexington has already established that Plaintiffs' contract claim has no basis in law or fact, Plaintiffs' repackaged declaratory judgment claim based on the same allegations likewise fails. Plaintiffs' declaratory judgment claim further fails because there is no justiciable controversy between the parties. See *Envision Realty Group, LLC v. Chuan Chen*, No. 05-18-00613-CV, 2020 WL 1060698, at *4 (Tex. App.—Dallas Mar. 5, 2020, no pet.) (“A declaratory judgment is proper only if a justiciable controversy exists as to the rights and status of the parties and the controversy will be resolved by the declaration sought. To constitute a justiciable controversy, there must exist a real and

substantial controversy involving genuine conflict of tangible interests and not merely a theoretical dispute.”) (internal citations omitted). Because, as a matter of law, there is no contract between Lexington and Plaintiffs, there is no justiciable controversy.

E. Because no contract exists, Plaintiffs’ bad faith claims fail.

Because Plaintiffs are not named insureds, additional insureds, or third-party beneficiaries of the Policies, their claims for Breach of the Duty of Good Faith and Fair Dealing (Count 2) and statutory violations under the Texas Insurance Code (Count 3) also have no basis in law or fact because a contractual relationship is a necessary predicate for each of these claims. *See Baldwin*, 2020 WL 4227591, at *6 (“A plaintiff must be either a named insured or a third-party beneficiary of the policy out of which the claim arose to assert a claim under Chapter 541. Since [plaintiff] is neither a named insured nor a third-party beneficiary of the Policy, his Chapter 541 claim must be dismissed.”) (internal citations omitted); *Crown Life Ins. Co. v. Casteel*, 22 S.W.3d 378, 384 n.1 (Tex. 2000) (noting that a third-party claimant has no contract with the insurer or the insured, has no legal relationship to the insurer, and has no basis upon which to expect or demand the benefit of the extra-contractual obligations imposed on insurers under Texas Insurance Code § 541); *Reule v. Colony Ins. Co.*, 407 S.W.3d 402, 413 (Tex. App.—Houston [14th Dist.] 2013, pet. denied) (“[I]n her current posture as a third-party claimant, [insurer] did not owe her duties under sections 541.060 and 542.051 and the duty of good-faith and fair dealing.”).

Plaintiffs’ claims for violations of section 541.060 further fail as a matter of law because, as the Texas Supreme Court recently confirmed, even if Plaintiffs were third-party beneficiaries, third parties cannot assert claims under section 541.060. *Tex. Med. Res., LLP v. Molina Healthcare of Tex., Inc.*, 659 S.W.3d 424, 439 (Tex. 2023) (Plaintiffs “can never prevail on the [541.060] claim they have pleaded because it requires “a claim by an insured or beneficiary””);

In re Geico Cnty. Mut. Ins. Co., No. 05-22-01164-CV, 2022 WL 17843869, *3 (Tex. App.—Dallas Dec. 22, 2022, no pet.) (affirming 91a dismissal of claims under Chapter 541 of the Texas Insurance Code based on third-party status). No contract exists between Plaintiffs and Lexington and because contractual liability is a prerequisite to their extracontractual claims, those claims necessarily fail. Plaintiffs’ claims for statutory violations under the Texas Insurance Code further fail because the Texas Supreme Court recently confirmed that such claims are not extended to third parties. As such, Lexington is entitled to dismissal of Plaintiffs’ bad faith claims.

IV. CONCLUSION

Each of Plaintiffs’ claims against Lexington Insurance Company must be dismissed under Rule 91a because they have no basis in law or fact. No contract exists between Plaintiffs and Lexington, Plaintiffs cannot maintain extracontractual claims without establishing contractual liability, and Plaintiffs cannot maintain their claims under the Texas Insurance Code. Accordingly, Lexington respectfully requests that the Court dismiss Plaintiffs’ causes of action with prejudice without leave to amend. Lexington also requests that the Court award it reasonable and necessary attorneys’ fees incurred in bringing this Motion and Lexington’s prior motions to dismiss, which have been significant due to Plaintiffs’ pleading amendments, as permitted by Texas Rule of Civil Procedure 91a.7.

Date: June 5, 2023

Respectfully submitted,

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CERTIFICATE OF CONFERENCE

This is to certify that on June 2, 2023, counsel for Plaintiffs confirmed that Plaintiffs are opposed to the relief sought in this Motion.

/s/ Amy B. Boyea
Amy B. Boyea

CERTIFICATE OF SERVICE

I hereby certify that on this June 5, 2023, a true and correct copy of the foregoing was served in accordance with the Texas Rules of Civil Procedure on:

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In the 164th
Judicial District Court of
Harris County, Texas

2214

party beneficiaries of the policies. The Rincons obtained a final judgment against CWH after a three-day arbitration final hearing. Texas law is well established that judgment creditors of an insured—like the Rincons here—have a right to stand in the shoes of the insured to enforce the insured’s liability insurance coverage. In this case, CWH’s all-risk policies with the Insurance Companies expressly cover CWH’s *liability* for negligently bailing the Rincons’ personal property. The Insurance Companies are simply mistaken when they claim that the policies cover only CWH’s *own property*, but not its *liability* for mishandling the property of others.

The Rincons also have standing as third-party beneficiaries because the policies expressly cover any of their “personal property” that was in CWH’s “care, custody, or control” or which CWH was “responsible for.” Other policy terms also demonstrate an intent to benefit the Rincons and other third parties whose personal property was bailed to CWH. Many Texas courts have found that bailors like the Rincons whose property is covered have standing to enforce the coverage as third-party beneficiaries.

Because the Rincons are beneficiaries of the policies, the Insurance Companies owe them a duty of good faith and fair dealing; and the Rincons may sue not only for breaching that duty, but also for the Insurance Companies’ unfair or deceptive practices under Chapter 541 of the Texas Insurance Code.

The Rincons’ pleading easily provides a basis in both law and fact for the Rincons’ claims for breach of contract, declaratory judgment, breach of the duty of good faith and fair dealing, and unfair or deceptive insurance practices—and this is

all they need to survive dismissal under Rule 91a. The Court should deny the Insurance Companies' Rule 91a motions to dismiss, and award the Rincons the reasonable and necessary attorneys' fees they have been forced to incur in responding to the Insurance Companies' stack of motions.

LEGAL STANDARDS

Rule 91a allows courts to dismiss any cause of action that lacks a basis in law or fact. A claim has “no basis in law” if the allegations, taken as true together with reasonable inferences, do not entitle the claimant to the relief sought. TEX. R. CIV. P. 91a.1. A claim has “no basis in fact” if no reasonable person could believe the facts pleaded. *Id.* In considering a Rule 91a motion, the Court may consider the pleading itself, plus any exhibits permitted by Rule 59. TEX. R. CIV. P. 91a.6.

It is difficult for a defendant to prevail on a Rule 91a motion—even more difficult than motions to dismiss in federal court. Texas courts have distinguished the standard under Rule 91a and the standard under Federal Rule 12(b)(6). To survive a 12(b)(6) motion to dismiss under the Federal Rules of Civil Procedure, a complaint must state a claim for relief that is “plausible” on its face. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007). But a state-court petition will survive dismissal under Rule 91a as long as a cause of action has *any* basis in law or fact. TEX. R. CIV. P. 91a; *see also In re Butt*, 495 S.W.3d 455, 461 (Tex. App.—Corpus Christi 2016, orig. proceeding).

Leaning in favor of the pleader, the Court should (a) liberally construe the Rincons' pleadings, (b) take every factual allegation as true, and (c) indulge every

reasonable inference in the Rincons' favor. *See City of Dallas v. Sanchez*, 494 S.W.3d 722, 724 (Tex. 2016).

On appeal, a court's decision to *grant* a Rule 91a motion to dismiss is reviewed *de novo*. *City of Dallas v. Sanchez*, 494 S.W.3d 722, 724 (Tex. 2016). By contrast, a court's decision to *deny* a Rule 91a motion to dismiss is reviewed for a clear abuse of discretion. *In re Essex Ins. Co.*, 450 S.W.3d 524, 528 (Tex. 2014).

FACTS

The following facts come from the allegations in the Rincons' Second Amended Petition ("SAP"), and must be taken as true in deciding the Insurance Companies' Rule 91a motions to dismiss:

A. A final judgment is entered against Carlton Woods Holdings, LLC in favor of the Rincons.

The Rincons were members of The Club at Carlton Woods ("Club"), which was owned and operated by CWH at the time of the underlying events. SAP at 4. The Rincons maintained several wine lockers at the Club under two identical wine-locker agreements. *Id.* They kept hundreds of bottles of wine valued at hundreds of thousands of dollars in their wine lockers to enjoy when they visited the Club. *Id.* After learning that hundreds of expensive bottles of wine went missing between 2013 and 2015, the Rincons sued CWH for damages under various legal theories. *Id.*

The suit, which the Rincons brought in 2016, wound up in arbitration before the American Arbitration Association. *Id.* During a three-day final hearing, former Texas Supreme Court Justice Harriett O'Neill heard witness testimony and considered documentary evidence. *Id.*

Justice O'Neill issued an exhaustive 28-page reasoned final award in which she found for the Rincons on their claims for breach of the wine-locker agreements and bailment. *Id.* at 5. She awarded the Rincons \$311,265 in actual damages (\$293,025 to Maria and Roberto Rincon, and \$18,240 to Jose Rincon), plus pre- and post-judgment interest at the legal rate, \$742,306.70 in attorneys' fees and litigation expenses, and \$56,840 in arbitration-related expenses. *Id.* The award totaled \$1,110,411.70, not including interest. *Id.* Harris County District Court judge Scot Dollinger confirmed the award. *Id.*

B. All-risk insurance policies insured by the Insurance Companies cover the damages awarded to the Rincons.

When the wine was lost between 2013 and 2015, the Insurance Companies insured CWH under multiple all-risk insurance policies that cover the damages awarded against it. CWH is an insured under the policies. *Id.* As “all-risk” policies, the policies cover “all risk of physical loss of or damage to property” unless expressly excluded. *Id.* at 6. No policy exclusions apply to the Rincons' claims in this case. *Id.*

In fact, the 2013-2014 policies expressly cover “(1) The interest of the Insured in real and personal property *of others* in the Insured's care, custody, or control” and “(3) Real and Personal Property *which the Insured is responsible for....*” *Id.*; *see also* Exhibits 1 and 1-A to 1-E (all emphasis added). They go on to expressly insure against “*all risk of physical loss* of or damage to property described herein including general average, salvage and all other charges on shipments covered hereunder, except as hereinafter excluded”—and no exclusion applies. *Id.* (emphasis added).

The 2014-2015 and 2015-2016 policies are much the same. SAP at 6. They expressly cover “the interest of the Insured in [sic] following: ... property of *others* in the Insured’s care, custody or control”—“*including the Insured’s liability for such property and including the costs to defend any allegations of liability for loss or damage to such property....*” *Id.*; see also Exhibits 1 and 1-F to 1-L (all emphasis added). They also insure against “*all risk of direct physical loss or damage occurring during the Policy Term to property ... except as hereinafter excluded*”; and explain that “the basis of adjustment shall be ... [for] property of *others* in the Insured’s care, custody or control: ... 1. the replacement cost new 2. the amount stipulated in the lease agreement 3. *Insured’s contractual or legal liability* 4. the cost to repair.” *Id.* (all emphasis added).

All the policies from all of the policy years provide \$1,000,000 worth of “Bailee Coverage” per occurrence. SAP at 7; see also Exhibits 1 and 1-A to 1-L. The ACE American Insurance Company policy from the 2013-2014 policy year also includes an express “Bailee Coverage Endorsement” that covers:

The interest of the Insured in real and personal property of others in the Insured’s care, custody, or control *where the Insured has a Bailee exposure*. However, this policy shall respond to damage caused by a peril not otherwise excluded to real and personal property of others only after all other insurance has been exhausted, unless it has been determined that the Insured was *negligent and liable for damage* to real and personal property of others.

Exhibit 1-A at 54 (emphasis added); see also Exhibit 1 and SAP at 7.

All the policies from all policy years also expressly cover “the costs and fees to defend any *claim or suit against the Insured ... alleging physical loss ... as insured*

against to *property of others in the care, custody or control of the Insured to the extent of the Insured's liability therefore [sic]....*" SAP at 7; *see also* Exhibits 1 and 1-A to 1-L (emphasis added). There would be no need for these provisions unless the policies covered CWH's *liability* for negligently bailing the property of others, not just the risk of loss of CWH's *own* property. SAP at 7.

C. The Insurance Companies wrongfully deny coverage for the damages awarded to the Rincons.

The Rincons' hard-fought victory in arbitration kicked off a protracted effort to collect the judgment—first, CWH sold off its only asset, the Club, and is now essentially just a shell company; then, CWH's insurers (the Insurance Companies) stonewalled. SAP at 8.

After Justice O'Neill issued the final award, CWH made a claim on its insurance policies to the Insurance Companies through its broker, Lockton. *Id.* Before suing, the Rincons likewise sent multiple demand letters to the Insurance Companies asking them to pay the final judgment entered against CWH. *Id.* The Insurance Companies' counsel sent a coverage-denial letter to the Rincons outlining various excuses for their non-coverage decision, all of which are baseless. *Id.*

ARGUMENT AND AUTHORITIES

If the Rincons show *any* legal basis and *any* factual basis for their claims, the Insurance Companies' Rule 91a motions must be denied. Rule 91a imposes a low hurdle for plaintiffs, and the Rincons easily overcome it here.

The Insurance Companies argue that the Rincons lack standing or capacity to either enforce or seek declaratory relief under the insurance policies, either as

judgment creditors of CWH or as intended third-party beneficiaries. They also contend that the Rincons lack third-party-beneficiary status, and thus are not owed any duty of good faith and fair dealing and lack standing to sue the Insurance Companies for unfair or deceptive insurance practices under Chapter 541 of the Texas Insurance Code. The Insurance Companies are mistaken on all fronts.

A. The Rincons have standing to sue for breach of contract and declaratory judgment, either as judgment creditors of CWH or as intended third-party beneficiaries of the Insurance Companies' insurance policies.

The law is well established that “[a] non-party may enforce an insurance contract if the non-party is the legally intended beneficiary of the contract or is a judgment creditor of the insured.” *Standard Fire Ins. Co. v. Sassin*, 894 F. Supp. 1023, 1027 (N.D. Tex. 1995) (citing *Dairyland County Mut. Ins. Co. v. Childress*, 650 S.W.2d 770, 775-76 (Tex. 1983) (legally intended beneficiary may enforce contract); *Cowley v. Texas Snubbing Control, Inc.*, 812 F. Supp. 1437, 1445 (S.D. Miss. 1992) (applying Texas law) (judgment creditor of insured is considered a third-party beneficiary of insured’s policy), *aff’d sub nom. Cowley v. Stapleton*, 15 F.3d 180 (5th Cir.), *and cert. denied*, 130 L. Ed. 2d 33, 115 S. Ct. 80 (1994)); *see, e.g., Farmers Ins. Exch. v. Rodriguez*, 366 S.W.3d 216, 223 (Tex. App.—Houston [14th Dist.] 2012, pet. denied) (citing *State Farm Cnty. Mut. Ins. Co. of Tex. v. Ollis*, 768 S.W.2d 722, 723 (Tex. 1989)).

Indeed, “an entity becomes a third party beneficiary to an insurance contract when it obtains a judgment against the insured; at that time, the entity becomes a third party judgment creditor.” *P.G. Bell Co. v. U.S. Fid. & Guar. Co.*, 853 S.W.2d

187, 189 (Tex. App.—Corpus Christi 1993, no writ) (citing *Filley v. Ohio Cas. Ins. Co.*, 805 S.W.2d 844, 847 (Tex. App.—Corpus Christi, 1991, writ denied); accord *Great Am. Ins. Co. v. Murray*, 437 S.W.2d 264, 265 (Tex. 1969); *Hutcheson v. Estate of Se'Christ*, 459 S.W.2d 495, 496-97 (Tex. Civ. App.—Amarillo 1970, writ ref'd n.r.e.)).

The Rincons are *both* judgment creditors of the Insurance Companies' insured, CWH, *and* legally intended third-party beneficiaries of the Insurance Companies' insurance policies. In *either* capacity, the Rincons have a right to enforce and seek declaratory relief under the insurance policies against the Insurance Companies.

1. As judgment creditors, the Rincons may enforce the liability coverage afforded by the Insurance Companies' insurance policies.

The Insurance Companies—relying mainly on *Debes v. Gen. Star Indem. Co.*, No. 09-12-00527-CV, 2014 Tex. App. LEXIS 7473 (Tex. App.—Beaumont July 10, 2014, no pet.)—claim that Texas law does not recognize a judgment creditor as a creditor beneficiary under a *first-party property insurance policy*. According to the Insurance Companies, such policies are intended solely to indemnify the insured for his actual monetary loss by the occurrence of a disaster, unlike *third-party liability policies*. The Insurance Companies claim that the policies here are purely first-party property insurance policies, and thus the Rincons have no right to enforce them as CWH's judgment creditors. The Insurance Companies are wrong—the policies in this case are not limited to property coverage; they cover liability as well.

The Insurance Companies do not deny that judgment creditors, like the Rincons here, are generally allowed to enforce *liability* coverage against an insurer. Thus, if the Insurance Companies' policies offer third-party liability coverage (and not just first-party property coverage), the Rincons have standing to enforce the policies. In this case, all the policies contain not only property coverage, but liability coverage as well. For this reason alone, the Rincons have standing.

The Houston Court of Appeals has explained that “[m]any policies involve *both*” property insurance and liability insurance—and that is exactly the case here. *Highlands Ins. Co. v. Galveston*, 721 S.W.2d 469, 471 (Tex. App.—Houston [14th Dist.] 1986, writ ref’d n.r.e.) (emphasis added); *Ayre v. Brown & Root, Inc.*, 678 S.W.2d 564, 566 (Tex. App.—Houston [14th Dist.] 1984, writ ref’d n.r.e.) (a single insurance policy can provide for different types of insurance). While “[p]roperty insurance policies are ‘intended solely to indemnify the insured for his actual monetary loss by the occurrence of the disaster,’” *liability* policies “insure against loss arising out of legal liability, usually based upon the assured’s negligence.” *Id.* (quoting 4 J. Appleman, *Insurance Law & Practice* § 2107 (rev. 1969) and citing *Members Mutual Insurance Co. v. Hermann Hospital*, 664 S.W.2d 325 (Tex. 1984); *Brightwell v. Rabeck*, 430 S.W.2d 252, 255 (Tex. Civ. App.—Fort Worth 1968, writ ref’d n.r.e.); accord 6 B J. Appleman, *Insurance Law & Practice* § 4261 (rev. 1979)). The Rincons, as judgment creditors of CWH, should be allowed to enforce the portions of the policies that provide liability coverage for CWH’s negligent bailment of their wine.

Whether the policies in question are property policies, liability policies, or both, is to be determined from a reading of the policies themselves in their entirety. In construing insurance policies, courts look to the plain language of the contract, and such language will be given effect when the parties' intent may be discerned from that language. *Glover v. National Ins. Underwriters*, 545 S.W.2d 755, 757 (Tex. 1977). When the language used is subject to two or more reasonable interpretations, the construction that affords coverage will be adopted. *Blaylock v. American Guarantee Bank Liability Ins. Co.*, 632 S.W.2d 719, 721 (Tex. 1982).

The plain language of the Insurance Companies' policies shows that they cover CWH's *liability* for failing to properly safeguard the personal property of others in its care, custody, or control—including the Rincons' wine that CWH negligently bailed. For example, the 2013-2014 policies all provide \$1,000,000 worth of "Bailee Coverage" per occurrence; expressly cover "(1) The interest of the Insured in real and *personal property of others in the Insured's care, custody, or control*" and "(3) Real and Personal Property which the Insured is responsible for..."; and expressly insure against "*all risk* of physical loss of or damage to property described herein including general average, salvage and all other charges on shipments covered hereunder, except as hereinafter excluded" and no exclusion applies. See Exhibit 1, Insurance Policy Summary, and Exhibits 1-A through 1-K, Insurance Policies (all emphasis added).

The ACE American Insurance Company policy from the 2013-2014 policy year also includes an express "Bailee Coverage Endorsement" that covers:

The interest of the Insured in real and personal property of others in the Insured's care, custody, or control *where the Insured has a Bailee exposure*. However, this policy shall respond to damage caused by a peril not otherwise excluded to real and personal property of others only after all other insurance has been exhausted, unless it has been determined that the Insured was *negligent and liable for damage* to real and personal property of others.

Exhibit 1-A at 54 (emphasis added); *see also* Exhibit 1.

The 2014-2015 and 2015-2016 policies similarly all provide \$1,000,000 worth of "Bailee Coverage" per occurrence; expressly cover "the interest of the Insured in [sic] following: ... property of others in the Insured's care, custody or control"—expressly "*including the Insured's liability for such property and including the costs to defend any allegations of liability for loss or damage to such property...*"; insure against "*all risk of direct physical loss or damage occurring during the Policy Term to property ... except as hereinafter excluded*"; and explain that "the basis of adjustment shall be ... [for] property of others in the Insured's care, custody or control: ... 1. the replacement cost new 2. the amount stipulated in the lease agreement 3. *Insured's contractual or legal liability* 4. the cost to repair." Exhibits 1 and 1-F to 1-L (all emphasis added).

All policies from all policy years also expressly cover "the costs and fees to defend any *claim or suit against the Insured ... alleging physical loss ... as insured against to property of others in the care, custody or control of the Insured to the extent of the Insured's liability therefore [sic]...*" *Id.* (emphasis added). As the Houston Court of Appeals has held, this kind of defense-cost language would not be

necessary “[i]f the policies provided property insurance only.” *Highlands Ins. Co.*, 721 S.W.2d at 471.

The policy language cited above makes abundantly clear that the insurance is intended to *indemnify* CWH from its liability to third parties like the Rincons when their personal property is lost or damaged while in CWH’s care, custody, or control. This is the very definition of third-party insurance. Even the *Debes* decision (on which the Insurance Companies rely so heavily) recognized this:

The intent of the parties to a third-party liability contract is to indemnify, and if the third-party obtains a judgment, *the policy confers a direct benefit to a third-party claimant injured by the insured*. As such, a third-party claimant who has obtained a judgment against the insured for a covered loss under the third-party liability policy has been held to be a third-party beneficiary to the liability policy.

Id. (emphasis added; citations omitted).

This is not the stuff of *first-party* insurance, whose purpose is to “reimburse[] the insured for losses that he incurs as a result of injury to *himself* or damage to property that *he owns or leases*” as a result of a disaster. *Id.* at *30 (quoting *Am. Nat’l Fire Ins. Co. v. Hammer Trucking, Inc.*, No. 2-04-327-CV, 2006 Tex. App. LEXIS 9774, 2006 WL 3247906, at *2 n.16 (Tex. App.—Fort Worth Nov. 9, 2006, pet. denied) (mem. op.) (quoting 1 BARRY R. OSTRAGER & THOMAS R. NEWMAN, HANDBOOK ON INSURANCE COVERAGE DISPUTES § 12.12(a) (12th ed. 2004)) (emphasis added). The provisions in this case have nothing to do with CWH’s *own* real or personal property, and thus do not constitute first-party insurance.

The Rincons, as judgment creditors of CWH, have a right to enforce the liability coverage afforded by the Insurance Companies’ policies. Because they have

a right to enforce the policies against the Insurance Companies, they also have a right to seek declaratory relief under the policies and there *is* a justiciable controversy between them and the Insurance Companies. *See Puente v. Chicago Ins. Co.*, No. CIV.A L-09-0110, 2010 WL 3463271, at *8 (S.D. Tex. May 20, 2010), report and recommendation adopted, No. CIV.A L-09-110, 2010 WL 3463253 (S.D. Tex. Sept. 3, 2010) (considering a liability insurance policy and concluding that the plaintiffs lacked standing to assert declaratory judgment where they were *neither* third-party beneficiaries *nor* judgment creditors). The Court should deny the Insurance Companies' Rule 91a motions to dismiss the Rincons' breach-of-contract and declaratory-judgment causes of action.

2. As an independent matter, the Rincons are intended third-party creditor beneficiaries of the insurance policies issued to CWH.

On top of having standing to enforce the liability coverage afforded by the Insurance Companies' insurance policies as judgment creditors of CWH, the Rincons have standing as legally intended third-party creditor beneficiaries of the policies. For this additional, independent reason, the Rincons may enforce the policies against the Insurance Companies.

Under Texas law, the Rincons qualify as third-party beneficiaries of the insurance policies, because: (1) they were not privy to the written policies between CWH and each Defendant; (2) the policies were made at least in part for the Rincons' benefit; and (3) the contracting parties intended for the Rincons to benefit by their written agreements. *Palma v. Verex Assurance*, 79 F.3d 1453, 1457 (5th Cir.

1996). The intent of the contracting parties is discerned from the four corners of the instrument. See *Talman Home Fed. Sav. & Loan Ass'n v. Am. Bankers Ins.*, 924 F.2d 1347, 1351 (5th Cir. 1991) (“It is the intention and purpose of the contracting parties, as disclosed within the four corners of the instrument, which should control.”) (internal quotation marks omitted); *Basic Capital Mgmt. v. Dynex Commercial, Inc.*, 348 S.W.3d 894, 900 (Tex. 2011). When interpreting a contract, courts examine and consider the entire writing to try to harmonize and give effect to all of its provisions so that none will be rendered meaningless. *Stine v. Stewart*, 80 S.W.3d 586, 590 (Tex. 2002); *MCI Telecomms. Corp. v. Tex. Utils. Elec. Co.*, 995 S.W.2d 647, 652 (Tex. 1999).

There are two types of third-party beneficiaries: creditors and donees. A party is “a donee beneficiary if the performance promised will, when rendered, come to him as a pure donation.” *MCI Telecomms. Corp.*, 995 S.W.2d at 651. One is a creditor beneficiary if the promised “performance will come to him in satisfaction of a legal duty owed to him by the promisee.” *Id.* Whether an agreement intends a direct benefit on a third party so as to make that party a third-party beneficiary is a question of law. See *In re Palm Harbor Homes, Inc.*, 195 S.W.3d 672, 677 (Tex. 2006).

The Rincons easily qualify as creditor beneficiaries under the insurance policies in question. **First**, it is undisputed that they were not privy to the written policies between CWH and the Insurance Companies.

Second, the liability coverage in each policy discussed above was made at least in part for the Rincons' benefit because it expressly covers the personal property "*of others*" in CWH's "care, custody, or control" or which CWH is "responsible for." Such property would include the Rincons' wine that CWH agreed to store at the Club under the Rincons' Wine Locker Agreements. All the policies provide \$1,000,000 worth of such "Bailee Coverage" per occurrence. Given that CWH by definition does not own the property "of others," the only purpose of this coverage can be to benefit the third-party owners of the property—owners like the Rincons—when that property is lost or damaged.

Third, for similar reasons, the four corners of the insurance policies show that the parties intended to insure the Rincons' wine and thus confer a benefit on them. The Rincons—as the owners of "personal property" in CWH's "care, custody, or control" or which CWH is "responsible for"—are beneficiaries of CWH's "Bailee Coverage" and thus have a right to enforce it against the Insurance Companies.

The principle that bailors such as the Rincons are creditor beneficiaries of insurance policies secured by a bailee to cover their bailed property has deep roots in Texas and other jurisdictions alike. "This principle has been applied to insurance contracts in numerous cases holding that the owner of identifiable property which has been insured for its full value by a bailee, trustee or agent, may recover in a direct action against the insurer, though the contract contains no language expressly stating that the loss is payable to the owner or that the contract

is made for his benefit.” *Cumis Ins. Soc’y v. Republic Nat’l Bank*, 480 S.W.2d 762, 766-67 (Tex. Civ. App.—Dallas 1972, writ ref’d n.r.e.) (citing numerous cases).

Performance by the insurer of its contractual promise to pay to the insured bailee the full amount of the loss may not actually discharge the bailee’s duty to account [to the owner of the property], but it will do more than merely provide funds from which the insured may discharge that duty. *It will create an independent right of action in favor of the owner for the proceeds*, regardless of any other basis of liability he may have against the insured, since the insured would then hold the proceeds for the benefit of the owner. *This new and beneficial legal relationship is a sufficiently direct benefit to give the owner the right to enforce performance of the contract.*

Id. at 767 (citations omitted) (emphasis added).

For similar reasons, the Rincons—as the owners of property bailed to CWH and insured under CWH’s insurance policies with the Insurance Companies—are third-party beneficiaries of the policies who have the right to enforce performance of the policies. The Court should thus deny the Insurance Companies’ motions to dismiss the Rincons’ breach-of-contract and declaratory-judgment causes of action. The Insurance Companies cannot establish that these claims have no basis, and cannot carry their heavy burden under Rule 91a.

B. As third-party beneficiaries or as judgment creditors, the Rincons are allowed to sue for breach of the duty of good faith and fair dealing and for unfair or deceptive insurance practices.

The Insurance Companies also argue that the Rincons’ extra-contractual claims for breach of the duty of good faith and fair dealing and for unfair or deceptive insurance practices have no basis in law or fact. But again, the Insurance Companies are mistaken.

First, the Insurance Companies argue that the Rincons' claim for breach of the duty of good faith and fair dealing (i.e., "insurance bad faith") is barred because a "contractual relationship" between the claimant and insurer is needed to bring such a claim. The Insurance Companies argue that, without such a relationship, they owed no duty of good faith and fair dealing to the Rincons.

But Texas courts say otherwise. They recognize that a claimant's third-party beneficiary status under an insurance policy provides the necessary contractual relationship. *See, e.g., St. Paul Guardian Insurance Co. v. Luker*, 801 S.W.2d 614, 616 (Tex. App.—Texarkana 1990, no writ) ("[W]hen an insurer agrees to insure a third party beneficiary under the terms of an insurance contract, it owes the same duty of good faith and fair dealing to the third party as it does to the purchaser of the insurance."); *Hopkins v. Highlands Ins. Co.*, 838 S.W.2d 819, 826 (Tex. App.—El Paso 1992, no writ) ("[W]e conclude that Hopkins is indeed owed a duty of good faith and fair dealing by Highlands, as he is a third-party beneficiary under the policy."); *Aranda v. Insurance Company of North America*, 748 S.W.2d 210 (Tex. 1988) (employing a three-party analysis to extend the duty of good faith and fair dealing to a third party to the insurance contract). Because the Rincons are third-party beneficiaries or judgment-creditor beneficiaries for the reasons already discussed, the Insurance Companies owed them the same duty of good faith and fair dealing that they owed to their insured. The Court should reject the Insurance Companies' attempt to dismiss the Rincons' cause of action for breach of the duty of good faith and fair dealing.

Second, the Insurance Companies argue that the Rincons' cause of action for unfair or deceptive insurance practices under Chapter 541 of the Texas Insurance Code is barred because such a claim may only be pursued by an insured or third-party beneficiary of the policies.² This contention turns on the Insurance Companies' mistaken argument that the Rincons are neither an insured nor a third-party beneficiary. But as detailed above, the Rincons *are* third-party beneficiaries (or judgment-creditor beneficiaries) of the Insurance Companies' insurance policies and thus they *may* pursue their claim for unfair or deceptive insurance practices. The Court should also deny the Insurance Companies' motion to dismiss this claim.

C. The Court should award the Rincons their costs and reasonable and necessary attorneys' fees.

The Rincons have been forced to respond to five Rule 91a motions by five Insurance Companies. This was expensive. Rule 91a allows the Court to award to the prevailing party "all costs and reasonable and necessary attorney fees incurred with respect to the challenged cause of action in the trial court." TEX. R. CIV. P. 91a.7. Should the Court deny the Insurance Companies' motions, the Rincons

² Chapter 541 expressly provides a remedy for "unfair methods of competition or unfair or deceptive acts or practices" in the "business of insurance" on a claim "by an insured *or beneficiary*." TEX. INS. CODE § 541.060(a) (emphasis added). Indeed, "[a] plaintiff must be either a named insured *or a third-party beneficiary* of the policy out of which the claim arose to assert a claim under Chapter 541." *Baldwin v. Mortg. Elec. Registration Sys.*, No. 4:19-CV-03921, 2020 U.S. Dist. LEXIS 131653, at *17 (S.D. Tex. 2020) (emphasis added), report and recommendation adopted, No. 4:19-CV-03921, 2020 WL 4227468 (S.D. Tex. July 23, 2020) (citing *Pineda v. PMI Mortg. Ins. Co.*, 843 S.W.2d 660, 672 (Tex. App.—Corpus Christi 1992, no writ)).

request such an award, along with the opportunity to present evidence of their fees and costs.

CONCLUSION AND PRAYER

The Rincons have standing and capacity to enforce CWH's insurance policies against the Insurance Companies—either as CWH's judgment creditors or as legally intended third-party beneficiaries of the policies. Because the Rincons are beneficiaries of the policies, they may also seek declaratory relief under the policies, and may sue for the Insurance Companies' breach of the duty of good faith and fair dealing and unfair and deceptive insurance practices. As detailed above, all of the Rincons' claims against the Insurance Companies have a basis in law and fact. The Insurance Companies have failed to show otherwise. As a result, the Court should deny the Insurance Companies' Rule 91a motions to dismiss, award the Rincons their reasonable and necessary attorneys' fees incurred in responding to the motions under Rule 91a.7, and grant the Rincons all such other relief to which they are justly entitled.

Respectfully submitted,

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Certificate of Service

This document was served on all counsel of record via the Court's electronic filing system on this 30th day of May, 2023.

/s/ Zachary W. Thomas
Zachary W. Thomas

There is a presumption against conferring third-party status on non-contracting parties and all doubts must be resolved against conferring third-party status. *Tawes v. Barnes*, 340 S.W.3d 419, 425 (Tex. 2011). While a court may properly construe the pleadings in favor of the plaintiff and accept factual allegations as true in reviewing a motion to dismiss, it need not accept as true legal conclusions put forth by the plaintiff. *Montoya v. San Angelo Cmty. Med. Ctr.*, No. 03-16-00510-CV, 2018 WL 2437508, * 2 (Tex. App – Austin May 31, 2018, pet. denied). It is Plaintiffs’ burden to establish third-party status and they simply cannot. The Policies suggest no intent to confer benefits on Plaintiffs nor establish any right for Plaintiffs to sue for enforcement. As such, Plaintiffs’ claims have no basis in law or fact and dismissal of all claims asserted against Lexington is appropriate.

A. Lexington’s Second Amended Motion to Dismiss is timely.

Rule 91a specifies that “[i]f the respondent amends the challenged cause of action at least 3 days before the date of the hearing, the movant may, before the date of the hearing, file a withdrawal of the motion or an amended motion directed to the amended cause of action.” Tex. R. Civ. Pro. 91a.5(b). Plaintiffs filed their Second Amended Petition on May 30, 2023, 7 days before the June 6, 2023 hearing on Lexington’s Amended Motion to Dismiss. Because Plaintiffs’ amendment fit within Rule 91a.5’s timeframe, Lexington was explicitly allowed to file an amended motion directed to the amended cause of action before the date of the hearing. The filing of an amended motion restarts the periods in Rule 91a. *See* Tex. R. Civ. Pro. 91a.5(d). Lexington’s Second Amended Motion to Dismiss was filed on June 5, 2023 and was thus timely under Rule 91a.5. *See Thuesen v. Amerisure Ins. Co.*, 487 S.W.3d 291 (Tex. App.—Houston [14th Dist.] 2016, no pet.).⁴

⁴ Lexington also notes that its Motion was filed before the 45 day deadline to rule on the First Amended Motion to Dismiss lapsed.

Plaintiffs attempt to argue that their amendments in the Second Amended Petition “add[ed] nothing new” to their claims and were “immaterial.” Opp. p. 3. A simple review of the pleadings disproves this contention. Not only did Plaintiffs plead new factual allegations and policy provisions allegedly supporting their claims, but they also attached for the first time a summary of “key insurance provisions” and the insurance policies as exhibits. *See generally* Second Amended Petition. Plaintiffs amended their causes of action, entitling Lexington to file its Second Amended Motion to Dismiss. *Compare Montoya*, 2018 WL 2437508, * 1-2 (considering a timely amended motion to dismiss filed after a second amended petition “**asserting the same causes of action but adding further factual allegations** and attaching as exhibits two pages from a patient’s chart and a sworn statement by the daughter of one of Montoya’s existing patients.”) *with Serna v. Banks*, No. 13-20-00505-CV, 2022 WL 3724102 (Tex. App.—Corpus Christi—Edinburg Aug. 30, 2022, no pet.) (dismissing an amended motion to dismiss not filed within the timeframes specified in Rule 91a.5 and because “the parties at the hearing acknowledged that Serna was asserting the exact same claims.”).

Plaintiffs further suggest that no causes of action were amended because the “Insurance Companies” “do not challenge the factual sufficiency of the Rincons’ pleading—they allege only that the Rincons’ claims lack a *legal* basis due to lack of standing or capacity.” Opp., p. 3. This is incorrect. Lexington’s Second Amended Motion to Dismiss (and its prior motions) maintain that Plaintiffs’ causes of action “have no basis in law **or fact**” because Plaintiffs cannot establish a contract between them and Lexington. *See generally* Motion. Lexington specifically challenged the factual sufficiency underlying Plaintiffs’ causes of action. Plaintiffs admitted additions to the Second Amended Petition were material in that they included additional contractual allegations upon which Plaintiffs maintain they can bring suit against Lexington. Because Lexington

challenges both the legal and factual sufficiency of Plaintiffs' claims, Plaintiffs' amendment permitted Lexington to file the Motion. *See* Tex. R. Civ. P. 91.5(b).

Even if this Court were to find that the Motion was untimely, it is not automatically subject to denial as Plaintiffs allege. Although Rule 91a provides that a motion to dismiss “must” be “filed within 60 days after the first pleading containing the challenged cause of action is served on the movant,” Rule 91a does not provide any consequence for not filing the motion within the prescribed period. *See* Tex. R. Civ. Pro. 91a. The Texas Supreme Court has indicated that the term “must” is “given a mandatory meaning when followed by a noncompliance penalty.” *Helena Chem. Co. v. Wilkins*, 47 S.W.3d 486, 493 (Tex. 2001). However, [i]f a provision requires that an act be performed within a certain time without any words restraining the act’s performance after that time, the timing provision is usually directory.” *Id.* at 495. Binding authority—unlike the *Banks*⁵ case relied upon by Plaintiffs—confirms that “although the procedural deadlines in Rule 91a.3 are phrased in terms of ‘must,’ these provisions are directory and not mandatory.” *Malik v. GEICO Advantage Ins. Co., Inc.*, No. 01-19-00489-CV, 2021 WL 1414275, at *4 (Tex. App.—Houston [1st Dist.] Apr. 15, 2021, pet. denied); *see also Walker v. Owens*, 492 S.W.3d 787, 790–91 (Tex. App.—Houston [1st Dist.] 2016, no pet.) (considering analogous deadline for trial court’s ruling in 91a.3); *Koenig v. Blaylock*, 497 S.W.3d 595, 598–99 (Tex. App.—Austin 2016, pet. denied) (same); *MedFin Manager, LLC v. Stone*, 613 S.W.3d 624, 628 (Tex. App.—San Antonio 2020, no pet.); *Fiamma Statler, LP v. Challis*, No. 02-18-00374-CV, 2020 WL 6334470, at *7 (Tex. App.—Fort Worth Oct. 29, 2020, no pet.) (mem. op.) (“Although the procedural deadlines in Rule 91a are phrased in terms of

⁵ *Serna v. Banks*, No. 13-20-00505-CV, 2022 WL 3724102 (Tex. App.—Corpus Christi—Edinburg Aug. 30, 2022, no pet.).

‘must,’ these provisions are directory and not mandatory.”). Thus, any purported noncompliance with the timing of the Motion does not require denial.

B. A third-party “judgment creditor” can only bring suit if a right to direct action is provided for in the policy.

A third-party “judgment creditor” can only maintain suit against an insurer if (1) a judgment was obtained in favor of the third-party **and** (2) the subject policy provides the third-party with the right to maintain a direct action. *See, e.g. Debes v. Gen. Star Indem. Co.*, No. 09-12-00527-CV, 2014 WL 3384679, at *10 (Tex. App.—Beaumont July 10, 2014, no pet.) (addressing sufficient direct-action language for a third-party to maintain suit); *Russell v. Hartford Casualty Ins. Co.*, 548 S.W.2d 737 (Tex. Civ. App.—Austin 1977, writ ref’d, n.r.e.) (in absence of statute or express provision of insurance contract, insurer cannot be sued directly in tort suit); *Samford v. Allstate Ins. Co.*, 529 S.W.2d 84 (Tex. Civ. App.—Corpus Christi, 1975, writ ref’d, n.r.e.) (if injured third parties had no direct cause of action against liability insurer, they were not third-party beneficiaries of such action by insured); *Bluth v. Neeson*, 127 Tex. 462, (Tex. 1936) (injured third party had no right of action on automobile liability policy, which was personal to insured). Plaintiffs’ attempt to eliminate the second element is not supported by their own cited authority. For example, in *Dairyland*, third-party beneficiary status was found based on contractual language because “Texas motor vehicle safety laws implies that all potential claimants for damages resulting from automobile accidents are intended as beneficiaries of the statutorily required automobile liability coverage.” *Dairyland Cnty. Mut. Ins. Co. of Tex. v. Childress*, 650 S.W.2d 770, 775 (Tex. 1983). There is no such applicable statute here. The other cases cited by Plaintiffs are equally unavailing and can be divided into two different categories: (1) those determining that no right to suit existed because judgment had not been entered in favor

of the third party⁶ and (2) those determining whether the suit was permitted based on the express language of the subject policy after judgment was entered.⁷ None of the cases cited by Plaintiffs stand for the proposition that a “judgment creditor” can maintain suit against a third-party insurer without enforcement language in the policy or by statute. Accordingly, to maintain suit against Lexington, Plaintiffs would have to prove that the Policies permit direct action by third-parties. They do not. *See generally* Lexington’s Original Answer (Lex Ans.), Exhibits 1-3 (LEX001-196). Because the Policies do not permit direct actions by third-parties, Plaintiffs cannot sue under the Policies as alleged “judgment creditors.”

C. Plaintiffs are not third-party beneficiaries because the Policies do not extend any rights, benefits, or enforcement powers to Plaintiffs directly.

Plaintiffs make a strained argument that resolution of whether they are third-party beneficiaries turns on the type and scope of coverage provided. However, third-party beneficiary status does not turn on what coverage a policy provides. Instead, Plaintiffs must prove—and bear the burden of proving—that (1) the obligation of the bargain-giver is fully spelled out, (2) it is **unmistakable that a benefit to the third party** was within the contemplation of the contracting parties, and (3) the contracting parties contemplated that **the third party would be vested with the right to sue** for enforcement of the contract. *Alvarado v. Lexington Ins. Co.*, 389 S.W.3d 544, 552 (Tex. App.—Houston [1st Dist.] 2012, no pet.) (emphasis added); *see also Debes*, 2014 WL 3384679, at *4; *Rivera v. S. Green Ltd. P’ship*, 208 S.W.3d 12, 23 (Tex. App.—Houston

⁶ *See Standard Fire Ins. Co. v. Sassin*, 894 F. Supp. 1023, 1027 (N.D. Tex. 1995); *Cowley v. Tex. Smubbing Control, Inc.*, 812 F. Supp. 1437, 1445 (S.D. Miss. 1992), *aff’d sub nom. Cowley v. Stapleton*, 15 F.3d 180 (5th Cir. 1994); *Farmers Ins. Exch. v. Rodriguez*, 366 S.W.3d 216, 223 (Tex. App.—Houston [14th Dist.] 2012, pet. denied) (each holding that no right to suit existed because judgment had not yet been entered in favor of the third-party).

⁷*P.G. Bell Co. v. U.S. Fid. & Guar. Co.*, 853 S.W.2d 187, 190 (Tex. App.—Corpus Christi 1993, no writ); *Great Am. Ins. Co. v. Murray*, 437 S.W.2d 264, 265 (Tex. 1969); *Hutcheson v. Se’Christ’s Estate*, 459 S.W.2d 495, 496–97 (Tex. App.—Amarillo 1970, writ ref’d).

[14th Dist.] 2006, pet. denied); *Ortega v. City Nat'l Bank*, 97 S.W.3d 765, 773 (Tex. App.—Corpus Christi 2003, no pet.). None of these requirements are met.⁸

1. The Policies do not confer any direct benefit on Plaintiffs.

Plaintiffs are not named in the Policies nor do the Policies provide any direct benefit to Plaintiffs. *See generally*, Lex Ans., Exhibits 1-3 (LEX001-196); *see also* Second Am. Pet., Exhibits 1-E, 1-H, 1-L. Plaintiffs are not identified by name anywhere in the Policies and the Policies contain no language indicating they were entered into for Plaintiffs' benefit. To the contrary, the Policies specify that losses will be adjusted with and payable only to HHC (or another insured). *See* Lex Ans., Exhibit 1 at LEX19; Exhibit 2 at LEX116; Exhibit 3 at LEX169.

Plaintiffs nonetheless maintain that the Policies directly benefit them because the Policies “cover **CWH's liability**” and “indemnify **CWH**” Opp., p. 18; 22 (bolding added; italics in original). As Plaintiffs concede, any liability and indemnity coverage provided under the Policies extends to CWH. Likewise, the Policies provide coverage for the “interest of the Insured in real or personal property of others in the Insured's care, custody, or control. Lex. Ans. at LEX019; *see also Id.* at LEX099; LEX151. On their face, the Policies do not provide any coverage or benefit to Plaintiffs. Thus, there is no direct (or even indirect) benefit provided to Plaintiffs. Plaintiffs' argument is similar to that advanced and rejected by the Fifth Circuit in *Talman Home Fed. Sav. & Loan Ass'n of Illinois v. Am. Bankers Ins.*, 924 F.2d 1347 (5th Cir. 1991).⁹ Talman

⁸ Plaintiffs invite this Court to ignore binding Texas Supreme Court precedent and dozens of other cases requiring that the contract fully and expressly spell out the obligations to the third party to find any such obligation exists, in favor of a non-binding case decided in 1972. *See* Opp., p. 27-28 (citing *Cumis Ins. Soc'y v. Republic Nat'l Bank*, 480 S.W.2d 762, 766-67 (Tex. Civ. App.—Dallas 1972, writ ref'd n.r.e.)). This Court should look to the great weight of authority limiting a third-party's rights to only those spelled out in the agreement instead of relying on an outlying, outdated case.

⁹ *Compare* Opp., p. 27-28 (citing to *Cumis Ins. Soc'y v. Republic Nat'l Bank*, 480 S.W.2d 762, 767 (Tex. Civ. App.1972, writ ref'd n.r.e.) *with* Talman, 924 F.2d at 1352 (also citing to *Cumis*, S.W.2d 480 at 767).

contended he was a third-party beneficiary “because performance of the promise would satisfy an actual or supposed or asserted duty of the promisee to the third-party, and no intention to make a gift appears.” *Talman* 924 F.2d at 1352. The Fifth Circuit rejected Talman’s argument holding that:

We find that the provisions contained within the four corners of the Insurance Policy standing alone do not state or imply any intent on the part of American Bankers or Home Savings to benefit Talman. The Insurance Policy names only Home Savings as the insured, and does not mention Talman. We find no evidence of intent on the part of either American Bankers or Home Savings to benefit anyone other than themselves The Insurance Policy imposes a duty on American Bankers to perform for Home Savings[.]

Id. Plaintiffs’ argument fails for the same reason. The Policies do not state or imply any intent to benefit Plaintiffs. *See generally*, Lex. Ans., Exhibits 1-3 (LEX001-196). In fact, the policy language cited by Plaintiffs confirms that all benefits owed under the Policies extends only to the named insureds. *See* Lex. Ans. at LEX019; LEX099; LEX151 (covering only **the insured’s interest** in the property of others in its care, custody, or control); *id.* at LEX 029; LEX105; LEX157 (insuring the costs and fees to **defend** any claim against the Insured); *id.* at LEX 019, LEX 116, LEX 169 (confirming that losses are only payable to an insured). Because there is no “unmistakable” obligation to benefit a third-party, Plaintiffs are not third-party beneficiaries.

2. The Policies do not provide Plaintiffs with a right of enforcement.

Plaintiffs further fail to qualify as third-party beneficiaries for the simple and indisputable fact that the Policies do not provide Plaintiffs with any enforcement rights. Notably, Plaintiffs have neither pleaded nor identified any alleged enforcement language contained in the Policies. *See generally* Second Amended Petition. Without such enforcement language, Plaintiffs cannot qualify as third-party beneficiaries. *Alvarado*, 389 S.W.3d at 552; *Rivera*, 208 S.W.3d at 23;

Ortega, 97 S.W.3d at 773; *MJR Corp. v. B & B Vending Co.*, 760 S.W.2d 4, 16 (Tex. App.—Dallas 1988, writ denied).¹⁰

D. Plaintiffs should not be awarded attorneys’ fees.

Plaintiffs’ claim they should be awarded attorneys’ fees because they had to respond to “10 motions[.]” Opp., p. 31. This is incorrect: Plaintiffs filed two joint responses (one addressing the amended motions to dismiss and one addressing the second amended motions to dismiss). While Plaintiffs noted select distinctions between the various motions, they glossed over and failed to substantively address significant distinctions. *See generally* Opp. More importantly, Plaintiffs should not be awarded attorneys’ fees because through the Rule 91a Motions, the filing Defendants were successful in eliminating three causes of action¹¹ that Plaintiffs impliedly acknowledged had no basis in law and/or fact—saving both the Court and the parties (including Plaintiffs) from expending resources litigating non-viable claims. Accordingly, Plaintiffs should not be awarded attorneys’ fees.

CONCLUSION

Each of Plaintiffs’ claims against Lexington Insurance Company must be dismissed under Rule 91a because they have no basis in law or fact. No contract exists between Plaintiffs and Lexington, Plaintiffs cannot maintain extracontractual claims without establishing contractual liability, and Plaintiffs cannot maintain their claims under the Texas Insurance Code. Accordingly, Lexington respectfully requests that the Court dismiss Plaintiffs’ causes of action with prejudice without leave to amend. Lexington also requests that the Court award it

¹⁰ Because contractual liability or a justiciable controversy is a prerequisite to Plaintiffs’ bad faith claims and request for declaratory judgment, respectively, the failure of Plaintiffs’ breach of contract claim dooms those claims as a matter of law. *See* Lexington’s Second Amended Motion to Dismiss, Sections III D; E.

¹¹ The abandoned claims include claims for Unfair Claim-Settlement Practices Act, Prompt Payment of Claims Violations, and an Application for Writ of Garnishment.

reasonable and necessary attorneys' fees incurred in bringing this Motion and Lexington's prior motions to dismiss, which have been significant, as permitted by Texas Rule of Civil Procedure 91a.7.

Date: July 18, 2023

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this July 18, 2023, a true and correct copy of the foregoing was served in accordance with the Texas Rules of Civil Procedure on:

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MH1292378

APP - H

LEXINGTON INSURANCE COMPANY
Administrative Office 100 Summer Street, Boston, Massachusetts 02110-2103
(hereinafter called the Company)

COMMERCIAL PROPERTY POLICY DECLARATIONS

POLICY NUMBER: 038421982

RENEWAL OF: 038421982

ITEM 1. Named Insured: THE HOWARD HUGHES CORPORATION

Address: 13355 NOEL ROAD, 22ND FLOOR
DALLAS, TX 75240-6845

ITEM 2. Policy Period:
From: 04/01/2013 TO: 04/01/2014
at 12:01 A.M. Standard Time at the address of the named insured shown above.

ITEM 3. Limit of Insurance: \$10,000,000 Per Occurrence and in the Primary
Specific Policy per Schedule on File with Company

Lexington Participation: 50% being \$5,000,000 part of \$10,000,000 per occurrence and in the
Primary.

Total Premium \$ 646,583 Minimum Earned Premium \$161,646

ITEM 4. Perils:
Real and Personal Property; Machinery and Equipment; Furniture & Fixtures; Improvements
and Betterment's; Inventory; Stock; EDP Hardware, Media and Data; Business Income -
Gross Earning / Extra Expense and as further described in the policy form.

ITEM 5. Description of Property Covered: Coinsurance
All Risks of Direct Physical Loss or Damage including Flood, Earth Movement and Waived
Equipment Breakdown/Boiler & Machinery and as further described in the approved
policy form.

STATE TAX \$31,359.28
STAMPING FEE \$387.95
FEES 0

ITEM 6. Mortgage Clause: Loss, if any shall be payable to:

Not Applicable

ITEM 7. Forms Attached:

See attached forms schedule



Authorized Representative OR
Countersignature (In states where applicable)

PRPDEC(Ed.01/91)
LX1119

POLICYHOLDER NOTICE

Thank you for purchasing insurance from the Chartis companies. Chartis Insurance Companies generally pay compensation to brokers and independent agents, and may have paid compensation in connection with your policy. You can review and obtain information about the nature and range of compensation paid by Chartis Insurance companies to brokers and independent agents in the United States by visiting our website at www.chartisinsurance.com/producercompensation or by calling 1-800-706-3102.

91222 (12/09)

LEX 003 1644

LEX 003 1 CR 1644

Exhibit 1-E

Guaranty Fund Nonparticipation Notice

This insurance contract is with an insurer not licensed to transact insurance in this state and is issued and delivered as surplus line coverage under the Texas Insurance statutes. The Texas Department of Insurance does not audit the finances or review the solvency of the surplus lines insurer providing this coverage, and the insurer is not a member of the property and casualty insurance guaranty association created under Chapter 462, Insurance Code. Chapter 225, Insurance Code, requires payment of a 4.85 percent tax on gross premium.

Risk Specialists Companies Insurance Agency, Inc.
TX Corporate Non-Resident Surplus Lines License #1477780
2929 Allen Parkway, Suite 1300, Houston, TX 77019-2128
mkingston@fllawoffice.com

TEXAS NOTICE
(Surplus Lines)

1. IMPORTANT NOTICE	AVISO IMPORTANTE
To obtain information or make a complaint:	Para obtener informacion o para someter una queja:
5. You may contact the Texas Department of Insurance to obtain information on companies, coverages, rights or complaints at:	Puede comunicarse con el Departamento de Seguros de Texas para obtener informacion acerca de companias, coberturas, derechos o quejas al:
1-800-252-3439	1-800-252-3439
6. You may write the Texas Department of Insurance:	Puede escribir al Departamento de Seguros de Texas:
P. O. Box 149104	P. O. Box 149104
Austin, TX 78714-9104	Austin, TX 78714-9104
Fax: (512) 475-1771	Fax: (512) 475-1771
Web: http://www.tdi.texas.gov	Web: http://www.tdi.texas.gov
E-mail: ConsumerProtection@tdi.state.tx.us	E-mail: ConsumerProtection@tdi.state.tx.us
7. PREMIUM OR CLAIM DISPUTES: Should you have a dispute concerning your premium or about a claim you should contact the (agent) (company) (agent or the company) first. If the dispute is not resolved, you may contact the Texas Department of Insurance.	DISPUTAS SOBRE PRIMAS O RECLAMOS: Si tiene una disputa concerniente a su prima o a un reclamo, debe comunicarse con el (agente) (la compania) (agente o la compania) primero. Si no se resuelve la disputa, puede entonces comunicarse con el departamento (TDI).
8. ATTACH THIS NOTICE TO YOUR POLICY: This notice is for information only and does not become a part or condition of the attached document.	UNA ESTE AVISO A SU POLIZA: Este aviso es solo para proposito de informacion y no se convierte en parte o condicion del documento adjunto.

56668 (09/11)

Exhibit 1-E

Forms Schedule

Named Insured: THE HOWARD HUGHES CORPORATION

Policy No: 038421982

Effective Date: 04/01/2013

Form Number	Edition Date	Endorsement Number	Title
PRPDEC	01/91		Property Dec
91222	12/09		Policyholder Notice
			Guaranty Fund Nonparticipation Notice
56668	08/11		Texas Notice
DOC018	12/87		Forms Schedule
PRFIRS	01/91		Fire Schedule of Covered Locations
PR9015	08/06		Pollution Contamination Form
PR9019	01/94		Standard Property Conditions
		Form	Manuscript Form
PR9885	11/05	Endt#001	Coverage Territory Endorsement
LX9598	05/03	Endt#002	Contributing Insurance Endorsement
NMA2918	08/01	Endt#003	War and Terrorism Exclusion Endorsement
PR9566	11/02	Endt#004	Equipment Breakdown Endorsement
Y69813	02/98	Endt#005	Comb. Prop/B&M Millennium Endorsement
LX9512	08/02	Endt#006	Mold/Fungus Exclusion
PR9514	09/02	Endt#007	Property Endorsement
96554	04/08	Endt#008	Terrorism Exclusion Endorsement
		Endt#009	Anti-Stacking Endorsement
		Endt#010	Amendatory Endorsement

DOC018 (ED. 12/87)
LX0295

LEX 006

LEX 006 1 CR 1647

Exhibit 1-E

FIRE

SCHEDULE OF COVERAGE

Policy Number: 038421982

Issued to: THE HOWARD HUGHES CORPORATION

DESCRIPTION OF PREMISES:

Per Schedule on File with the Company

LIMIT

\$5,000,000 Part of
\$10,000,000

COINSURANCE

Waived

Sublimits:

As Per Attached Manuscript Form

PRFIRS(ED.01/91)
LX1120

LEX1648

LEX 007 1 CR 1648

Exhibit 1-E

POLLUTION, CONTAMINATION, DEBRIS REMOVAL EXCLUSION ENDORSEMENT

1. Property Not Covered

This policy does not cover land, land values or water.

2. Pollution and Contamination Exclusion.

This policy does not cover loss or damage caused by, resulting from, contributed to or made worse by actual, alleged or threatened release, discharge, escape or dispersal of CONTAMINANTS or POLLUTANTS, all whether direct or indirect, proximate or remote or in whole or in part caused by, contributed to or aggravated by any physical damage insured by this policy.

Nevertheless, if fire is not excluded from this policy and a fire arises directly or indirectly from seepage or contamination or pollution, any loss or damage insured under this policy arising directly from that fire is insured, subject to the provisions of this policy.

CONTAMINANTS or POLLUTANTS means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste, which after its release can cause or threaten damage to human health or human welfare or causes or threatens damage, deterioration, loss of value, marketability or loss of use to property insured hereunder, including, but not limited to, bacteria, virus, or hazardous substances as listed in the Federal Water, Pollution Control Act, Clean Air Act, Resource Conservation and Recovery Act of 1976, and Toxic Substances Control Act or as designated by the U. S. Environmental Protection Agency. Waste includes materials to be recycled, reconditioned or reclaimed.

This exclusion shall not apply when loss or damage is directly caused by fire, lightning, aircraft impact, explosion, riot, civil commotion, smoke, vehicle impact, windstorm, hail, vandalism, malicious mischief. This exclusion shall also not apply when loss or damage is directly caused by leakage or accidental discharge from automatic fire protective systems.

3. Asbestos, Dioxin or Polychlorinated Biphenols Exclusions

This policy does not cover -

- a) Asbestos, dioxin or polychlorinated biphenols (hereinafter all referred to as "Materials") removal from any good, product or structure unless the asbestos is itself damaged by fire, lightning, aircraft impact, explosion, riot, civil commotion, smoke, vehicle impact, windstorm or hail, vandalism, malicious mischief, leakage or accidental discharge from automatic fire protective system.
- b) Demolition or increased cost of reconstruction, repair, debris removal or loss of use necessitated by the enforcement of any law or ordinance regulating such Materials;
- c) Any governmental direction or request declaring that such Materials present in or part of or utilized on any undamaged portion of the insured's property can no longer be used for the purpose for which it was intended or installed and must be removed or modified.

The exception to exclusion 3(a), above, does not apply to payment for the investigation or defense of any loss, damage or any undamaged portion of the insured's property can no longer be used for the purpose for which it was intended

4. Debris Removal Exclusion

The Company will pay the expense within the sum insured to remove debris of insured property damaged or destroyed by an insured peril during the policy term.

The Company will not pay the expense to:

- a) Extract contaminants or pollutants from the debris; or
- b) Extract contaminants or pollutants from land or water; or

Exhibit 1-E

- c) Remove, restore or replace contaminated or polluted land or water; or
- d) Remove or transport any property or debris to a site for storage or decontamination required because the property or debris is affected by pollutants or contaminants, whether or not such removal, transport, or decontamination is required by law or regulation.

It is a condition precedent to recovery under this extension that the Company shall have paid or agreed to pay for direct physical loss or damage to the property insured hereunder and that the Insured shall give written notice to the Company of intent to claim for cost of removal of debris or cost to clean up not later than 180 days after the date of such physical loss or damage.

5. Authorities Exclusion

Notwithstanding any of the provisions of this policy, the Company shall not be liable for loss, damage, costs, expenses, fines or penalties incurred or sustained by or imposed on the Insured at the order of any Government Agency, Court or other Authority arising from any cause whatsoever.

PR9015 (03/06)
LX1093

LEX 1090

LEX 009 1 CR 1650

Exhibit 1-E

LEXINGTON INSURANCE COMPANY Standard Property Conditions

This endorsement effective 04/01/2013 forms a part of Policy Number 038421982
issued to THE HOWARD HUGHES CORPORATION

LEXINGTON INSURANCE COMPANY (hereinafter called "the Company").

In consideration of the premium charged, the following clauses are hereby made applicable under this policy.

MINIMUM EARNED PREMIUM CLAUSE

In the event of cancellation of this policy by the Insured, a minimum premium of \$161,646 shall become earned, any provision of the policy to the contrary notwithstanding.

Failure of the Insured to make timely payment of premium shall be considered a request by the Insured for the Company to cancel on the Insured's behalf. In the event of such cancellation for non-payment of premium, the minimum earned premium shall be due and payable; provided, however, such cancellation shall be rescinded if the Insured remits and the Company receives the full policy premium with 10 days after the date of issuance of the cancellation notice. Such remittance and acceptance by the Company shall not effect the minimum earned premium provision of this endorsement. In the event of any other cancellation by the Company, the earned premium shall be computed pro-rata, not subject to the minimum earned premium.

POLICY DEDUCTIBLE

Each claim for loss or damage separately occurring shall be adjusted separately and from each such adjusted claim, the amount of \$100,000 shall be deducted. Notwithstanding the foregoing, the deductible amount applying to certain peril(s) insured against by this policy shall be as follows:

\$100,000	deductible applying to	Per Manuscript Policy Attached
	deductible applying to	
	deductible applying to	
	deductible applying to	
	deductible applying to	

In the event of any other insurance covering the property insured hereunder, whether or not concurrent, the deductible(s) specified herein shall apply in full against that portion of any claim for loss or damage which the Company is called upon to pay under the provisions of the Apportionment Clause irrespective of any provisions to the contrary of such other insurance.

CANCELLATION CLAUSE

Except and to the extent of the Minimum Earned Premium Clause which is part of this policy, this clause supersedes other cancellation clauses made a part of this policy.

CANCELLATION: This policy may be cancelled by the Insured by surrender thereof to the Company or by mailing to the Company written notice stating when thereafter such cancellation shall be effective. This policy may be cancelled by the Company by mailing to the Insured, at the mailing address shown in this policy or last known address, written notice, stating when, not less than _____ days thereafter (10 days for non-payment of premium) such cancellation shall be effective. The effectiveness of cancellation is not dependent on the return of unearned premium with the notice. Proof of mailing of notice as aforesaid shall be sufficient proof of notice. The effective date and hour of cancellation stated in the notice shall become the end of the policy period. Delivery of such written notice either by the Insured or the Company shall be equivalent to mailing. If the Insured cancels, earned premium shall be computed in accordance with the customary short rate table and procedure. If the Company cancels, earned premium shall be computed pro rata. Premium adjustment shall be made as soon as practicable after cancellation becomes effective.

SERVICE OF SUIT CLAUSE

Service of Suit: In the event of failure of the Company to pay any amount claimed to be due hereunder, the Company, at the request of the Insured, will submit to the jurisdiction of a court of competent jurisdiction within the United States. Nothing in this condition constitutes or should be understood to constitute a waiver of the Company's rights to commence an action in any court of competent jurisdiction in the United States to remove an action to a United States District Court or to seek a transfer of a case to another court as permitted by the laws of the United States or of any state in the United States. It is further agreed that service or process in such suit may be made upon Counsel, Legal Department, Company stated on Declarations, 100 Summer Street, Boston, Massachusetts, 02110-2103, or his or her representative, and that in any suit instituted against the Company upon this policy, the Company will abide by the final decision.

1 of 2

PR9019 (Ed.01/94)
LX1101

Exhibit 1-E

of such court or of any appellate court in the event of an appeal.

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

WAR RISK EXCLUSION CLAUSE

The Company shall not be liable for any loss, caused directly or indirectly, by (1) hostile or warlike action in time of peace or war, whether or not declared, including action in hindering, combating or defending against an actual, impending or expected attack (a) by government or sovereign power (de jure or de facto) or by any authority maintaining or using military, naval or air forces; or (b) by military, naval or air forces; or (c) by an agent of any such government, power, authority or force (2) any weapon of war employing atomic fission or radioactive force whether in time of peace or war, whether or not its discharge was accidental; (3) insurrection, rebellion, revolution, civil war, usurped power, or action taken by government authority in hindering, combating, or defending against such an occurrence, seizure or destruction; (4) any consequence of any of the foregoing.

NUCLEAR EXCLUSION CLAUSE

The Company shall not be liable for loss by nuclear reaction or nuclear radiation or radioactive contamination all whether controlled or not, and whether such loss be direct or indirect, proximate or remote, or be in whole or in part caused by, contributed to, or aggravated by the peril(s) insured against in this policy. If the peril of fire is insured under this policy, then, subject to the foregoing and all provisions of this policy, direct loss by fire resulting from nuclear reaction or nuclear radiation or radioactive contamination is insured against by this policy.

SALVAGE AND RECOVERY CLAUSE

All salvages, recoveries and payments recovered or received either prior or subsequent to a loss settlement under this policy shall be applied as if recovered or received prior to the said settlement and all necessary adjustments shall be made by the parties hereto, including deduction of the Company's cost of recovery or salvage.

REPORTING CLAUSE

Notwithstanding that the Insured may be obligated to report full values for premium purposes, the Company's maximum limit of liability shall not exceed that amount stated as the policy limit of liability.

PROOF OF LOSS AND PAYMENT

The Insured shall complete and sign a sworn proof of loss within ninety (90) days after the occurrence of a loss (unless such period be extended by the written agreement of the Company) stating the time, place and cause of loss, the interest of the Insured and of all others in the property, the sound value thereof and the amount of loss or damage thereto, and all other insurance thereon. All adjusted claims shall be due and payable thirty (30) days after the presentation and acceptance of satisfactory proof(s) of loss at the office of the Company at 100 Summer Street, Boston, Massachusetts 02110-2103.

GOVERNMENT ACTIVITY CLAUSE

The Company shall not be liable for loss or damage caused by or resulting from: (1) the seizure or destruction of property insured by this policy by any government body, including any customs or quarantine action, or (2) confiscation or destruction of any property by order of any government or public authority, except an order to destroy property to prevent the spread of fire or explosion.

IN WITNESS WHEREOF, the Company has caused this policy to be executed and attested, but this policy shall not be valid unless countersigned in the Declarations by one of its duly authorized representatives.


Secretary


President

The Howard Hughes Corporation

AND ITS AFFILIATED, SUBSIDIARY, AND ASSOCIATED
COMPANIES AND/OR CORPORATIONS AND THE INSURED'S INTEREST IN
PARTNERSHIPS AND JOINT VENTURES
AS NOW EXIST OR MAY HEREAFTER BE CONSTITUTED OR ACQUIRED
AND ANY PARTY IN INTEREST WHICH THE
INSURED IS RESPONSIBLE TO INSURE

HEREINAFTER REFERRED TO AS "THE INSURED"

1. TERM OF INSURANCE

In consideration of \$646,583 annual share premium, this policy attaches and covers for a period of 12 months, from April 1, 2013 to April 1, 2014, beginning and ending at 12:01 A.M., standard time, at the location of the property involved.

The actual effective time of attachment of this insurance on the above date shall be the same time as the actual effective time of cancellation or expiration of policy(ies) replaced or renewed by this policy.

2. LIMITS OF LIABILITY

This Company shall not be liable for more than its proportion of the a loss limit of \$250,000,000 or the following sublimits for any one occurrence applicable separately to each limit, irrespective of the sequence of occurrences, whether or not proximate or ensuing as respects loss or damage arising out of:

A. With respect to the peril of earthquake, excluding California, Hawaii and the Pacific Northwest, this Company shall not be liable, per occurrence and in any one policy year, for more than its proportion of \$100,000,000 which shall apply separately to each peril. Even if the peril of flood or earthquake is the predominant cause of loss or damage, any ensuing loss or damage not otherwise excluded herein shall not be subject to any sub limits or aggregates specified in this Clause A;

B. With respect to the peril of earthquake in California, Hawaii and the Pacific Northwest, this Company shall not be liable, per occurrence and in any one policy year, for more than its proportion of \$25,000,000 which shall apply separately to each peril. Even if the peril of flood or earthquake is the predominant cause of loss or damage, any ensuing loss or damage not otherwise excluded herein shall not be subject to any sub limits or aggregates specified in this Clause B;

C. With respect to the perils of flood, this Company shall not be liable, per occurrence and in any one policy year, for more than its proportion of \$100,000,000 which shall apply separately to each peril. Even if the peril of flood or earthquake is the predominant cause of loss or damage, any ensuing loss or damage not otherwise excluded herein shall not be subject to any sub limits or aggregates specified in this Clause C, Except;

D. With respects to Flood locations listed in Appendix A the limit shall be, per occurrence and in any one policy year, for more than its proportion of \$25,000,000 which shall apply separately to each peril. Even if the peril of flood or earthquake is the predominant cause of loss or damage, any ensuing loss or damage not otherwise excluded herein shall not be subject to any sub limits or aggregates specified in this Clause D;

E.	\$25,000,000	per occurrence for Accounts Receivable
F.	Included	per occurrence for Automatic Coverage (90 days reporting)
G.	\$5,000,000	per occurrence for Christmas Holiday décor while stored at an off-site location during the Off-Season (off-season shall be considered the period between February 1 st and October 31 st)
H.	30 Days	per occurrence for Civil & Military Authority
I.	\$25,000,000	per occurrence for Contingent Time Element
J.	\$40,000,000	per occurrence for Debris Removal
K.	\$35,000,000	per occurrence for Demolition & Increased Cost of Construction
L.	\$1,000,000	per occurrence for Defense Costs
M.	\$10,000,000	per occurrence for Errors & Omissions

Exhibit 1-E

3

N.	\$25,000,000	per occurrence for Expediting Expense & Extra Expense Combined
O.	\$10,000,000	per occurrence for Fine Arts
P.	\$1,000,000	per occurrence for Fines, Damages, & Penalties
Q.	\$1,000,000	per occurrence for Fire Brigade Charges and Extinguishing Expenses
R.	30 Days	per occurrence for Ingress / Egress
S.	\$10,000,000	per occurrence for Leasehold Interest
T.	\$1,000,000	per occurrence for Loss Adjustment Expense
U.	\$25,000,000	per occurrence for Miscellaneous Unnamed Locations
V.	\$5,000,000	per occurrence for Mold and Fungus (ensuing loss or damage as a result of specified covered peril)
W.	\$5,000,000	per occurrence and annual aggregate for Pollutant Clean-Up and Removal Expense
X.	\$25,000,000	per occurrence for Service Interruption
Y.	\$10,000,000	per conveyance as respects property in transit; each railroad car or trailer shall be considered a separate conveyance;
Z.	\$10,000,000	per occurrence for Valuable Papers and Records
AA.	\$5,000,000	per occurrence for Vehicles; except not to exceed \$25,000 per vehicle and \$1,000,000 per occurrence for Self Park or Valet Parking Locations
AB.	\$1,000,000	per occurrence Bailee Coverage
AC.	With Respect to Boiler & Machinery, the sub limits shall be as follows:	
	▪ \$100,000,000 per occurrence for Boiler and Machinery Accidents	
	▪ \$40,000,000 per occurrence for Contingent Time Element	
	▪ \$25,000,000 per occurrence for Off-Premises Power/Service Interruption	
	▪ \$1,000,000 per occurrence for Ammonia and Refrigeration Contamination	
	▪ \$25,000,000 per occurrence for Expediting Expenses	
	▪ \$1,000,000 per occurrence for Hazardous Substances	

-
- \$2,500,000 per occurrence for Computer Equipment

Golf Course Sub limits:

- A. \$1,000,000 per occurrence as respects Golf Course Greens, Tees, Grounds (excluding Fairways and Sand Traps), Trees and Shrubs
- B. \$250,000 per occurrence as respects Business Income on Golf Course Greens Fees
- C. \$250,000 per occurrence as respects Golf Course Fairways
- D. \$500,000 per occurrence as respects Golf Course Sand Traps

Time Limits:

- A. 365 Days Extended Period of Indemnity as respects all locations
- B. 30 Days as respects Ingress/Egress
- C. 30 Days as respects Civil or Military Authority

3. DEDUCTIBLES

All losses, damages or expenses arising out of any one occurrence shall be adjusted as one loss, and from the amount of such adjusted loss shall be deducted \$100,000 except:

Special Flood Deductible--The following sum(s) shall be deducted from any adjusted loss due to Flood:

- (1) With respect to locations wholly or partially within Special Flood Hazard Areas (SFHA), area of 100-year flooding, as defined by the Federal Emergency Management Agency (if these locations are not excluded elsewhere in this policy with respect to the peril of flood), the deductible shall be 5% of the total values at the time of loss at each location involved in the loss per unit of insurance, subject to a minimum of \$1,000,000 for any one occurrence;
- (2) With respect to Named Storm ("Named Storm" means a storm that has been declared and named by the National Weather Service), the deductible shall be 5% of the total values at the time of loss at each location involved in the loss per unit of insurance, subject to a minimum of \$1,000,000 for any one occurrence.
- (3) With respect to any other flood loss, the deductible shall be \$100,000 any one occurrence

Special Wind Deductible--The following sum(s) shall be deducted from any adjusted loss due to Named Storm. ("Named Storm" means a storm that has been declared and named by the National Weather Service):

- (1) With respect to locations within the State of Florida and Tier 1 wind zones in the states of Texas, Louisiana, Alabama and Mississippi the deductible shall be 5% of the total values at the time of loss or damage at each location involved in the loss or damage per unit of insurance, subject to a minimum of \$250,000 for any one occurrence;
- (2) With respect to locations within the State of Hawaii and Tier 1 wind zones in the states of Virginia, North Carolina, South Carolina and Georgia the deductible shall be 3% of the total values at the time of loss or damage at each location involved in the loss or damage per unit of insurance, subject to a minimum of \$100,000 for any one occurrence;
- (3) With respect to the locations located in Montgomery County, Texas, the deductible shall be \$500,000 per occurrence

Tier 1 Counties as referenced above shall be defined as:

STATE	TIER 1 WIND COUNTIES AND SPECIFIC CITIES
Alabama	Baldwin, Mobile
Florida	Entire State
Georgia	Bryan, Chatham, Liberty, Camden, Glynn, McIntosh
Hawaii	All Counties
Louisiana	Cameron, Orleans, St. Tammany, Iberia, Plaquemines, Terrebonne Jefferson, St. Bernard, Vermillion, Lafourche, St. Mary, St. Charles
Mississippi	Hancock, Harrison, Jackson
North Carolina	Beaufort, Dare, Pamlico, Brunswick, Hyde, Pender, Carteret, New Hanover, Bertie, Craven, Onslow, Camden, Chowan, Currituck, Pasquotank, Perquimans, Tyrell, Washington
South Carolina	Beaufort, Charleston, Georgetown, Berkeley, Colleton, Horry, Jasper
Texas	Aransas, Orange, Nueces, Brazoria, Jackson, Refugio, Calhoun, Jefferson, San Patricio, Cameron, Kennedy Willacy, Chambers, Kleberg, Victoria, Galveston, Matagorda, Harris County
Virginia	Accomack, Gloucester, Poquoson City, Chesapeake City, Mathews, Portsmouth City, Hampton City, Middlesex, Suffolk City, Lancaster, Newport News City, Virginia Beach City, Norfolk City, York, Northampton, Northumberland, Essex, Isle of Wight, James City, King, George, Richmond, Stafford, Westmoreland, Williamsburg, York

Special Earthquake Deductible--If coverage is not otherwise excluded, the following sum(s) shall be deducted from any adjusted loss due to Earthquake:

- (1) With respect to locations wholly or partially within the states of California and

Alaska the deductible shall be 5% of the total values at the time of loss or damage at each location involved in the loss or damage per unit of Insurance, subject to a minimum of \$250,000 for any one occurrence unless coverage is excluded elsewhere in its entirety;

(2) With respect to locations wholly or partially within the state of Hawaii, Pacific Northwest Earthquake Counties & New Madrid Earthquake Counties the deductible shall be 2% of the total values at each location involved in loss or damage per unit of insurance, subject to a minimum of \$100,000 any one occurrence.

(3) With respect to any other earthquake loss, the deductible shall be \$100,000 any one occurrence

Pacific Northwest and New Madrid Counties as referenced above shall be defined as:

STATE	PACIFIC NORTHWEST AND NEW MADRID COUNTIES AND SPECIFIC CITIES
Arkansas	Clay, Craighead, Crittenden, Cross, Greene, Jackson, Lawrence, Randolph, Sharp, Mississippi, Poinsett
Illinois	Alexander, Massac, Pulaski, Union, Williamson, Johnson, Pope, Saline, Jackson, Franklin, Perry, Hardin, Randolph, Monroe, St. Clair, Washington, Clinton, Bond, Madison, Jefferson
Indiana	Pose, Vanderburgh, Gibson, Warrick, Pike
Kentucky	Ballard, Carlisle, Fulton, Graves, Hickman, Livingston, McCracken, Marshall, Calloway
Mississippi	Desoto, Tunica, Marshall, Tate, Coahoma, Bolivar
Missouri	Bollinger, Butler, Cape, Girardeau, Dunklin, Mississippi, New Madrid, Pemiscot, Scott, Stoddard, St. Louis, St. Francois, St. Charles, Jefferson, Franklin, Warren, Washington, Iron, Wayne, Reynolds, Madison, St Genevieve, Perry
Tennessee	Crockett, Dyer, Haywood, Lake, Lauderdale, Obion, Shelby, Tipton, Gibson, Madison, Fayette, Hardeman
Washington	Clallam, Jefferson, King, Kitsap, Mason, Pierce, San Juan, Skagit, Snohomish, Thurston, Whatcom

Fine Arts \$50,000 per occurrence

Boiler & Machinery \$100,000 per accident

Off Premises Service Interruption – Twenty Four (24) Hours Qualifying Period

A **Named Windstorm** is defined as a storm that has been declared and named by the National Weather Service including flood as result of storm surge.

The following shall be considered a separate Unit of Insurance: (1) each separate building or structure, not including the value of foundations; (2) the contents of each separate building or structure; (3) property in each yard; (4) business interruption as defined in Clauses 7.B. and 7.C. for the twelve month period immediately following the loss sustained to said property.

The values to be used when calculating the deductibles for the above shall be those as specified for each unit of insurance as shown in the most recent Statement of Values on file with the Company. If values are not itemized for each unit of insurance or if the property damaged is a building in the course of construction or renovation, the values will be determined at the time of loss.

If two or more deductible amounts in this policy apply to a single occurrence, the total to be deducted shall not exceed the largest deductible.

In any occurrence where loss or damage is caused by more than one peril insured against under this policy, the Insured shall have the right to separate the loss amount by peril for the purposes of application of the deductible(s) specified in this section, notwithstanding the above reference to two or more deductibles and the policy limits.

As respects theft, the term Occurrence as referred to elsewhere within the policy means the sum total of all losses of covered property resulting from one or more concealed acts committed by one person or more than one person acting in unison to the extent such loss is not otherwise excluded under this policy.

The deductible amounts specified above shall not apply to general average contributions, salvage charges and sue and labor expenses.

4. **LOSS PAYABLE**

Loss, if any, shall be adjusted with and payable to The Howard Hughes Corporation or their order, whose receipt shall constitute a release in full of all liability under this policy with respect to such loss.

5. **TERRITORY**

This policy covers loss occurring anywhere in the United States of America (including its territories and possessions and the District of Colombia) and Canada.

6. **COVERAGE**

Except as hereinafter excluded, this policy covers:

A. **Real and Personal Property**

- (1) The interest of the Insured in all real and personal property including but not limited to property owned, used, leased or intended for use by the Insured, or hereafter constructed, erected, installed, or acquired, including while in course of construction, erection, installation, and assembly. In the event of loss or damage, this Company agrees to accept and consider the Insured as sole and unconditional owner of improvements and betterments, notwithstanding any contract or leases to the contrary.
- (2) The interest of the Insured in real and personal property of others in the Insured's care, custody, or control.
- (3) Real and Personal Property which the Insured is responsible for or has agreed to insure.
- (4) At the option of the Insured, personal property of the Insured's officials, employees and representatives while on the premises of the Insured. This insurance shall then act as primary insurance.
- (5) Contractors' and vendors' interest in property covered to the extent of the Insured's liability imposed by law or assumed by contract, whether written or oral.

B. **Business Interruption**

- (1) Loss resulting from necessary interruption of business conducted by the Insured, whether total or partial, and caused by loss, damage, or destruction covered herein during the term of this policy to real and personal property as described in Clause 7.A.

- (2) If such loss occurs during the term of this policy, it shall be adjusted on the basis of ACTUAL LOSS SUSTAINED by the Insured, consisting of the net profit which is thereby prevented from being earned and of all charges and expenses only to the extent that these must necessarily continue during the interruption of business including ordinary payroll and only to the extent such charges and expenses would have been earned had no loss occurred.

"Ordinary payroll" is defined to be the entire payroll expense for all employees of the Insured except officers, executives, department managers, employees under contract, and other important employees as determined by the Insured.

- (3) In the event of loss, damage, or destruction covered herein to property as described in Clause 7.A. which results in an interruption of research and development activities which in themselves would not have produced income during the indemnity period, this policy shall cover the actual loss sustained of the continuing fixed charges and expenses, including ordinary payroll directly attributable to such research and development activities.
- (4) However, this Company shall not be liable under this Clause B. for any loss resulting from damage to or destruction of finished stock nor for the time required to reproduce said finished stock. Finished stock shall mean stock manufactured by the Insured which in the ordinary course of the Insured's business is ready for packing, shipment, or sale.
- (5) Resumption of Operations: If the Insured, by reasonable means within its control, could reduce the loss resulting from the interruption of business:
- (a) by a complete or partial resumption of operation of the property insured, whether damaged or not; or
 - (b) by making use of available stock, merchandise, or other property;
- such reduction shall be taken into account in arriving at the amount of loss hereunder.
- (6) Experience of the Business:

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- (a) In determining the amount of net profit, charges and expenses covered hereunder for the purpose of ascertaining the amount of loss sustained, due consideration shall be given to the experience of the business before the date of damage or destruction and to the probable experience thereafter had no loss occurred to real or personal property as described in Clause 7.A.
 - (b) With respect to alterations, additions, and property while in the course of construction, erection, installation, or assembly, due consideration shall be given to the available experience of the business after completion of the construction, erection, installation, or assembly.

C. Extra Expense

- (1) Extra Expense incurred resulting from loss, damage, or destruction covered herein during the term of this policy to real or personal property as described in Clause 7.A.
- (2) "Extra Expense" means the excess of the total cost chargeable to the operation of the Insured's business over and above the total cost that would normally have been incurred to conduct the business had no loss or damage occurred.

D. Rental Value

- (1) Rental Value loss sustained by the Insured resulting directly from loss, damage, or destruction covered herein during the term of this policy to real and personal property as described in Clause 7.A. but not exceeding the reduction in rental value less charges and expenses which do not necessarily continue.
- (2) "Rental Value" is defined as the sum of:
 - (a) the total anticipated gross rental income from tenant occupancy of the described property as furnished and equipped by the Insured; and
 - (b) the amount of all charges which are the legal obligation of the tenant(s) and which would otherwise be obligations of the Insured; and
 - (c) the fair rental value of any portion of said property which is occupied by the Insured.
- (3) Experience of the Business:

- (a) In determining the amount of rental value covered hereunder for the purposes of ascertaining the amount of loss sustained, due consideration shall be given to the rental experience before the date of damage or destruction and to the probable experience thereafter had no loss occurred to real and personal property as described in Clause 7.A.
- (b) With respect to alterations, additions, and property while in the course of construction, erection, installation, or assembly, due consideration shall be given to the available rental experience of the business after completion of the construction, erection, installation, or assembly.

E. Royalties

- (1) Loss of income to the Insured under royalty, licensing fees, or commission agreements between the Insured and another party which is not realizable due to loss, damage, or destruction by any of the perils covered herein during the term of this policy to property of the other party.
- (2) If such loss occurs during the term of this policy, it shall be adjusted on the basis of ACTUAL LOSS SUSTAINED of such income referred to in paragraph 1 above, which would have been earned had no loss occurred.
- (3) Resumption of Operations: The Insured shall influence, to the extent reasonably possible, the party with whom the agreement described in paragraph 1 above has been made to use any other machinery, supplies or locations in order to resume business so as to reduce the amount of loss hereunder, and the Insured shall cooperate with that party in every reasonable way to effect this, but not financially unless such expenditures shall be authorized and paid by this Company.
- (4) Experience of the Business: In determining the amount of income derived from the agreement(s) described in paragraph 1 above for the purpose of ascertaining the amount of loss sustained, due consideration shall be given to the amount of income derived from such agreement(s) before the date of damage or destruction and to the probable amount of income thereafter had no loss occurred to real and personal property of the type insured under this policy of such other party.

F. Time Element Extensions

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- (1) This policy, subject to all provisions and without increasing the limits of this policy, also insures against loss resulting from damage to or destruction by causes of loss insured against, to:
- (a) Service Interruption: electrical, steam, gas, water, sewer, telecommunications, or any other utility or service, transmission lines and related plants, substations and equipment situated on or outside of the premises;
 - (b) Contingent Time Element: property that wholly or partially prevents any direct or indirect supplier of goods and/or services to the Insured from rendering their goods and/or services, or property that wholly or partially prevents any direct or indirect receiver of goods and/or services from the Insured from accepting the Insured's goods and/or services, such supplier or receiver to be located anywhere in the world;
 - (c) Impounded Water: dams, reservoirs, or equipment connected therewith when water, used as a raw material or used for power or for other purposes, stored behind such dams or reservoirs is released from storage and causes an interruption of business as a result of lack of water supply from such sources;
 - (d) Leader Property: property not owned or operated by the Insured, located in the same vicinity as the Insured, which attracts business to the Insured.
- (2) Interruption by Civil or Military Authority: This policy is extended to cover the loss sustained during the period of time when access to real or personal property is impaired by order or action of civil or military authority issued in connection with or following a peril insured against.
- (3) Ingress/Egress: This policy is extended to cover the loss sustained during the period of time when, in connection with or following a peril insured against, access to or egress from real or personal property is impaired.

G. Provisions Applicable to Business Interruption, Extra Expense, Rental Value and Royalties Coverages

- (1) Period of Recovery: The length of time for which loss may be claimed:
- (a) shall not exceed such length of time as would be required with the exercise of due diligence and dispatch to rebuild, repair, or replace the property that has been destroyed or damaged;

- (b) and, such additional length of time to restore the Insured's business to the condition that would have existed had no loss occurred, commencing with the later of the following dates:
- (i) the date on which the liability of the Company for loss or damage would otherwise terminate; or
 - (ii) the date on which repair, replacement, or rebuilding of the property that has been damaged is actually completed;
- but in no event for more than one year from said later commencement date;
- (c) with respect to alterations, additions and property while in the course of construction, erection, installation, or assembly shall be determined as provided in subparagraph (a) above, but such determined length of time shall be applied to the experience of the business after the business has reached its planned level of production or level of business operations;
- (d) shall commence with the date of such loss or damage and shall not be limited by the date of expiration of this policy or cancellation date.
- (2) Special Exclusions: This section of the policy does not insure against any increase of loss which may be occasioned by the suspension, lapse, or cancellation of any lease, license, contract, or order; nor for any increase of loss due to interference at the Insured's premises by strikers or other persons with rebuilding, repairing, or replacing the property damaged or destroyed, or with the resumption or continuation of business, or with the reoccupancy of the premises.
- (3) Expense to Reduce Loss (not applicable to Business Interruption - Loss of Profits): This policy also covers such expenses incurred for the purpose of reducing any loss under this policy, even though such expenses may exceed the amount by which the loss under this policy is thereby reduced.

H. Transit

- (1) Property in transit within and between the territorial limits of this policy, including the coastal waters thereof, by any means of conveyance, from the time the property is moved for purpose of loading and continuously thereafter while awaiting and during loading and unloading and in temporary storage, including temporary storage on any conveyance intended for use for any outbound or used for inbound shipment, including during deviation and delay, until safely delivered and accepted into place of final destination.
- (2) This insurance is extended to cover loss or damage to property:
 - (a) sold and shipped by the Insured under terms of F.O.B. point of origin or other terms usually regarded as terminating the shipper's responsibility short of points of delivery;
 - (b) arising out of any unauthorized person(s) representing themselves to be the proper party(ies) to receive goods for shipment or to accept goods for delivery;
 - (c) occasioned by the acceptance by the Insured, by its agents, or by its customers of fraudulent bills of lading, shipping and delivery orders, or similar documents;
 - (d) at the Insured's option, which is incoming to the Insured.
- (3)
 - (a) The Insured may waive right(s) of recovery against private, contract, and common carriers and accept bills of lading or receipts from carriers, bailees, warehousemen, or processors limiting their liability, but this transit insurance shall not inure to the benefit of any carrier, bailee, warehouseman, or processor.
 - (b) With respect to shipments made under subparagraphs 2(a) and 2(d) above, this Company agrees to waive its rights of subrogation against consignees at the option of the Insured.
- (4) The Insured is not to be prejudiced by any agreements exempting lightermen from liability.
- (5) Seaworthiness of any vessel or watercraft and airworthiness of any aircraft are admitted between this Company and the Insured.

I. Accounts Receivable

- (1) All sums due the Insured from customers, provided the Insured is unable to effect collection thereof as the direct result of loss of or damage to records of accounts receivable;
- (2) Interest charges on any loan to offset impaired collections pending repayment of such sums made uncollectible by such loss or damage;
- (3) Collection expense in excess of normal collection cost and made necessary by such loss or damage;
- (4) Other expenses, when reasonably incurred by the Insured in reestablishing records of accounts receivable following such loss or damage.

For the purpose of this insurance, credit card company charge media shall be deemed to represent sums due the Insured from customers, until such charge media is delivered to the credit card company.

When there is proof that a loss of records of accounts receivable has occurred but the Insured cannot more accurately establish the total amount of accounts receivable outstanding as of the date of such loss, such amount shall be computed as follows:

- (1) The monthly average of accounts receivable during the last available twelve months shall be adjusted in accordance with the percentage increase or decrease in the twelve months average of monthly gross revenues which may have occurred in the interim.
- (2) The monthly amount of accounts receivable thus established shall be further adjusted in accordance with any demonstrable variance from the average for the particular month in which the loss occurred, due consideration being given to the normal fluctuations in the amount of accounts receivable within the fiscal month involved.

There shall be deducted from the total amount of accounts receivable, however established, the amount of such accounts evidenced by records not lost or damaged, or otherwise established or collected by the Insured, and an amount to allow for probable bad debts which would normally have been uncollectible by the Insured.

J. Leasehold Interest

- (1) Pro rata proportion from the date of loss to expiration date of the lease (to be paid without discount) on the Insured's interest in:

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- (a) the amount of bonus paid by the Insured for the acquisition of the lease not recoverable under the terms of the lease;
 - (b) improvements and betterments to real property which are not covered under any other section of this policy;
 - (c) the amount of advance rental paid by the Insured and not recoverable under the terms of the lease;

when property is rendered wholly or partially untenable by any covered loss during the term of this policy and the lease is canceled by the party not the Named Insured by this policy in accordance with the conditions of the lease or by statutory requirements of the appropriate jurisdiction in which the damaged or destroyed property is located; and

- (2) (a) "The Interest of the Insured as Lessee or Lessor" when property is rendered wholly or partially untenable by any covered loss during the term of this policy and the lease is canceled by the party not the Named Insured under this policy in accordance with the conditions of the lease or by statutory requirements of the appropriate jurisdiction in which the damaged or destroyed property is located.
- (b) "The Interest of the Insured as Lessee or Lessor" as referred to herein shall be paid for the first three months succeeding the date of the loss and the "Net Lease Interest" shall be paid for the remaining months of the unexpired lease.
- (3) Definitions:

The following terms, wherever used in this section shall mean::

- (a) "The Interest of the Insured as Lessee" is defined as:
 - (i) the excess of the rental value of similar premises over the actual rental payable by the lessee (including any maintenance or operating charges paid by the lessee) during the unexpired term of the lease; and
 - (ii) the rental income earned by the Insured from sublease agreements, to the extent not covered under any other section of this policy, over and above the rental expenses specified in the lease between the Insured and the lessor.

- (b) "The Interest of the Insured as Lessor" is defined as the difference between the rents payable to the lessor under the terms of the lease in effect at the time of loss and the actual rent collectible by the lessor during the unexpired term of the lease provided the lease is canceled by the lessee, to the extent not covered under any other section of this policy.
- (c) "Net Lease Interest" is defined as that sum, which placed at 6% interest compounded annually will be equivalent to the "The Interest of the Insured as Lessee or Lessor."
- (4) This Company shall not be liable for any increase of loss which may be occasioned by the suspension, lapse or cancellation of any license or by the Named Insured exercising any option to cancel the lease. Furthermore, the Named Insured shall use due diligence including all things reasonably practicable to diminish loss under this clause.

7. **COVERAGE EXTENSIONS**

A. **Demolition and Increased Cost of Construction**

In the event of loss or damage under this policy that causes the enforcement of any law, ordinance, governmental directive or standard regulating the construction, repair, use, or occupancy of property, this Company shall be liable for:

- (1) the cost of demolishing the undamaged property including the cost of clearing the site;
- (2) the proportion that the value of the undamaged part of the property bore to the value of the entire property prior to loss;
- (3) increased cost of repair or reconstruction of the damaged and undamaged property on the same or another site, limited to the cost that would have been incurred in order to comply with the minimum requirements of such law or ordinance regulating the repair or reconstruction of the damaged property on the same site. However, this Company shall not be liable for any increased cost of construction loss unless the damaged property is actually rebuilt or replaced;
- (4) any increase in the business interruption, extra expense, rental value or royalties loss arising out of the additional time required to comply with said law or ordinance.

B. **DEBRIS REMOVAL**

This policy covers the following expenses resulting from a covered loss:

- (1) the cost of removal of debris of property covered hereunder;
- (2) the cost of removal of debris of property not covered hereunder from the premises of the Insured;

C. EXPEDITING EXPENSE

This policy covers the extra cost of temporary repair and/or replacement and of expediting the repair and/or replacement of damaged property insured hereunder, including, but not limited to, overtime and express freight or other rapid means of transportation.

D. LOSS ADJUSTMENT EXPENSES

This policy is extended to include expenses incurred by the Insured, or by the Insured's representatives for preparing and certifying details of a claim resulting from a loss which would be payable under this policy. However, this Company shall not be liable under this clause for expenses incurred by the Insured in utilizing the services of a public adjuster.

E. FIRE BRIGADE CHARGES AND EXTINGUISHING EXPENSES

This policy covers the following expenses resulting from a covered loss:

- (1) fire brigade charges and any extinguishing expenses which the Insured incurs;
- (2) loss and disposal of fire extinguishing materials expended.

F. DEFENSE COSTS

This policy, subject to all of its provisions, also insures the costs and fees to defend any claim or suit against the Insured and/or its directors, officers and/or employees alleging physical loss or damage as insured against to property of others in the care, custody or control of the Insured to the extent of the Insured's liability therefore, even if such claim or suit is groundless, false or fraudulent; but the Company may without prejudice make such investigation, negotiation or settlement of any such claim or suit as it deems expedient.

G. CONSEQUENTIAL LOSS

- (1) In the event of loss or damage not otherwise excluded to property, and such damage, without the intervention of any other independent excluded cause, results in a sequence of events which causes physical damage to insured property, then there shall be liability under the policy for the resulting loss.
- (2) This policy also insures against consequential loss to the property insured caused by but not limited to change of temperature or humidity or by interruption of power, heat, air conditioning, or refrigeration resulting from loss or damage not otherwise excluded.
- (3) This policy also insures the reduction in value to the remaining part or parts of any lot of merchandise usually sold by lots or sizes, color ranges, or other classifications due to damage to or destruction of a part of such lots or other classifications due to a cause of loss not otherwise excluded.

H. CONTROL OF DAMAGED MERCHANDISE

The Insured, exercising a reasonable discretion, shall be the sole judge as to whether the goods involved in any loss under this policy are fit for normal intended use or consumption. No goods so deemed by the Insured to be unfit for consumption shall be sold or otherwise disposed of except by the Insured or with the Insured's consent, but the Insured shall allow this Company any salvage obtained by the Insured on any sale or other disposition of such goods. The Insured shall have full right to the possession of and retain control of all goods involved in any loss under this policy.

I. BRANDS OR TRADEMARKS

In case of damage insured against to property bearing a brand or trademark or which in any way carries or implies the guarantee or the responsibility of the manufacturer or Insured, the salvage value of such damaged property shall be determined after removal at the Company's expense in the customary manner of all such brands or trademarks or other identifying characteristics.

8. PERILS INSURED AGAINST

This policy insures against all risk of physical loss of or damage to property described herein including general average, salvage and all other charges on shipments covered hereunder, except as hereinafter excluded.

Physical loss or damage shall include any destruction, disruption, distortion or corruption of any computer data, coding, program or software except as hereinafter excluded.

9. **PERILS EXCLUDED**

This policy does not insure:

- A. against any fraudulent or dishonest act or acts committed by the Insured or any of the Insured's employees meaning only dishonest or fraudulent acts committed by the Insured or the Insured's employees with the manifest intent to:

- (1) cause the Insured to sustain such loss, and
- (2) obtain financial benefit for the Insured, Insured's employee, or for any other person or organization intended by the Insured or the employee to receive such benefit, other than salaries, commissions, fees, bonuses, promotions, awards, profit sharing, pensions, or other employee benefits earned in the normal course of employment.

This exclusion does not apply to acts of damage or destruction by employees, but theft by employees is not covered.

- B. against the cost of making good, defective design or specifications, faulty material, or faulty workmanship; however, this exclusion shall not apply to loss or damage resulting from such defective design or specifications, faulty material, or faulty workmanship;
- C. against errors in processing or manufacture of the Insured's product unless loss or damage not otherwise excluded ensues and then this policy shall cover for such ensuing loss or damage;
- D. against ordinary wear and tear, or gradual deterioration unless loss or damage not otherwise excluded ensues and then this policy shall cover for such ensuing loss or damage;
- E. against normal settling or normal shrinkage of walls, floors, or ceilings unless loss or damage not otherwise excluded ensues and then this policy shall cover for such ensuing loss or damage;
- F. insect, bird, animal, or vermin damage;

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- G. against nuclear reaction, or nuclear radiation, or radioactive contamination, all whether controlled or uncontrolled, and whether such loss be direct or indirect, proximate or remote; except:
- (1) if fire ensues, liability is specifically assumed for direct loss by such ensuing fire but not including any loss due to nuclear reaction, nuclear radiation, or radioactive contamination;
 - (2) this Company shall be liable for loss or damage caused by sudden and accidental radioactive contamination including resultant radiation damage for each occurrence from material used or stored or from processes conducted on an insured premises provided at the time of loss there is neither a nuclear reactor capable of sustaining a nuclear fission in a self-supporting chain reaction nor any new or used nuclear fuel on the insured premises;
- H. (1) against warlike action in time of peace or war, including action in hindering, combating, or defending against an actual, impending, or expected attack:
- (a) by any government or sovereign power (de jure or de facto) or by any authority maintaining or using military, naval, or air forces;
 - (b) or by military, naval, or air forces;
 - (c) or by an agent of any such government, power, authority, or forces;
- (2) against any weapon employing atomic fission or fusion;
 - (3) against rebellion, revolution, civil war, usurped power, or action taken by governmental authority in hindering, combating, or defending against such occurrence;
 - (4) against seizure or destruction by order of public authority, except destruction by order of public authority to prevent the spread of, or to otherwise contain, control or minimize loss, damage or destruction not otherwise excluded under this policy;
 - (5) against risks of contraband or illegal trade.

Notwithstanding the above provisions, H. (1), (3), (4), and (5), this insurance shall cover loss or damage directly caused by acts committed by an agent of any government, party, or faction engaged in war, hostilities, or warlike operations, provided such agent is acting secretly and not in connection with any operation of armed forces (whether military, naval, or air forces) in the country where the property is situated. Nothing in the foregoing shall be construed to include any loss, damage or expense caused by or resulting from any of the risks or perils excluded above, excepting only the acts of certain agents expressly covered herein, but in no event shall this insurance include any loss, damage, or expense caused by or resulting from any weapon of war employing atomic fission or fusion whether in time of peace or war;

Exclusions C, D, & F do not apply to property in transit.

Exclusion D does not apply to alterations, additions, and property while in the course of construction, erection, installation, or assembly.

10. PROPERTY EXCLUDED

This policy does not cover loss or damage to:

- A. Land; however, this exclusion shall not apply to the cost of reclaiming, restoring or repairing land improvements. Land improvements are defined as any alteration to the natural condition of the land by grading, landscaping, earthen dikes or dams, and additions to land such as pavements, roadways, or similar works;
- B. Water, except water which is normally contained within any type of tank, piping system or other process equipment;
- C. Money and securities;
- D. Growing crops, standing timber, and animals except for research;
- E. Watercraft, aircraft, motor vehicles licensed for highway use when not on the Insured's premises, but this exclusion shall not apply to contractor's equipment;
- F. Waterborne shipments via the Panama Canal, and to and from Puerto Rico, the Virgin Islands, Hawaii, and Alaska;

- G. Export shipments after loading on board an overseas vessel, watercraft, or aircraft, or after Ocean Marine insurance attaches, whichever occurs first; and import shipments prior to discharge from an overseas vessel, watercraft, or aircraft, or until Ocean Marine insurance terminates, whichever occurs last.

11. VALUATION

In case of loss, the basis of adjustment shall be as follows:

A. Stock

- (1) Raw Stock (materials and supplies in the state in which the Insured received them for conversion by the Insured into finished stock, including supplies consumed in such conversion or in the service rendered by the Insured) shall be valued at replacement cost at the time and place of loss.
- (2) Stock in process (raw stock which has undergone any aging, seasoning, or other processing by the Insured but which has not become finished stock) shall be valued at the Insured's selling price of finished stock at the time of loss, less any manufacturing expense not incurred by the Insured and less any discounts, rebates, and unincurred expenses to which the sales price would have been subject.
- (3) Finished stock (stock which in the ordinary course of the Insured's business is ready for packing, shipment or sale) and merchandise shall be valued at the Insured's selling price at the time of loss, less all discounts, rebates, and unincurred expenses to which such sales price would have been subject.

B. Real and Personal Property

- (1) Buildings, structures, furniture and fixtures, machinery, equipment, improvements and betterments, shall be valued at the replacement cost new on the same premises, as of the date of replacement.
- (2) Electronic Data Processing or control equipment and production machinery and equipment or any part thereof shall be valued at the cost to repair or replace new on the same premises as of the time of replacement except, that with respect to items for which replacement with identical property is impossible, the replacement cost shall be the cost of items similar to the destroyed property and intended to perform the same function but which may include technological advances.

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- (3) Valuable papers and records shall be valued at the cost to reproduce the property as of the date of reproduction including the cost of gathering and/or assembling information;

"Valuable papers and records" are defined as written, printed, or otherwise inscribed documents and records, including but not limited to books, maps, films, drawings, abstracts, deeds, mortgages, micro-inscribed documents, manuscripts, and media and the data recorded thereon, but not including money and/or securities.

"Media" is defined as materials upon which data is recorded including, but not limited to, papertapes, cards, electronic memory circuits, and magnetic or optical storage devices. "Data" is defined as facts, concepts, or instructions in a form usable for communications, interpretation, or processing by automatic means. It includes computer programs.

The term "securities" shall mean all negotiable and non-negotiable instruments or contracts representing either money or other property, and includes revenue and other stamps in current use, tokens and tickets but does not include money.

- (4) Property of others which the Insured is required to insure to a stipulated value shall be valued at the replacement cost new as of the date of replacement, if replaced at the Insured's option; otherwise at the stipulated value.
- (5) Fine Arts shall be valued at the appraised value; or, if there is no appraisal, at the greater of the original acquisition cost or the market value at the time of the loss.
- (6) Other property not otherwise provided for, at replacement cost new on the same premises as of the date of replacement.
- (7) Permission is granted for the Insured to replace the damaged property with any property at the same site or at another site within the territorial limits of this policy, but recovery is limited to what it would cost to replace on same site. If property damaged or destroyed is not repaired, rebuilt or replaced within a reasonable period after the loss or damage, this Company shall not be liable for more than the actual cash value at the time of loss (ascertained with proper deduction for depreciation) of the property damaged or destroyed. However, limitations imposed by federal, state, municipal or other governmental building codes shall not result in actual cash valuation.

In the event the Insured decides not to reassemble, rebuild, reclaim, reconstruct, repair, replace or restore the property lost, damaged or destroyed, the liability of the Insurer shall not exceed the cost and expenses which would have been incurred to reassemble, rebuild, reclaim, reconstruct, repair, replace or restore the property lost, damaged or destroyed at the site of the loss provided the proceeds of such loss settlement are expended in any other capital expenditures related to the Insured's operations.

12. EARTHQUAKE AND FLOOD

FLOOD

With respect to the peril Flood, any and all losses from this cause within a 72-hour period shall be deemed to be one loss insofar as the Limit of Liability and Deductible provisions of this policy are concerned. The Company shall not be liable for any loss caused by any Flood which commences before the effective date and time of this policy, however, the Company will be liable for any loss occurring for a period of up to seventy-two (72) hours after the expiration of this policy provided that the first flood damage occurs prior to the date and time of the expiration of this policy. The term "flood", as used herein, shall mean surface water, waves, tide, or tidal water and the rising (including overflowing or breaking of boundaries) of lakes, ponds, reservoirs, rivers, streams, harbors and similar bodies of water. The term "surface water", as insured hereunder, shall mean seepage, leakage or inflex of water (immediately derived from natural sources) through sidewalks, driveways, foundations, walls basements or other floors, or through doors, windows or any other openings in such sidewalks, foundations, walls or floods.

Flood does not mean Flood and Storm Surge as a result of a named storm.

EARTHQUAKE

Each loss by Earthquake shall constitute a single claims hereunder; provided, if more than one earthquake shock shall occur within any period of one hundred sixty eight hours (168) hours during the term of this policy such Earthquake shall be deemed to be a single Earthquake within the meaning hereof. The Company shall not be liable for any loss cause by any Earthquake occurring before the effective date and time of this policy, however, the Company will be liable for any losses occurring for a period of up to one hundred sixty eight (168) hours after the expiration of this policy provided that the first earthquake shock or damage occurs prior to the date and time of the expiration of this policy. The term "earthquake", as used herein shall mean: earth shock, volcanic action, landslide, mudslide, earth movement, earth sinking, Tsunami, earth rising or shifting.

13. ACCIDENT

The term "accident" is defined solely for the determination of the limits of liability and/or deductible(s) and application of the sue and labor and suspension section only. The term "accident" shall not limit or define the perils or coverages provided elsewhere in this policy.

A. The term "accident" shall mean:

- (1) Any condition or occurrence within boilers or fired or unfired vessels owned by, operated by, or under the control of the Insured and subject to pressure or vacuum including piping or apparatus attached to and forming a part thereof, except that the words "any condition or occurrence" shall not include explosion, other than explosion of the parts of a steam boiler containing steam or water, steam piping, steam turbines, or steam engines;
- (2) mechanical breakdown of any machine or apparatus arising out of any condition or occurrence within such machine or apparatus;
- (3) electrical injury or disturbance to electrical appliances, devices, fixtures, wiring, or other electrical or electronic equipment caused by electrical currents artificially generated.

However, the term "accident" does not include:

- (1) loss or damage from fire or from the use of water or other means to extinguish fire; and
- (2) the normal operation of any safety or protective device;

B. The term "accident" shall not apply to the following property:

- (1) property in transit;
- (2) property while in the course of construction, erection, installation, or assembly;
- (3) electronic data processing systems used for administrative, statistical, or accounting purposes;
- (4) any sewer piping, any piping forming a part of a fire protective system, or any water piping other than:
 - (a) boiler feed water piping;
 - (b) boiler condensate return piping;
 - (c) water piping used in a heat transfer system for cooling, humidifying, or space heating purposes;

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- (5) any vehicle, aircraft, or self-propelled equipment or floating vessel;
 - (6) any elevator, crane, ladle or bucket, hoist, power shovel, drag line, excavator, scale, or conveyor, but not excluding any pressure vessel, gears, engines or electrical equipment used with a machine.

14. CONTRIBUTING INSURANCE

Contributing insurance is insurance written upon the same plan, terms, conditions, and provisions as those contained in this policy. This insurance shall contribute in accordance with the conditions of this policy only with other contributing insurance as defined.

15. EXCESS INSURANCE

Excess insurance is insurance over the limit of liability set forth in this policy. The existence of such excess insurance shall not prejudice the coverage provided under this policy nor will it reduce any liability hereunder.

16. UNDERLYING INSURANCE

- A. Underlying insurance is insurance on all or any part of the deductible and against all or any of the causes of loss covered by this policy including declarations of value to the carrier for hire. The existence of such underlying insurance shall not prejudice or affect any recovery otherwise payable under this policy.
- B. If the limits of such underlying insurance exceed the deductible amount which would apply in the event of loss under this policy, then that portion which exceeds such a deductible amount shall be considered other insurance, as defined in the Other Insurance clause.

17. OTHER INSURANCE

Except for insurance described by the contributing insurance clause, the excess insurance clause, or the underlying insurance clause, this policy shall not cover to the extent of any other collectible insurance, whether directly or indirectly covering the same property against the same causes of loss. This Company shall be liable for loss or damage only to the extent of that amount in excess of the amount recoverable from such other collectible insurance. Notwithstanding that this policy only covers for the excess of any other collectible insurance, this Company guarantees prompt payment in full of the amount of loss which would have been recoverable under this policy in the absence of such other collectible insurance and agrees to advance the amount of loss as a loan, without interest, repayable in the event of and to the extent of recovery from such other collectible insurance minus the cost of recovery, and repayable in the event of non-payment by the primary Insurer due to insolvency as excluded in Clause 10.A. As used herein, "other collectible insurance" does not include self-insurance, deductibles, self-insured retentions or fronting policies.

18. CONFLICT IN WORDING

Subject to all other terms and conditions set forth herein, coverage under this policy shall take precedence when the perils and/or definitions and/or conditions set forth herein are broader in meaning or scope than those of primary policies.

19. SUBROGATION

- A. Any release from liability entered into by the Insured prior to loss hereunder shall not affect this policy or the right of the Insured to recover hereunder. The right of subrogation against the Insured, affiliated, subsidiary, and associated companies or corporations, the Insured's officers, directors, and employees, or any other corporations or companies associated with the Insured through ownership or management, and at the option of the Insured against a tenant, vendor, supplier or customer of the Insured, is waived.
- B. In the event of any payment under this policy, this Company, where legally permitted and where loss payment under primary insurance are not reduced or eliminated, shall be subrogated to the extent of such payment to all the Insured's rights of recovery therefore. The Insured shall execute all papers required and shall do anything that may be reasonably necessary at the expense of the Company to secure such right. The Company will act in concert with all other interests concerned, i.e., the Insured and any other Company(ies) participating in the payment of any loss as primary or excess insurers, in the exercise of such rights of recovery.

If any amount is recovered as a result of such proceedings, the net amount recovered after deducting the cost of recovery shall be divided between the interests concerned in the proportion of their respective interests. If there should be no recovery, the expense of proceedings shall be borne by the insurers instituting the proceedings.

20. SALVAGE AND RECOVERIES

All salvages, recoveries and payments, excluding proceeds from subrogation and underlying insurance, recovered or received prior to a loss settlement under this policy, shall reduce the loss accordingly. If recovered or received subsequent to a loss settlement under this policy, such net amounts recovered shall be divided between the interests concerned, i.e. the Insured and any other Company(ies) participating in the payment of any loss, in the proportion of their respective interests.

21. MACHINERY

In case of loss or damage insured against to any part of a machine or unit consisting of two or more parts when complete for use, the liability of the Company shall be limited to the value of the part or parts lost or damaged or, at the Insured's option, to the cost and expense of replacing or duplicating the lost or damaged part or parts or of repairing the machine or unit.

22. SUSPENSION

Upon discovery of a dangerous condition with respect to any boiler, fired or unfired pressure vessel and any mechanical or electrical machine or apparatus used for the generation, transmission or utilization of mechanical or electrical power, any representative of the Company may immediately suspend the insurance with respect to an "accident" to said property by written notice mailed or delivered to the Insured at the home office address of the Insured.

23. ERRORS OR OMISSIONS

Any unintentional error or omission made by the Insured shall not void or impair the insurance hereunder provided the Insured reports such error or omission as soon as reasonably possible after discovery by the Insured's home office insurance department.

24. NOTICE OF LOSS

As soon as practicable after any loss or damage occurring under this policy is known to the Insured's Home Office Insurance Department, the Insured shall report such loss or damage to Willis of Texas, Inc. 920 Memorial City Way, Suite 500, Houston, TX, 77024, for transmission to this Company. Any delay by the Insured in providing notice shall not affect the Insured's right to coverage under this policy, except if and to the extent that the Company proves that it actually and substantially was prejudiced by any unreasonable delay in notice.

25. PROOF OF LOSS

The Insured, at the request of the Company, will render a signed and sworn proof of loss to the Company or its appointed representative stating: the place, time, cause of the loss, damage, or expense; the interest of the Insured and of all others; the value of the property involved in the loss; and the amount of loss, damage, or expense.

26. PARTIAL PAYMENT OF LOSS

In the event of a loss covered by this policy, it is understood and agreed that the Company will issue partial payment(s) of claim subject to the policy provisions, and shall not be less than the undisputed estimate of loss or damage between the Insured and the Company.

27. ASSIGNED ADJUSTER

It is agreed that at the Insured's option, the Company will use Bill Adams of McLearens Young, 10440 North Central Express Way, Suite 650, Dallas, Texas 75231 for the adjustment of all claims made against this policy. This assignment may be changed by mutual consent of the Insured and the Company.

28. APPRAISAL

If the Insured and this Company fail to agree on the amount of the loss, each, upon written demand of either the Insured or this Company made within 60 days after receipt of proof of loss by the Company, shall select a competent and disinterested appraiser. The appraisers shall then select a competent and disinterested umpire. If they should fail for 15 days to agree upon such umpire, then upon the request of the Insured or of this Company, such umpire shall be selected by a judge of a court of record in the jurisdiction in which such appraisal is pending. Then, at a reasonable time and place, the appraisers shall appraise the loss, stating separately the value at the time of loss and the amount of loss. If the appraisers fail to agree, they shall submit their differences to the umpire. An award in writing by any two shall determine the amount of loss and shall be paid by the Company within 30 days thereafter. The Insured and this Company shall each pay his or its chosen appraiser and shall bear equally the other expenses of the appraisal and of the umpire. However, if the award is greater than the amount offered by the Company in payment of the loss at any time before the award is rendered, then the Company shall pay 100% of the fees and expenses for each appraiser and the umpire and for the appraisal.

29. PAIR AND SET

Except as provided under the Machinery clause and paragraph (3) of the Consequential Loss clause, in the event of loss or damage insured against to any article or articles which are a part of a pair or set, the measure of loss or damage to such article or articles shall be, at the Insured's option:

- A. the reasonable and fair proportion of the total value of the pair or set, giving consideration to the importance of said article or articles, but in no event shall such loss or damage be construed to mean total loss of the pair or set; or
- B. the full value of the pair or set provided that the Insured surrenders the remaining article or articles of the pair or set to the Company.

30. ASSISTANCE AND COOPERATION OF THE INSURED

The Insured shall reasonably cooperate with this Company, and, at this Company's reasonable request and expense, shall attend hearings and trials and shall assist in effecting settlements, in securing and giving evidence, in obtaining the attendance of witnesses and in conducting suits.

31. SUE AND LABOR

In case of actual or imminent loss or damage covered by this policy except imminent loss or damage as respects an "accident", it shall, without prejudice to this insurance, be lawful and necessary for the Insured, their factors, servants, or assigns to sue, labor and travel for, in and about the defense, the safeguard, and the recovery of property or any part of the property insured hereunder; nor, in the event of loss or damage, shall the acts of the Insured or of this Company in recovering, saving, and preserving the insured property be considered a waiver or an acceptance of abandonment. This Company shall pay the expenses so incurred.

32. PAYMENT OF LOSS

All adjusted claims shall be due and payable no later than 30 days after presentation and acceptance of proofs of loss by this Company or its appointed representative.

33. CURRENCY

A. Loss, if any, is to be paid in the same currency in which the premium is paid.

B. (1) In the event of a property damage loss adjustment involving local currency, conversion into the currency of the United States of America shall be at the New York foreign exchange selling rate published in The Wall Street Journal as of the date(s) of expenditure.

If property damaged or destroyed is not repaired, rebuilt or replaced, conversion into the currency of the United States of America shall be at the New York foreign exchange selling rate published in The Wall Street Journal as of the date of loss.

(2) In the event of a business interruption, extra expense, rental value, royalties and/or expediting expense loss adjustment involving local currency, conversion into the currency of the United States of America shall be at the average New York foreign exchange selling rate published in The Wall Street Journal in effect during each 30 day period (or part thereof) commencing on the date the loss occurs.

C. Local Currency shall be defined as the currency of the country where loss occurs. This definition shall also include a local currency equivalent.

34. REINSTATEMENT

With the exception of loss caused by perils which are subject to annual aggregate limits as noted in Section 3, no loss hereunder shall reduce the amount of this policy.

35. SUIT AGAINST THE COMPANY

No suit or action on this policy for the recovery of any claim shall be sustainable in any court of law or equity unless the Insured shall have fully complied with all the requirements of this policy; however, if there is any dispute between the Insured and the Company as to whether the Insured has fully complied with all the requirements of this policy, such a dispute may be resolved in a suit or action on the policy for recovery of any claim. The Company agrees that any action or proceedings against it for recovery of any loss under this policy shall not be barred if commenced within two years and one day after the Insured provides notice to the Company in accordance with clause 26 above, which period shall be tolled from the date of notice until the date that the Insured receives the Company's final coverage decision (this two year and one day period is referred to as the "limitations period"). However, the limitations period shall not apply if by the laws of the State of the address of the Insured such a limitation is invalid or if the laws of the jurisdiction in which any such action is brought permit a longer period of time within which to commence such a suit. Furthermore, any tolling of the limitations period shall not preclude the Insured from bringing a suit or any other proceeding regarding recovery for any loss or of any claim hereunder during the period of tolling or at any other time. Prosecution of a suit by the Insured shall not be barred due to the failure of the Company to timely advise and notify the Insured of the expiration of any applicable dates to file and commence said suit.

It is agreed that in the event of the failure of the Company to pay any amount claimed to be due hereunder or in the event of any other dispute relating to this policy, the Company, at the request of the Insured, will submit to the jurisdiction of any court of competent jurisdiction within the United States and will comply with all of the requirements necessary to give such court jurisdiction and all matters hereunder shall be determined in accordance with the law and practice of such court, not including the court's law regarding choice of law. The Company shall not transfer, change venue, or remove, or seek to transfer, change venue, or remove any lawsuit filed by the Insured in any such court.

36. CERTIFICATES OF INSURANCE

Any certificate of insurance issued in connection with this policy shall be issued solely as a matter of convenience or information for the addressee(s) or holder(s) of said certificate of insurance, except where any Additional Insured(s) or Loss Payee(s) are named pursuant to the Special Provisions of said certificate of insurance. In the event any Additional Insured(s) or Loss Payee(s) are so named, this policy shall be deemed to have been endorsed accordingly, subject to all other terms, conditions and exclusions stated herein.

The Company hereby authorizes Willis to issue certificates of insurance including any Mortgagee, Loss Payee and Additional Insured clauses.

37. **CANCELLATION**

- A. This policy may be canceled at any time at the request of the Insured or it may be canceled by the Company by mailing to the Insured at 13355 Noel Road 22nd floor, Dallas, Texas 75240 and to the additional named insureds/loss payees indicated on the certificates of insurance issued during the term of this policy, written notice stating when, not less than 120 days thereafter, such cancellation shall be effective. The earned premium shall be computed on a pro-rata basis.
- B. The mailing of notice as aforesaid shall be sufficient proof of notice and the effective date and hour of cancellation stated in the notice shall become the end of the policy period. Delivery of such written notice either by the Insured or by the Company shall be equivalent to mailing.
- C. Cancellation shall not affect coverage on any shipment in transit on the date of cancellation. Coverage will continue in full force until such property is safely delivered and accepted at place of final destination.
- D. In the event of non-payment of premium this policy may be canceled by the Company by mailing to the Insured at the address shown in A. above stating when, not less than 10 days thereafter, such cancellation shall be effective. Reinstatement of coverage shall be effective immediately upon receipt of premium by the Company.
- E. In the event of cancellation of this policy by the Company, except cancellation for non-payment of premium, the annual aggregate deductible shall be computed on a pro rata basis predicated on that portion of the policy year that has lapsed up to the date such cancellation becomes effective. If losses assumed by the Insured exceed the amount that would have been sustained if computed on such a pro rata basis, the Company shall promptly pay the Insured their share of the difference between the assumed losses and the pro rata amount. Cancellation by the Insured shall not result in any adjustment of the annual aggregate deductible.

38. **VALUES**

The values and schedule of property declared to the Company at the inception of the policy are for premium purposes only and shall not limit the coverages provided by this policy.

39. **TITLES OF PARAGRAPHS**

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

40. POLICY AUTHORS

Regardless of who may have drafted or prepared this policy, or any portions thereof, the provisions contained herein shall be deemed to have been authored by this Company.

41. CONFORMANCE

The terms of this policy which are in conflict with the applicable statutes of the jurisdiction wherein this policy is issued are hereby amended to conform to such statutes, unless the statutes narrow or limit the coverage afforded by this policy and do not bar a policy from providing broader coverage.

42. FULL WAIVER

The terms and conditions of this form and endorsements attached thereto replace those of the policy to which it is attached, all terms, conditions and endorsements of the latter being waived.

Attaches to and forming part of Policy No. 038421982 of the LEXINGTON INSURANCE COMPANY

Signed _____
(Authorized Signature)

ENDORSEMENT NO. 1

INSURED: The Howard Hughes Corporation

EFFECTIVE DATE: April 1, 2013- April 1, 2014

The following provisions are hereby attached to and made part of this Policy:

SEEPAGE AND/OR POLLUTION AND/OR CONTAMINATION EXCLUSION;
DEBRIS REMOVAL AND COST OF CLEAN UP EXTENSION; AUTHORITIES
EXCLUSION.

**1.) SEEPAGE AND/OR POLLUTION AND/OR CONTAMINATION
EXCLUSION**

Notwithstanding any provisions in the policy to which this Endorsement is attached, this policy does not insure against loss, damage, costs or expenses in connection with any kind or description of seepage and/or pollution and/or contamination, direct or indirect, arising from any cause whatsoever. Nevertheless if a perils not excluded from this policy arises directly or indirectly from seepage and/or pollution and/or contamination any loss or damage insured under this policy arising directly from that peril shall (subject to the terms, conditions and limitations of the policy) be covered.

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

The Insured shall give notice to the Company of intent to claim no later than 12 months after the date of the original physical loss or damage.

2.) DEBRIS REMOVAL AND COST OF CLEAN UP EXTENSION

- a. Notwithstanding the provisions of the preceding exclusion in this Endorsement or any provision respecting seepage and/or pollution and/or contamination, and/or debris removal and/or cost of clean up in the policy to which this Endorsement is attached, in the event of direct physical loss or damage to the property insured hereunder, this policy (subject otherwise to its terms, conditions and limitations, including but not limited to any applicable deductible) also insures, within the limit of liability stated in Section 3:

-
- (1) expenses reasonably incurred in removal of debris of the property insured hereunder destroyed or damaged from the location of the loss;
- and/or
- (2) cost of clean-up, at the location of the loss, made necessary as a result of such direct physical loss or damage;

Provided that this policy does not insure against the costs of decontamination or removal of water, soil or any other substance not covered by this policy on or under such premises.

- b. It is a condition precedent to recovery under this extension that the Company shall have paid or agreed to pay for direct physical loss or damage to the property insured hereunder unless such payment is precluded solely by the operation of any deductible and that the Insured shall give notice to the Company of intent to claim for cost of removal of debris or cost of clean-up NO LATER THAN 12 MONTHS AFTER THE DATE OF SUCH PHYSICAL LOSS OR DAMAGE.

3) **AUTHORITIES EXCLUSION**

Notwithstanding any of the preceding provisions of this Endorsement, except in respect of certain specific coverage(s) provided elsewhere in the policy to which this Endorsement is attached, this policy does not insure against fines, penalties and expenses directly attributable to such fines and penalties incurred or sustained by or imposed on the Insured at the order of any government agency, court or other authority arising from any cause whatsoever.

- 4) Nothing in this Endorsement shall override any radioactive contamination exclusion clause in the policy to which this Endorsement is attached.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.

Attaches to and forming part of Policy No. 038421982 of the LEXINGTON INSURANCE COMPANY.

[Authorized Signature]

ENDORSEMENT NO. 2 SUBSCRIPTION ENDORSEMENT**INSURED:** The Howard Hughes Corporation**EFFECTIVE DATE:** April 1, 2013- April 1, 2014

In consideration of the premium charged, the subscribing Insurer hereto, hereinafter referred to as the "Insurer," does severally, but not jointly, agree to indemnify the Insured for the amount recoverable in accordance with the terms and conditions of this Policy and any Endorsements hereto, provided that:

1. The collective liability of the subscribing "Insurer" shall not exceed its percentage of the Limit of Liability or any appropriate Sub-limit of Liability or any aggregate Limit of Liability in any Policy Year.
2. The limit of the subscribing "Insurer" shall not exceed the Limit of the pro-rata percentage of Liability set against its name.

"Insurer"	LEXINGTON INSURANCE COMPANY
"Insurer" Policy Number/Reference	038421982
"Insurer" Participation	50% being USD5,000,000 part of USD10,000,00 excess of the Policy Deductible(s)
"Insurer" Premium	USD646,583, being 50% part of USD1,293,165
Deductions from "Insurer" Premium	NIL

Additional Conditions: In consideration of the premium charged, it is agreed that the following provisions are added to the Policy as respects the liability of the "Insurer":

1. Priority of Payments

The amount of loss from any one "occurrence" for which this "Insurer's" liability is excess shall be determined by the combined loss, damage or expense as insured under the underlying insurance.

Any recovery made under the underlying insurance shall be treated as applying first in satisfaction of the perils insured, coverage provided and/or locations not insured by this "Insurer" and thereafter in satisfaction of the perils insured, coverages provided and/or locations insured by this "Insurer."

2. Step Down

Except with respect to Contamination Clean-up in PROPERTY INSURED, in the event of the reduction or exhaustion of aggregate Limits of Liability, if any, applying to a Policy Year in the underlying insurance, this "Insurer" shall pay excess of the reduced aggregate or, in the

Exhibit 1-E

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event of exhaustion, continue in force as primary insurance, but only for the perils or coverages provided herein and only for property insured by this "Insurer."

subject to any deductible or self-insured retention to which the underlying insurance is subject.

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

For the "Insurer"

Date

All Other Terms and Conditions Unchanged

The Howard Hughes Corporation 2013-2014, 038421982, LEXINGTON INSURANCE COMPANY

ENDORSEMENT NO. 3 GENERAL CHANGE ENDORSEMENT

INSURED: The Howard Hughes Corporation

EFFECTIVE DATE: April 1, 2013- April 1, 2014

The following provisions are hereby attached to and made part of this Policy:

1. Item 3. Limits of Liability, Clause A,B,C and D are amended to the following:
 - A. With respect to the peril of earthquake, excluding California, Hawaii and the Pacific Northwest, this Company shall not be liable, per occurrence and in any one policy year, for more than its proportion of \$100,000,000 which shall apply separately to each peril. **Even if the peril of flood or earthquake is the predominant cause of loss or damage, any ensuing loss or damage caused by Fire, Explosion, or sprinkler damage, not otherwise excluded herein shall not be subject to any sub limits or aggregates specified in this Clause A;**
 - B. With respect to the peril of earthquake in California, Hawaii and the Pacific Northwest, this Company shall not be liable, per occurrence and in any one policy year, for more than its proportion of \$25,000,000 which shall apply separately to each peril. Even if the peril of flood or earthquake is the predominant cause of loss or damage, any ensuing loss or damage, **caused by Fire, Explosion, or sprinkler damage,** not otherwise excluded herein shall not be subject to any sub limits or aggregates specified in this Clause B;
 - C. With respect to the perils of flood, this Company shall not be liable, per occurrence and in any one policy year, for more than its proportion of \$100,000,000 which shall apply separately to each peril. Even if the peril of flood or earthquake is the predominant cause of loss or damage, any ensuing loss or damage, not otherwise excluded herein shall not be subject to any sub limits or aggregates **caused by Fire, Explosion, or sprinkler damage,** specified in this Clause C, Except;
 - D. With respects to Flood locations listed in Appendix A the limit shall be, per occurrence and in any one policy year, for more than its proportion of \$25,000,000 which shall apply separately to each peril. Even if the peril of flood or earthquake is the predominant cause of loss or damage, any ensuing loss or damage, **caused by Fire, Explosion, or sprinkler damage,** not otherwise excluded herein shall not be subject to any sub limits or aggregates specified in this Clause D;
2. Item 2. Limits of Liability, Clause V. Mold and Fungus(ensuing loss or damage as a result of specified covered peril) sublimit is amended to \$5,000,000 per occurrence and any one policy year.

3. Item 2. Limits of Liability, Deferred Payments sublimit of \$5,000,000 is added.
4. Item 2. Limits of Liability, Land and Water Decontamination sublimit of \$100,000 per occurrence and any one policy year is added.
5. Item 2. Limits of Liability, Section AC. Boiler and Machinery, the following sublimit is added:
 - \$1,000,000 sublimit for Perishable Goods/Spoilage is added.
6. Item 3. Deductibles, Special Wind Deductible, Clause (1) and (2) are amended as follows:
 - (1) With respect to locations within the State of Florida, Hawaii and Tier 1 wind zones in the states of Texas, Louisiana, Alabama and Mississippi the deductible shall be 5% of the total values at the time of loss or damage at each location involved in the loss or damage per unit of insurance, subject to a minimum of \$250,000 for any one occurrence;
 - (2) With respect to locations within the and Tier 1 wind zones in the states of Virginia to Maine the deductible shall be 3% of the total values at the time of loss or damage at each location involved in the loss or damage per unit of insurance, subject to a minimum of \$100,000 for any one occurrence;
7. Item 3. Deductibles, The Tier 1 Counties referenced in the form are hereby deleted and replaced with the following:

Tier 1 Counties or Parishes	
State	County or Parish
Alabama	Baldwin, Mobile
Connecticut	Fairfield, Middlesex, New Haven, New London
Delaware	Sussex
Florida	Entire State
Georgia	Bryan, Camden, Chatham, Glynn, Liberty, McIntosh
Hawaii	Entire State
Louisiana	Cameron, Iberia, Jefferson, Lafourche, Orleans, Plaquemines, St. Bernard, St. Mary, St. Tammany, Terrebonne, Vermilion

Maine	Androscoggin, Cumberland, Hancock, Knox, Lincoln, Sagadahoc, Waldo, Washington, York
Maryland	Calvert, Charles, Dorchester, St. Mary's, Somerset, Wicomico, Worcester
Massachusetts	Barnstable, Bristol, Dukes, Essex, Nantucket, Norfolk, Plymouth, Suffolk
Mississippi	Hancock, Harrison, Jackson
New Hampshire	Rockingham, Strafford
New Jersey	Atlantic, Bergen, Cape May, Cumberland, Essex, Hudson, Middlesex, Monmouth, Ocean, Union
New York	Bronx, Kings, Nassau, New York, Queens, Richmond, Suffolk, Westchester
North Carolina	Beaufort, Bertie, Brunswick, Camden, Carteret, Craven, Currituck, Dare, Hyde, Jones, New Hanover, Onslow, Pamlico, Pender, Pasquotank, Perquimans, Washington
Rhode Island	Block Island, Bristol, Kent, Newport, Providence, Washington
South Carolina	Beaufort, Charleston, Colleton, Georgetown, Horry, Jasper
Texas	Aransas, Brazoria, Calhoun, Cameron, Chambers, Galveston, Harris, Jackson, Jefferson, Kennedy, Kleberg, Nueces, Refugio, San Patricio, Willacy, Matagorda
Virginia	Accomack, Chesapeake, Gloucester, Hampton, Isle of Wight, James City, Lancaster, Matthews, Middlesex, Newport News, Norfolk, North Hampton, Northumberland, Poquoson, Portsmouth, Suffolk, Surry, Virginia Beach, York, Williamsburg,

8. Item 3. Deductibles, the following is added to the policy:

Civil or Military Authority and Ingress / Egress – Twenty Four (24) Hours Qualifying Period

9. Item 3. Deductible, the following wording is amended as follows:

If two or more deductible amounts provided in this Policy apply to a single Occurrence, the total to be deducted shall not exceed the largest deductible applicable unless otherwise stated in this Policy. However, if:

Covered Loss or Damage by Flood arises out of a Named Storm, then the Company shall apply the Flood deductible set forth in Special Flood deductible or the Named Storm deductible set forth in Special Wind Deductible, whichever is greater.

In lieu of...

"If two or more deductible amounts in this policy apply to a single occurrence, the total to be deducted shall not exceed the largest deductible."

"In any occurrence where loss or damage is caused by more than one peril insured against under this policy, the Insured shall have the right to separate the loss amount by peril for the purposes of application of the deductible(s) specified in this section, notwithstanding the above reference to two or more deductibles and the policy limits.

10. Item 6. Coverage, F. Time Element Extensions Clause (1) (b) is amended to the following:
 - (b) Contingent Time Element: property that wholly or partially prevents any direct or indirect supplier of goods and/or services to the Insured from rendering their goods and/or services, or property that wholly or partially prevents any direct or indirect receiver of goods and/or services from the Insured from accepting the Insured's goods and/or services, such supplier or receiver to be located within policy territory as described in Clause 6;
11. Item 6. Coverage, F. Time Element Extensions Clause (1) (d) is deleted in its entirety
12. Item 6. Coverage, F. Time Element Extensions Clause (2) is amend to the following:
 - (2) Interruption by Civil or Military Authority: This policy is extended to cover the loss sustained during the period of time when access to real or personal property is prohibited by order or action of civil or military authority issued in connection with or following a peril insured against.
13. Item 6. Coverage, F. Time Element Extensions Clause (3) is amend to the following:
 - (3) Ingress/Egress: This policy is extended to cover the loss sustained during the period of time when, in connection with or following a peril insured against, access to or egress from real or personal property is prohibited.
14. Item 8. Perils Insured Against is amended to the following:

This policy insures against all risk of direct physical loss of or damage to property described herein including general average, salvage and all other charges on shipments covered hereunder, except as hereinafter excluded.

Physical loss or damage shall include any destruction, disruption, distortion or corruption of any computer data, coding, program or software except as hereinafter excluded

15. Item 9. Perils Excluded, the following is deleted from H.

Notwithstanding the above provisions, H. (1), (3), (4), and (5), this insurance shall cover loss or damage directly caused by acts committed by an agent of any government, party, or faction engaged in war, hostilities, or warlike operations, provided such agent is acting secretly and not in connection with any operation of armed forces (whether military, naval, or air forces) in the country where the property is situated. Nothing in the foregoing shall be construed to include any loss, damage or expense caused by or resulting from any of the risks or perils excluded above, excepting only the acts of certain agents expressly covered herein, but in no event shall this insurance include any loss, damage, or expense caused by or resulting from any weapon of war employing atomic fission or fusion whether in time of peace or war;

Exclusions C, D, & F do not apply to property in transit.

Exclusion D does not apply to alterations, additions, and property while in the course of construction, erection, installation, or assembly.

16. Item 12. Earthquake And Flood, EARTHQUAKE definition is amended as follows:

Each loss by Earthquake shall constitute a single claims hereunder; provided, if more than one earthquake shock shall occur within any period of seventy-two (72) hours during the term of this policy such Earthquake shall be deemed to be a single Earthquake within the meaning hereof. The Company shall not be liable for any loss cause by any Earthquake occurring before the effective date and time of this policy, however, the Company will be liable for any losses occurring for a period of up to seventy-two (72) hours after the expiration of this policy provided that the first earthquake shock or damage occurs prior to the date and time of the expiration of this policy. The term "earthquake", as used herein shall mean: earth shock, volcanic action, landslide, mudslide, earth movement, earth sinking, Tsunami, earth rising or shifting.

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- 17. Item 37. Cancellation written notice is amended to 90 days in lieu of 120 days
 - 18. Item 40. Policy Authors is deleted in its entirety
 - 19. Item 42. Full Waiver is deleted in its entirety
 - 20. Endorsement 1, Seepage and/or Pollution and/or Contamination Exclusion-notice of intent to claim is amended to 180 days in lieu of 12 months
 - 21. Endorsement 1, Debris Removal and Cost of Clean-up Extension-notice of intent to claim is amended to 180 days in lieu of 12 months

For the "Insurer"

Date

All Other Terms and Conditions Unchanged

INSURED: The Howard Hughes Corporation

EFFECTIVE DATE: April 1, 2013- April 1, 2014

Appendix A

Street Address	City	State	Zip	Zone
28040 Dry Creek Road	Magnolia	TX	77354	AE
4835 South Highland Drive	Salt Lake City	UT	84117	AE
1800 E. Murray-Holladay Road	Salt Lake City	UT	84117	AE
19 Fulton Street	New York	NY	10038	AE
20 Fulton Street	New York	NY	10038	AE
11 Fulton Street	New York	NY	10038	AE
89 South Street	New York	NY	10038	AE
91 South Street	New York	NY	10038	AE
100 Redlands Mall	Redlands	CA	92373	AO
1030 Auahi Street	Honolulu	HI	96814	AE
1031 Auahi Street	Honolulu	HI	96814	AE
1044 Auahi Street	Honolulu	HI	96814	AE
1060 Auahi Street	Honolulu	HI	96814	AE
310 Kamakee Street	Honolulu	HI	96814	AE
1050 Ala Moana Blvd	Honolulu	HI	96814	AE
1108 Auahi St	Honolulu	HI	96814	AE
1170 Auahi St	Honolulu	HI	96814	AE
1170 Auahi St	Honolulu	HI	96814	AE
1200 Ala Moana Blvd	Honolulu	HI	96814	AE
1240 Ala Moana Blvd	Honolulu	HI	96814	AE
210 Ward Ave	Honolulu	HI	96814	AE
306 Kamani Street	Honolulu	HI	96814	AE
307 Kamani Street	Honolulu	HI	96814	AE
318 Kamani Street	Honolulu	HI	96814	AE
324 Kamani Street	Honolulu	HI	96814	AE
330 Kamani Street	Honolulu	HI	96814	AE
330 Kamakee St	Honolulu	HI	96814	AE
340 Kamakee St	Honolulu	HI	96814	AE
331 Kamani Street	Honolulu	HI	96814	AE
333 Ward Ave	Honolulu	HI	96814	AE
940 Auahi Street	Honolulu	HI	96814	AE
404 Ward Ave	Honolulu	HI	96814	AE
420 Ward Ave	Honolulu	HI	96814	AE
505 Ahui Street	Honolulu	HI	96814	AE
506 Ahui Street	Honolulu	HI	96814	AE

The Howard Hughes Corporation 2013-2014, 038421982, LEXINGTON INSURANCE COMPANY

Exhibit 1-E

12

517 Ahui Street	Honolulu	HI	96814	AE
523 Ahui Street	Honolulu	HI	96814	AE
531 Ahui Street	Honolulu	HI	96814	AE
537 Ahui Street	Honolulu	HI	96814	AE
541 Ahui Street	Honolulu	HI	96814	AE
831 Pohukaina Street	Honolulu	HI	96814	AE
841 Pohukaina Street	Honolulu	HI	96814	AE
851 Pohukaina Street	Honolulu	HI	96814	AE
834 Pohukaina Street	Honolulu	HI	96814	AE
837 Halekauwila Street	Honolulu	HI	96814	AE
846 Pohukaina Street	Honolulu	HI	96814	AE
849 Halekauwila St	Honolulu	HI	96814	AE
855 Halekauwila St	Honolulu	HI	96814	AE
900 Halekauwila St	Honolulu	HI	96814	AE
518 Ahui Street	Honolulu	HI	96814	AE
534 Koula Street	Honolulu	HI	96814	AE
909 Halekauwila Street	Honolulu	HI	96814	AE
955 Kawaiahao Street	Honolulu	HI	96814	AE
956 Queen Street	Honolulu	HI	96814	AE
1015 Queen Street	Honolulu	HI	96814	AE
1020 Auahi Street	Honolulu	HI	96814	AE
967 Queen Street	Honolulu	HI	96814	AE
987 Queen Street	Honolulu	HI	96814	AE

The Howard Hughes Corporation 2013-2014, 038421982, LEXINGTON INSURANCE COMPANY

Exhibit 1-E

ENDORSEMENT # 001

This endorsement, effective 12:01 AM 04/01/2013

Forms a part of policy no.: 038421982

Issued to: THE HOWARD HUGHES CORPORATION

By: LEXINGTON INSURANCE COMPANY

COVERAGE TERRITORY ENDORSEMENT

This endorsement modifies insurance provided under the following:

Payment of loss under this policy shall only be made in full compliance with all United States of America economic or trade sanction laws or regulations, including, but not limited to, sanctions, laws and regulations administered and enforced by the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC").



Authorized Representative OR
Countersignature (In states where applicable)

PR8885 (11/05)

Exhibit 1-E

ENDORSEMENT #002

This endorsement, effective 12:01 AM 04/01/2013

Forms part of policy no.: 038421982

Issued to: THE HOWARD HUGHES CORPORATION

By: LEXINGTON INSURANCE COMPANY

CONTRIBUTING INSURANCE ENDORSEMENT

This endorsement modifies all of the insurance provided under this policy:

ITEM 3. Policy Limit of Insurance:

\$5,000,000 Part of \$10,000,000 Otherwise shown as
50% Our Percentage

1. This endorsement applies to all coverages and all limits of insurance shown in this policy.
2. The Policy Limit of Insurance shown above represents our percentage (shown as Our Percentage 50%) of the total limits of insurance for all contributing insurance covering the same property.
3. Subject to the Policy Limit of Liability shown in Item 3., the most we will pay is limited to our percentage of any covered loss, regardless of whether one or more causes of loss contribute to the loss.

All other terms and conditions of this Policy remain unchanged.



Authorized Representative OR
Countersignature (In states where applicable)

LX9598 (ED. 05/03)

Exhibit 1-E

ENDORSEMENT # 003

This endorsement, effective 12:01 AM 04/01/2013

Forms a part of policy no.: 038421982

Issued to: THE HOWARD HUGHES CORPORATION

By: LEXINGTON INSURANCE COMPANY

WAR AND TERRORISM EXCLUSION ENDORSEMENT

(Applies to locations outside the United States of America, its territories and possessions)

This endorsement modifies insurance provided by the policy:

Notwithstanding any provision to the contrary within this insurance or any endorsement thereto, it is agreed that this insurance excludes loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any of the following regardless of any other cause or event contributing concurrently or in any other sequence to the loss:

1. War, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power; or
2. Any act of terrorism.

For the purpose of this endorsement an act of terrorism means an act including, but not limited to, the use of force or violence and/or the threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organization(s) or government(s), committed for political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public, or any section of the public, in fear.

This endorsement also excludes loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to 1. and/or 2. above.

If the Underwriters allege that by reason of this exclusion, any loss, damage, cost or expense is not covered by this insurance the burden of proving the contrary shall be upon the Assured.

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

All other terms and conditions of the policy remain the same.

NMA2918
08/10/2001
LX8599



Authorized Representative OR
Countersignature (in states where applicable)

LEX 702

LEX 061 1 CR 1702

Exhibit 1-E

ENDORSEMENT # 004

This endorsement, effective 12:01 AM 04/01/2013

Forms a part of policy no.: 038421982

Issued to: THE HOWARD HUGHES CORPORATION

By: LEXINGTON INSURANCE COMPANY

EQUIPMENT BREAKDOWN ENDORSEMENT (Boiler and Machinery)

- (1) This policy covers loss caused by or resulting from an "accident" to "covered equipment." "Accident" means direct physical loss as follows:
- (a) mechanical breakdown, including rupture or bursting caused by centrifugal force;
 - (b) artificially generated electric current, including electric arcing, that disturbs electrical devices, appliances or wires;
 - (c) explosion of steam boilers, steam pipes, steam engines or steam turbines owned or operated by or under the control of the Insured;
 - (d) loss or damage to steam boilers, steam pipes, steam engines or steam turbines caused by or resulting from any condition or event inside such equipment; or
 - (e) loss or damage to hot water boilers or other water heating equipment caused by or resulting from any condition or event inside such boilers or equipment.
- "Accident" does not include destruction, disruption, distortion or corruption of any computer data, coding, program or software.
- (2) The following coverages also apply to loss caused by or resulting from an "accident" to "covered equipment". These coverages do not provide additional amounts of insurance.
- (a) **Expediting Expense**
The Company shall be liable for the reasonable extra cost to make temporary repairs and to expedite permanent repairs or permanent replacement of damaged covered property. The Company's total liability for Expediting Expense resulting from an "accident" to "covered equipment", is the amount shown in the Equipment Breakdown Schedule.
 - (b) **Hazardous Substances**
The Company shall be liable for the additional cost to repair or replace covered property because of contamination by a hazardous substance. This includes the additional expenses to clean up or dispose of such property. Hazardous substance means any substance other than ammonia that has been declared to be hazardous to health by a governmental agency. Additional costs mean those beyond that which would have been required had no hazardous substance been involved.
The Company's total liability for loss or damage under this coverage, including actual loss of Business Interruption sustained, necessary Extra Expense incurred, loss of Rental Value and loss under Spoilage coverage, is \$100,000, unless otherwise shown in the Equipment Breakdown Schedule. Any coverage under the policy for decontamination or pollution cleanup does not apply to this endorsement. Exclusion R.(1) of the form to which this endorsement is attached does not apply to this Hazardous Substances coverage.
 - (c) **Spoilage**
The Company shall be liable for:
 - (i) the Insured's loss of "perishable goods" due to spoilage;
 - (ii) the Insured's loss of "perishable goods" due to contamination from the release of refrigerant, including but not limited to ammonia;

- (iii) necessary expenses incurred to reduce the amount of loss under this coverage. The Company shall be liable for such expenses to the extent that they do not exceed the amount of loss that otherwise would have been payable under this coverage.
- (iv) the Insured's loss of "perishable goods" due to spoilage caused by an "accident" to equipment that is owned by a utility, landlord, or other supplier with whom the insured has a contract for provision of any of the following services: electrical power, communications, waste disposal, air conditioning, refrigeration, heating, gas, air, water or steam. This coverage applies only to loss that occurs in buildings owned by the Insured.

If the Insured is unable to replace the "perishable goods" before its anticipated sale, payment will be determined on the basis of the sales price of the "perishable goods" at the time of the "accident", less discounts and expenses that otherwise would have been incurred. Otherwise payment will be determined in accordance with the Valuation provision of the policy. The Company's total liability for loss or damage under this coverage is the amount shown in the Equipment Breakdown Schedule.

(d) Computer Equipment

The Company shall be liable for loss or damage caused by or resulting from an "accident" to "computer equipment." The Company's total liability for loss or damage under this coverage, including actual loss of Business Interruption sustained, necessary Extra Expense incurred, and loss of Rental Value is the amount shown in the Equipment Breakdown Schedule. Computers used primarily to control or operate "covered equipment" are not subject to this limit.

The coverage provided by this provision shall be primary to any coverage provided in the form to which this endorsement is attached for "accident" to "computer equipment." In no event shall liability for loss to "computer equipment" under this endorsement and the form to which it is attached exceed the sublimit(s) stated in the Sublimits of Liability section of the form to which this endorsement is attached.

(e) Data Restoration

The Company shall be liable for the cost to research, replace and restore data, including programs and operating systems, that is lost or corrupted due to an "accident." The Company's total liability for loss or damage under this coverage is \$100,000 unless otherwise shown in the Equipment Breakdown Schedule.

(f) CFC Refrigerants

The Company shall be liable for the additional cost to repair or replace covered property because of the use or presence of a refrigerant containing CFC (chlorofluorocarbon) substances. This means the additional expense to do the least expensive of the following:

- (i) Repair the damaged property and replace any lost CFC refrigerant;
- (ii) Repair the damaged property, retrofit the system to accept a non-CFC refrigerant and charge the system with a non-CFC refrigerant; or
- (iii) Replace the system with one using a non-CFC refrigerant.

Additional costs mean those beyond what would have been required had no CFC refrigerant been involved. The Company's total liability for loss or damage under this coverage, including actual loss of Business Interruption sustained, necessary Extra Expense incurred, loss of Rental Value and loss under Spoilage coverage, is the amount shown in the Equipment Breakdown Schedule.

(3) BUSINESS INTERRUPTION / EXTRA EXPENSE / RENTAL VALUE

Coverage for Business Interruption, Extra Expense and / or Rental Value provided herein shall apply as respects the Business Interruption, Extra Expense and Rental Value clauses, and any Additional Provisions applicable to Business Interruption, Extra Expense and Rental Value, of the policy to which this endorsement is attached, solely as a result of loss caused by or resulting from an "accident" to "covered equipment" as defined herein.

The Business Interruption, Extra Expense, Rental Value provisions, and any Additional Provisions applicable to Business Interruption, Extra Expense and Rental Value, of the policy to which this endorsement is attached are amended as follows:

Exhibit 1-E

(a) If so indicated in the Equipment Breakdown Schedule, Contingent Business Interruption does not apply to Equipment Breakdown coverage or applies only up to the limit specified on the Equipment Breakdown Schedule.

(b) As respects Equipment Breakdown coverage only, the Period of Restoration provision is amended to read as follows:

Period of restoration means the period of time that:

- (i) Begins with the date of direct physical loss or damage by any of the perils covered herein, at the described premises; and
- (ii) Ends on the date when the property at the described premises should be repaired, rebuilt or replaced with reasonable speed and similar quality, plus the number of days, if any, indicated in the Equipment Breakdown Schedule for Extended Period of Restoration.

Period of restoration does not include any increased period required due to the enforcement of any ordinance or law that:

- (i) Regulates the construction, use or repair, or requires the tearing down, of any property; or
- (ii) Requires the insured or others to test for, monitor, clean up, remove, contain, treat, detoxify, or neutralize, or in any way respond to, or assess the effects of "contaminants" or "pollutants" as defined in Section 9. Perils Excluded, Paragraph Q.

The expiration date of this policy will not cut short the period of restoration.

(4) ADDITIONAL PERILS EXCLUDED

The following exclusions are in addition to those in the policy attached hereto.

(a) With respect to coverage provided by this endorsement, the Company shall not be liable for loss or damage caused by or resulting from: fire; lightning; windstorm or hail; explosion of gas or unconsumed fuel within the furnace of any boiler or fired vessel or within the passages from that furnace to the atmosphere; any other explosion (except for explosion of steam boilers, steam piping, steam engines or steam turbines); smoke; aircraft or vehicles; riot or civil commotion; vandalism; sprinkler leakage; breakage of glass; falling objects; weight of snow, ice or sleet; freezing (caused by cold weather); collapse; or molten material.

(b) With respect to Business Interruption, Extra Expense and Rental Value coverages, the Company shall not be liable for any delay in resuming operations due to the need to reconstruct or reinput data or programs on "media."

(c) The Company shall not be liable for loss or damage caused by or resulting from:

- (i) a hydrostatic, pneumatic, or gas pressure test of any boiler or pressure vessel; or an insulation breakdown test of any type of electrical equipment;
- (ii) failure to use all reasonable means to protect "perishable goods" from damage following an "accident";
- (iii) any defect, virus, loss of data or other situation within "media." But if loss or damage from an "accident" results, the Company shall be liable for that resulting damage.

(5) DEDUCTIBLES

Only as regards Equipment Breakdown Coverage, the DEDUCTIBLES provision is deleted and replaced with the following: Unless the Schedule indicates that the deductible is combined for all coverages, multiple deductibles may apply to any "one accident." If deductibles vary by type of "covered equipment" and more than one type of "covered equipment" is involved in any "one accident," the highest deductibles for each coverage will apply.

(a) Direct and Indirect Coverages

Unless otherwise shown in the Equipment Breakdown Schedule, the Direct Coverages Deductibles apply to all loss or damage covered by this endorsement, with the exception of those coverages subject to the Indirect Coverages Deductibles. Unless more specifically indicated in the Equipment Breakdown Schedule, the Indirect Coverages Deductibles apply to Business Interruption, Extra Expense and Rental Value.

Exhibit 1-E

(b) Application of Deductibles

(i) Dollar Deductibles

The Company shall not be liable for loss or damage resulting from any "one accident" until the amount of loss or damage exceeds the applicable Deductible shown in the Equipment Breakdown Schedule. The Company shall then pay the amount of loss or damage in excess of the applicable deductible, up to the applicable LIMIT OF LIABILITY.

(ii) Time Deductible

If a time deductible is shown in the Equipment Breakdown Schedule, the Company shall not be liable for any loss occurring during the specified number of hours or days immediately following the "accident." If a time deductible is expressed in days, each day shall mean twenty-four consecutive hours.

(iii) Multiple of Average Daily Value (ADV)

If a deductible is expressed as a number times ADV, that amount will be calculated as follows:

The ADV (Average Daily Value) will be the net profit (or loss) and expenses as described in the policy attached hereto that would have been earned or incurred had no "accident" occurred during the period of interruption of business divided by the number of working days in that period. No reduction shall be made for the net profit (or loss) and expenses not being earned, or in the number of working days, because of the "accident" or any other scheduled or unscheduled shutdowns during the period of interruption. The ADV applies to all locations included in the valuation of the loss.

The number indicated in the Equipment Breakdown Schedule shall be multiplied by the ADV as determined above. The result shall be used as the applicable deductible.

(iv) Percentage of Loss Deductibles

If a deductible is expressed as a percentage of loss, the Company shall not be liable for the indicated percentage of the gross amount of loss or damage (prior to any applicable deductible) insured under the applicable coverage. If the dollar amount of such percentage is less than the indicated minimum deductible, the minimum deductible will be the applicable deductible.

(8) DEFINITIONS

(a) "Boilers and Vessels" means:

- (i) Any boiler, including attached steam, condensate and feedwater piping; and
- (ii) Any fired or unfired pressure vessel subject to vacuum or internal pressure other than the static pressure of its contents.

This term does not appear elsewhere in this endorsement, but may appear in the Equipment Breakdown Schedule.

(b) "Computer equipment" means covered property that is electronic computer or other data processing equipment, including "media" and peripherals used in conjunction with such equipment.

(c) "Covered equipment" means covered property built to operate under vacuum or pressure, other than weight of contents, or used for the generation, transmission or utilization of energy. None of the following is "covered equipment":

- (i) structure, foundation, cabinet, compartment or air supported structure or building;
- (ii) insulating or refractory material;
- (iii) sewer piping, underground vessels or piping, or piping forming a part of a sprinkler system;
- (iv) water piping other than boiler feedwater piping, boiler condensate return piping or water piping forming a part of a refrigerating or air conditioning system;
- (v) vehicle, aircraft, floating vessel or any equipment mounted on such vehicle, aircraft or floating vessel;
- (vi) dragline, excavation or construction equipment; or
- (vii) equipment manufactured by the Insured for sale.

(d) "Media" means all forms of electronic, magnetic and optical tapes and discs for use in any electronic computer or electronic data processing equipment.

Exhibit 1-E

- (e) "One accident" means: If an initial "accident" causes other "accidents," all will be considered "one accident." All "accidents" that are the result of the same event will be considered "one accident."
- (f) "Perishable Goods" means personal property maintained under controlled conditions for its preservation, and susceptible to loss or damage if the controlled conditions change.
- (g) "Production Machinery" means any machine or apparatus that processes or produces a product intended for eventual sale. However, "production machinery" does not mean any fired or unfired pressure vessel other than a cylinder containing a movable plunger or piston. This term does not appear elsewhere in this endorsement, but may appear in the Equipment Breakdown Schedule.
- (h) "Service Interruption" means the Extension of Coverage provided in the form to which this endorsement is attached for interruption of business conducted by the Insured resulting from loss or damage to public utility plants, transformers or switching stations, substations furnishing heat, light, power, water, telephone or gas to the Insured's premises, but within one statute mile of the premises.

(7) SUSPENSION

When any "covered equipment" is found to be in, or exposed to a dangerous condition, any representative of the Company may immediately suspend the insurance against loss from an "accident" to said "covered equipment" by mailing or delivering a written notice of suspension to the Insured at the address as shown in the Declarations, or at the address where the "covered equipment" is located. Once suspended in this way, the insurance can be reinstated only by endorsement for that property. If so suspended, the Insured will get a pro rata refund of premium. But the suspension will be effective even if a refund has not been offered or made.

(8) COINSURANCE

If indicated in the Equipment Breakdown Schedule, specified coverages may be subject to coinsurance. The Company shall not pay for the full amount of the loss if the applicable limit is less than the product of the specified coinsurance percentage times the value of the property subject to the coverage at the time of the loss. Instead, the Company shall determine what percentage this calculated product is compared to the applicable limit and apply that percentage to the gross amount of loss. Then the applicable Deductible will be subtracted. The resulting amount, or the applicable limit, is the most the Company shall pay. The remainder of the loss will not be paid.



Authorized Representative OR
Countersignature (In states where applicable)

Exhibit 1-E

ENDORSEMENT # 005

This endorsement, effective 12:01 AM 04/01/2013

Forms a part of policy no.: 038421982

Issued to: THE HOWARD HUGHES CORPORATION

By: LEXINGTON INSURANCE COMPANY

COMBINED PROPERTY/BOILER & MACHINERY MILLENNIUM ENDORSEMENT

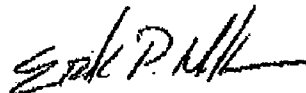
This policy is hereby amended as follows:

- A. The Insurer will not pay for Damage or Consequential Loss directly or indirectly caused by, consisting of, or arising from, the failure of any computer, data processing equipment, media microchip, operating systems, microprocessors (computer chip), integrated circuit or similar device, or any computer software, whether the property of the Insured or not, and whether occurring before, during or after the year 2000 that results from the inability to:
1. correctly recognize any data as its true calendar date;
 2. capture, save, or retain, and/or correctly manipulate, interpret or process any data or information or command or instruction as a result of treating any data other than its true calendar date; and/or
 3. capture, save, retain or correctly process any data as a result of the operation of any command which has been programmed into any computer software, being a command which causes the loss of data or the inability to capture, save, retain or correctly process such data on or after any date.
- B. It is further understood that the Insurer will not pay for the repair or modification of any part of an electronic data processing system or its related equipment, to correct deficiencies or features of logic or operation.
- C. It is further understood that the Insurer will not pay for Damage or Consequential Loss arising from the failure, inadequacy, or malfunction of any advice, consultation, design, evaluation, inspection, installation, maintenance, repair or supervision done by the Insured or for the Insured or by or for others to determine, rectify or test, any potential or actual failure, malfunction or inadequacy described in A. above.

Such Damage or Consequential Loss described in A, B, or C above, is excluded regardless of any other cause that contributed concurrently or in any other sequence.

This endorsement shall not exclude subsequent Damage or Consequential Loss, not otherwise excluded, which itself results from a Defined Peril. Defined Peril shall mean fire, lightning, explosion, aircraft or vehicle impact, falling objects, windstorm, hail, tornado, hurricane, cyclone, riot, strike, civil commotion, vandalism, malicious mischief, earthquake, volcano, tsunami, freeze or weight of snow, sudden and accidental breakdown of an object, including mechanical and electrical breakdown.

All other terms, conditions and exclusions of this policy remain unchanged.



AUTHORIZED REPRESENTATIVE

OR Countersignature (In states where applicable)

69813 (2/99)

LEX 708

LEX 067 1 CR 1708

Exhibit 1-E

ENDORSEMENT # 006

This endorsement, effective 12:01 AM 04/01/2013

Forms a part of policy no.: 038421982

Issued to: THE HOWARD HUGHES CORPORATION

By: LEXINGTON INSURANCE COMPANY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

MOLD / FUNGUS EXCLUSION

In consideration of the premium charged, it is hereby understood and agreed that this policy is amended as follows.

The Company shall not be liable for any loss or damage caused by, arising out of, contributed to, or resulting from fungus, mold(s), mildew or yeast; or any spores or toxins created or produced by or emanating from such fungus, mold(s), mildew or yeast;

- (a) fungus includes, but is not limited to, any of the plants or organisms belonging to the major group fungi, lacking chlorophyll, and including mold(s), rusts, mildews, smuts and mushrooms;
- (b) mold(s) includes, but is not limited to, any superficial growth produced on damp or decaying organic matter or on living organisms, and fungi that produce mold(s);
- (c) spores means any dormant or reproductive body produced by or arising or emanating out of any fungus, mold(s), mildew, plants, organisms or microorganisms,

regardless of any other cause or event that contributes concurrently or in any sequence to such loss.

All other terms, conditions, definitions, exclusions, limitations and provisions of the Policy remain the same.



Authorized Representative OR
Countersignature (In states where applicable)

LX9512 (08/02)

Exhibit 1-E

ENDORSEMENT # 007

This endorsement, effective 12:01 AM 04/01/2013

Forms a part of policy no.: 038421982

Issued to: THE HOWARD HUGHES CORPORATION

By: LEXINGTON INSURANCE COMPANY

PROPERTY ENDORSEMENT

It is noted and agreed that this policy is hereby amended as follows:

The Insurer will not pay for Damage or Consequential loss directly or indirectly caused by, consisting of, or arising from:

1. Any functioning or malfunctioning of the internet or similar facility, or of any Intranet or private network or similar facility,
2. Any corruption, destruction, distortion, erasure or other loss or damage to data, software, or any kind of programming or instruction set,
3. Loss of use or functionality whether partial or entire of data, coding, program, software, any computer or computer system or other device dependent upon any microchip or embedded logic, and any ensuing liability or failure of the Insured to conduct business.

This Endorsement shall not exclude subsequent damage or Consequential loss, not otherwise excluded, which itself results from a Defined Peril. Defined Peril shall mean: Fire, Lightning, Earthquake, Explosion, Falling Aircraft, Flood, Smoke, Vehicle Impact, Windstorm or Tempest.

Such Damage or Consequential loss described in 1, 2, or 3 above is excluded regardless of any other cause that contributed concurrently or in any other sequence.

All other terms, conditions and exclusions of this policy remain unchanged.



Authorized Representative OR
Countersignature (in states where applicable)

PR9514 (09/02)

Exhibit 1-E

Endorsement #008

This endorsement, effective 12:01 AM 04/01/2013

Forms a part of policy no.: 038421982

Issued to: THE HOWARD HUGHES CORPORATION

By: LEXINGTON INSURANCE COMPANY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

TERRORISM EXCLUSION - CERTIFIED AND NON-CERTIFIED ACTS

This Insurance does not apply to loss, injury, damage, claim or suit, arising directly or indirectly as a result of an "act of terrorism", which is defined in the Terrorism Risk Insurance Act of 2002, as amended by the Terrorism Risk Insurance Program Reauthorization Act of 2007 (collectively, "TRIA") as follows:

(1) ACT OF TERRORISM. -

(A) CERTIFICATION. - The term "act of terrorism" means any act that is certified by the Secretary [of the Treasury], in concurrence with the Secretary of State, and the Attorney General of the United States -

- (i) to be an act of terrorism;
- (ii) to be a violent act or an act that is dangerous to -
 - (I) human life;
 - (II) property; or
 - (III) infrastructure;
- (iii) to have resulted in damage within the United States, or outside of the United States in the case of -
 - (I) an air carrier or vessel [described in TRIA]; or
 - (II) the premises of a United States mission; and
- (iv) to have been committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

(B) LIMITATION. - No act shall be certified by the Secretary as an act of terrorism if -

- (i) the act is committed as part of the course of a war declared by the Congress, except that this clause shall not apply with respect to any coverage for workers' compensation; or
- (ii) property and casualty insurance losses resulting from the act, in the aggregate, do not exceed \$5,000,000.

(C) DETERMINATIONS FINAL. - Any certification of, or determination not to certify, an act as an act of terrorism under this paragraph shall be final, and shall not be subject to judicial review.

(D) NONDELEGATION. - The Secretary may not delegate or designate to any other officer, employee, or person, any determination under this paragraph of whether, during the effective period of the Program, an act of terrorism has occurred.

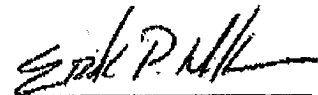
This Insurance also does not apply to loss, injury, damage, claim or suit, arising directly or indirectly as a result of a "non-certified act of terrorism", which means any act that is not an "act of terrorism", as defined above, that

- (1) involves the use of force or violence against person or property;
- (2) is dangerous to human life or property; or
- (3) interferes with or disrupts an electronic or communication system; and
- (4) is undertaken by any group or person, whether or not acting on behalf of or in any connection with any organization, government, power, authority or military force, when the effect is to intimidate, coerce or harm:

Exhibit 1-E

- (A) a government;
- (B) the civilian population of a country, state or community; or
- (C) to disrupt the economy of a country, state or community.

All other terms and conditions of the policy are the same.


Authorized Representative or
Countersignature (in States Where
Applicable)

96554 (4/08)

Page 2 of 2

Exhibit 1-E

Endorsement #009

This endorsement, effective 12:01 AM 04/01/2013

Forms a part of policy no.: 038421982

Issued to: THE HOWARD HUGHES CORPORATION

By: LEXINGTON INSURANCE COMPANY

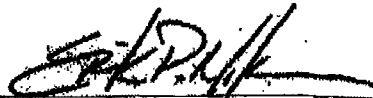
ANTI-STACKING ENDORSEMENT

The following condition is added to the policy:

If this insurance and any other insurance issued to the Insured by the Company or any entity that the Company controls, is controlled by or is under common control with applies to the same loss, claim, suite, occurrence, or accident, whichever is applicable, the maximum limit of insurance under all insurance available will not exceed the highest applicable limit of insurance available under any one policy.

However, this condition does not apply to any other insurance issued to the Insured by the Company or any entity that the Company controls, is controlled by or is under common control with which is specifically intended to be primary to, in excess of, or quota share with the policy to which this endorsement is attached.

All other terms, conditions & exclusions of the policy remain unchanged.



Authorized Representative OR
Countersignature (In states where applicable)

Exhibit 1-E

Endorsement #010

This endorsement, effective 12:01 AM 04/01/2013

Forms a part of policy no.: 038421982

Issued to: THE HOWARD HUGHES CORPORATION

By: LEXINGTON INSURANCE COMPANY

Amendatory Endorsement

In consideration of the policy premium, it is understood and agreed that the policy is amended as follows:

Note: Any new locations in AK, CA, FL, HI and TX will be underwritten and rated in accordance with our guidelines at the time we are requested to add them.

It is understood and agreed that Paragraph 2.b. is deleted from Form PR9014; Occurrence Limit of Liability Endorsement.

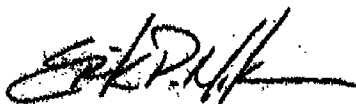
It is understood and agreed that the following wording will supersede Clause 37 and will be in addition to Standard Property Conditions:

Suit Against Company: No suit, action or proceeding for the recovery of any claim under this Policy shall be sustainable in any court of law or equity unless the Insured shall have fully Complied with all the requirements of this Policy, nor unless the same be commenced within twenty four (24) months next after the date of the loss, provided however, that if under the laws of the Jurisdiction in which the property is located such time limitation is invalid, then any such claims shall be void unless such action, suit or proceedings is commenced within the shortest limit of time permitted by the laws of such jurisdiction.

Pre Existing Damage Endorsement. It is understood and agreed that this policy shall exclude any loss or damage directly or indirectly caused by, resulting from or contributed to, by any pre-existing damage at the time of the policy inception.

No binder, policy or endorsement providing the perils of windstorm, hail or flood or increasing the limit of liability may be issued to cover any property within 100 miles of the seacoast or gulf of Mexico whenever a hurricane has been reported by the national weather service to be within 600 statute miles and moving toward, parallel to or in the general direction of such property.

All other terms, conditions & exclusions of the Policy remain unchanged.



Authorized Representative OR
Countersignature (In states where applicable)

APP - I

POLICYHOLDER NOTICE

Thank you for purchasing insurance from a member company of American International Group, Inc. (AIG). The AIG member companies generally pay compensation to brokers and independent agents, and may have paid compensation in connection with your policy. You can review and obtain information about the nature and range of compensation paid by AIG member companies to brokers and independent agents in the United States by visiting our website at www.aig.com/producercompensation or by calling 1-800-706-3102.

Exhibit 1-H

LEXINGTON INSURANCE COMPANY

Administrative Offices: 99 High Street, Boston, Massachusetts 02110
(hereinafter called the Company)

COMMERCIAL PROPERTY POLICY DECLARATIONS

POLICY NUMBER: 021469162

RENEWAL OF: NEW

ITEM 1. Named Insured: THE HOWARD HUGHES CORPORATION

Address: ONE GALLERIA TOWER
13355 NOEL RD., 22ND FLOOR
DALLAS, TX 75240

ITEM 2. Policy Period:
From 04/01/2014 To 04/01/2015
at 12:01 A.M. Standard Time at the address of the named insured shown above.

ITEM 3. Limit of Insurance:
\$8,750,000 PART OF \$35,000,000 PER OCCURRENCE

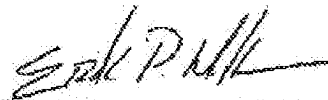
Total Premium \$443,750 Minimum Earned Premium \$110,938

ITEM 4. Perils:
ALL RISKS OF DIRECT PHYSICAL LOSS OR DAMAGE INCLUDING FLOOD, EARTHQUAKE &
EQUIPMENT BREAKDOWN/B&M AND AS FURTHER DESCRIBED IN THE APPROVED POLICY FORM

ITEM 5. Description of Property Covered: Coinsurance
REAL AND PERSONAL PROPERTY; MACHINERY AND EQUIPMENT; FURNITURE &
FIXTURES; IMPROVEMENTS AND BETTERMENT'S; INVENTORY; STOCK; EDP
HARDWARE, MEDIA AND DATA; BUSINESS INCOME - GROSS EARNING / EXTRA
EXPENSE AND AS FURTHER DESCRIBED IN THE POLICY FORM.

ITEM 6. Mortgagee Clause: Loss, if any shall be payable to:

ITEM 7. Forms Attached:
See attached forms schedule



Authorized Representative OR
Countersignature (In states where applicable)

PRPDEC (Ed. 01/91)
LX1119

LEX1874

LEX 076 2 CR 1874

Exhibit 1-H

FORMS SCHEDULE

Named Insured: THE HOWARD HUGHES CORPORATION

Policy No: 021469162

Effective Date: 04/01/2014

Form Number	Edition Date	Endorsement Number	Title
PRPDEC	01/91		PROPERTY DEC
LX8852	06/11		SL PREMIUM BREADOWN ENDT
PRFIRS	01/91		FIRE SCHEDULE
PR9545	08/06		PROPERTY MANUSCRIPT
PR9014	08/06		OCCURRENCE LIMIT OF LIABILITY
PR9015	08/06		POLLUTION CONTAMINATION FORM
PR9019	01/94		STANDARD PROPERTY CONDITIONS
PR4225	07/13		ECONOMIC SANCTIONS ENDORSEMENT
		001	MOLD/FUNGUS CLAUS
		002	JOINT LOSS AGREEMENT
		003	ELECTRONIC DATA EXCLUSION
		004	UPGRADE TO GREEN
		005	PIER17 AND FULTON STREET MARKE
		006	ANTI-STACKING ENDORSEMENT
Y69813	02/98		COMB. PROP/B&M MILLENNIUM END.
PR4266	11/13		TOTAL TERRORISM EXCLUSION
NMA2918	08/01		WAR AND TERRORISM EXCLUSION
BRK MNCPT	04/14		Broker Manuscript Form

Exhibit 1-H

ENDORSEMENT

This endorsement, effective 12:01 AM 04/01/2014

Forms a part of policy no.: 021469162

Issued to: THE HOWARD HUGHES CORPORATION

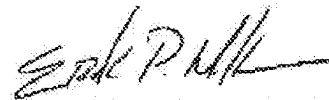
By: LEXINGTON INSURANCE COMPANY

SURPLUS LINES PREMIUM BREAKDOWN ENDORSEMENT

GROSS PREMIUM	\$ 443,750
BROKER FEE	\$
STATE TAX (4.85%)	\$ 21,521.88
STAMPING FEE	\$ 266.25
	\$ 465,538.13

% LOCATION: % 40.57

GROSS PREMIUM \$ 443,750



Authorized Representative

Exhibit 1-H

Guaranty Fund Nonparticipation Notice

This insurance contract is with an insurer not licensed to transact insurance in this state and is issued and delivered as surplus line coverage under the Texas insurance statutes. The Texas Department of Insurance does not audit the finances or review the solvency of the surplus lines insurer providing this coverage, and the insurer is not a member of the property and casualty insurance guaranty association created under Chapter 462, Insurance Code. Chapter 225, Insurance Code, requires payment of a 4.85 percent tax on gross premium.

Risk Specialists Companies Insurance Agency, Inc.
TX Corporate Non-Resident Surplus Lines License #1477780
2929 Allen Parkway, Suite 1300, Houston, TX 77019-2128

Exhibit 1-H

TEXAS NOTICE

(Surplus Lines)

IMPORTANT NOTICE

To obtain information or make a complaint:

You may contact the Texas Department of Insurance to obtain information on companies, coverages, rights or complaints at:

1-800-252-3439

You may write the Texas Department of Insurance:

P. O. Box 149104

Austin, TX 78714-9104

Fax: (512) 475-1771

Web: <http://www.tdi.texas.gov>

E-mail: ConsumerProtection@tdi.texas.gov

PREMIUM OR CLAIM DISPUTES:

Should you have a dispute concerning your premium or about a claim you should contact the agent first. If the dispute is not resolved, you may contact the Texas Department of Insurance.

ATTACH THIS NOTICE TO YOUR POLICY:

This notice is for information only and does not become a part or condition of the attached document.

AVISO IMPORTANTE

Para obtener informacion o para someter una queja:

Puede comunicarse con el Departamento de Seguros de Texas para obtener informacion acerca de companias, coberturas, derechos o quejas al:

1-800-252-3439

Puede escribir al Departamento de Seguros de Texas:

P. O. Box 149104

Austin, TX 78714-9104

Fax: (512) 475-1771

Web: <http://www.tdi.texas.gov>

E-mail: ConsumerProtection@tdi.texas.gov

DISPUTAS SOBRE PRIMAS O RECLAMOS: Si tiene una disputa concerniente a su prima o a un reclamo, debe comunicarse con el agente primero. Si no se resuelve la disputa, puede entonces comunicarse con el departamento (TDI).

UNA ESTE AVISO A SU POLIZA: Este aviso es solo para proposito de informacion y no se convierte en parte o condicion del documento adjunto.

Exhibit 1-H

FIRE

Schedule of Covered Locations

Policy Number: 021469162

Issued to: THE HOWARD HUGHES CORPORATION

<u>Description of Premises</u>	<u>Limit</u>	<u>Percent of Coins</u>
AS PER ON FILE WITH THE COMPANY	\$8,750,000 P/O \$35,000,000	NIL

Exhibit 1-H

OCCURRENCE LIMIT OF LIABILITY ENDORSEMENT

It is agreed that the following special terms and conditions apply to this policy:

1. The limit of liability or Amount of Insurance shown on the face of this policy, or endorsed on this policy, is the total limit of the Company's liability applicable to each occurrence, as hereafter defined. Notwithstanding any other terms and conditions of this policy to the contrary, in no event shall the liability of the Company exceed this limit or amount irrespective of the number of locations involved.

The term "occurrence" shall mean, any one loss, disaster, casualty, or series of losses, disasters, or casualties, arising out of one event. When the term applies to loss or losses from the perils of tornado, cyclone, hurricane, windstorm, hail, flood, earthquake, volcanic eruption, riot, riot attending a strike, civil commotion, vandalism and malicious mischief, or terrorism, one event shall be construed to be all losses arising during a continuous period of 72 hours. When filing proof of loss, the Insured may elect the moment at which the 72 hour period shall be deemed to have commenced, which may not be earlier than the time when the first loss to covered property occurs.

2. The premium for this policy is based upon the Statement of Values provided to the Insurer(s) by or on behalf of the Insured and kept on file by the Insurer(s). In the event of loss under the policy, the liability of the Insurer(s) shall be limited to the least of the following:
 - a.) The actual adjusted amount of loss, less applicable deductible(s);
 - b.) As respects each location insured by this Policy, 100 percent of the total combined stated values for all categories of covered property (e.g. building, contents) and other covered exposures (e.g., business income, extra expense, rental loss), shown for that location on the latest statement of values or other documentation on file with the insurer.
 - c.) Any other Limit of Liability or Sublimit of Insurance or Amount of Insurance specifically stated in this policy to apply to any particular insured loss or coverage or location.

Exhibit 1-H

POLLUTION, CONTAMINATION, DEBRIS REMOVAL EXCLUSION ENDORSEMENT

1. Property Not Covered

This policy does not cover land, land values or water.

2. Pollution and Contamination Exclusion.

This policy does not cover loss or damage caused by, resulting from, contributed to or made worse by actual, alleged or threatened release, discharge, escape or dispersal of CONTAMINANTS or POLLUTANTS, all whether direct or indirect, proximate or remote or in whole or in part caused by, contributed to or aggravated by any physical damage insured by this policy.

Nevertheless, if fire is not excluded from this policy and a fire arises directly or indirectly from seepage or contamination or pollution, any loss or damage insured under this policy arising directly from that fire is insured, subject to the provisions of this policy.

CONTAMINANTS or POLLUTANTS means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste, which after its release can cause or threaten damage to human health or human welfare or causes or threatens damage, deterioration, loss of value, marketability or loss of use to property insured hereunder, including, but not limited to, bacteria, virus, or hazardous substances as listed in the Federal Water, Pollution Control Act, Clean Air Act, Resource Conservation and Recovery Act of 1976, and Toxic Substances Control Act or as designated by the U. S. Environmental Protection Agency. Waste includes materials to be recycled, reconditioned or reclaimed.

This exclusion shall not apply when loss or damage is directly caused by fire, lightning, aircraft impact, explosion, riot, civil commotion, smoke, vehicle impact, windstorm, hail, vandalism, malicious mischief. This exclusion shall also not apply when loss or damage is directly caused by leakage or accidental discharge from automatic fire protective systems.

3. Asbestos, Dioxin or Polychlorinated Biphenols Exclusions

This policy does not cover -

- a) Asbestos, dioxin or polychlorinated biphenols (hereinafter all referred to as "Materials") removal from any good, product or structure unless the asbestos is itself damaged by fire, lightning, aircraft impact, explosion, riot, civil commotion, smoke, vehicle impact, windstorm or hail, vandalism, malicious mischief, leakage or accidental discharge from automatic fire protective system.
- b) Demolition or increased cost of reconstruction, repair, debris removal or loss of use necessitated by the enforcement of any law or ordinance regulating such Materials;
- c) Any governmental direction or request declaring that such Materials present in or part of or utilized on any undamaged portion of the insured's property can no longer be used for the purpose for which it was intended or installed and must be removed or modified.

The exception to exclusion 3(a), above, does not apply to payment for the investigation or defense of any loss, damage or any undamaged portion of the insured's property can no longer be used for the purpose for which it was intended

4. Debris Removal Exclusion

The Company will pay the expense within the sum insured to remove debris of insured property damaged or destroyed by an insured peril during the policy term.

The Company will not pay the expense to:

- a) Extract contaminants or pollutants from the debris; or
- b) Extract contaminants or pollutants from land or water; or

Exhibit 1-H

- c) Remove, restore or replace contaminated or polluted land or water; or
- d) Remove or transport any property or debris to a site for storage or decontamination required because the property or debris is affected by pollutants or contaminants, whether or not such removal, transport, or decontamination is required by law or regulation.

It is a condition precedent to recovery under this extension that the Company shall have paid or agreed to pay for direct physical loss or damage to the property insured hereunder and that the Insured shall give written notice to the Company of intent to claim for cost of removal of debris or cost to clean up not later than 180 days after the date of such physical loss or damage.

5. Authorities Exclusion

Notwithstanding any of the provisions of this policy, the Company shall not be liable for loss, damage, costs, expenses, fines or penalties incurred or sustained by or imposed on the Insured at the order of any Government Agency, Court or other Authority arising from any cause whatsoever.

Exhibit 1-H

LEXINGTON INSURANCE COMPANY Standard Property Conditions

This endorsement effective 04/01/2014 forms a part of Policy Number 021469162
issued to THE HOWARD HUGHES CORPORATION

by
LEXINGTON INSURANCE COMPANY (hereinafter called "the Company").

In consideration of the premium charged, the following clauses are hereby made applicable under this policy.

MINIMUM EARNED PREMIUM CLAUSE

In the event of cancellation of this policy by the Insured, a minimum premium of \$110,938 shall become earned, any provision of the policy to the contrary notwithstanding.

Failure of the Insured to make timely payment of premium shall be considered a request by the Insured for the Company to cancel on the Insured's behalf. In the event of such cancellation for non-payment of premium, the minimum earned premium shall be due and payable; provided, however, such cancellation shall be rescinded if the Insured remits and the Company receives the full policy premium with 10 days after the date of issuance of the cancellation notice. Such remittance and acceptance by the Company shall not effect the minimum earned premium provision of this endorsement. In the event of any other cancellation by the Company, the earned premium shall be computed pro-rata, not subject to the minimum earned premium.

POLICY DEDUCTIBLE

Each claim for loss or damage separately occurring shall be adjusted separately and from each such adjusted claim, the amount of \$25,000 shall be deducted. Notwithstanding the foregoing, the deductible amount applying to certain peril(s) insured against by this policy shall be as follows:

25,000	deductible applying to	AOP AND AS PER POLICY FORM
	deductible applying to	
	deductible applying to	
	deductible applying to	
	deductible applying to	

In the event of any other insurance covering the property insured hereunder, whether or not concurrent, the deductible(s) specified herein shall apply in full against that portion of any claim for loss or damage which the Company is called upon to pay under the provisions of the Apportionment Clause irrespective of any provisions to the contrary of such other insurance.

CANCELLATION CLAUSE

Except and to the extent of the Minimum Earned Premium Clause which is part of this policy, this clause supersedes other cancellation clauses made a part of this policy.

CANCELLATION: This policy may be cancelled by the Insured by surrender thereof to the Company or by mailing to the Company written notice stating when thereafter such cancellation shall be effective. This policy may be cancelled by the Company by mailing to the Insured, at the mailing address shown in this policy or last known address, written notice, stating when, not less than 90 days thereafter (10 days for non-payment of premium) such cancellation shall be effective. The effectiveness of cancellation is not dependent on the return of unearned premium with the notice. Proof of mailing of notice as aforesaid shall be sufficient proof of notice. The effective date and hour of cancellation stated in the notice shall become the end of the policy period. Delivery of such written notice either by the Insured or the Company shall be equivalent to mailing. If the Insured cancels, earned premium shall be computed in accordance with the customary short rate table and procedure. If the Company cancels, earned premium shall be computed pro rata. Premium adjustment shall be made as soon as practicable after cancellation becomes effective.

SERVICE OF SUIT CLAUSE

Service of Suit: In the event of failure of the Company to pay any amount claimed to be due hereunder, the Company, at the request of the Insured, will submit to the jurisdiction of a court of competent jurisdiction within the United States. Nothing in this condition constitutes or should be understood to constitute a waiver of the Company's rights to commence an action in any court of competent jurisdiction in the United States to remove an action to a United States District Court or to seek a transfer of a case to another court as permitted by the laws of the United States or of any state in the United States. It is further agreed that service or process in such suit may be made upon Counsel, Legal Department, Company stated on Declarations, 99 High Street, Boston, Massachusetts 02110, or his or her representative, and that in any suit instituted against the Company upon this policy, the Company will abide by the final decision.

1 of 2

PR9019 (Ed.01/94)
LX1101

LEX 085
LEX 085 2 CR 1883

Exhibit 1-H

of such court or of any appellate court in the event of an appeal.

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

WAR RISK EXCLUSION CLAUSE

The Company shall not be liable for any loss, caused directly or indirectly, by (1) hostile or warlike action in time of peace or war, whether or not declared, including action in hindering, combating or defending against an actual, impending or expected attack (a) by government or sovereign power (de jure or de facto) or by any authority maintaining or using military, naval or air forces; or (b) by military, naval or air forces; or (c) by an agent of any such government, power, authority or force (2) any weapon of war employing atomic fission or radioactive force whether in time of peace or war, whether or not its discharge was accidental; (3) insurrection, rebellion, revolution, civil war, usurped power, or action taken by government authority in hindering, combating, or defending against such an occurrence, seizure or destruction; (4) any consequence of any of the foregoing.

NUCLEAR EXCLUSION CLAUSE

The Company shall not be liable for loss by nuclear reaction or nuclear radiation or radioactive contamination all whether controlled or not, and whether such loss be direct or indirect, proximate or remote, or be in whole or in part caused by, contributed to, or aggravated by the peril(s) insured against in this policy. If the peril of fire is insured under this policy, then, subject to the foregoing and all provisions of this policy, direct loss by fire resulting from nuclear reaction or nuclear radiation or radioactive contamination is insured against by this policy.

SALVAGE AND RECOVERY CLAUSE

All salvages, recoveries and payments recovered or received either prior or subsequent to a loss settlement under this policy shall be applied as if recovered or received prior to the said settlement and all necessary adjustments shall be made by the parties hereto, including deduction of the Company's cost of recovery or salvage.

REPORTING CLAUSE

Notwithstanding that the Insured may be obligated to report full values for premium purposes, the Company's maximum limit of liability shall not exceed that amount stated as the policy limit of liability.

PROOF OF LOSS AND PAYMENT

The Insured shall complete and sign a sworn proof of loss within ninety (90) days after the occurrence of a loss (unless such period be extended by the written agreement of the Company) stating the time, place and cause of loss, the interest of the Insured and of all others in the property, the sound value thereof and the amount of loss or damage thereto, and all other insurance thereon. All adjusted claims shall be due and payable thirty (30) days after the presentation and acceptance of satisfactory proof(s) of loss at the office of the Company at 99 High Street, Boston, Massachusetts 02110.

GOVERNMENT ACTIVITY CLAUSE

The Company shall not be liable for loss or damage caused by or resulting from: (1) the seizure or destruction of property insured by this policy by any government body, including any customs or quarantine action, or (2) confiscation or destruction of any property by order of any government or public authority, except an order to destroy property to prevent the spread of fire or explosion.

IN WITNESS WHEREOF, the Company has caused this policy to be executed and attested, but this policy shall not be valid unless countersigned in the Declarations by one of its duly authorized representatives.


Secretary


President

Exhibit 1-H

ENDORSEMENT

This endorsement, effective 12:01 AM 04/01/2014

Forms a part of policy no.: 021469162

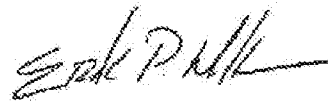
Issued to: THE HOWARD HUGHES CORPORATION

By: LEXINGTON INSURANCE COMPANY

ECONOMIC SANCTIONS ENDORSEMENT

The Insurer shall not be deemed to provide cover and the Insurer shall not be liable to pay any claim or provide any benefit hereunder to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose the Insurer, its parent company or its ultimate controlling entity to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union or the United States of America.

All other terms and conditions of the policy remain the same.



Authorized Representative

Exhibit 1-H

ENDORSEMENT

This endorsement, effective 12:01 AM 04/01/2014

Forms a part of policy no.: 021469162

Issued to: THE HOWARD HUGHES CORPORATION

By: LEXINGTON INSURANCE COMPANY

WAR AND TERRORISM EXCLUSION ENDORSEMENT

(Applies to locations outside the United States of America, its territories and possessions)

This endorsement modifies insurance provided by the policy:

Notwithstanding any provision to the contrary within this insurance or any endorsement thereto, it is agreed that this insurance excludes loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any of the following regardless of any other cause or event contributing concurrently or in any other sequence to the loss:

1. War, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power; or
2. Any act of terrorism.

For the purpose of this endorsement an act of terrorism means an act including, but not limited to, the use of force or violence and/or the threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organization(s) or government(s), committed for political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public, or any section of the public, in fear.

This endorsement also excludes loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to 1. and/or 2. above.

If the Underwriters allege that by reason of this exclusion, any loss, damage, cost or expense is not covered by this insurance the burden of proving the contrary shall be upon the Assured.

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

All other terms and conditions of the policy remain the same.

NMA2918
03/18/2001
LX8569



Authorized Representative OR
Countersignature (in states where applicable)

Exhibit 1-H

ENDORSEMENT

This endorsement, effective 12:01 AM 04/01/2014

Forms a part of policy no.: 021469162

Issued to: THE HOWARD HUGHES CORPORATION

By: LEXINGTON INSURANCE COMPANY

TOTAL TERRORISM EXCLUSION ENDORSEMENT

A. This insurance does not apply to loss, injury, damage, claim or suit, arising directly or indirectly as a result of an "act of terrorism", which is defined in the Terrorism Risk Insurance Act of 2002, as amended by the Terrorism Risk Insurance Program Reauthorization Act of 2007 (collectively, "TRIA") as follows:

(1) ACT OF TERRORISM. -

(A) CERTIFICATION. - The term "act of terrorism" means any act that is certified by the Secretary [of the Treasury], in concurrence with the Secretary of State, and the Attorney General of the United States -

(i) to be an act of terrorism;

(ii) to be a violent act or an act that is dangerous to -

(I) human life;

(II) property; or

(III) infrastructure;

(iii) to have resulted in damage within the United States, or outside of the United States in the case of -

(I) an air carrier or vessel [described in TRIA]; or

(II) the premises of a United States mission; and

(iv) to have been committed by an individual or individuals as part of an effort to coerce the civilian population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

(B) LIMITATION. - No act shall be certified by the Secretary as an act of terrorism if -

(i) the act is committed as part of the course of a war declared by the Congress, except that this clause shall not apply with respect to any coverage for workers' compensation; or

(ii) property and casualty insurance losses resulting from the act, in the aggregate, do not exceed \$5,000,000.

(C) DETERMINATIONS FINAL. - Any certification of, or determination not to certify, an act as an act of terrorism under this paragraph shall be final, and shall not be subject to judicial review.

Exhibit 1-H

(D) NONDELEGATION. --The Secretary may not delegate or designate to any other officer, employee, or person, any determination under this paragraph of whether, during the effective period of the Program, an act of terrorism has occurred.

This insurance also does not apply to loss, injury, damage, claim or suit, arising directly or indirectly as a result of a "non-certified act of terrorism", which means any act that is not an "act of terrorism", as defined above, that:

- (1) involves the use of force or violence against person or property;
- (2) is dangerous to human life or property; or
- (3) interferes with or disrupts an electronic or communication system; and
- (4) is undertaken by any group or person, whether or not acting on behalf of or in any connection with any organization, government, power, authority or military force, when the effect is to intimidate, coerce or harm:
 - (A) a government;
 - (B) the civilian population of a country, state or community; or
 - (C) to disrupt the economy of a country, state or community.

- B. TRIA is scheduled to terminate on December 31, 2014. In the event "TRIA" is not reauthorized during the policy period, then the exclusion provided under Section A. above is deleted in its entirety and replaced with the following exclusion as of December 31, 2014:

This insurance also does not apply to loss, injury, damage, claim or suit, arising directly or indirectly as a result of "terrorism" regardless of any other cause or event contributing concurrently or in any sequence to the loss. "Terrorism" means any act that:

- (1) involves the use of force or violence against person or property;
- (2) is dangerous to human life or property; or
- (3) interferes with or disrupts an electronic or communication system; and
- (4) is undertaken by any group or person, whether or not acting on behalf of or in any connection with any organization, government, power, authority or military force, when the effect is to intimidate, coerce or harm:
 - (A) a government;
 - (B) the civilian population of a country, state or community; or
 - (C) to disrupt the economy of a country, state or community.

- C. In the event, TRIA is reauthorized, but is amended as a part of its reauthorization, we reserve the right to modify the policy, as of the effective date of such amendment to TRIA, with the sole purpose of revising the policy to be consistent with the provisions of the amended statute reauthorizing TRIA.

- D. Exception Covering Certain Fire Losses -If "terrorism", as defined in Paragraphs B (1) through (4) above, results in fire, we will pay for such loss or damage caused by such fire, subject to all of the policy's applicable terms and conditions; but only if:

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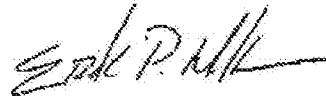
- (1) Such covered property is located in a State of the United States, the District of Columbia, Puerto Rico, or a territory or possession of the United States, that pursuant to the Standard Fire Policy, statute, regulation or other law, prohibits the exclusion of a fire following an act of "terrorism"; and
- (2) Such coverage for fire applies only to direct physical loss or damage to covered property insured hereunder, and no other coverage, including but not limited to, business income and extra expense coverage.

Furthermore, in accordance with the terms and conditions of the applicable Standard Fire Policy, the valuation of such covered property resulting from direct physical loss or damage caused by fire following "terrorism" may be limited the lesser of the:

- (1) Actual cash value of the covered property at the time of loss; or
- (2) Cost to repair or replace at the covered property at the time and place of the loss with materials of like kind and quality, without deduction for depreciation and obsolescence

Without allowance for any increased cost of repair or replacement by reason of any ordinance or law.

All other terms and conditions of the policy are the same.



Authorized Representative

Exhibit 1-H

ENDORSEMENT

This endorsement, effective 12:01 AM 04/01/2014

Forms a part of policy no.: 021469162

Issued to: THE HOWARD HUGHES CORPORATION

By: LEXINGTON INSURANCE COMPANY

COMBINED PROPERTY/BOILER & MACHINERY MILLENNIUM ENDORSEMENT

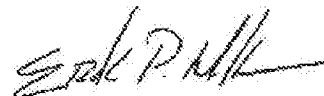
This policy is hereby amended as follows:

- A. The Insurer will not pay for Damage or Consequential Loss directly or indirectly caused by, consisting of, or arising from, the failure of any computer, data processing equipment, media microchip, operating systems, microprocessors (computer chip), integrated circuit or similar device, or any computer software, whether the property of the Insured or not, and whether occurring before, during or after the year 2000 that results from the inability to:
1. correctly recognize any date as its true calendar date;
 2. capture, save, or retain, and/or correctly manipulate, interpret or process any data or information or command or instruction as a result of treating any date other than its true calendar date; and/or
 3. capture, save, retain or correctly process any data as a result of the operation of any command which has been programmed into any computer software, being a command which causes the loss of data or the inability to capture, save, retain or correctly process such data on or after any date.
- B. It is further understood that the Insurer will not pay for the repair or modification of any part of an electronic data processing system or its related equipment, to correct deficiencies or features of logic or operation.
- C. It is further understood that the Insurer will not pay for Damage or Consequential Loss arising from the failure, inadequacy, or malfunction of any advice, consultation, design, evaluation, inspection, installation, maintenance, repair or supervision done by the Insured or for the Insured or by or for others to determine, rectify or test, any potential or actual failure, malfunction or inadequacy described in A. above.

Such Damage or Consequential Loss described in A, B, or C above, is excluded regardless of any other cause that contributed concurrently or in any other sequence.

This endorsement shall not exclude subsequent Damage or Consequential Loss, not otherwise excluded, which itself results from a Defined Peril. Defined Peril shall mean fire, lightning, explosion, aircraft or vehicle impact, falling objects, windstorm, hail, tornado, hurricane, cyclone, riot, strike, civil commotion, vandalism, malicious mischief, earthquake, volcano, tsunami, freeze or weight of snow, sudden and accidental breakdown of an object, including mechanical and electrical breakdown.

All other terms, conditions and exclusions of this policy remain unchanged.



AUTHORIZED REPRESENTATIVE

OR Countersignature (In states where applicable)

69813 (2/99)

LEX 890

LEX 092 2 CR 1890

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The Howard Hughes Corporation and its affiliated, subsidiary, and associated companies and/or corporations and the Insured's interest in partnerships and joint ventures as now exist or may hereafter be constituted or acquired and any party in interest which the insured is responsible to insure.

All hereafter referred to as the "Insured."

1. Policy Term

In consideration of the premium charged, this policy attaches and covers from April 1, 2014 at 12:01 A.M. at the location of property involved and shall continue in full force and effect until April 1, 2015 at 12:01 A.M. at the location of property involved.

2. Territory

This policy insures within and between the 50 states comprising the United States of America, Canada, the District of Columbia, Guam, Puerto Rico and the U.S. Virgin Islands, and including any other territories and possessions of the foregoing. The territory includes coastal and inland waterways between points and places therein.

3. Limit of Liability:

In the event of loss or damage insured under this policy, this Insurer shall be liable for its proportional share of \$250,000,000 per occurrence.

This policy's proportion is 25% or \$8,750,000 part of the Primary \$35,000,000 per Occurrence and in the Annual Aggregate for Flood and Earthquake, excess of deductibles.

Coverage hereunder applies up to, but not more than, the stated limits, for any one loss per Occurrence (unless otherwise noted). The sublimits listed below are part of and not in addition to the above stated Limits of Liability.

- (a) With respects to all losses caused by the peril of **Earthquake**, the Company shall not be liable, in the annual aggregate for any one Policy year, for more than its proportionate share of USD250,000,000; except for the following separate aggregate limits:

- (i) USD100,000,000 for losses occurring in the State of Hawaii
- (ii) USD25,000,000 for losses occurring in the State of California

The aggregate limits stated in subparagraphs (i) and (ii) above shall be part of the overall aggregate limit stated in the introduction to this paragraph (a).

- (b) With respects to all losses caused by the peril of **Flood**, the Company shall not be liable, in the annual aggregate for any one Policy year, for more than its proportionate share of USD250,000,000;

But not to exceed USD100,000,000 in the aggregate for any one Policy year for the peril of Flood occurring in **Special Flood Hazard Areas (SFHA)**. However, this **Special Flood Hazard Area** sublimit shall not apply to loss involving personal property, buildings, or structures wholly located outside an area designated as a **Special Flood Hazard Area**.

The aggregate limit stated in the paragraph above shall be part of the overall aggregate limit stated in the introduction to the paragraph (b).

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(c) With respects to the following sublimits described below, such sublimits shall be the maximum amount collectible in any one Occurrence:

Included	Named Windstorm, including storm surge
\$ 25,000,000	Accounts Receivable
\$ 1,000,000	Bailor Coverage
\$ 5,000,000	Christmas Holiday décor while stored at an offsite location during the off-season (Off-season shall be considered the period between February 1 st and October 31 st)
60 days	Civil or Military Authority -- within 5 statute miles, limited to a maximum of \$10,000,000
\$ 25,000,000	Contingent Business Interruption and Contingent Extra Expense
\$ 25,000,000	Data Processing Equipment & Media
\$ 25,000,000	Data Restoration or Reproduction
\$ 50,000,000	Debris Removal or 25% of the physical damage loss, whichever is greater
\$ 2,500,000	Defense Costs
\$ 50,000,000	Demolition and Increased Cost of Construction -- full policy limits apply to the undamaged portion of the building
\$ 25,000,000	Errors and Omissions
Included	Equipment Breakdown, except;
\$ 2,500,000	Ammonia and Refrigeration Contamination
\$ 2,500,000	Consequential Damage/Spoilage
\$ 2,500,000	Hazardous Substances
\$ 25,000,000	Expediting Expense
365 days	Extended Period of Indemnity
\$ 25,000,000	Extra Expense
\$ 10,000,000	Fine Arts, subject to a maximum of \$500,000 per unscheduled item
\$ 1,000,000	Fines, Damages and Penalties
\$ 5,000,000	Fire Brigade Charges and Extinguishing Expenses
\$ 10,000,000	Golf Courses included but not limited to greens, tees, grounds, fairways, sand traps, trees and shrubs per Occurrence and in the Annual Aggregate
30 Days	Impounded Water
60 days	Ingress/Egress -- within 5 statute miles, limited to a maximum of \$10,000,000
\$ 10,000,000	Leasehold Interest
\$ 2,500,000	Loss Adjustment Expense
\$ 25,000,000	Miscellaneous Unnamed Locations
\$ 10,000,000	Mold Coverage per Occurrence and Annual Aggregate provided for in Endt #1
Included	Newly Acquired Locations -- 120 days Reporting
\$ 10,000,000	Plants, Trees, and Shrubs
\$ 5,000,000	Pollutant Clean Up of Land and Water per Occurrence and Annual Aggregate
\$ 25,000,000	Property in the Course of Construction, Erection, Installation, or Assembly
\$ 500,000	Property of Officers, Employees, Hotel Guests, or Tenants
\$ 5,000,000	Royalties
\$ 25,000,000	Service Interruption -- Business Interruption and Extra Expense
\$ 10,000,000	Soft Costs

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\$ 1,000,000	Tenant/Hotel Guest Emergency Evacuation
\$ 1,000,000	Tenant and Hotel Guest Relocation Expense -- per Occurrence and Annual Aggregate - \$10,000 per guest per Occurrence
\$ 1,000,000	Tenant Move Back Coverage -- per Occurrence and Annual Aggregate
\$ 10,000,000	Transit per conveyance; each railroad car or trailer shall be considered a separate conveyance.
\$ 5,000,000	Upgrade to Green
\$ 10,000,000	Valuable Papers and Records

4. Deductibles

- A. All losses, damages, or expenses arising out of any one **Occurrence** shall be adjusted as one loss and from the amount of such adjusted loss shall be deducted the sum of \$25,000 per occurrence except for:

\$100,000 Earthquake, except:

5% of the total values in the State of California at each location involved in the loss, to be calculated separately for each Unit of Insurance which sustains loss or damage, subject to a minimum of \$250,000 for any one occurrence shall be deducted from any adjusted Earthquake loss;

2% of the total values in the State of Hawaii at each location involved in the loss, to be calculated separately for each Unit of Insurance which sustains loss or damage, subject to a minimum of \$250,000 for any one occurrence shall be deducted from any adjusted Earthquake loss;

\$100,000 Flood, except:

With respect to buildings, structures and contents wholly or partially within Special Flood Hazard Areas (SFHA) (if these locations are not excluded elsewhere in this policy with respect to the peril of Flood), the deductible shall be 5% of the total values at each location involved in the loss, to be calculated separately for each unit of insurance which sustains loss or damage, subject to a minimum of \$1,000,000 for any one occurrence shall be deducted from any adjusted Flood loss;

\$ 25,000 Named Windstorm, except:

5% of the Total Values for locations within the State of Florida and at the Riverwalk Marketplace located at 1 Poydras Street, New Orleans, LA, 70130, at each location involved in the loss, to be calculated separately for each Unit of Insurance which sustains loss or damage, subject to a minimum of \$250,000 for any one occurrence shall be deducted from any adjusted Named Windstorm loss.

2% of the Total Values for locations within all other Tier 1 Counties, at each location involved in the loss, to be calculated separately for each Unit of Insurance which sustains loss or damage, subject to a minimum of \$250,000 for any one occurrence shall be deducted from any adjusted Named Windstorm loss.

\$100,000 Named Windstorm for locations in Montgomery County, TX, per occurrence

Flood/Storm Surge as a result of a Named Windstorm:

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5% of the Total Values for locations within the State of Florida and at the Riverwalk Marketplace located at 1 Poydras Street, New Orleans, LA, 70130, at each location involved in the loss, to be calculated separately for each Unit of Insurance which sustains loss or damage, subject to a minimum of \$250,000 for any one occurrence shall be deducted from any adjusted Flood/Storm Surge loss as a result of a Named Windstorm.

2% of the Total Values for all other locations, at each location involved in the loss, to be calculated separately for each Unit of Insurance which sustains loss or damage, subject to a minimum of \$250,000 for any one occurrence shall be deducted from any adjusted Flood/Storm Surge loss as a result of a Named Windstorm.

\$ 10,000 Fine Arts

With respect to all other locations all loss, damage, and/or expense arising out of any one **Occurrence** shall be adjusted as one loss, and from the amount of each such adjusted loss shall be deducted the sum of \$25,000 per occurrence.

The percentage deductible(s) stipulated above shall apply only to those buildings and associated personal property and time element values at each building suffering a loss in the Occurrence and for which claim is being sought. However, this deductible shall not apply to ensuing loss or damage not otherwise excluded herein.

Subject to A. Above:

- B. If two or more deductible amounts in this policy apply to a single **Occurrence**, the total to be deducted shall not exceed the largest deductible applicable.
- C. The deductible amount specified in Clause A. above shall not apply to general average contributions and salvage charges.
- D. Waiting Periods:
 - 1. Service Interruption: 24 Hours
 - 2. Civil or Military Authority: 24 Hours
 - 3. Ingress/Egress: 24 Hours

Waiting period application: The insurer will not be liable for any Loss or Damage unless the period of interruption exceeds the specified waiting period. Once these Waiting Periods are satisfied, the entire claim will be covered subject to the applicable dollar deductible.

- E. Unit of Insurance:

The following shall be considered a separate unit of insurance: (1) each separate building or structure; (2) the contents of each separate building or structure; (3) property in each yard; (4) business interruption for the twelve-month period immediately following the loss.
- F. The values to be used when calculating the deductibles for the above shall be those as specified for each unit of insurance as shown in the most recent Statement of Values on file with the Company. If values are not itemized for each unit of insurance or if the property damage is a building in the course of construction or renovation, the values will be determined at the time of loss.

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- G. If other insurance applies to the same property as insured hereunder, and to the extent recovery is made from such other insurance, the deductible under this policy be reduced by such recovery, but in no event shall the deductible under this policy be less than shown in the policy. If recovery from such other insurance is greater than the deductible in the policy, then the deductible under this policy shall not apply.
- H. In the event of loss or damage involving more than one deductible, the Insured can either elect to have the deductibles apply separately or have the single largest deductible apply.
- I. Whenever mortgage or lease conditions require insurance protection without deductibles or with deductibles less than are provided herein, Insurers agree to make payment without consideration of the applicable deductible. The Insured agrees to reimburse the Insurers for any payments so made within a reasonable time after settlement of the loss subject to credit approval.

5. Perils Insured

This policy insures against all risk of direct physical loss or damage occurring during the Policy Term to property including but not limited to Earthquake, Named Windstorm, Flood, Equipment Breakdown, general average, salvage, and all other charges on shipments covered here under except as hereinafter excluded.

Physical loss or damage shall include any destruction, disruption, distortion or corruption of any computer data, coding, program or software except as hereinafter excluded.

6. Perils Excluded

This policy does not insure against loss or damage caused by the following perils:

- A.
 - 1. Against hostile or warlike action in time of peace, including action in hindering, combating, or defending against an actual, impending, or expected attack:
 - (a) by any government or sovereign power (de jure or de facto) or by any authority maintaining or using military, naval, or air forces;
 - (b) or by military, naval, or air forces;
 - (c) or by an agent of such government, power, authority, or forces;
 - 2. Against any weapon employing atomic fission or fusion;
 - 3. Against rebellion, revolution, civil war, usurped power; or action taken by governmental authority in hindering, combating, or defending against such **occurrence**;
 - 4. Against seizure or destruction by order of public authority, except destruction by order of public authority to prevent spread of, or to otherwise contain, control or minimize loss, damage, or destruction which occurs due to a peril insured against under this policy;
 - 5. Against risks of contraband or illegal trade.

Notwithstanding the above provisions 1, 3, 4, and 5, this insurance shall cover loss or damage directly caused by acts committed by an agent of any government, party, or faction engaged in war, hostilities, or warlike operations, provided such agent is acting secretly and not in connection with any operation or armed forces (whether military, naval, or air forces) in the

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country where the property is situated. Nothing in the foregoing shall be construed to include any loss, damage, or expense caused by or resulting from any of the risks or perils excluded above, excepting only the acts of certain agents expressly covered herein, but in no event shall this insurance include any loss, damage, or expense caused by or resulting from any weapon of war employing atomic fission or fusion whether in time of peace or war.

- B. Nuclear reaction or nuclear radiation or radioactive contamination, all whether controlled or uncontrolled, and whether such loss be direct or indirect, proximate or remote, or be in whole or in part caused by, attributed to, or aggravated by the peril(s) insured against in this policy except that: If a fire ensues, liability is specifically assumed by the **Insurer** for direct loss by such peril insured hereunder but not including any loss due to nuclear reaction, nuclear radiation or radioactive contamination.

The **Insurer** shall be liable for direct physical loss or damage occurring during the Policy Term caused by sudden or accidental radioactive contamination, including resultant radiation damage in excess of the amount of the deductible named elsewhere in this policy for each **occurrence** from material used or stored or from processes conducted on the described premises and provided at the time of loss there is neither a nuclear reactor nor any new or used radioactive fuel on the described premises.

- C. **Fraudulent or dishonest acts** committed by the **Insured** or any of the **Insured's** employees with the manifest intent to:

1. cause the **Insured** to sustain such loss; and
2. obtain financial benefit for the **Insured**, **Insured's** employee, or for any other person or organization intended by the **Insured** or the employee to receive such benefit, other than salaries, commissions, fees, bonuses, promotions, awards, profit sharing, pensions, or other employee benefits earned in the normal course of employment.

This exclusion does not apply to acts of destruction of covered property by the **Insured's** employees or carriers for hire; but theft by the **Insured's** employees is not covered.

- D. Errors in design, faulty workmanship, faulty materials, ordinary wear and tear, inherent or latent defect or gradual deterioration, unless a peril not otherwise excluded ensues and then only loss, damage or expense caused by the ensuing peril.
- E. Loss or damage arising out of settling, cracking, shrinking, bulging, or expansion of pavements, foundations, walls, floors, roofs, or ceilings unless a peril not otherwise excluded ensues and then only for the loss, damage, or expense caused by the ensuing peril.
- F. Loss or damage arising out of damage by rodents or insects unless a peril not otherwise excluded ensues and then only for the loss, damage or expense caused by the ensuing peril.
- G. Loss or damage arising out of accumulated effects of smog, smoke, vapor, liquid or dust unless a peril not otherwise excluded ensues and then only for the loss, damage, or expense caused by the ensuing peril.
- H. Against loss or damage arising out of rust or corrosion unless a peril not otherwise excluded ensues and then only for the loss, damage or expense caused by the ensuing peril.

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1. Unexplained or mysterious disappearance of any property, or shortage disclosed by audit or upon taking inventory; unless such loss or damage results directly from other physical damage not otherwise excluded in this policy.

7. Coverage

This policy insures the interest of the **Insured** in following:

A. Real and Personal Property

1. All Real and Personal Property owned, used, or intended for use by the **Insured**, acquired by the **Insured**, property of others in the **Insured's** care, custody or control including the **Insured's** liability for such property and including the costs to defend any allegations of liability for loss or damage to such property; including but not limited to the following:
 - (a) The **Insured's** interest in Improvements and Betterments.

In the event of loss or damage to improvements and betterments, the **Insurer** agrees to accept and consider the **Insured** in the position of sole and unconditional owner of improvements and betterments, notwithstanding any contract or lease to the contrary.
 - (b) At the option of the **Insured**, Personal Property of the **Insured's** officials and employees, while in the **Insured's** care, custody or control.
 - (c) Property in the course of construction, erection, installation or assembly.
 - (d) Fine Arts, EDP Media and EDP Systems, Valuable Papers & Records, Architect Fees and Engineering Fees, Fire Brigade Charges/ Fire Extinguishing Materials and Expenses.
2. Contractor's and/or subcontractor's (of any tier) and vendor's interests in property covered to the extent of the **Insured's** liability imposed by law or assumed by written contract.
3. This policy shall cover the interest of the **Insured** and at the option of the **Insured**, the interest of the **Insured's** customer in property sold by the **Insured** under conditional sale, trust agreement, installment plan or other deferred payment plan including property which is leased to customers under a lease/purchase agreement.
4. Property of others that the **Insured** has agreed to insure prior to loss or damage including property not in the **Insured's** care, custody or control and at the **Insured's** option the interest of the owner of such property.
5. Newly Acquired Locations:
All newly acquired locations, or additions to existing locations insured, including construction of new properties, are automatically covered, subject to reporting to company within 120 days of acquisition. After 120 days, the Miscellaneous Unnamed Locations sublimit will apply.
6. Miscellaneous Unnamed Locations:
This policy is extended to cover insured property at a location:
 - (a) not described in this policy; and

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(b) not otherwise insured.

7. Land improvements as described hereunder include, but are not limited to, any alteration to the natural condition of the land by grading, landscaping, earthen dikes or dams, underground wiring and in ground sprinklers, as well as additions to land such as pavements, roadways, ponds, golf courses, or similar works.

B. Business Interruption

1. Loss of Earnings resulting from the necessary interruption of business conducted by the **Insured** including all interdependencies between or among companies owned or operated by the **Insured** caused by physical loss, damage, or destruction by the perils insured herein during the term of this policy to real and/or personal property described in Clause 7.A.
2. If such loss occurs during the term of this policy, it shall be adjusted on the basis of ACTUAL LOSS SUSTAINED by the **Insured** consisting of the net profit which is prevented from being earned including ordinary payroll and payroll; and

all charges and other expenses to the extent that these must necessarily continue during the interruption of business, but only to the extent to which such charges and expenses would have been incurred had no loss occurred.
3. In determining the amount of net profit, charges, and expenses covered hereunder for the purposes of ascertaining the amount of loss sustained, due consideration shall be given to the experience of the business before the date of damage or destruction and to the probable experience thereafter had no loss occurred.

C. Extra Expense

1. This **Insurer** will pay the **Insured** for the Extra Expense incurred by the **Insured** in order to continue as nearly as practicable the normal operation of the **Insured's** business following physical loss, damage or destruction by the perils insured herein during the term of this policy to Real and/or Personal Property as described in Clause 7.A.
2. The term Extra Expense, as used herein, is defined as the excess (if any) of the total cost incurred during the recovery period chargeable to the operation of the **Insured's** business, over and above the total cost that would normally have been incurred to conduct the business during the same period had no damage or destruction occurred.

D. Accounts Receivable

In the event of physical loss, damage or destruction to records or accounts receivable from customers by the perils insured herein, this **Insurer** will pay the **Insured** as follows:

1. All sums due the **Insured** (from customers), provided the **Insured** is unable to effect collection thereof as a result of loss or damage to records of accounts receivable by a peril insured by this policy.
2. All sums due the **Insured** from factoring transactions, when the property of the debtor has been lost or damaged by a peril insured by this policy and the **Insured** has been unable to effect collection thereof.

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3. Interest charges on any loan to offset impaired collections pending repayment of such sums made uncollectible by such loss or damage.
4. Collection expenses in excess of normal collection cost and made necessary because of such loss or damage.
5. Other expenses, when reasonably incurred by the **Insured** in reestablishing records of accounts receivable following such loss or damage.

For purpose of this insurance, credit card company charge media shall be deemed to represent sums due the **Insured** from customers, until received by the credit card company.

When there is proof that a loss of records of accounts receivable has occurred by the **Insured** and the **Insured** cannot more accurately establish the total amount of accounts receivable outstanding as of the date of such loss, such amount shall be computed as follows:

1. The monthly average of accounts receivable during the last available Twelve (12) months, together with collection expenses in excess of normal collection costs and made necessary because of such loss or damage and reasonable expenses incurred in reestablishing records of accounts receivable following such loss or damage, shall be adjusted in accordance with the percentage increased or decreased in the Twelve (12) months average of monthly gross revenues which may have occurred in the interim;
2. The monthly amount of accounts receivable thus established shall be further adjusted in accordance with any demonstrable variance from the average for the particular month in which the loss occurred, due consideration also being given to the normal fluctuations in the amount of accounts receivable within the fiscal month involved.

There shall be deducted from the total amount of accounts receivable, however established, the amount of such accounts evidenced by records, not lost or damaged, or otherwise established or collected by the **Insured** and an amount to allow for probable bad debts which would normally have been uncollectible by the **Insured**.

E. Leasehold Interest

In the event of physical loss, damage, or destruction caused by the perils insured herein during the term of this policy and not otherwise excluded, to real property, which is leased by the **Insured**, this policy is extended to cover as follows:

1. If as a result of such loss or damage the property becomes wholly untenable or unusable and the lease agreement requires continuation of the rent, this **Insurer** shall pay the **Insured** for the actual rent payable for the unexpired term of the lease; or
2. If as a result of such loss or damage the property becomes partially untenable or unusable and the lease agreement requires continuation of the rent, this **Insurer** shall pay the **Insured** for the proportion of the rent applicable thereto; or
3. If as a result of such loss or damage the lease is canceled by the lessor pursuant to the lease agreement or by operation of law, this **Insurer** shall pay the **Insured** for its **Lease Interest** for the first three months following the loss or damage and for its **Net Lease Interest** for the remaining unexpired term of the lease; provided. However, that this

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company shall not be liable for any increase in the amount recoverable hereunder resulting from the suspension, lapse or cancellation of any license, or from the **Insured** exercising an option to cancel the lease; or from any act or omission of the **Insured** which constitutes a default under the lease; and provided further that the **Insured** shall use any suitable property or service owned or controlled by the **Insured** or obtainable from another source to reduce the loss hereunder.

F. Rental Value and Rental Income

1. Loss of Rental Income and/or Loss of Rental Value of the **Insured** caused by physical loss, damage or destruction by the perils insured herein during the term of this policy to property and/or premises rented/or occupied by the **Insured** and/or rented or leased by the **Insured** to others.
2. Rental Income shall include the following:
 - (a) The total anticipated gross rental income from tenant(s) of the **Insured's** building(s) and structure(s), and
 - (b) The amount of all charges assumed by tenant(s), which would otherwise be obligations of the **Insured**, plus
 - (c) A similar value for that portion occupied by the **Insured**.

3. Rental Value shall include the following:

This policy will serve as Rental Income Insurance in those situations where the **Insured** is required under a lease or rental agreement to maintain such insurance on behalf of any landlord.

This policy will respond for rental expenses incurred by the **Insured** in excess of the expenses, which would have been incurred, had a leased or rented premise not been damaged or destroyed by any peril covered under this policy. Such coverage will apply for all additional expenses incurred during the period of untenability of if the lease cannot be terminated until its expiration.

Rental value shall also include contingent rents for buildings under construction and rents from the vacant and/or unoccupied portion or portions of the buildings.

4. Experience of the Business: In determining the amount of income derived from the agreement(s) described in paragraph 1 above for the purposes of ascertaining the amount of loss sustained, due consideration shall be given to the amount of income derived from such agreement(s) before the date of damage or destruction and to the probable amount of income thereafter had no loss occurred.

G. Royalties

1. Loss of income to the **Insured** under royalty, licensing fees, or commission agreements between the **Insured** and another party which is not realizable due to physical loss, damage or destruction by any of the perils covered herein during the term of this policy to property of the other party.

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2. If such loss occurs during the term of this policy, it shall be adjusted on the basis of ACTUAL LOSS SUSTAINED of such income referred to in paragraph 1 above, which would have been earned had no loss occurred.
3. Resumption of Operations: The **Insured** shall influence, to the extent possible, the party with whom the agreement described in paragraph 1 above has been made to use any other machinery, supplies or locations in order to resume business so as to reduce the amount of loss here under and the **Insured** shall cooperate with that party in every way to effect this, but not financially, unless such expenditures shall be authorized by the **Insurer**.
4. Experience of the Business: In determining the amount of income derived from the agreement(s) described in paragraph 1 above for the purposes of ascertaining the amount of loss sustained, due consideration shall be given to the amount of income derived from such agreement(s) before the date of damage or destruction and to the probable amount of income thereafter had no loss occurred.

H. Transit

1. This policy attaches and covers shipments within and between the territorial limits of this policy, including the coastal waters thereof, by any means of conveyance, from the time the property is moved for purposes of loading and continuously thereafter while awaiting and during loading and unloading and in temporary storage, including temporary storage on any conveyance intended for use for any outbound or used for inbound shipment, including during deviation and delay, until safely delivered and accepted at place of final destination.
2. This insurance is extended to cover loss or damage to property:
 - (a) sold and shipped by the **Insured** under terms of F.O.B. point of origin or other terms usually regarded as terminating the shipper's responsibility short of points of delivery;
 - (b) arising out of any unauthorized person(s) representing themselves to be the proper party(ies) to receive goods for shipment or to accept goods for delivery;
 - (c) occasioned by the acceptance by the **Insured**, by its agents, or by its customers of fraudulent bills of lading, shipping and delivery orders, or similar documents;
 - (d) at the **Insured's** option, which is incoming to the **Insured**.
3.
 - (a) The **Insured** may waive right(s) of recovery against private, contract, and common carriers and accept bills of lading or receipts from carriers, bailees, warehousemen, or processors limiting or releasing their liability, but this transit insurance shall not inure to the benefit of any carrier, bailee, warehouseman, or processor.
 - (b) With respect to shipments described under subparagraphs 2a and 2d above, the **Insurer** agrees to waive its rights of subrogation against shippers and consignees at the option of the **Insured**.
4. The **Insured** is not to be prejudiced by any agreements exempting lightermen from liability.

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5. Seaworthiness of any vessel or watercraft and airworthiness of any aircraft are admitted between the Insurer and the Insured.

8. Extensions of Coverage

THIS CLAUSE EXTENDS THE COVERAGES DESCRIBED IN CLAUSES 7.A, 7.B, 7.C, 7.D, 7.E, 7.F, 7.G, and 7.H.

This policy, subject to all its provisions and without increasing the amount of said policy, also insures against loss, damage or destruction by the perils insured against, of:

A. Brands and Labels/Control of Damaged Goods

In case of damage to property bearing a brand or trademark or which in any way carries or implies the guarantee or the responsibility of the manufacturer or Insured, the salvage value of such damaged property shall be determined after removal in the customary manner, and at the expense of the Insurer, of all such brands or trademarks or other identifying characteristics. The Insured shall have full right to the possession of all goods involved in any loss under this policy and shall retain control of all damaged goods. The Insured, exercising a reasonable discretion, shall be the sole judge as to whether the goods involved in any loss under this policy are fit for consumption, sale or use and any goods so deemed by the Insured to be unfit for consumption shall not be sold or otherwise disposed of except by the Insured or with the Insured's consent, but the Insured shall allow the Insurer any salvage obtained by the Insured on any sale or other disposition of such goods.

B. CFC Refrigerants

The Company will pay for the additional cost to repair or replace covered property that is physically damaged because of the use or presence of a refrigerant containing CFC (chlorinated fluorocarbon) substances. This means the additional expense to do the least of the following:

- (1) Repair the damaged property and replace any lost CFC refrigerant;
- (2) Repair the damaged property, retrofit the system to accept a non-CFC refrigerant and charge the system with a non-CFC refrigerant; or
- (3) Replace the system with one using a non-CFC refrigerant

Additional costs mean those beyond what would have been required had no CFC refrigerant been involved.

B. Civil/Military Authority

Actual loss as insured herein during the period of time when, as a result of a peril insured against access to real or personal property is prohibited by order of civil authority.

C. Consequential/Sequential Damage

Consequential/sequential loss or damage caused by or resulting from the change of temperature or humidity or by interruption of power, heat, air conditioning, refrigeration.

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telephone or telegraphs, supply water or telecommunications, excluding overhead transmission and distribution lines which are over 1000 feet from an insured property, resulting from damage by the perils insured against here under to property/equipment or plants used to provide refrigeration, cooling, humidifying, dehumidifying, air conditioning, heating, generating, converting power, or telephone or telegraph, power generating equipment, utility plants, or sources, whether or not such equipment is on or off the premises of the Insured. (Exclusion 6.F shall not apply to this Extension of Coverage).

D. Contingent Business Interruption/Contingent Extra Expense

This Policy covers the Actual Loss Sustained and extra expense incurred by the Insured during the period of liability resulting from physical loss or damage of the type insured to property of the type insured at contingent time element locations and attraction properties located worldwide.

E. Contingent Property Damage

This policy shall cover loss to real property that is not otherwise scheduled but where The Howard Hughes Corporation is the owner or JV Partner (including corporations, limited liability companies, partnerships, or other entity not specifically mentioned and regardless of whether or not The Howard Hughes Corporation is a minority partner in the entity) and The Howard Hughes Corporation has required their co-owner or partner to provide specific insurance coverage for real property under an agreement or contract, the insurance company will pay up to a certain limit in any one occurrence for this covered loss when the co-owner or partner has:

Allowed the specific coverage for real property to lapse
Not insured the real property to its 100% replacement cost or
In any other way violated the terms of the underlying insurance contract

Such contingent property coverage is excess and contingent of any other underlying or otherwise collectable insurance.

F. Debris Removal and Cost of Cleanup Extension

This policy covers the necessary and reasonable expenses actually incurred by the Insured due to physical loss or damage as insured against occurring during the term of this policy to remove from the insured premises debris of covered property remaining after any such loss or damage.

G. Defense Costs

This policy, subject to all of its provisions, also insures the costs and fees to defend any claim or suit against the Insured and/or its directors, officers, and/or employees alleging physical loss or damage as insured against to property of others is the care, custody, or control of the Insured to the extent of the Insured's liability therefore, even if such claim or suit is groundless, false or fraudulent; but the Insurer may without prejudice make such investigation, negotiation or settlement of any such claim or suit as it deems expedient.

H. Demolition and Increased Cost of Construction

In the event of loss or damage under this policy that causes the enforcement of any law or ordinance regulating the construction repair or use of property, the **Insurer** shall be liable for:

- A. The cost of demolishing the undamaged property including the cost of clearing the site;
- B. The proportion that the value of the undamaged part of the property bore to the value of the entire property prior to loss;
- C. Increased cost of repair or reconstruction of the damaged and undamaged property on the same or another site and limited to the costs that would have been incurred in order to comply with the minimum requirements of such law or ordinance regulating the repair or reconstruction of the damaged property on the same site or another site. However, the **Insurer** shall not be liable for any increased cost of construction loss unless the damaged property is actually rebuilt or replaced;
- D. Any increase in the Business Interruption, Extra Expense, Rental Value and Royalties loss arising out of the additional time required to comply with said law or ordinance.
- E. Under this policy the **Insurer** will not pay for any loss due to any ordinance or law:
 - 1. You are required to comply with before the loss, even if the building was undamaged, and
 - 2. you failed to comply with.

I. Errors & Omissions

No inadvertent error, omission or failure in making reports or other data hereunder shall prejudice the **Insured's** right of recovery, but shall be corrected when discovered. It is further understood and agreed that any error in description of locations, or values of projects covered or to be covered by this policy shall not invalidate or reduce the policy limit of liability, or otherwise prejudice any recovery under this policy.

J. Evacuation Expense Reimbursement

Subject to the conditions of the policy loss as insured by this policy is extended to include loss resulting from interruption of or interference with the business in consequence of access to the premises being hindered or prevented as a result of the actions or advice of a Government or Local Authority due to the suspected or actual presence of an incendiary or explosive device on or in the vicinity of the premises provided that there shall be no liability under this extension for:

- A. Any incident involving an interruption of less than 24 hours duration.
- B. Any period other than the actual period of hindrance or prevention of access to the premises.
- C. Any consequence of physical loss, destruction or damage, labor disputes, or infectious or contagious diseases.

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K. Expediting Expense

This policy covers the reasonable extra cost of temporary repair or replacement and of expediting the repair or replacement of damaged property insured hereunder, including overtime and express freight or other rapid means of transportation.

L. Fire Brigade Charges and Extinguishing Expenses

This policy covers the following expenses resulting from a peril insured against occurring during the Policy Term:

- A. Fire brigade charges and other extinguishing expenses for which the **Insured** may be assessed;
- B. loss of fire extinguishing materials expended.

M. Impounded Water

- A. This policy is extended to cover the actual loss sustained and the Extra Expense incurred by the **Insured** due to the necessary interruption of the **Insured's** business caused by inadequate water supply.
- B. It is a condition precedent to recovery under this extension that such inadequate water supply is a direct result of the release of water:

- 1) stored behind dams or in reservoirs;
- 2) used for any manufacturing purpose, including but not limited to as raw material or for power; and
- 3) at Insured Location(s);

Caused by physical loss or damage not otherwise excluded by this policy to such dams or reservoirs, or to equipment connected thereto.

- C. Notwithstanding the coverage provided under this extension and unless excluded property is amended by endorsement accordingly, dams and reservoirs are not insured property and physical loss or damage thereto is not covered by this policy.

N. Ingress/Egress

Loss sustained during the period of time when, as a result of a peril insured against, ingress to or egress from the real or personal property is prevented or hindered.

O. Loss Adjustment Expenses

This policy is extended to include reasonable expenses incurred by the **Insured**, or by the **Insured's** representatives for preparing and certifying details of a claim resulting from a loss which would be payable under this policy. This excludes any expenses incurred by the **Insured** from or through the use of any Public Adjuster(s) or Public Adjustment firm(s).

P. Lost Key/Alternative Key Systems

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This policy is extended to cover the consequential loss to keys and locks if a master key or grand master key is lost or damaged directly resulting from an insured peril. The policy will provide payment for the actual cost to replace keys, adjustment of locks to accept new keys, or if required, new locks including the cost of their installation. Further, the policy is extended to cover loss or damage directly resulting from an insured peril to alternative key system, such as mechanically or electronically coded key cards, including card-programmer, card-readers, computers, related alarms, transreceivers, power supplies and any other electronic or mechanical apparatus needed to make the card keys operate.

Q. Pollutant Cost of Clean Up Extension

This policy covers any cost or expense of decontamination or removal or disposal of water, soil or any similar substance on or under the premises of the **Insured**, including any costs or expenses incurred during emergency measures undertaken in order to mitigate any circumstances pertaining to Seepage, Pollution and/or Contamination, whether or not at the instruction of any Government Agency or other Authority.

It is the condition precedent to recovery under this extension that the **Insurer** shall have paid or agreed to pay for physical loss or damage to the property insured hereunder unless such payment is precluded solely by the operation of any deductible and that the insured shall give written notice to the **Insurer** of intent to claim for cost of debris removal or cost to cleanup not later than twelve months after the date of such physical loss or damage.

R. Service Interruption/Off Premises Power

All incoming services to the **Insured**, whether or not owned by the **Insured**, including, but not limited to, any electrical equipment and systems, fuel, water, gas, feedstock, pulp, liquid gases, sewage, steam, telephone, telecommunications, heating, refrigeration and/or air conditioning systems, situated on or outside of the premises, when used for the incoming service of the **Insured**, excluding overhead transmission and distribution lines which are over 1000 feet from an insured premise. This coverage is extended to cover loss or damage resulting from any accidental loss to the property covered under this clause, not otherwise excluded in this policy.

This coverage is extended to include loss or damage resulting from any accidental occurrence to property referenced in this clause.

S. Soft Costs

This policy shall cover soft costs, as hereinafter defined, incurred by the insured caused by loss, damage, or destruction by any of the perils covered herein during the term of this policy to property as covered herein.

1. The term "Soft Costs" is defined as:

- a) Additional interest costs on money used to finance construction or repair;
- b) Additional real estate and property taxes incurred for the period of time that construction extends beyond the projected completion date;

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- c) Additional legal and accounting fees; and
 - d) Additional advertising and promotional expenses which become necessary as a result of an insured loss.
2. This insurer shall pay soft costs incurred from the date that the building, structure or improvement would have been completed had no physical damage occurred until such time that it is completed. As soon as practicable after any loss, the Insured shall utilize every available means to reduce the amount of loss including;
- a) partial or complete resumption of construction, business or operations;
 - b) making use of materials, equipment, supplies, or other property at the Insured's premises or elsewhere; or
 - c) making use of substitute facilities or services where practical;
3. This policy insures the interest expense necessarily incurred by the insured in effecting repairs to the damaged property, from the date of the Insured's payment to others until payment of the loss by the Insurer. The prime lending rate of the Insured's bank will apply.
4. Subject to all terms, conditions and limitation of the policy to which it is attached, in the event of direct physical loss or damage to property insured, the Insurer shall indemnify the Named Insured for scheduled Soft Costs/Additional Expenses, Loss of Rental Income and/or Loss of Gross Earnings arising out of the resulting Delay in completion of the project described in the Declarations portion of this policy, or as amended by Endorsement, on an actual loss sustained basis.
5. The Insurer shall also indemnify the Named Insured for reasonable expenditures that are necessarily incurred for the purpose of reducing any loss amount under this Coverage, but only to the extent that such loss amount may otherwise payable under this extension is actually reduced.

T. Tenant/Hotel Guest Emergency Evacuation:

- 1. We will reimburse you for the necessary expenses you incur to evacuate a covered location because of imminent danger to life or well being of your tenants/guests caused by an external event or condition at the covered location when a civil authority having jurisdictional authority orders you to evacuate the covered location.
- 2. We will not reimburse you for the necessary expenses arising out of any planned evacuation drill.

U. Tenant/Hotel Guest Relocation Expense

- 1. We will pay you the actual expenses you incur as a result of reimbursing the expenses of a hotel guest for whom prearranged hotel accommodations cannot be honored because of loss or damage resulting from a covered loss.
- 2. We will pay you for the reasonable expenses your hotel guest has incurred:

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- a. To secure and use other comparable hotel accommodations as close as possible to your covered location;
 - b. While traveling to and from your covered location to the location where the comparable hotel accommodations are secured; and
 - c. For prepaid amounts spent for activities away from the covered location which are lost because other comparable accommodations within a reasonable distance from your covered location are unavailable.
3. We will pay you for the reimbursed expenses of the hotel guest for the time:
 - a. Beginning on the date the hotel guests prearranged accommodations at the covered location are:
 - i. Scheduled to begin; or
 - ii. InterruptedWhichever is later; and
 - b. Ending on the earliest of the following dates:
 - i. The date the hotel guests prearranged hotel accommodations at the covered location are scheduled to end;
 - ii. The date the damaged property at the covered location should be repaired, rebuilt or replaced with reasonable speed or similar quality;Or
 - iii. Fourteen (14) days after the date determined in A. above.
4. For the purpose of this endorsement hotel guest(s) means a person or persons holding valid confirmed reservations or prearranged hotel accommodations at a location shown on the schedule.

V. Tenant Move Back Coverage

The Policy provides coverages for expenses incurred by you for covered move-back costs of tenants who temporarily vacate a portion of a covered building property at the premises described in this policy. The vacancy must have occurred while the portion of the building property rented by the tenant could not be occupied due to direct physical loss or damage to your covered property caused by or resulting from any covered cause of loss during the policy period. The move back must take place within 60 days after the portion of the covered building property rented by the tenant has been repaired or rebuilt and is ready for occupancy. We will pay for covered move-back costs whether or not the tenant(s) move back before the expiration date of this policy.

Covered Move-Back Costs means documented, reasonable and necessary;

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- a. Costs of packing, insuring and carting business personal property;
- b. Costs of reestablishing electric utility services, less refunds from discontinued services;
- c. Costs of assembling and setting up fixtures and equipment; and
- d. Costs to unpack and reshell stock and supplies.

Covered Move-Back Costs does not include:

- a. Loss caused by the termination of a lease or other agreement; or
- b. Security deposits or other payments, forfeitures or penalties made to the landlord or lessor of other premises.

9. Loss Provisions Applicable to Clauses 7.B, 7.C, 7.E, 7.F, and 7.G.

A. The length of time for which loss may be claimed is referred to as the recovery period and is defined as follows:

- 1. shall commence with the date of such loss or damage and shall not be limited by the date of expiration of this policy;
 - 2. shall not exceed such length of time as would be required with the exercise of due diligence and dispatch to rebuild, repair, or replace such part of the property which has been destroyed or damaged; and
 - 3. such additional length of time to restore the **Insured's** business to the condition that would have existed had no loss occurred, commencing with the later of the following dates:
 - (a) the date on which the liability of the company for loss or damage would otherwise terminate; or
 - (b) the date on which repair, replacement or rebuilding of such part of the property as has been damaged is actually completed.
- but in no event for more than one year thereafter from said later commencement date;
- 4. with respect to alterations, additions, or property while in the course of construction, erection, installation, or assembly, due consideration shall be given to the level of production or level of business operations that would reasonably have been achieved after construction and start up would have been completed had no physical damage occurred.

B. If the **Insured**, by reasonable means within its control, can reduce the loss resulting from the interruption of business:

- 1. by a complete or partial resumption of operations of the property insured, whether damaged or not; or
- 2. by making use of stock, merchandise, or other property;

Such reduction shall be taken into account in arriving at the amount of Loss Hereunder.

C. Expense to Reduce Loss:

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This policy also covers such expenses as are necessarily incurred for the purpose of reducing any loss under this policy, but only to the extent of such reduction.

D. Experience of the Business:

In determining the amount of loss insured hereunder due consideration shall be given to the experience of the business before the date of damage or destruction and to the probable experience thereafter had no loss occurred.

E. Special Exclusions:

This section of the policy does not insure against any increase of loss which may be occasioned by the suspension, lapse, or cancellation of any lease, license, contract, or order; nor for any increase of loss due to interference at the **Insured's** premises by strikers or other persons with rebuilding, repairing, or replacing the property damaged or destroyed, or with the resumption or continuation of business, or with the reoccupancy of the premises.

10. Property Excluded

- A. Watercraft over forty (40) feet only while waterborne, aircraft, motor vehicles licensed for highway use, when not on the **Insured's** premises, but this exclusion does not apply to mobile or contractor's equipment.
- B. Land, and however, this exclusion shall not apply to the cost of reclaiming, restoring or repairing land improvements. Land improvements as described hereunder include, but are not limited to, any alteration to the natural condition of the land by grading, landscaping, earthen dikes or dams, underground wiring and in ground sprinklers, as well as additions to land such as pavements, roadways, ponds, golf courses, or similar works.
- C. Coverage on export shipments does not extend beyond the time when the property is safely loaded on board overseas vessel or aircraft; coverage on import shipments does not attach until after discharge from overseas vessel or aircraft.
- D. Currency, money, gold bullion, evidence of debt noted or securities, except accounts receivable and/or valuable papers as defined in the policy, except as otherwise defined in this policy.
- E. Growing crops or standing timber.
- F. Animals or birds.
- G. Water (whether above or below ground or the cost of reclamation); water courses; aquifers. However this exclusion shall not apply to:
 - 1. water stored by the insured for the purpose of fire protection, water in swimming pools, or water contained within any type of tank, piping system or other process equipment
 - 2. water considered to be part of a Golf Course, including but not limited to, man-made lakes, ponds and water hazards;
- H. Railroad Rolling Stock

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- I. Delay or Loss of Market
- J. Offshore property
- K. Satellites

11. Valuation

At time of loss, the basis of adjustment shall be as follows:

- A. On buildings and structures, at the replacement cost, defined as the cost to rebuild or replace on the same site, with new materials of like kind, size and quality, or the actual expenditure incurred in rebuilding, repairing or replacing on the same or another site. If the property damaged or destroyed is useless to the insured or is not repaired, rebuilt or replaced, on the same or another site, within two years after the loss, **Insurers** shall not be liable for more than the actual cash value with proper deduction for depreciation.
- B. On machinery, equipment, furniture, fixtures and improvements and betterments at the repair or replacement cost new, whichever is less.
- C. Electronic Data Processing Equipment at replacement cost new.
- D. **Valuable Papers and Records** including, but not limited to, media, books, maps, films, drawings, abstracts, evidence of debt, deeds, mortgages, mortgage files, manuscripts and micro or electronically/magnetically inscribed documents/media, at the value blank plus the cost of labor, service and/or supplies for actually reconstructing, reproducing, recreating, transcribing or copying such papers and records.
- E. **Fine Arts** owned by the **Insured** at the cost of reasonably restoring the property to its condition immediately prior to the loss or in the event that the property cannot be restored at the appraised value prior to the loss. In absence of such appraisal, at the market value at the time of loss, plus the **Insured's** costs.

 Fine Arts, which is the property of others, at the **Insured's** option, either at the cost of reasonably restoring the property to its condition immediately prior to loss, or the **Insured's** contractual or legal liability.
- F. Finished products and other merchandise for sale including merchandise sold but not delivered, at the **Insured's** selling price less discounts to which the goods would have been subject had no loss occurred.
- G. Property of others in the **Insured's** care, custody or control, and property leased by the **Insured**, at the **Insured's** option:
 - 1. the replacement cost new
 - 2. the amount stipulated in the lease agreement
 - 3. **Insured's** contractual or legal liability.
 - 4. the cost to repair.
- H. All other property not otherwise provided for, at - replacement cost new.

It is understood and agreed that as respects replacement cost, the following shall apply:

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1. This **Insurer** shall be allowed to dispose of, as salvage, any non-proprietary property deemed unusable by the **Insured**. If the equipment is replaced, the **Insured** shall have the option of replacement with equipment having technological advantages and/or representing an improvement in function and/or forming part of a program of system enhancement provided that such replacement can be accomplished without increasing the **Insurer's** liability.
2. Permission is granted for the **Insured** to replace the property with similar property at the same or another site within the territorial limits of the policy, but recovery is limited to what it would cost to replace on same site. If the **Insured** chooses not to repair or replace damaged or destroyed property, this policy will pay for any Capital Expenditure, whether planned or not, up to an amount equivalent to what the repair or replace cost would have been at the damaged location.

14. Policy Provisions

1. Arbitration/Appraisal

In case the **Insured** and this **Insurer** shall fail to agree as to the amount of loss or damage, each shall, on the written demand of either, select a competent and disinterested appraiser. The appraiser shall first select a competent and disinterested umpire and if they fail for 15 (Fifteen) days to agree upon such umpire, then, on request of the **Insured** or the **Insurer**, such umpire shall be selected by a judge or a court of record in the State which the property insured is located. The appraisers shall then appraise the loss or damage, stating separately sound value and loss or damage to each item; and, failing to agree, shall submit the differences only to the umpire. An award in writing, so itemized, of any two when filed with the **Insurer**, shall determine the amount of sound value and loss or damage. Each appraiser shall be paid by the party selecting him and the expenses of appraisal and umpire shall be paid by the parties. However, if the award is greater than the amount offered by the Company in payment of the loss at any time before the award is rendered, then the Company shall pay 100% of the fees and expenses for each appraiser and the umpire and for the appraisal.

2. Assistance and Cooperation of the Insured

The **Insured** shall cooperate with this **Insurer**, and upon this **Insurer's** request shall attend hearings and trials and shall assist in effecting settlements, securing and giving evidence, obtaining the attendance of witnesses, and in the conduct of suits.

3. Cancellation

A. This policy may be canceled at any time at the request of the **Insured** or it may be canceled by the **Insurer** by mailing to:

The Howard Hughes Corporation
Attn: Randy Kostroske
One Galleria Tower, 22nd Floor
13355 Noel Road
Dallas, TX 75240

and with copies provided to:

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Lockton Companies, L.L.C.
Attn: Maggie Martin
2100 Ross Avenue, Suite 1400
Dallas, TX 75201

Notices of Cancellation will be mailed by the broker to loss payees and mortgagees as on file with Lockton Companies.

During the term of this policy, written notice stating when no less than Ninety (90) days thereafter, Ten (10) days for nonpayment of premium such cancellation shall be effective. This insurance may be canceled at any time by the **Insured** by surrender of this policy to the **Insurer** or by mailing or delivery to the **Insurer** written notice stating when thereafter such cancellation shall take effect. Return premium shall be allowed the **Insured** on a pro rata basis if the **Insurer** cancels and it shall be on a pro rata basis if the **Insured** cancels.

Payments or tender of any unearned premium by the **Insurer** shall not be a condition precedent to the effectiveness of cancellation, but such payment shall be made as soon as practicable.

B. The mailing of notice as aforesaid shall be sufficient proof of notice and the effective date and hour of cancellation stated in the notice shall become the end of the policy period. Delivery of such written notice either by the **Insured** or by this **Insurer** shall be equivalent to mailing.

C. Cancellation shall not affect coverage on any shipment in transit on the date of cancellation. Coverage will continue in full force until such property is safely delivered and accepted at the place of final destination.

4. Certificates of Insurance

Any Certificate of Insurance issued in conjunction with this policy shall be issued solely as a matter of convenience or information for the addressee(s) or holder(s) of said Certificate of Insurance. In the event any Additional Insured(s) or Loss Payee(s) are so named, this policy shall be deemed to have been endorsed accordingly, subject to all other terms, conditions, and exclusions stated herein.

Lockton Companies may issue Certificates of Insurance evidencing coverage afforded by this policy.

5. Coinsurance Waiver

This policy is not subject to Coinsurance.

6. Conflict of Wording

The terms and conditions contained in this policy shall supersede those of the Insurer's basic policy and/or endorsements, which are attached to this policy, wherever the same may conflict, except those required by law. Where there is a conflict between the specific sections and general conditions of this policy, the conditions of the specific section shall prevail.

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7. Contributing Insurance

Permission is granted for other policies written upon the same terms, conditions, and provisions irrespective of limit or attachment point as those contained in this policy. This policy shall contribute to the total of each loss otherwise payable herein to the extent of the participation of this policy in the total limit of liability stated herein.

8. Excess Insurance

Permission is granted for the **Insured** to have excess insurance over the limit of liability in this policy without prejudice to this policy and the existence of such insurance, if any, shall not reduce any liability under this policy.

9. Inspection and Audit

This **Insurer(s)** shall be permitted, but not obligated, to inspect the **Insured's** property at any time. Neither the **Insurer(s)** right to make inspections nor the making thereof nor any report thereon shall constitute an undertaking, on behalf of or for the benefit of the **Insured** or others, to determine or warrant that such property is safe.

10. Knowledge of Occurrence

It is agreed that knowledge of an **occurrence** by an agent, servant or employee of the **Insured** shall not in itself constitute knowledge by the **Insured**. Knowledge is understood to occur only when the Risk Management Department of the **Insured** shall have received notice from its agent, servant or employee.

11. Liberalization

If during the period that insurance is in force under this policy, any authorized endorsement or filed rules or regulations affecting the same are revised by statute or otherwise so as to broaden the insurance without additional premium charge, such extended or broadened insurance shall insure to the benefit of the **Insured** hereunder.

12. Loss Adjustment/Payable

Loss, if any, will be adjusted with and payable to The Howard Hughes Corporation or as may be directed by The Howard Hughes Corporation. Additional insured interests will also be included in loss payment as their interest may appear when named as additional named insured, lender, mortgagee and/or loss payee in the Certificates of Insurance on file with the **Insurer**.

13. Loss Adjustor

It is agreed that at the **Insured's** option, the **Insurer**, will use Roger Sawyer at Cunningham Lindsey (11000 Richmond Ave., Ste. 250, Houston, TX 77042, Phone: 713-272-3365) for the adjustment of all claims made against this policy or equivalent as agreed between the **Insured** and **Insurer**. This assignment may be changed by mutual consent of the **Insured** and **Insurer**.

14. Mortgage Clause

Loss or damage, if any, under this policy shall be payable to the mortgagee (or trustee) as interest may appear, and this insurance, as to the interest of the mortgagee (or trustee) only therein, shall not be invalidated by any act or neglect of the mortgagor or owner of the described property, nor by any foreclosure or other proceedings or notice of sale relating to the property, nor by any change in the title or ownership of the property, nor by the occupation of the premises for purposes more hazardous than are permitted by this policy provided that in case the mortgagor or owner shall neglect to pay any premium due under this policy, the mortgagee (or trustee) shall, on demand, pay the same. Provided also, that the mortgagor (or trustee) shall notify this **Insurer** of any change of ownership or occupancy or increase of hazard which shall come to the knowledge of said mortgagee (or trustee) and, unless permitted by this policy, it shall be noted thereon and the mortgagee (or trustee) shall, on demand, pay the premium for such increased hazard for the term of use thereof; otherwise, this policy shall be null and void.

This **Insurer** reserves the right to cancel this policy at any time as provided by its terms, but in such case this policy shall continue in force for the benefit only of the mortgagee (or trustee) for Ninety (90) days after notice to the mortgagee (or trustee) of such cancellation and shall then cease and this **Insurer** shall have the right, on like notice, to cancel this agreement.

Wherever this **Insurer** shall pay the mortgagee (or trustee) any sum for loss or damage under this policy, and shall claim that as the mortgagor or owner, no liability therefore existed, this **Insurer** shall, to the extent of such payment, be thereupon legally subrogated to all the rights of the party to whom such payment shall be made.

15. No Control

This insurance shall not be prejudiced by any act or neglect of the owner of any building if the **Insured** is not the owner thereof, or by any act or neglect of any occupancy of any building, when such act or neglect of the owner or occupant is not within the control of the **Insured**, or by failure of the **Insured** to comply with any warranty or condition contained in any form or Endorsement attached to this policy with regard to any portion of the premises over which the **Insured** has no control.

16. Non-Reduction of Limits of Liability

Any loss here under shall not reduce the limit(s) of liability under this contract except for Flood and Earthquake aggregate limits as described in Clause 3.

17. Notice of Loss

The **Insured** shall report to the **Insurer** every loss or damage, which may become a claim under this insurance as soon as may be practicable after it becomes known to the Risk Management Department of the **Insured**.

18. Other Insurance

Except as referred to in Clause 13 and 14, if any property included in the terms of this policy shall, at the time of any loss, be more specifically insured with insurance purchased by the **Insured**, this policy shall extend to cover such property only so far as

related to any excess of insured values not covered by such other insurance, and this policy shall be liable on such specifically insured property only for such loss as shall be in excess of the amount payable by or recoverable from such more specific insurance.

19. Pair and Set

In the event of loss of, or damage to, any article or articles which are part of a set, the measure of loss of, or damage to, such article or articles shall be, at the Insured's option:

- A. a reasonable and fair proportion of the total value of the set, giving consideration to the importance of said article or articles.
- B. the full value of the pair or set provided that the Insured surrenders the remaining article or articles of the pair or set to the Company

20. Partial Payment of Loss

In the event of a loss covered by this policy, it is understood and agreed that this Insurer will allow partial payments of claims subject to the policy provisions and the normal policy adjustment provisions:

To obtain said partial claim payment; the Insured shall submit a partial Proof of Loss with supporting documentation. It shall be lawful for the Insured to make claim in accordance with the valuation provisions contained in this policy.

21. Permission

Permission is hereby granted for any buildings to be and remain vacant and unoccupied without limit of time and without prejudice to the Insured's right of recovery for claim under this policy.

Any change in occupancy or use of the premises or any increase in hazard shall not prejudice the Insured's right of recovery for claim under this policy.

22. Premium Adjustment

Premium adjustment for location and value will be performed on a quarterly basis.

23. Priority of Payments

Any recoveries made under this policy shall first apply to loss or damage not insured by the excess policy(ies). Upon exhaustion of this policy's limit, the excess policy(ies) shall step down and be liable for the loss in excess of the amount attributed to this policy as respects loss or damage insured there under subject to the excess policy(ies) limits.

24. Proof and Payment of Loss

A detailed Proof of Loss shall be filed with the Insurer as soon as practicable. Loss shall be adjusted with the Risk Management Department of the Insured, and all adjusted claims shall be paid to the Insured or its order. The Insurer will pay for covered loss within Thirty (30) days after receiving the sworn proof of loss, if:

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1. the **Insured** has complied with all the terms of the policy; and
2. the **Insurer** has reached agreement with the **Insured** or an appraisal award has been made.

For loss adjustment purposes, the **Insured** shall be considered as sole unconditional owner of the insured property, any contract or lease to the contrary notwithstanding.

25. Salvage and Recoveries

After expenses incurred in salvage or recovery are deducted, any salvage or other recovery, except recovery through subrogation proceedings and from underlying as described herein, shall accrue entirely to the benefit of the **Insurer** until the sum paid by the **Insurer** has been recovered, except for any amount assumed by the **Insured** beyond any payment made under this policy, which amount shall accrue entirely to the benefit of the **Insured** until such amount has been recovered by the **Insured**.

26. Reporting

Reporting of changes to locations and values will be provided by the **Insured** 60 days of the end of each quarter.

27. Required by Law

Any provisions, required by Law to be stated in policies issued by a subscriber hereto, shall be deemed to have been stated herein unless the statutes narrow or limit the coverage afforded by this policy and do not bar a policy from providing broader coverage.

28. Service of Suit

It is agreed that in the event of the failure of the **Insurer** to pay an amount claimed to be due hereunder, the **Insurer**, at the request of the **Insured**, will submit to the jurisdiction of any court of competent jurisdiction within the United States and will comply with all requirements necessary to give such court jurisdiction and all matters arising here under shall be determined in accordance with the law and practice of such court, and the **Insurer** agrees that any action or proceeding against it for recovery of any claim under or by virtue of this insurance shall not be barred if commenced within the time prescribed therefore in the statutes of the State having jurisdiction.

29. Severability of Interest

Each of the **Insureds** covered by this policy will have the same protection and obligations as if the policy has been issued individually to each of them. However, the inclusion of more than one **Insured** will not operate to increase the limit of liability of the **Insurer** beyond the limit of liability stated in this policy.

30. Stepdown Dropdown

In determining the amount of any loss or damage for which this policy is excess, the total loss caused by any combination of loss or damage, one or more of which is insured

against under the primary policy, shall be used even though such loss or damage is not insured against under this excess policy.

1. Any recoveries made under the primary policy shall first apply to loss or damage not insured against by this policy. Upon exhaustion of the primary policy limits, this policy shall step down and be liable for the loss in excess of the amount attributed to the primary policy as respects loss or damage insured hereunder subject to the limit of this policy.
2. If there is any other excess insurance insuring the property insured hereunder for loss or damage insured against in the primary policy but not insured by this policy, this policy shall then allocate any loss recoveries made under the primary policy in the same proportion as the amount of loss or damage insured against by this policy bears to the combined total loss. Upon exhaustion of the primary policy limits, this policy shall step down and be liable for the loss in excess of the amount attributed to the primary policy as respects loss or damage insured hereunder subject to the limit of this policy.
3. Paragraph 2. shall not apply, however, when the amount of loss attributed to loss or damage insured under the primary policy, but not insured under this policy, exceed the total amount of insurance provided by the primary and excess coverage's with respect to said loss or damage. In this situation, any recoveries made under the primary policy shall first apply to loss or damage not insured by this policy. Upon exhaustion of the primary policy limits, this policy shall step down and be liable for the loss in excess of the amount attributed to the primary policy as respects loss or damage insured hereunder subject to the limit of this policy.
4. It is further agreed, in the event the **flood** and/or **earthquake** annual aggregate limits of any underlying policy are diminished or exhausted in any one policy year, the coverage provided under this policy for **flood** and/or **earthquake** shall apply as excess of any undiminished or unexhausted limits subject to the **underlying policy** deductibles.

31. Subrogation and Subrogation Waiver

1. It is agreed that upon payment of any loss, this **Insurer** is subrogated to all the rights of the **Insured** to the extent of such payment.

Any release or waiver of liability entered into by the **Insured** in the normal course of their business prior to loss (including bills of lading and/or receipts from carriers, bailees, warehouseman, lighterman, processors, limiting or releasing their liability) hereunder shall not affect this insurance or the right of the **Insured** to recover hereunder.

2. The right of subrogation against the **Insured's** subsidiary, affiliated, or associated corporations or companies, joint ventures, partnerships or individuals, or any other party required to be insured as described herein, or any other corporations or companies associated with the **Insured** through ownership or management is waived. At the option of the **Insured**, subrogation is waived against any tenant or landlord of the **Insured**.
3. In the event of any payment under this policy, the **Insurer** shall be subrogated to the extent of such payment to all the **Insured's** rights of recovery therefore. The **Insured** shall execute all papers required and shall do anything that may be necessary to secure such right. The **Insurer** will act in concert with all other interests concerned, i.e., the **Insured** and any other company (ies) participating in the payment of any loss as primary or excess **Insurers**, in the exercise of such rights of recovery. If any amount

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is recovered, after deducting the costs of recovery, such amount shall be divided between the interests concerned in the proportion of their respective interests. If there should be no recovery, the expense of proceedings shall be shared proportionately by the interests instituting the proceedings.

32. Sue and Labor

In case of actual or imminent loss or damage, it shall be lawful and necessary for the **Insured**, their factors, servants or assignees, to sue, labor and travel for, in and about the defense, safeguard and recovery of the property insured hereunder, or any part thereof, without prejudice of this insurance, nor shall the acts of the **Insured** or these **Insurers** in recovering, saving, and preserving the property insured in case of loss or damage, be considered a waiver or acceptance of an abandonment. The **Insurers** will contribute according to their proportion of the sum hereby insured.

33. Suit Against the Company

No suit or action on this policy for the recovery of any claim shall be sustainable in any court of law or equity unless the **Insured** shall have fully complied with all the requirements of this policy; however, if there is any dispute between the **Insured** and the **Insurer** as to whether the **Insured** has fully complied with all the requirements of this policy, such a dispute may be resolved in a suit or action on the policy for recovery of any claim. The **Insurer** agrees that any action or proceedings against it for recovery of any loss under this policy shall not be barred if commenced within two years and one day after the **Insured** provides notice to the **Insurer** in accordance with Clause 22 above, which period shall be tolled from the date of notice until the date that the **Insured** receives the **Insurer's** final coverage decision (this two year and one day period is referred to as the "limitations period"). However, the limitations period shall not apply if by the laws of the State of the address of the **Insured** such a limitation is invalid or if the laws of the jurisdiction in which any such action is brought permit a longer period of time within which to commence such a suit. Furthermore, any tolling of the limitations period shall not preclude the **Insured** from bringing a suit or any other proceeding regarding recovery for any loss or of any claim hereunder during the period of tolling or at any other time. Prosecution of a suit by the **Insured** shall not be barred due to the failure of the **Insurer** to timely advise and notify the **Insured** of the expiration of any applicable dates to file and commence said suit.

It is agreed that in the event of the failure of the **Insurer** to pay any amount claimed to be due hereunder or in the event of any other dispute relating to this policy, the **Insurer**, at the request of the **Insured**, will submit to the jurisdiction of any court of competent jurisdiction within the United States and will comply with all of the requirements necessary to give such court jurisdiction and all matters hereunder shall be determined in accordance with the law and practice of such court, not including the court's law regarding choice of law. The **Insurer** shall not transfer, change venue, or remove, or seek to transfer, change venue, or remove any lawsuit filed by the **Insured** in any such court.

34. Titles of Paragraphs

The several titles of the various paragraphs of this form (and of Endorsements and Supplemental Contracts, if any, are hereafter attached to this policy) are inserted solely

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for convenience or reference and shall not be deemed in any way to limit or affect the provisions to which they relate.

35. Underlying Insurance

Permission is granted for the **Insured** to purchase insurance on all or any part of the deductible and against all or any of the perils covered by this policy. The existence of such underlying insurance shall not prejudice or affect any recovery otherwise payable under this policy.

15. Definitions

The following terms whenever used in this policy shall mean:

A. Accidental Occurrence

A sudden and accidental occurrence which does not result from physical loss or damage.

However, accidental occurrence does not include, under any circumstances, coverage for hostile or warlike action, nuclear reaction or radiation or pollution and contamination as excluded in Clauses 6.A., 6.B. and 6. F.

B. Architect/Engineering/Professional Fees

Any cost associated with the preparation of plans for the repair or reconstruction of the damaged property.

C. Attraction Properties

Properties, not operated by the **Insured**, which attract potential customers to the vicinity of the **Insured's** location.

D. Contingent Time Element Location

Property that directly or indirectly prevents a direct supplier of goods and/or services to the **Insured** from rendering their goods and/or services, or property that prevents direct customers of goods and/or services from the **Insured** from accepting **Insured's** goods and/or services.

E. Earthquake

Earthquake is defined as the shaking or trembling of the earth that is tectonic in origin, including, but not limited to Earthquake aftershocks, volcanic eruption (the sudden **Occurrence** of a violent discharge of steam and volcanic material) or earth sinking, rising or shifting, regardless of any other cause or event contributing concurrently or in any other sequence of loss. However, physical loss or damage by fire, explosion, sprinkler leakage, riot, civil commotion, vandalism, malicious mischief, or theft resulting from Earthquake will not be considered to be loss by Earthquake within the terms and conditions of this Policy.

Tsunami is considered Earthquake under this Policy.

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F. EDP Systems

Electronic Data Processing Systems, transferring equipment, computer systems, telecommunications systems or electronic control equipment and component parts (including, but not limited to, air conditioning systems, auxiliary generating systems, and other related power supplies).

G. EDP Media

All forms of data, converted data, electronically converted data and/or programs and/or applications and/or instructions and/or media vehicles employed in the **Insured's** data processing or production operations.

H. Equipment Breakdown

The term "Equipment Breakdown" is defined solely for the determination of the limits of liability and/or deductible(s) and application of the sue and labor section only. The term "Equipment Breakdown" shall not limit or define the perils or coverages provided elsewhere in this policy.

A. The term "Equipment Breakdown" shall mean:

- (1) Any condition or **Accidental Occurrence** within boilers or fired or unfired vessels owned by, operated by, or under the control of the **Insured** and subject to pressure or vacuum including piping or apparatus attached to and forming a part thereof, except that the words "any condition or **Accidental Occurrence**" shall not include explosion, other than explosion of the parts of a steam boiler containing steam or water, steam piping, steam turbines, or steam engines;
- (2) Mechanical breakdown of any machine or apparatus arising out of any condition or **Accidental Occurrence** within such machine or apparatus;
- (3) Electrical injury or disturbance to electrical appliances, devices, fixtures, wiring, or other electrical or electronic equipment caused by electrical currents artificially generated.

However, the term "Equipment Breakdown" does not include:

- (1) Loss or damage from fire or from the use of water or other means to extinguish fire; and
- (2) The normal operation of any safety or protective device;

B. The term "Equipment Breakdown" shall not apply to the following property:

- (1) Property in transit;
- (2) Property while in the course of construction, erection, installation, or assembly;
- (3) Electronic data processing systems used for administrative, statistical or accounting purposes;

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(4) Any sewer piping, any piping forming a part of a fire protective system, or any water piping other than:

- (a) boiler feed water piping;
- (b) boiler condensate return piping;
- (c) water piping used in a heat transfer system for cooling, humidifying, or space heating purposes;

(5) Any vehicle, aircraft, or self-propelled equipment or floating vessel

(6) Any elevator, crane, ladle or bucket, hoist, power shovel, drag line, excavator, scale, or conveyor, but not excluding any pressure vessel, gears, engines, or electrical equipment used with a machine.

I. Fine Arts

Fine Arts shall include but not be limited to bona fide works of art, works of rarity, works of historical values, works of artistic merit, photographs, (positives and negatives) lithographs, illustrations, galley proofs, original records, and similar property.

J. Fire Brigade Charges/Fire Extinguishing Expenses

Fire fighting and/or containment charges and/or fire department service charges and other extinguishing expenses for which the **Insured** is assessed.

K. Flood

Waves, tide or tidal water, rapid accumulation of surface waters, or the rising (including overflowing or breaking of boundaries) of lakes, reservoirs, rivers, streams or other bodies of water, and mudslide or mudflow, regardless of any other cause or event contributing concurrently or in any other sequence of loss. However, physical loss or damage by fire, explosion, sprinkler leakage, riot, civil commotion, vandalism, malicious mischief, or theft resulting from Flood will not be considered to be loss by Flood within the terms and conditions of this Policy.

Tsunami is considered Earthquake under this Policy.

Flood/storm surge as a result of a Named Windstorm are not considered Flood under this policy.

L. Hazardous Substances

Means any substance other than ammonia that has been declared to be hazardous to health by a governmental agency.

M. Insurer

Lexington Insurance Company – 021469162

N. Lease Interest

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The excess rent paid for the same or similar replacement property over actual rent payable plus cash bonuses or advance rent paid (including any maintenance or operating charges) for each month during the unexpired term of the Insured's lease.

O. Named Windstorm

A storm that has been declared and named by the National Weather Service to be a Hurricane, Typhoon, Tropical Cyclone, or Tropical Storm

Flood/storm surge as a result of Named Windstorm are considered Named Windstorm under this policy.

P. Net Lease Interest

That sum which placed at 8% interest compounded annually would equal the Lease Interest (less any amounts otherwise payable hereunder).

Q. New Madrid Counties

Arkansas	Clay, Craighead, Crittenden, Cross, Greene, Jackson, Lawrence, Mississippi, Poinsett, Randolph, Sharp
Illinois	Alexander, Bond, Clinton, Franklin, Hardin, Jackson, Jefferson, Johnson, Madison, Massac, Monroe, Perry, Pope, Pulaski, Randolph, Saline, St. Clair, Union, Washington, Williamson
Indiana	Gibson, Pike, Posey, Vanderburgh, Warrick
Kentucky	Ballard, Calloway, Carlisle, Fulton, Graves, Hickman, Livingston, Marshall, McCracken
Mississippi	Bolivar, Coahoma, De Soto, Marshall, Tate, Tunica
Missouri	Bollinger, Butler, Cape Girardeau, Dunklin, Franklin, Iron, Jefferson, Madison, Mississippi, New Madrid, Pemiscot, Perry, Reynolds, St. Charles, St. Francois, St. Genevieve, St. Louis, Scott, Stoddard, Warren, Washington, Wayne
Tennessee	Crockett, , Dyer, Fayette, Gibson, Hardeman, Haywood, Lake, Lauderdale, Madison, Obion, Shelby, Tipton

R. Occurrence

Means the aggregate loss by any peril or combination of perils insured against arising out of a single event.

When the term applies to **Named Windstorm**, it shall be defined as the sum total of all losses arising out of or caused by the same atmospheric disturbance during any period of 72 consecutive hours. The Insured shall have the right to elect the moment from which the 72 hour period shall be deemed to have commenced, provided always that no elected period of 72 hours shall commence within the period of any previous **Occurrence**. This 72 hour stipulation shall also apply to loss caused by freezing, when caused by the same weather system.

When the term applies to **Earthquake**, it shall be defined as the sum total of all the Insured's losses sustained during any period of 168 hours by reason of one **Earthquake** or a series of **Earthquakes** or earth movement including but not limited to volcanic eruption. The Insured may elect the moment from which the 168 hour period shall be deemed to have

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commenced, provided always that no elected period of 168 hours shall commence within the period of any previous **Occurrence**.

When the term applies to **Flood**, it shall be defined as the sum total of all losses sustained by reason of one **Flood** or a series of **Floods**.

When the term applies to theft or vandalism and malicious mischief or riot, the sum total of all losses of property and/or interests insured herein resulting from one or more fraudulent or dishonest acts committed by a person(s) acting alone or in collusion with others shall constitute one **Occurrence**.

S. Ordinary Payroll

Ordinary Payroll is the entire payroll expense for all employees of the **Insured** except officers, executives, employees under contract, and other critical employees.

T. Pacific Northwest is defined as property located in the following counties:

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

U. Property in Yard

Shall mean all common area property at a location that is not attached to any building including but not limited to: trees, plants, shrubs, land improvements, gazebos, cabanas, swimming pools, mail boxes, signs, and outdoor lighting.

V. "Special Flood Hazard Area" or "SFHA"

Locations within areas of 100-year flooding as defined by the Federal Emergency Management Agency (FEMA).

W. Tier 1 Counties

Alabama	Baldwin, Mobile
Florida	Entire State
Georgia	Bryan, Camden, Chatham, Glynn, Liberty, McIntosh
Hawaii	Entire State
Louisiana	Cameron, Iberia, Jefferson, Lafourche, Orleans, Plaquemines, St. Bernard, St. Mary, St. Tammany, Terrebonne, Vermillion
Mississippi	Hancock, Harrison, Jackson
North Carolina	Beaufort, Brunswick, Carteret, Craven, Dare, Hyde, New Hanover, Onslow, Pamlico, Pender
South Carolina	Beaufort, Berkley, Charleston, Colleton, Georgetown, Horry, Jasper
Texas	Aransas, Brazoria, Calhoun, Cameron, Chambers, Galveston, Harris, Jackson, Jefferson, Kennedy, Kleberg, Matagorda, Nueces, Orange, Refugio, San Patricio, Victoria, Willacy

X. Underlying Policy

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An insurance policy issued to the **Insured** which is similar as respects the terms and conditions of this policy and issued for limits below the attachment point or deductible of this policy.

Y. Valuable Papers & Records

Written, printed or otherwise inscribed documents, securities, and records including but not limited to books, maps, films, drawings, abstracts, evidence of debt, deeds, mortgages, mortgage files, manuscripts and micro or electronically/magnetically inscribed documents, but not including the monetary value of monies and/or securities.

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Endorsement #1

Insured: The Howard Hughes Corporation, et al

Insurance Company: Lexington Insurance Company

Policy Number: 021469162

Effective Date of Endorsement: April 1, 2014

It is agreed that the following is hereby made a part of this policy.

MOLD/FUNGUS CLAUSE

In consideration of the premium charged, it is hereby understood and agreed that this policy is amended as follows:

The **Insurer** shall not be liable for any loss or damage in the form of, caused by, arising out of, contributed to, or resulting from *fungus, mold(s), mildew or yeast; or any spores or toxins created or produced by or emanating from such fungus, mold(s), mildew or yeast;*

- (a) *fungus* includes, but is not limited to, any of the plants or organisms belonging to the major group fungi, lacking in chlorophyll, and including mold(s), rusts, mildews, smuts, and mushrooms;
- (b) *mold(s)* includes, but is not limited to, any superficial growth produced on damp or decaying organic matter or on living organisms, and fungi that produce mold(s);
- (c) *spores* means any dormant or reproductive body produced by or arising or emanating out of any fungus, mold(s), mildew, plants, organisms or microorganisms, regardless of any other cause or event that contributes concurrently or in any sequence to such loss.

This exclusion shall not apply to any loss or damage in the form of, caused by, contributed to or resulting from fungus, mold(s), mildew or yeast, or any spores or toxins created or produced by or emanating from such fungus, mold(s), mildew or yeast which the **Insured** establishes is a direct result of a Covered Loss not otherwise excluded by the Policy, provided that such fungus, mold(s), mildew or yeast loss or damage is reported to the **Insurer** within twelve months from the expiration date of this Policy.

All other terms, conditions, definitions, exclusions, limitations and provisions of the Policy remain the same.

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Endorsement #2

Insured: The Howard Hughes Corporation, et al

Insurance Company: Lexington Insurance Company

Policy Number: 021469162

Effective Date of Endorsement: April 1, 2014

Joint Loss Agreement

In the event that this policy is either a boiler and machinery/equipment breakdown, all risk, named peril, difference in conditions, or an earthquake property insurance policy, which covers the same property or the same location(s), as one or more of the other policies, it is agreed that:

If there is a disagreement between the **Insurers** under this policy and such other policies either as to:

- 1) whether such damages or destruction is insured against by the boiler and machinery/equipment breakdown, all risk, named peril, difference in conditions, or an earthquake insurance policy, or
- 2) the extent of participation of this policy and such other policies in a loss which is insured against, partially or wholly, by any one of all of said policies;

this **Insurer** shall, upon written request of the **Insured**, pay to the **Insured** its proportional share of the loss which is in disagreement, but in no event more than this **Insurer** would have paid if the other said policies had not been in effect, subject to the following conditions:

- 1) the amount of the loss which is in disagreement, after making provisions for any undisputed claims payable under the said policies and after the amount of the loss is agreed upon by the **Insured** and the **Insurers**, is limited to the minimum amount remaining payable under this policy and such other policy(ies);
- 2) the **Insurers** underwriting each policy in disagreement shall simultaneously pay to the **Insured** their proportional share of said amount which is in disagreement;
- 3) the payments by the **Insurers** hereunder and acceptance of the same by the **Insured** signify the agreement of the **Insurers** to submit to and proceed with arbitration within ninety days of such payments.

One arbitrator shall be appointed by each **Insurer**, and one additional arbitrator shall be appointed by consent of the others. The decision by the arbitrators shall be binding on the **Insurers** and that judgment upon such award may be entered in any court of competent jurisdiction;

- 4) the **Insured** agrees to cooperate in connection with such arbitration, but not to intervene therein;
- 5) these provisions shall not apply unless each of the said policies in disagreement are similarly endorsed;

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- 6) acceptance by the **Insured** of sums paid pursuant to these provisions, including an arbitration award, shall not operate to alter, waive, surrender or in any way affect the rights of the **Insured** against any of the **Insurers**.

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Endorsement #3

Insured: The Howard Hughes Corporation, et al

Insurance Company: Lexington Insurance Company

Policy Number: 021469162

Effective Date of Endorsement: April 1, 2014

ELECTRONIC DATA ENDORSEMENT

1. Electronic Data Exclusion

Notwithstanding any provision to the contrary within the Policy or any endorsement thereto, it is understood and agreed as follows:-

- a) This Policy does not insure loss, damage, destruction, distortion, erasure, corruption or alteration of ELECTRONIC DATA from any cause whatsoever (including but not limited to COMPUTER VIRUS) or loss of use, reduction in functionality, cost, expense of whatsoever nature resulting therefrom, regardless of any other cause or event contributing concurrently or in any other sequence to the loss.

ELECTRONIC DATA means facts, concepts and information converted to a form useable for communications, interpretation, or processing by electronic and electromechanical data processing or electronically controlled equipment and includes programs, software, and other coded instructions for the processing and manipulation of data or the direction and manipulation of such equipment.

COMPUTER VIRUS means a set of corrupting, harmful or otherwise unauthorized instructions or code including a set of maliciously introduced unauthorized instructions or code, programmatic or otherwise, that propagate themselves through a computer system or network of whatsoever nature. COMPUTER VIRUS includes but is not limited to 'Trojan Horses', 'worms' and 'time or logic bombs'.

- b) However, in the event that a peril listed below results from any of the matters described in paragraph a) above, this Policy, subject to all its terms, conditions and exclusions, will cover physical damage occurring during the Policy period to property insured by this Policy directly caused by such listed peril.

Listed Perils are as follows:

Fire, explosion, riot, civil commotion, vehicle or aircraft impact or collision, sonic boom, theft, sprinkler leakage, sinkhole collapse, Flood, Earthquake or volcanic action, if and to the extent such perils are already covered by this or by any underlying policy.

2. Electronic Data Processing Media Valuation

Notwithstanding any provision to the contrary within the Policy or any endorsement thereto, it is understood and agreed as follows:-

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Should electronic data processing media insured by this Policy suffer physical loss or damage insured by this Policy, then the basis of valuation shall be the cost to repair, replace or restore such media to the condition that existed immediately prior to such loss or damage, including the cost of reproducing any ELECTRONIC DATA contained thereon, providing such media is repaired, replaced or restored. Such cost of reproduction shall include all reasonable and necessary amounts, incurred by the Assured in recreating, gathering and assembling such ELECTRONIC DATA. If the media is not repaired, replaced or restored the basis of valuation shall be the cost of the blank media. However this Policy does not insure any amount pertaining to the value of such ELECTRONIC DATA to the Assured or any other party, even if such ELECTRONIC DATA cannot be recreated, gathered or assembled.

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Endorsement #4

Insured: The Howard Hughes Corporation, et al

Insurance Company: Lexington Insurance Company

Policy Number: 021469162

Effective Date of Endorsement: April 1, 2014

Upgrade to Green

This endorsement modifies insurance provided by the policy:

We will pay the increased cost you incur to repair or replace lost or damaged building to the same general size at the same site or lost or damaged personal property for the same general use, to the minimum requirements of applicable green standards, including necessary and incurred costs to:

- hire professionals accredited pursuant to applicable green standards to participate in the repair or replacement of the building or personal property (professional fees);
- register or certify the repaired or replaced building or personal property pursuant to applicable green standards (registration fees);
- dispose of debris, certified pursuant to applicable green standards, at recycling facilities, if such debris can be recycled (recycling costs);

This Premises Coverage does not include any increase in costs, loss or damage:

- to clean up or remove pollutants from land, water or air either inside or outside of a building
- to clean up, remove, restore or replace covered property because of the presence of fungus either inside or outside of a building
- to clean up, remove, restore or replace polluted land, water or air either inside or outside of a building; or
- attributable to any green standards that were in effect, but you did not comply with, before loss

This Upgrade To Green Standards Premises Coverage does not apply to:

- loss or damage caused by or resulting from fire which ensues from nuclear reaction or radiation, or radioactive contamination;
- the Fungus Clean-up Or Removal Premises Coverage or Pollutant Clean-up or Removal Additional Coverage; or
- Stock

The most we will pay in any occurrence under this Premises Coverage is the lesser of the applicable:

- increased cost percentage of the covered direct physical loss or damage to building or personal property; or
- Limit Of Insurance for Upgrade To Green Standards -- Property Damage shown in the Schedule above.

Premises Coverage's

Exhibit 1-H

If a separate Limit of Insurance for Professional Fees, Registration Fees, Recycling Costs or Ventilation Costs is shown in the Schedule above, that Limit Of Insurance is the most we will pay for such fees or costs and is part of and will reduce the applicable Limit Of Insurance for Upgrade To Green Standards.

If Business Income With Extra Expense, Business Income with Extra Expense and Research and Development Income, Rental Income, Business Income without Extra Expense or Extra Expense is shown above, the following is added under Limits Of Insurance only with respect to the applicable premises shown in the schedule above:

Limits of Insurance

Subject to the applicable Limit Of Insurance for Business Income, Rental Income or Extra Expense shown in the Declarations, the most we will pay in any one occurrence for business income or rental income loss and extra expense, if such coverage is provided, attributable to any increase in the period of restoration for time required to repair or replace property to meet the minimum requirements of green standards, is the applicable Limit Of Insurance for Upgrade To Green Standards -- Business Income, Rental Income or Extra Expense shown in the Schedule above.

Any payment we make for **business income** or **rental income** loss and **extra expense**, if such coverage is provided, attributable to any increase in the **period of restoration** for time required to repair or replace **property** to meet the minimum requirements of **green standards**, will reduce the applicable Limit Of Insurance for Business Income, Rental Income or Extra Expense shown in the Declarations.

If the applicable Limit Of Insurance for Business Income, Rental Income or Extra Expense is less than or has been reduced to an amount that is less than the applicable Limit Of Insurance for Upgrade To Green Standards -- Business Income, Rental Income Or Extra Expense, then the remaining applicable Limit Of Insurance for Business Income, Rental Income or Extra Expense is the most that will be available for any other payment.

If Business Income With Extra Expense, Business Income With Extra Expense And Research And Development Income, Rental Income, Business Income Without Extra Expense or Extra Expense is shown above, the following is added under Loss Payment Limitations:

Loss Payment Limitations

We will not pay for any increase in loss attributable to any increase in the **period of restoration** for time required to repair or replace **property**:

- at **dependent business premises**;
- **in transit**;
- at an exhibition, fair or trade show;
- while being shipped by air;
- at any other premises not shown in the Declarations and not shown in the Schedule above,

to meet the minimum requirements of **green standards**.

Definitions

Exhibit 1-H

Under Definitions and only with respect to the premises shown in the Schedule above, the following are added:

Green standards means:

- the LEED[®] Green Building Rating System[™] of the United States Green Building Council;
- requirements of the Green Globes Assessment And Rating System of the Green Building Initiative;
- Energy Star[®] qualified requirements; or
- other generally accepted site development, water savings, energy efficiency, materials selection and other environmental quality standards for the design and construction of **building or personal property**.

Increased cost percentage means the applicable Upgrade To Green Standards Increased Cost Percentage – Property Damage shown in the Schedule above.

Under Definitions, and only with respect to the premises shown in the Schedule above, **period of restoration** is deleted and replaced with the following:

Period of restoration means the period of time that, for **business income**, begins:

- A. immediately after the time of direct physical loss or damage by a **covered peril** to **property**; or
- B. on the date **operations** would have begun if the direct physical loss or damage had not occurred, when loss or damage to any of the following delays the start of **operations**:
 - 1. new **buildings** whether complete or under construction;
 - 2. alterations or additions to existing **buildings**; or
 - 3. **personal property** consisting of materials, machinery, equipment, supplies and temporary structures used in the construction of, or for making additions to, alterations or repairs to the structure.

Period of restoration means the period of time that, for **extra expense**, begins immediately after the time of direct physical loss or damage by a **covered peril** to **property**.

Period of restoration will continue until your **operations** are restored, with reasonable speed, to the level which would generate the **business income** amount that would have existed if no direct physical loss or damage occurred, including the time required to:

- A. repair or replace the **property**;
- B. repair or replace the **property** to comply with the minimum standards of any enforceable ordinance or law that:
 - 1. regulates the repair or replacement of any **property**;
 - 2. requires the tearing down of parts of any **property** not damaged by a **covered peril**; and
 - 3. is in force prior to the date of the direct physical loss or damage; or
- C. repair or replace the **building or personal property** to meet the requirements of **green standards**,

not to exceed the applicable number of days shown as Extended Period in the Declarations, beginning on the date that:

Exhibit 1-H

- for manufacturing risks, the lost or damaged **property** is actually repaired or replaced and production capability is restored to the level that existed prior to the date the direct physical loss or damage occurred; or
- for all other risks, the lost or damaged **property** is actually repaired or replaced and your **operations** are restored.

The expiration date of this policy will not cut short the **period of restoration**.

If loss or damage occurs at a:

- **dependent business premises**; or
- utility,

for the purpose of determining **period of restoration** following such loss or damage, **property** includes:

- **personal property of a utility**; or
- **personal property of a dependent business premises**.

In determining the **business income** amount that would have existed if no direct physical loss or damage occurred, we will reduce such amount to the extent necessary to reflect unfavorable economic conditions attributable to the impact the **covered peril** had in the geographic area where the lost or damage **property** is located.

Period of restoration does not include any increased period required to comply with any ordinance or law:

- you were required to comply with before the direct physical loss or damage;
- involving any **property** outside the legal boundary of the premises shown in the Declarations;
- that regulates the repair or replacement of any **property** that was lost or damaged by an excluded peril. If direct physical loss or damage is caused by or results from both a **covered peril** and an excluded peril, the **period of restoration** only includes the length of time required to repair or replace the **property** lost or damaged by a **covered peril**; or
- that requires any insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of **fungus** or **pollutants**, except as provided under the Fungus Clean-up Or Removal Premises Coverage or the Pollutant Clean-up Or Removal Additional Coverage.

All other terms and conditions remain unchanged

Exhibit 1-H

Endorsement #5

Insured: The Howard Hughes Corporation, et al

Insurance Company: Lexington Insurance Company

Policy Number: 021469162

Effective Date of Endorsement: April 1, 2014

Pier 17 and Fulton Street Market Coverage Provision Endorsement

This endorsement modifies insurance provided by the policy:

It is hereby understood and agreed that this policy is amended as follows.

As respects coverage for Fulton Street Market, 91 South Street, New York, NY 10038, all terms and conditions in the Policy will apply, except:

1. the maximum amount payable in the event of a loss is \$9,292,945;
2. Business Interruption coverage is excluded, however Extra Expense coverage is included;
3. the per Occurrence deductible will be \$100,000 per Occurrence, except as is applicable to Earthquake, Flood, Named Windstorm and Flood/Storm Surge as a result of a Named Windstorm

As respects coverage at Pier 17, 89 South Street, New York, NY 10038, the maximum amount payable in any one Occurrence is \$5,000,000, subject to the limitations for the following extensions of coverage:

\$1,000,000	Debris Removal and Cost of Cleanup Extension
\$ 500,000	Defense Costs
\$1,000,000	Demolition and Increase Cost of Construction – Coverage A as defined in the policy, except Increased Cost of Construction is excluded
\$ 500,000	Expediting Expense
\$ 500,000	Fire Brigade Charges and Extinguishing Expense
\$ 250,000	Loss Adjustment Expense

In the event of insured physical loss or damage, only amounts claimable in the above extensions of coverage will be used to determine final loss settlement, subject to a per occurrence deductible of \$250,000, except as is applicable to Earthquake, Flood, Named Windstorm and Flood/Storm Surge as a result of a Named Windstorm

Coverage for these locations will terminate at the inception of a Builder's Risk policy or 60 days, whichever is earlier.

Exhibit 1-H

ENDORSEMENT # 006

This endorsement, effective 12:01 AM 04/01/2014

Forms a part of policy no.: 021469162

Issued to: THE HOWARD HUGHES CORPORATION

By: LEXINGTON INSURANCE COMPANY

ANTI-STACKING ENDORSEMENT

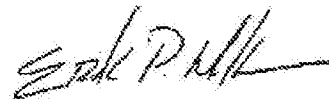
The following condition is added to the policy:

If this insurance and any other insurance issued to the Insured by the Company or any entity that the Company controls, is controlled by or is under common control with, applies to the same loss, claim, suit, occurrence, or accident, whichever is applicable, the maximum limit of insurance under all insurance available will not exceed the highest applicable limit of insurance available under any one policy.

However, this condition does not apply to any other insurance issued to the Insured by the Company or any entity that the Company controls, is controlled by or is under common control with which is specifically intended to be primary to, in excess of, or quota share with the policy to which this endorsement is attached.

All other terms and conditions of the policy remain the same.

LEXDOC021
LX0404



Authorized Representative OR
Countersignature (In states where applicable)

Commercial Property – Claim Reporting and Claim Questions**Options for Reporting a New Claim**

- **Telephone :** **AIG CallOnesm:** 800-931-9546 24/7, 365 days/year
- **Email :** newloss-usproperty&energy@aig.com
- **Fax :** 855-805-4125
- **Internet :** Complete a Quick Claim form at LexingtonClaims.com
- **Mail :** P.O. Box 2310, Alpharetta, Georgia 30023-2970

Such written notice shall include the Named Insured as shown on the Declarations, the policy number, the date of loss and a brief description of the potential claim.

Options for Questions Regarding Existing/Previously Reported Claims

For questions regarding existing claims, contact should be made directly with the assigned AIG Examiner via direct dial or email. ***However, in the instance where an AIG Examiner is unknown, please use the following methods to obtain the information:***

- **Claim Service Center: 877-873-9972**
- **AIG CallOne: 800-931-9546**

Exhibit 1-K
FORMS SCHEDULE

EFFECTIVE DATE: 04/01/2015

NAMED INSURED: THE HOWARD HUGHES CORPORATION

POLICY NO: 021469162

Form Number	Edition Date	Endorsement Number	Title
PRPDEC	01/91		PROPERTY DEC
PR4225	07/13		ECONOMIC SANCTIONS ENDORSEMENT
MNSCPT	04/15		BROKER MANUSCRIPT FORM
		001	MOLD/FUNGUS CLAUSE
		002	JOINT LOSS AGREEMENT
		003	ELECTRONIC DATA ENDORSEMENT
		004	UPGRADE TO GREEN
		005	ANTI-STACKING ENDORSEMENT
PR9015	08/06		POLLUTION CONTAMINATION FORM
PR9019	08/06		STANDARD PROPERTY CONDITIONS
NMA2918	08/01		WAR AND TERRORISM EXCLUSION
Y69813	02/98		COMB. PROP/B&M MILLENNIUM END.

Exhibit 1-K
POLICYHOLDER NOTICE

Thank you for purchasing insurance from a member company of American International Group, Inc. (AIG). The AIG member companies generally pay compensation to brokers and independent agents, and may have paid compensation in connection with your policy. You can review and obtain information about the nature and range of compensation paid by AIG member companies to brokers and independent agents in the United States by visiting our website at www.aig.com/producercompensation or by calling 1-800-706-3102.

Exhibit 1-K

LEXINGTON INSURANCE COMPANY

Administrative Offices: 99 High Street, Boston, Massachusetts 02110
(hereinafter called the Company)

**COMMERCIAL PROPERTY POLICY
DECLARATIONS**

POLICY NUMBER: 021469162

RENEWAL OF: 021469162

ITEM 1. Named Insured: THE HOWARD HUGHES CORPORATION

Address: ONE GALLERIA TOWER
13355 NOEL RD., 22ND FLOOR
DALLAS, TX 75240-6602

ITEM 2. Policy Period:
From 04/01/2015 To 04/01/2016
at 12:01 A.M. Standard Time at the address of the named insured shown above.

ITEM 3. Limit of Insurance:
25% BEING \$8,750,000 PART OF \$35,000,000 PER OCCURRENCE AND IN THE PRIMARY

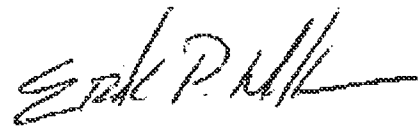
Total Premium	\$525,000	Minimum Earned Premium	\$131,250

ITEM 4. Perils:
ALL RISKS OF DIRECT PHYSICAL LOSS OR DAMAGE INCLUDING FLOOD, EARTHQUAKE &
EQUIPMENT BREAKDOWN/B&M AND AS FURTHER DESCRIBED IN THE APPROVED POLICY FORM

ITEM 5. Description of Property Covered:	Coininsurance
REAL AND PERSONAL PROPERTY; MACHINERY AND EQUIPMENT; FURNITURE & FIXTURES; IMPROVEMENTS AND BETTERMENT'S; INVENTORY; STOCK; EDP HARDWARE, MEDIA AND DATA; BUSINESS INCOME-GROSS EARNING/EXTRA EXPENSE AND AS FURTHER DESCRIBED IN THE POLICY FORM.	NIL

ITEM 6. Mortgagee Clause: Loss, if any shall be payable to:

ITEM 7. Forms Attached:
See attached forms schedule



Authorized Representative OR
Countersignature (In states where applicable)

Exhibit 1-K
ENDORSEMENT

This endorsement, effective 12:01 AM 04/01/2015

Forms a part of policy no.: 021469162

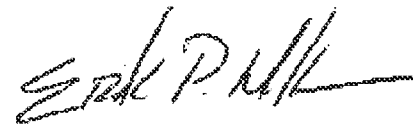
Issued to: THE HOWARD HUGHES CORPORATION

By: LEXINGTON INSURANCE COMPANY

ECONOMIC SANCTIONS ENDORSEMENT

The Insurer shall not be deemed to provide cover and the Insurer shall not be liable to pay any claim or provide any benefit hereunder to the extent that the provision of such cover, payment of such claim or provision of such benefit would expose the Insurer, its parent company or its ultimate controlling entity to any sanction, prohibition or restriction under United Nations resolutions or the trade or economic sanctions, laws or regulations of the European Union or the United States of America.

All other terms and conditions of the policy remain the same.



Authorized Representative

Exhibit 1-K

The Howard Hughes Corporation and its affiliated, subsidiary, and associated companies and/or corporations and the Insured's interest in partnerships and joint ventures as now exist or may hereafter be constituted or acquired and any party in interest which the insured is responsible to insure.

All hereafter referred to as the "Insured."

1. Policy Term

In consideration of the premium charged, this policy attaches and covers from April 1, 2015 at 12:01 A.M. at the location of property involved and shall continue in full force and effect until April 1, 2016 at 12:01 A.M. at the location of property involved.

2. Territory

This policy insures within and between the 50 states comprising the United States of America, Canada, the District of Columbia, Guam, Puerto Rico and the U.S. Virgin Islands, and including any other territories and possessions of the foregoing. The territory includes coastal and inland waterways between points and places therein.

3. Limit of Liability:

In the event of loss or damage insured under this policy, this Insurer shall be liable for its proportional share of \$350,000,000 per occurrence.

This policy's proportion is 25% or \$8,750,000 part of the Primary \$35,000,000 per Occurrence and in the Annual Aggregate for Flood and Earthquake, excess of deductibles.

Coverage hereunder applies up to, but not more than, the stated limits, for any one loss per Occurrence (unless otherwise noted). The sublimits listed below are part of and not in addition to the above stated Limits of Liability.

- (a) With respects to all losses caused by the peril of **Earthquake**, the Company shall not be liable, in the annual aggregate for any one Policy year, for more than its proportionate share of \$250,000,000; except for the following:

- (i) \$100,000,000 for losses occurring in the State of Hawaii
- (ii) \$25,000,000 for losses occurring in the State of California

The aggregate limits stated in subparagraphs (i) and (ii) above shall be part of the overall aggregate limit stated in the introduction to this paragraph (a).

- (b) With respects to all losses caused by the peril of **Flood**, the Company shall not be liable, in the annual aggregate for any one Policy year, for more than its proportionate share of \$250,000,000; except for the following:

But not to exceed \$100,000,000 in the aggregate for any one Policy year for the peril of Flood occurring in **Special Flood Hazard Areas (SFHA)**. However, this **Special Flood Hazard Area** sublimit shall not apply to loss involving personal property, buildings, or structures wholly located outside an area designated as a **Special Flood Hazard Area**.

The aggregate limit stated in the paragraph above shall be part of the overall aggregate limit stated in the introduction to the paragraph (b).

Exhibit 1-K

(c) With respects to the following sublimits described below, such sublimits shall be the maximum amount collectible in any one **Occurrence**:

Included	Named Windstorm, including storm surge
\$ 25,000,000	Accounts Receivable
\$ 1,000,000	Bailee Coverage
\$ 5,000,000	Christmas Holiday décor while stored at an offsite location during the off-season (Off-season shall be considered the period between February 1 st and October 31 st)
60 Days	Civil or Military Authority – within 5 statute miles, limited to a maximum of \$10,000,000
\$ 25,000,000	Contingent Business Interruption and Contingent Extra Expense
\$ 25,000,000	Data Processing Equipment & Media
\$ 25,000,000	Data Restoration or Reproduction
\$ 50,000,000	Debris Removal or 25% of the physical damage loss, whichever is greater
\$ 2,500,000	Defense Costs
\$ 50,000,000	Demolition and Increased Cost of Construction – full policy limits apply to the undamaged portion of the building
\$ 25,000,000	Errors and Omissions
\$250,000,000	Equipment Breakdown, except;
\$ 2,500,000	Ammonia and Refrigeration Contamination
\$ 2,500,000	Consequential Damage/Spoilage
\$ 2,500,000	Hazardous Substances
\$ 25,000,000	Expediting Expense
365 Days	Extended Period of Indemnity
\$ 25,000,000	Extra Expense
\$ 10,000,000	Fine Arts, subject to a maximum of \$500,000 per unscheduled item
\$ 1,000,000	Fines, Damages and Penalties
\$ 5,000,000	Fire Brigade Charges and Extinguishing Expenses
\$ 10,000,000	Golf Courses included but not limited to greens, tees, grounds, fairways, sand traps, trees and shrubs per Occurrence and in the Annual Aggregate
30 Days	Impounded Water
60 Days	Ingress/Egress – within 5 statute miles, limited to a maximum of \$10,000,000
\$ 10,000,000	Leasehold Interest
\$ 2,500,000	Loss Adjustment Expense
\$ 25,000,000	Miscellaneous Unnamed Locations
\$ 10,000,000	Mold Coverage per Occurrence and Annual Aggregate provided for in Endt #1
Included	Newly Acquired Locations – 120 days Reporting
\$ 10,000,000	Plants, Trees, and Shrubs
\$ 5,000,000	Pollutant Clean Up of Land and Water per Occurrence and Annual Aggregate
\$ 25,000,000	Property in the Course of Construction, Erection, Installation, or Assembly
\$ 500,000	Property of Officers, Employees, Hotel Guests, or Tenants
\$ 5,000,000	Royalties
\$ 25,000,000	Service Interruption – Business Interruption and Extra Expense
\$ 10,000,000	Soft Costs

Exhibit 1-K

\$ 1,000,000	Tenant/Hotel Guest Emergency Evacuation
\$ 1,000,000	Tenant and Hotel Guest Relocation Expense – per Occurrence and Annual Aggregate - \$10,000 per guest per Occurrence
\$ 1,000,000	Tenant Move Back Coverage – per Occurrence and Annual Aggregate
\$ 10,000,000	Transit per conveyance; each railroad car or trailer shall be considered a separate conveyance
\$ 5,000,000	Upgrade to Green
\$ 10,000,000	Valuable Papers and Records

4. Deductibles

- A. All losses, damages, and/or expenses arising out of any one **Occurrence** shall be adjusted as one loss and from the amount of such adjusted loss shall be deducted the sum of \$25,000 per occurrence except for:

\$100,000 Earthquake, except:

5% of the total values in the State of California at each location involved in the loss, to be calculated separately for each Unit of Insurance which sustains loss or damage, subject to a minimum of \$250,000 for any one occurrence shall be deducted from any adjusted Earthquake loss;

2% of the total values in the State of Hawaii at each location involved in the loss, to be calculated separately for each Unit of Insurance which sustains loss or damage, subject to a minimum of \$250,000 for any one occurrence shall be deducted from any adjusted Earthquake loss;

\$100,000 Flood, except:

With respect to buildings, structures and contents wholly or partially within Special Flood Hazard Areas (SFHA) (if these locations are not excluded elsewhere in this policy with respect to the peril of Flood), the deductible shall be 5% of the total values at each location involved in the loss, to be calculated separately for each unit of insurance which sustains loss or damage, subject to a minimum of \$1,000,000 for any one occurrence shall be deducted from any adjusted Flood loss;

\$ 25,000 Named Windstorm, except:

5% of the Total Values for locations within the State of Florida and at the Riverwalk Marketplace located at 1 Poydras Street, New Orleans, LA, 70130, at each location involved in the loss, to be calculated separately for each Unit of Insurance which sustains loss or damage, subject to a minimum of \$250,000 for any one occurrence shall be deducted from any adjusted Named Windstorm loss.

2% of the Total Values for locations within all other Tier 1 Counties, at each location involved in the loss, to be calculated separately for each Unit of Insurance which sustains loss or damage, subject to a minimum of \$250,000 for any one occurrence shall be deducted from any adjusted Named Windstorm loss.

\$100,000 Named Windstorm for locations in Montgomery County, TX, per occurrence

Flood/Storm Surge as a result of a Named Windstorm:

5% of the Total Values for locations within the State of Florida and at the Riverwalk Marketplace located at 1 Poydras Street, New Orleans, LA, 70130, at each location involved in the loss, to be calculated separately for each Unit of Insurance which

Exhibit 1-K

sustains loss or damage, subject to a minimum of \$250,000 for any one occurrence shall be deducted from any adjusted Flood/Storm Surge loss as a result of a Named Windstorm.

2% of the Total Values for all other locations, at each location involved in the loss, to be calculated separately for each Unit of Insurance which sustains loss or damage, subject to a minimum of \$250,000 for any one occurrence shall be deducted from any adjusted Flood/Storm Surge loss as a result of a Named Windstorm.

\$ 10,000 Fine Arts

With respect to all other locations all loss, damage, and/or expenses arising out of any one **Occurrence** shall be adjusted as one loss, and from the amount of each such adjusted loss shall be deducted the sum of \$25,000 per occurrence.

The percentage deductible(s) stipulated above shall apply only to those buildings and associated personal property and time element values at each building suffering a loss in the Occurrence and for which claim is being sought. However, this percentage deductible shall not apply to ensuing loss or damage not otherwise excluded herein.

Subject to A. Above:

- B. If two or more deductible amounts in this policy apply to a single **Occurrence**, the total to be deducted shall not exceed the largest deductible applicable.
- C. The deductible amount specified in Clause A. above shall not apply to general average contributions and salvage charges.
- D. Waiting Periods:
 - 1. Service Interruption: 24 Hours
 - 2. Civil or Military Authority: 24 Hours
 - 3. Ingress/Egress: 24 Hours

Waiting period application: The insurer will not be liable for any Loss or Damage unless the period of interruption exceeds the specified waiting period. Once these Waiting Periods are satisfied, the entire claim will be covered subject to the applicable dollar deductible.

- E. Unit of Insurance:

The following shall be considered a separate unit of insurance: (1) each separate building or structure; (2) the contents of each separate building or structure; (3) property in each yard; (4) business interruption for the twelve-month period immediately following the loss.
- F. The values to be used when calculating the deductibles for the above shall be those as specified for each unit of insurance as shown in the most recent Statement of Values on file with the Company. If values are not itemized for each unit of insurance or if the property damage is a building in the course of construction or renovation, the values will be determined at the time of loss.
- G. If other insurance applies to the same property as insured hereunder, and to the extent recovery is made from such other insurance, the deductible under this policy be reduced by such recovery, but in no event shall the deductible under this policy be less than shown in the policy. If

Exhibit 1-K

recovery from such other insurance is greater than the deductible in the policy, then the deductible under this policy shall not apply.

- H. In the event of loss or damage involving more than one deductible, the Insured can either elect to have the deductibles apply separately or have the single largest deductible apply.
- I. Whenever mortgage or lease conditions require insurance protection without deductibles or with deductibles less than are provided herein, Insurers agree to make payment without consideration of the applicable deductible. The Insured agrees to reimburse the Insurers for any payments so made within a reasonable time after settlement of the loss subject to credit approval.

5. Perils Insured

This policy insures against all risk of direct physical loss or damage occurring during the Policy Term to property including but not limited to Earthquake, Named Windstorm, Flood, Equipment Breakdown, general average, salvage, and all other charges on shipments covered here under except as hereinafter excluded.

Physical loss or damage shall include any destruction, disruption, distortion or corruption of any computer data, coding, program or software except as hereinafter excluded.

6. Perils Excluded

This policy does not insure against loss or damage caused by the following perils:

A.

1. Against hostile or warlike action in time of peace, including action in hindering, combating, or defending against an actual, impending, or expected attack:
 - (a) by any government or sovereign power (de jure or de facto) or by any authority maintaining or using military, naval, or air forces;
 - (b) or by military, naval, or air forces;
 - (c) or by an agent of such government, power, authority, or forces;
2. Against any weapon employing atomic fission or fusion;
3. Against rebellion, revolution, civil war, usurped power; or action taken by governmental authority in hindering, combating, or defending against such **occurrence**;
4. Against seizure or destruction by order of public authority, except destruction by order of public authority to prevent spread of, or to otherwise contain, control or minimize loss, damage, or destruction which occurs due to a peril insured against under this policy;
5. Against risks of contraband or illegal trade.

Notwithstanding the above provisions 1, 3, 4, and 5, this insurance shall cover loss or damage directly caused by acts committed by an agent of any government, party, or faction engaged in war, hostilities, or warlike operations, provided such agent is acting secretly and not in connection with any operation or armed forces (whether military, naval, or air forces) in the country where the property is situated. Nothing in the foregoing shall be construed to include any loss, damage, or expense caused by or resulting from any of the risks or perils excluded above, excepting only the acts of certain agents expressly covered herein, but in no event

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shall this insurance include any loss, damage, or expense caused by or resulting from any weapon of war employing atomic fission or fusion whether in time of peace or war.

- B. Nuclear reaction or nuclear radiation or radioactive contamination, all whether controlled or uncontrolled, and whether such loss be direct or indirect, proximate or remote, or be in whole or in part caused by, attributed to, or aggravated by the peril(s) insured against in this policy except that: If a fire ensues, liability is specifically assumed by the **Insurer** for direct loss by such peril insured hereunder but not including any loss due to nuclear reaction, nuclear radiation or radioactive contamination.

The **Insurer** shall be liable for direct physical loss or damage occurring during the Policy Term caused by sudden or accidental radioactive contamination, including resultant radiation damage in excess of the amount of the deductible named elsewhere in this policy for each **occurrence** from material used or stored or from processes conducted on the described premises and provided at the time of loss there is neither a nuclear reactor nor any new or used radioactive fuel on the described premises.

- C. **Fraudulent or dishonest acts** committed by the **Insured** or any of the **Insured's** employees with the manifest intent to:

1. cause the **Insured** to sustain such loss; and
2. obtain financial benefit for the **Insured**, **Insured's** employee, or for any other person or organization intended by the **Insured** or the employee to receive such benefit, other than salaries, commissions, fees, bonuses, promotions, awards, profit sharing, pensions, or other employee benefits earned in the normal course of employment.

This exclusion does not apply to acts of destruction of covered property by the **Insured's** employees or carriers for hire; but theft by the **Insured's** employees is not covered.

- D. Errors in design, faulty workmanship, faulty materials, ordinary wear and tear, inherent or latent defect or gradual deterioration, unless a peril not otherwise excluded ensues and then only loss, damage or expense caused by the ensuing peril.
- E. Loss or damage arising out of settling, cracking, shrinking, bulging, or expansion of pavements, foundations, walls, floors, roofs, or ceilings unless a peril not otherwise excluded ensues and then only for the loss, damage, or expense caused by the ensuing peril.
- F. Loss or damage arising out of damage by rodents or insects unless a peril not otherwise excluded ensues and then only for the loss, damage or expense caused by the ensuing peril.
- G. Loss or damage arising out of accumulated effects of smog, smoke, vapor, liquid or dust unless a peril not otherwise excluded ensues and then only for the loss, damage, or expense caused by the ensuing peril.
- H. Against loss or damage arising out of rust or corrosion unless a peril not otherwise excluded ensues and then only for the loss, damage or expense caused by the ensuing peril.
- I. Unexplained or mysterious disappearance of any property, or shortage disclosed by audit or upon taking inventory; unless such loss or damage results directly from other physical damage not otherwise excluded in this policy.

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7. Coverage

This policy insures the interest of the **Insured** in following:

A. Real and Personal Property

1. All Real and Personal Property owned, used, or intended for use by the **Insured**, acquired by the **Insured**, property of others in the **Insured**'s care, custody or control including the **Insured**'s liability for such property and including the costs to defend any allegations of liability for loss or damage to such property; including but not limited to the following:
 - (a) The **Insured**'s interest in Improvements and Betterments.

In the event of loss or damage to improvements and betterments, the **Insurer** agrees to accept and consider the **Insured** in the position of sole and unconditional owner of improvements and betterments, notwithstanding any contract or lease to the contrary.
 - (b) At the option of the **Insured**, Personal Property of the **Insured**'s officials and employees, while in the **Insured**'s care, custody or control.
 - (c) Property in the course of construction, erection, installation or assembly.
 - (d) **Fine Arts, EDP Media and EDP Systems, Valuable Papers & Records, Architect Fees and Engineering Fees, Fire Brigade Charges/ Fire Extinguishing Materials and Expenses.**
2. Contractor's and/or subcontractor's (of any tier) and vendor's interests in property covered to the extent of the **Insured**'s liability imposed by law or assumed by written contract.
3. This policy shall cover the interest of the **Insured** and at the option of the **Insured**, the interest of the **Insured**'s customer in property sold by the **Insured** under conditional sale, trust agreement, installment plan or other deferred payment plan including property which is leased to customers under a lease/purchase agreement.
4. Property of others that the **Insured** has agreed to insure prior to loss or damage including property not in the **Insured**'s care, custody or control and at the **Insured**'s option the interest of the owner of such property.
5. Newly Acquired Locations:

All newly acquired locations, or additions to existing locations insured, including construction of new properties, are automatically covered, subject to reporting to company within 120 days of acquisition. After 120 days, the Miscellaneous Unnamed Locations sublimit will apply.
6. Miscellaneous Unnamed Locations:

This policy is extended to cover insured property at a location:

 - (a) not described in this policy; and
 - (b) not otherwise insured.
7. Land improvements as described hereunder include, but are not limited to, any alteration to the natural condition of the land by grading, landscaping, earthen dikes or dams, underground

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wiring and in ground sprinklers, as well as additions to land such as pavements, roadways, ponds, golf courses, or similar works.

B. Business Interruption

1. Loss of Earnings resulting from the necessary interruption of business conducted by the **Insured** including all interdependencies between or among companies owned or operated by the **Insured** caused by physical loss, damage, or destruction by the perils insured herein during the term of this policy to real and/or personal property described in Clause 7.A.
2. If such loss occurs during the term of this policy, it shall be adjusted on the basis of **ACTUAL LOSS SUSTAINED** by the **Insured** consisting of the net profit which is prevented from being earned including **ordinary payroll** and payroll; **and**

all charges and other expenses to the extent that these must necessarily continue during the interruption of business, but only to the extent to which such charges and expenses would have been incurred had no loss occurred.
3. In determining the amount of net profit, charges, and expenses covered hereunder for the purposes of ascertaining the amount of loss sustained, due consideration shall be given to the experience of the business before the date of damage or destruction and to the probable experience thereafter had no loss occurred.

C. Extra Expense

1. This **Insurer** will pay the **Insured** for the Extra Expense incurred by the **Insured** in order to continue as nearly as practicable the normal operation of the **Insured's** business following physical loss, damage or destruction by the perils insured herein during the term of this policy to Real and/or Personal Property as described in Clause 7.A.
2. The term Extra Expense, as used herein, is defined as the excess (if any) of the total cost incurred during the recovery period chargeable to the operation of the **Insured's** business, over and above the total cost that would normally have been incurred to conduct the business during the same period had no damage or destruction occurred.

D. Accounts Receivable

In the event of physical loss, damage or destruction to records or accounts receivable from customers by the perils insured herein, this **Insurer** will pay the **Insured** as follows:

1. All sums due the **Insured** (from customers), provided the **Insured** is unable to effect collection thereof as a result of loss or damage to records of accounts receivable by a peril insured by this policy.
2. All sums due the **Insured** from factoring transactions, when the property of the debtor has been lost or damaged by a peril insured by this policy and the **Insured** has been unable to effect collection thereof.
3. Interest charges on any loan to offset impaired collections pending repayment of such sums made uncollectible by such loss or damage.

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4. Collection expenses in excess of normal collection cost and made necessary because of such loss or damage.
5. Other expenses, when reasonably incurred by the **Insured** in reestablishing records of accounts receivable following such loss or damage.

For purpose of this insurance, credit card company charge media shall be deemed to represent sums due the **Insured** from customers, until received by the credit card company.

When there is proof that a loss of records of accounts receivable has occurred by the **Insured** and the **Insured** cannot more accurately establish the total amount of accounts receivable outstanding as of the date of such loss, such amount shall be computed as follows:

1. The monthly average of accounts receivable during the last available Twelve (12) months, together with collection expenses in excess of normal collection costs and made necessary because of such loss or damage and reasonable expenses incurred in reestablishing records of accounts receivable following such loss or damage, shall be adjusted in accordance with the percentage increased or decreased in the Twelve (12) months average of monthly gross revenues which may have occurred in the interim;
2. The monthly amount of accounts receivable thus established shall be further adjusted in accordance with any demonstrable variance from the average for the particular month in which the loss occurred, due consideration also being given to the normal fluctuations in the amount of accounts receivable within the fiscal month involved.

There shall be deducted from the total amount of accounts receivable, however established, the amount of such accounts evidenced by records, not lost or damaged, or otherwise established or collected by the **Insured** and an amount to allow for probable bad debts which would normally have been uncollectible by the **Insured**.

E. Leasehold Interest

In the event of physical loss, damage, or destruction caused by the perils insured herein during the term of this policy and not otherwise excluded, to real property, which is leased by the **Insured**, this policy is extended to cover as follows:

1. If as a result of such loss or damage the property becomes wholly untenable or unusable and the lease agreement requires continuation of the rent, this **Insurer** shall pay the **Insured** for the actual rent payable for the unexpired term of the lease; or
2. If as a result of such loss or damage the property becomes partially untenable or unusable and the lease agreement requires continuation of the rent, this **Insurer** shall pay the **Insured** for the proportion of the rent applicable thereto; or
3. If as a result of such loss or damage the lease is canceled by the lessor pursuant to the lease agreement or by operation of law, this **Insurer** shall pay the **Insured** for its **Lease Interest** for the first three months following the loss or damage and for its **Net Lease Interest** for the remaining unexpired term of the lease; provided. However, that this company shall not be liable for any increase in the amount recoverable hereunder resulting from the suspension, lapse or cancellation of any license, or from the **Insured** exercising an option to cancel the lease; or from any act or omission of the **Insured** which constitutes a default under the lease; and provided further that the **Insured** shall

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use any suitable property or service owned or controlled by the **Insured** or obtainable from another source to reduce the loss hereunder.

F. Rental Value and Rental Income

1. Loss of Rental Income and/or Loss of Rental Value of the **Insured** caused by physical loss, damage or destruction by the perils insured herein during the term of this policy to property and/or premises rented/or occupied by the **Insured** and/or rented or leased by the **Insured** to others.
2. Rental Income shall include the following:
 - (a) The total anticipated gross rental income from tenant(s) of the **Insured's** building(s) and structure(s), and
 - (b) The amount of all charges assumed by tenant(s), which would otherwise be obligations of the **Insured**, plus
 - (c) A similar value for that portion occupied by the **Insured**.

3. Rental Value shall include the following:

This policy will serve as Rental Income Insurance in those situations where the **Insured** is required under a lease or rental agreement to maintain such insurance on behalf of any landlord.

This policy will respond for rental expenses incurred by the **Insured** in excess of the expenses, which would have been incurred, had a leased or rented premise not been damaged or destroyed by any peril covered under this policy. Such coverage will apply for all additional expenses incurred during the period of untenability of if the lease cannot be terminated until its expiration.

Rental value shall also include contingent rents for buildings under construction and rents from the vacant and/or unoccupied portion or portions of the buildings.

4. Experience of the Business: In determining the amount of income derived from the agreement(s) described in paragraph 1 above for the purposes of ascertaining the amount of loss sustained, due consideration shall be given to the amount of income derived from such agreement(s) before the date of damage or destruction and to the probable amount of income thereafter had no loss occurred.

G. Royalties

1. Loss of income to the **Insured** under royalty, licensing fees, or commission agreements between the **Insured** and another party which is not realizable due to physical loss, damage or destruction by any of the perils covered herein during the term of this policy to property of the other party.
2. If such loss occurs during the term of this policy, it shall be adjusted on the basis of ACTUAL LOSS SUSTAINED of such income referred to in paragraph 1 above, which would have been earned had no loss occurred.
3. Resumption of Operations: The **Insured** shall influence, to the extent possible, the party with whom the agreement described in paragraph 1 above has been made to use any other

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machinery, supplies or locations in order to resume business so as to reduce the amount of loss here under and the **Insured** shall cooperate with that party in every way to effect this, but not financially, unless such expenditures shall be authorized by the **Insurer**.

4. Experience of the Business: In determining the amount of income derived from the agreement(s) described in paragraph 1 above for the purposes of ascertaining the amount of loss sustained, due consideration shall be given to the amount of income derived from such agreement(s) before the date of damage or destruction and to the probable amount of income thereafter had no loss occurred.

H. Transit

1. This policy attaches and covers shipments within and between the territorial limits of this policy, including the coastal waters thereof, by any means of conveyance, from the time the property is moved for purposes of loading and continuously thereafter while awaiting and during loading and unloading and in temporary storage, including temporary storage on any conveyance intended for use for any outbound or used for inbound shipment, including during deviation and delay, until safely delivered and accepted at place of final destination.
2. This insurance is extended to cover loss or damage to property:
 - (a) sold and shipped by the **Insured** under terms of F.O.B. point of origin or other terms usually regarded as terminating the shipper's responsibility short of points of delivery;
 - (b) arising out of any unauthorized person(s) representing themselves to be the proper party(ies) to receive goods for shipment or to accept goods for delivery;
 - (c) occasioned by the acceptance by the **Insured**, by its agents, or by its customers of fraudulent bills of lading, shipping and delivery orders, or similar documents;
 - (d) at the **Insured's** option, which is incoming to the **Insured**.
3.
 - (a) The **Insured** may waive right(s) of recovery against private, contract, and common carriers and accept bills of lading or receipts from carriers, bailees, warehousemen, or processors limiting or releasing their liability, but this transit insurance shall not inure to the benefit of any carrier, bailee, warehouseman, or processor.
 - (b) With respect to shipments described under subparagraphs 2a and 2d above, the **Insurer** agrees to waive its rights of subrogation against shippers and consignees at the option of the **Insured**.
4. The **Insured** is not to be prejudiced by any agreements exempting lightermen from liability.
5. Seaworthiness of any vessel or watercraft and airworthiness of any aircraft are admitted between the **Insurer** and the **Insured**.

8. Extensions of Coverage

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THIS CLAUSE EXTENDS THE COVERAGES DESCRIBED IN CLAUSES 7.A, 7.B, 7.C, 7.D, 7.E, 7.F, 7.G, and 7.H.

This policy, subject to all its provisions and without increasing the amount of said policy, also insures against loss, damage or destruction by the perils insured against, of:

A. Brands and Labels/Control of Damaged Goods

In case of damage to property bearing a brand or trademark or which in any way carries or implies the guarantee or the responsibility of the manufacturer or Insured, the salvage value of such damaged property shall be determined after removal in the customary manner, and at the expense of the Insurer, of all such brands or trademarks or other identifying characteristics. The Insured shall have full right to the possession of all goods involved in any loss under this policy and shall retain control of all damaged goods. The Insured, exercising a reasonable discretion, shall be the sole judge as to whether the goods involved in any loss under this policy are fit for consumption, sale or use and any goods so deemed by the Insured to be unfit for consumption shall not be sold or otherwise disposed of except by the Insured or with the Insured's consent, but the Insured shall allow the Insurer any salvage obtained by the Insured on any sale or other disposition of such goods.

B. CFC Refrigerants

The Company will pay for the additional cost to repair or replace covered property that is physically damaged because of the use or presence of a refrigerant containing CFC (chlorinated fluorocarbon) substances. This means the additional expense to do the least of the following:

- (1) Repair the damaged property and replace any lost CFC refrigerant;
- (2) Repair the damaged property, retrofit the system to accept a non-CFC refrigerant and charge the system with a non-CFC refrigerant; or
- (3) Replace the system with one using a non-CFC refrigerant

Additional costs mean those beyond what would have been required had no CFC refrigerant been involved.

B. Civil/Military Authority

Actual loss as insured herein during the period of time when, as a result of a peril insured against access to real or personal property is prohibited by order of civil authority.

C. Consequential/Sequential Damage

Consequential/sequential loss or damage caused by or resulting from the change of temperature or humidity or by interruption of power, heat, air conditioning, refrigeration, telephone or telegraphs, supply water or telecommunications, excluding overhead transmission and distribution lines which are over 1000 feet from an insured property, resulting from damage by the perils insured against here under to property/equipment or plants used to provide refrigeration, cooling, humidifying, dehumidifying, air conditioning, heating, generating, converting power, or telephone or telegraph, power

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generating equipment, utility plants, or sources, whether or not such equipment is on or off the premises of the **Insured**. (Exclusion 6.F shall not apply to this Extension of Coverage).

D. Contingent Business Interruption/Contingent Extra Expense

This Policy covers the Actual Loss Sustained and extra expense incurred by the Insured during the period of liability resulting from physical loss or damage of the type insured to property of the type insured at **contingent time element locations** and **attraction properties** located worldwide.

E. Contingent Property Damage

This policy shall cover loss to real property that is not otherwise scheduled but where The Howard Hughes Corporation is the owner or JV Partner (including corporations, limited liability companies, partnerships, or other entity not specifically mentioned and regardless of whether or not The Howard Hughes Corporation is a minority partner in the entity) and The Howard Hughes Corporation has required their co-owner or partner to provide specific insurance coverage for real property under an agreement or contract, the insurance company will pay up to a certain limit in any one occurrence for this covered loss when the co-owner or partner has:

Allowed the specific coverage for real property to lapse
Not insured the real property to its 100% replacement cost or
In any other way violated the terms of the underlying insurance contract

Such contingent property coverage is excess and contingent of any other underlying or otherwise collectable insurance.

F. Debris Removal and Cost of Cleanup Extension

This policy covers the necessary and reasonable expenses actually incurred by the **Insured** due to physical loss or damage as insured against occurring during the term of this policy to remove from the insured premises debris of covered property remaining after any such loss or damage.

G. Defense Costs

This policy, subject to all of its provisions, also insures the costs and fees to defend any claim or suit against the **Insured** and/or its directors, officers, and/or employees alleging physical loss or damage as insured against to property of others is the care, custody, or control of the **Insured** to the extent of the **Insured's** liability therefore, even if such claim or suit is groundless, false or fraudulent; but the **Insurer** may without prejudice make such investigation, negotiation or settlement of any such claim or suit as it deems expedient.

H. Demolition and Increased Cost of Construction

In the event of loss or damage under this policy that causes the enforcement of any law or ordinance regulating the construction repair or use of property, the **Insurer** shall be liable for:

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- A. The cost of demolishing the undamaged property including the cost of clearing the site;
- B. The proportion that the value of the undamaged part of the property bore to the value of the entire property prior to loss;
- C. Increased cost of repair or reconstruction of the damaged and undamaged property on the same or another site and limited to the costs that would have been incurred in order to comply with the minimum requirements of such law or ordinance regulating the repair or reconstruction of the damaged property on the same site or another site. However, the **Insurer** shall not be liable for any increased cost of construction loss unless the damaged property is actually rebuilt or replaced;
- D. Any increase in the Business Interruption, Extra Expense, Rental Value and Royalties loss arising out of the additional time required to comply with said law or ordinance.
- E. Downsizing

In the event of loss or damage to insured property caused by a peril insured against, the Insurers shall be liable for loss as described below due to the enforcement of any law, ordinance or other governmental restrictions in effect prior to the insured loss or damage, which limits the Insured's ability to rebuild the damaged property to like kind and quality, density, use, size or number of floors in existence immediately prior to such loss or damage.

The **Insurers** limit of liability shall be limited to the sum of the replacement value of the real property which must be demolished or which is lost, damaged, destroyed or which may not be rebuilt, including loss of rents for the portions of the property which cannot be repaired or replaced due to the operation of the above described ordinances, laws, and regulations subject to the maximum amount payable under Clause 3. Limits of Liability. However, as respects loss of rents, the maximum period of indemnity is 12 (twelve) months.

- F. Under this policy the **Insurer** will not pay for any loss due to any ordinance or law:

- 1. You are required to comply with before the loss, even if the building was undamaged, and
- 2. You failed to comply with.

I. Errors & Omissions

No inadvertent error, omission or failure in making reports or other data hereunder shall prejudice the **Insured's** right of recovery, but shall be corrected when discovered. It is further understood and agreed that any error in description of locations, or values of projects covered or to be covered by this policy shall not invalidate or reduce the policy limit of liability, or otherwise prejudice any recovery under this policy.

J. Evacuation Expense Reimbursement

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Subject to the conditions of the policy loss as insured by this policy is extended to include loss resulting from interruption of or interference with the business in consequence of access to the premises being hindered or prevented as a result of the actions or advice of a Government or Local Authority due to the suspected or actual presence of an incendiary or explosive device on or in the vicinity of the premises provided that there shall be no liability under this extension for:

- A. Any incident involving an interruption of less than 24 hours duration.
- B. Any period other than the actual period of hindrance or prevention of access to the premises.
- C. Any consequence of physical loss, destruction or damage, labor disputes, or infectious or contagious diseases.

K. Expediting Expense

This policy covers the reasonable extra cost of temporary repair or replacement and of expediting the repair or replacement of damaged property insured hereunder, including overtime and express freight or other rapid means of transportation.

L. Fire Brigade Charges and Extinguishing Expenses

This policy covers the following expenses resulting from a peril insured against occurring during the Policy Term:

- A. Fire brigade charges and other extinguishing expenses for which the **Insured** may be assessed;
- B. loss of fire extinguishing materials expended.

M. Impounded Water

- A. This policy is extended to cover the actual loss sustained and the Extra Expense incurred by the Insured due to the necessary interruption of the Insured's business caused by inadequate water supply.
- B. It is a condition precedent to recovery under this extension that such inadequate water supply is a direct result of the release of water:

- 1) stored behind dams or in reservoirs;
- 2) used for any manufacturing purpose, including but not limited to as raw material or for power; and
- 3) at Insured Location(s);

Caused by physical loss or damage not otherwise excluded by this policy to such dams or reservoirs, or to equipment connected thereto.

- C. Notwithstanding the coverage provided under this extension and unless excluded property is amended by endorsement accordingly, dams and reservoirs are not insured property and physical loss or damage thereto is not covered by this policy.

N. Ingress/Egress

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Loss sustained during the period of time when, as a result of a peril insured against, ingress to or egress from the real or personal property is prevented or hindered.

O. Loss Adjustment Expenses

This policy is extended to include reasonable expenses incurred by the **Insured**, or by the **Insured's** representatives for preparing and certifying details of a claim resulting from a loss which would be payable under this policy. This excludes any expenses incurred by the **Insured** from or through the use of any Public Adjuster(s) or Public Adjustment firm(s).

P. Lost Key/Alternative Key Systems

This policy is extended to cover the consequential loss to keys and locks if a master key or grand master key is lost or damaged directly resulting from an insured peril. The policy will provide payment for the actual cost to replace keys, adjustment of locks to accept new keys, or if required, new locks including the cost of their installation. Further, the policy is extended to cover loss or damage directly resulting from an insured peril to alternative key system, such as mechanically or electronically coded key cards, including card-programmer, card-readers, computers, related alarms, transreceivers, power supplies and any other electronic or mechanical apparatus needed to make the card keys operate.

Q. Pollutant Cost of Clean Up Extension

This policy covers any cost or expense of decontamination or removal or disposal of water, soil or any similar substance on or under the premises of the **Insured**; including any costs or expenses incurred during emergency measures undertaken in order to mitigate any circumstances pertaining to Seepage, Pollution and/or Contamination, whether or not at the instruction of any Government Agency or other Authority.

It is the condition precedent to recovery under this extension that the **Insurer** shall have paid or agreed to pay for physical loss or damage to the property insured hereunder unless such payment is precluded solely by the operation of any deductible and that the insured shall give written notice to the **Insurer** of intent to claim for cost of debris removal or cost to cleanup not later than twelve months after the date of such physical loss or damage.

R. Service Interruption/Off Premises Power

All incoming services to the **Insured**, whether or not owned by the **Insured**, including, but not limited to, any electrical equipment and systems, fuel, water, gas, feedstock, pulp, liquid gases, sewage, steam, telephone, telecommunications, heating, refrigeration and/or air conditioning systems, situated on or outside of the premises, when used for the incoming service of the **Insured**, excluding overhead transmission and distribution lines which are over 1000 feet from an insured premise. This coverage is extended to cover loss or damage resulting from any accidental loss to the property covered under this clause, not otherwise excluded in this policy.

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S. Soft Costs

This policy shall cover soft costs , as hereinafter defined, incurred by the insured caused by loss, damage, or destruction by any of the perils covered herein during the term of this policy to property as covered herein.

1. The term “Soft Costs” is defined as:
 - a) Additional interest costs on money used to finance construction or repair;
 - b) Additional real estate and property taxes incurred for the period of time that construction extends beyond the projected completion date;
 - c) Additional legal and accounting fees; and
 - d) Additional advertising and promotional expenses which become necessary as a result of an insured loss.
2. This insurer shall pay soft costs incurred from the date that the building, structure or improvement would have been completed had no physical damage occurred until such time that it is completed. As soon as practicable after any loss, the Insured shall utilize every available means to reduce the amount of loss including:
 - a) partial or complete resumption of construction, business or operations;
 - b) making use of materials, equipment, supplies, or other property at the Insured’s premises or elsewhere; or
 - c) making use of substitute facilities or services where practical;
3. This policy insures the interest expense necessarily incurred by the insured in effecting repairs to the damaged property, from the date of the Insured’s payment to others until payment of the loss by the Insurer. The prime lending rate of the Insured’s bank will apply.
4. Subject to all terms, conditions and limitation of the policy to which it is attached, in the event of direct physical loss or damage to property insured, the Insurer shall indemnify the Named Insured for scheduled Soft Costs/Additional Expenses, Loss of Rental Income and/or Loss of Gross Earnings arising out of the resulting Delay in completion of the project described in the Declarations portion of this policy, or as amended by Endorsement, on an actual loss sustained basis.
5. The Insurer shall also indemnify the Named Insured for reasonable expenditures that are necessarily incurred for the purpose of reducing any loss amount under this Coverage, but only to the extent that such loss amount may otherwise payable under this extension is actually reduced.

T. Tenant/Hotel Guest Emergency Evacuation:

1. The **Insurer** will reimburse the **Insured** for the necessary expenses incurred to evacuate an insured location because of imminent danger to life or wellbeing of tenants/guests caused by an external event or condition at the insured location when a

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civil authority having jurisdictional authority orders you to evacuate the covered location.

2. The **Insurer** will not reimburse the **Insured** for the necessary expenses arising out of any planned evacuation drill.

U. Tenant/Hotel Guest Relocation Expense

1. The **Insurer** will pay for the **Insured's** actual expenses incurred as a result of reimbursing the expenses of a hotel guest for whom prearranged hotel accommodations cannot be honored because of loss or damage resulting from a insured loss hereunder.
2. The **Insurer** will pay the **Insured** for the reasonable expenses which the **Insured's** hotel guest has incurred:
 - a. To secure and use other comparable hotel accommodations as close as possible to the **Insured's** covered location;
 - b. While traveling to and from the insured covered location to the location where the comparable hotel accommodations are secured; and
 - c. For prepaid amounts spent for activities away from the insured location which are lost because other comparable accommodations within a reasonable distance from the insured location are unavailable.
3. The **Insurer** will pay the **Insured** for the reimbursed expenses of the hotel guest for the time:
 - a. Beginning on the date the hotel guests prearranged accommodations at the insured location are:
 - i. Scheduled to begin; or
 - ii. InterruptedWhichever is later; and
 - b. Ending on the earliest of the following dates:
 - i. The date the hotel guests prearranged hotel accommodations at the insured location are scheduled to end;
 - ii. The date the damaged property at the insured location should be repaired, rebuilt or replaced with reasonable speed or similar quality;

Or

 - iii. Fourteen (14) days after the date determined in A. above.

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4. For the purpose of this endorsement hotel guest(s) means a person or persons holding valid confirmed reservations or prearranged hotel accommodations at a location shown on the schedule.

V. Tenant Move Back Coverage

The Policy provides coverages for expenses incurred by the **Insured** for move-back costs of tenants who temporarily vacate a portion of an insured property at the property insured by this policy. The vacancy must have occurred while the portion of the property rented by the tenant could not be occupied due to loss or damage to insured property caused by or resulting from a peril insured against during the policy period. The move back must take place within 60 days after the portion of the insured property rented by the tenant has been repaired or rebuilt and is ready for occupancy. The **Insurer** will pay for the move-back costs whether or not the tenant(s) move back before the expiration date of this policy.

Move-Back Costs means documented, reasonable and necessary:

- a. Costs of packing, insuring and carting business personal property;
- b. Costs of reestablishing electric utility services, less refunds from discontinued services;
- c. Costs of assembling and setting up fixtures and equipment; and
- d. Costs to unpack and reshelv stock and supplies.

Move-Back Costs does not include:

- a. Loss caused by the termination of a lease or other agreement; or
- b. Security deposits or other payments, forfeitures or penalties made to the landlord or lessor of other premises.

9. Loss Provisions Applicable to Clauses 7.B, 7.C, 7.E, 7.F, and 7G.

A. The length of time for which loss may be claimed is referred to as the recovery period and is defined as follows:

1. shall commence with the date of such loss or damage and shall not be limited by the date of expiration of this policy.
2. shall not exceed such length of time as would be required with the exercise of due diligence and dispatch to rebuild, repair, or replace such part of the property which has been destroyed or damaged; **and**
3. such additional length of time to restore the **Insured's** business to the condition that would have existed had no loss occurred, commencing with the later of the following dates:
 - (a) the date on which the liability of the company for loss or damage would otherwise terminate; or
 - (b) the date on which repair, replacement or rebuilding of such part of the property as has been damaged is actually completed.

but in no event for more than one year thereafter from said later commencement date;

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4. with respect to alterations, additions, or property while in the course of construction, erection, installation, or assembly, due consideration shall be given to the level of production or level of business operations that would reasonably have been achieved after construction and startup would have been completed had no physical damage occurred.
- B. If the **Insured**, by reasonable means within its control, can reduce the loss resulting from the interruption of business:
1. by a complete or partial resumption of operations of the property insured, whether damaged or not; or
 2. by making use of stock, merchandise, or other property;

Such reduction shall be taken into account in arriving at the amount of Loss Hereunder.

C. Expense to Reduce Loss:

This policy also covers such expenses as are necessarily incurred for the purpose of reducing any loss under this policy, but only to the extent of such reduction.

D. Experience of the Business:

In determining the amount of loss insured hereunder due consideration shall be given to the experience of the business before the date of damage or destruction and to the probable experience thereafter had no loss occurred.

E. Special Exclusions:

This section of the policy does not insure against any increase of loss which may be occasioned by the suspension, lapse, or cancellation of any lease, license, contract, or order; nor for any increase of loss due to interference at the **Insured's** premises by strikers or other persons with rebuilding, repairing, or replacing the property damaged or destroyed, or with the resumption or continuation of business, or with the re-occupancy of the premises.

10. Property Excluded

- A. Watercraft over forty (40) feet only while waterborne, aircraft, motor vehicles licensed for highway use, when not on the **Insured's** premises, but this exclusion does not apply to mobile or contractor's equipment.
- B. Land, and however, this exclusion shall not apply to the cost of reclaiming, restoring or repairing land improvements. Land improvements as described hereunder include, but are not limited to, any alteration to the natural condition of the land by grading, landscaping, earthen dikes or dams, underground wiring and in ground sprinklers, as well as additions to land such as pavements, roadways, ponds, golf courses, or similar works.
- C. Coverage on export shipments does not extend beyond the time when the property is safely loaded on board overseas vessel or aircraft; coverage on import shipments does not attach until after discharge from overseas vessel or aircraft.

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- D. Currency, money, gold bullion, evidence of debt noted or securities, except accounts receivable and/or valuable papers as defined in the policy, except as otherwise defined in this policy.
- E. Growing crops or standing timber.
- F. Animals or birds.
- G. Water (whether above or below ground or the cost of reclamation); water courses; aquifers. However this exclusion shall not apply to:
 - 1. water stored by the insured for the purpose of fire protection, water in swimming pools, or water contained within any type of tank, piping system or other process equipment
 - 2. water considered to be part of a Golf Course, including but not limited to, man-made lakes, ponds and water hazards;
- H. Railroad Rolling Stock
- I. Delay or Loss of Market
- J. Offshore property
- K. Satellites

11. Valuation

At time of loss, the basis of adjustment shall be as follows:

- A. On buildings and structures, at the replacement cost, defined as the cost to rebuild or replace on the same site, with new materials of like kind, size and quality, or the actual expenditure incurred in rebuilding, repairing or replacing on the same or another site. If the property damaged or destroyed is useless to the insured or is not repaired, rebuilt or replaced, on the same or another site, within two years after the loss, **Insurers** shall not be liable for more than the actual cash value with proper deduction for depreciation.
- B. On machinery, equipment, furniture, fixtures and improvements and betterments at the repair or replacement cost new, whichever is less.
- C. Electronic Data Processing Equipment at replacement cost new.
- D. **Valuable Papers and Records** including, but not limited to, media, books, maps, films, drawings, abstracts, evidence of debt, deeds, mortgages, mortgage files, manuscripts and micro or electronically/magnetically inscribed documents/media, at the value blank plus the cost of labor, service and/or supplies for actually reconstructing, reproducing, recreating, transcribing or copying such papers and records.
- E. **Fine Arts** owned by the **Insured** at the cost of reasonably restoring the property to its condition immediately prior to the loss or in the event that the property cannot be restored at the appraised value prior to the loss. In absence of such appraisal, at the market value at the time of loss, plus the **Insured's** costs.

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Fine Arts, which is the property of others, at the **Insured's** option, either at the cost of reasonably restoring the property to its condition immediately prior to loss, or the **Insured's** contractual or legal liability.

- F. Finished products and other merchandise for sale including merchandise sold but not delivered, at the **Insured's** selling price less discounts to which the goods would have been subject had no loss occurred.
- G. Property of others in the **Insured's** care, custody or control, and property leased by the **Insured**, at the **Insured's** option:
 - 1. the replacement cost new
 - 2. the amount stipulated in the lease agreement
 - 3. **Insured's** contractual or legal liability.
 - 4. the cost to repair.
- H. All other property not otherwise provided for, at - replacement cost new.

It is understood and agreed that as respects replacement cost, the following shall apply:

- 1. This **Insurer** shall be allowed to dispose of, as salvage, any non-proprietary property deemed unusable by the **Insured**. If the equipment is replaced, the **Insured** shall have the option of replacement with equipment having technological advantages and/or representing an improvement in function and/or forming part of a program of system enhancement provided that such replacement can be accomplished without increasing the **Insurer's** liability.
- 2. Permission is granted for the **Insured** to replace the property with similar property at the same or another site within the territorial limits of the policy, but recovery is limited to what it would cost to replace on same site. If the **Insured** chooses not to repair or replace damaged or destroyed property, this policy will pay for any Capital Expenditure, whether planned or not, up to an amount equivalent to what the repair or replace cost would have been at the damaged location.

14. Policy Provisions

1. Arbitration/Appraisal

In case the **Insured** and this **Insurer** shall fail to agree as to the amount of loss or damage, each shall, on the written demand of either, select a competent and disinterested appraiser. The appraiser shall first select a competent and disinterested umpire and if they fail for 15 (Fifteen) days to agree upon such umpire, then, on request of the **Insured** or the **Insurer**, such umpire shall be selected by a judge or a court of record in the State which the property insured is located. The appraisers shall then appraise the loss or damage, stating separately sound value and loss or damage to each item; and, failing to agree, shall submit the differences only to the umpire. An award in writing, so itemized, of any two when filed with the **Insurer**, shall determine the amount of sound value and loss or damage. Each appraiser shall be paid by the party selecting him and the expenses of appraisal and umpire shall be paid by the parties. However, if the award is greater than the amount offered by the Company in payment of the loss at any time before the award is rendered, then the Company shall pay 100% of the fees and expenses for each appraiser and the umpire and for the appraisal.

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2. Assistance and Cooperation of the Insured

The **Insured** shall cooperate with this **Insurer**, and upon this **Insurer**'s request shall attend hearings and trials and shall assist in effecting settlements, securing and giving evidence, obtaining the attendance of witnesses, and in the conduct of suits.

3. Cancellation

A. This policy may be canceled at any time at the request of the **Insured** or it may be canceled by the **Insurer** by mailing to:

The Howard Hughes Corporation
Attn: Randy Kostroske
One Galleria Tower, 22nd Floor
13355 Noel Road
Dallas, TX 75240

and with copies provided to:

Lockton Companies, LLC.
Attn: Maggie Martin
2100 Ross Avenue, Suite 1400
Dallas, TX 75201

Notices of Cancellation will be mailed by the broker to loss payees and mortgagees as on file with Lockton Companies.

During the term of this policy, written notice stating when no less than Ninety (90) days thereafter, Ten (10) days for nonpayment of premium such cancellation shall be effective. This insurance may be canceled at any time by the **Insured** by surrender of this policy to the **Insurer** or by mailing or delivery to the **Insurer** written notice stating when thereafter such cancellation shall take effect. Return premium shall be allowed the **Insured** on a pro rata basis if the **Insurer** cancels and it shall be on a pro rata basis if the **Insured** cancels.

Payments or tender of any unearned premium by the **Insurer** shall not be a condition precedent to the effectiveness of cancellation, but such payment shall be made as soon as practicable.

B. The mailing of notice as aforesaid shall be sufficient proof of notice and the effective date and hour of cancellation stated in the notice shall become the end of the policy period. Delivery of such written notice either by the **Insured** or by this **Insurer** shall be equivalent to mailing.

C. Cancellation shall not affect coverage on any shipment in transit on the date of cancellation. Coverage will continue in full force until such property is safely delivered and accepted at the place of final destination.

4. Certificates of Insurance

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Any Certificate of Insurance issued in conjunction with this policy shall be issued solely as a matter of convenience or information for the addressee(s) or holder(s) of said Certificate of Insurance. In the event any Additional Insured(s) or Loss Payee(s) are so named, this policy shall be deemed to have been endorsed accordingly, subject to all other terms, conditions, and exclusions stated herein.

Lockton Companies may issue Certificates of Insurance evidencing coverage afforded by this policy.

5. **Coinsurance Waiver**

This policy is not subject to Coinsurance.

6. **Conflict of Wording**

The terms and conditions contained in this policy shall supersede those of the Insurer's basic policy and/or endorsements, which are attached to this policy, wherever the same may conflict, except those required by law. Where there is a conflict between the specific sections and general conditions of this policy, the conditions of the specific section shall prevail.

7. **Contributing Insurance**

Permission is granted for other policies written upon the same terms, conditions, and provisions irrespective of limit or attachment point as those contained in this policy. This policy shall contribute to the total of each loss otherwise payable herein to the extent of the participation of this policy in the total limit of liability stated herein.

8. **Excess Insurance**

Permission is granted for the **Insured** to have excess insurance over the limit of liability in this policy without prejudice to this policy and the existence of such insurance, if any, shall not reduce any liability under this policy.

9. **Inspection and Audit**

This **Insurer(s)** shall be permitted, but not obligated, to inspect the **Insured's** property at any time. Neither the **Insurer(s)** right to make inspections nor the making thereof nor any report thereon shall constitute an undertaking, on behalf of or for the benefit of the **Insured** or others, to determine or warrant that such property is safe.

10. **Knowledge of Occurrence**

It is agreed that knowledge of an **occurrence** by an agent, servant or employee of the **Insured** shall not in itself constitute knowledge by the **Insured**. Knowledge is understood to occur only when the Risk Management Department of the **Insured** shall have received notice from its agent, servant or employee.

11. **Liberalization**

If during the period that insurance is in force under this policy, any authorized endorsement or filed rules or regulations affecting the same are revised by statute or

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otherwise so as to broaden the insurance without additional premium charge, such extended or broadened insurance shall insure to the benefit of the **Insured** hereunder.

12. Loss Adjustment/Payable

Loss, if any, will be adjusted with and payable to The Howard Hughes Corporation or as may be directed by The Howard Hughes Corporation. Additional insured interests will also be included in loss payment as their interest may appear when named as additional named insured, lender, mortgagee and/or loss payee in the Certificates of Insurance on file with the **Insurer**.

13. Loss Adjustor

It is agreed that at the **Insured's** option, the **Insurer**, will use TBD for the adjustment of all claims made against this policy or equivalent as agreed between the **Insured** and **Insurer**. This assignment may be changed by mutual consent of the **Insured** and **Insurer**.

14. Mortgage Clause

Loss or damage, if any, under this policy shall be payable to the mortgagee (or trustee) as interest may appear, and this insurance, as to the interest of the mortgagee (or trustee) only therein, shall not be invalidated by any act or neglect of the mortgagor or owner of the described property, nor by any foreclosure or other proceedings or notice of sale relating to the property, nor by any change in the title or ownership of the property, nor by the occupation of the premises for purposes more hazardous than are permitted by this policy provided that in case the mortgagor or owner shall neglect to pay any premium due under this policy, the mortgagee (or trustee) shall, on demand, pay the same. Provided also, that the mortgagor (or trustee) shall notify this **Insurer** of any change of ownership or occupancy or increase of hazard which shall come to the knowledge of said mortgagee (or trustee) and, unless permitted by this policy, it shall be noted thereon and the mortgagee (or trustee) shall, on demand, pay the premium for such increased hazard for the term of use thereof; otherwise, this policy shall be null and void.

This **Insurer** reserves the right to cancel this policy at any time as provided by its terms, but in such case this policy shall continue in force for the benefit only of the mortgagee (or trustee) for Ninety (90) days after notice to the mortgagee (or trustee) of such cancellation and shall then cease and this **Insurer** shall have the right, on like notice, to cancel this agreement.

Wherever this **Insurer** shall pay the mortgagee (or trustee) any sum for loss or damage under this policy, and shall claim that as the mortgagor or owner, no liability therefore existed, this **Insurer** shall, to the extent of such payment, be thereupon legally subrogated to all the rights of the party to whom such payment shall be made.

15. No Control

This insurance shall not be prejudiced by any act or neglect of the owner of any building if the **Insured** is not the owner thereof, or by any act or neglect of any occupancy of any building, when such act or neglect of the owner or occupant is not within the control of the **Insured**, or by failure of the **Insured** to comply with any warranty or condition

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contained in any form or Endorsement attached to this policy with regard to any portion of the premises over which the **Insured** has no control.

16. Non-Reduction of Limits of Liability

Any loss here under shall not reduce the limit(s) of liability under this contract except for Flood and Earthquake aggregate limits as described in Clause 3.

17. Notice of Loss

The **Insured** shall report to the **Insurer** every loss or damage, which may become a claim under this insurance as soon as may be practicable after it becomes known to the Risk Management Department of the **Insured**.

18. Other Insurance

Except as referred to in Clause 13 and 14, if any property included in the terms of this policy shall, at the time of any loss, be more specifically insured with insurance purchased by the **Insured**, this policy shall extend to cover such property only so far as related to any excess of insured values not covered by such other insurance, and this policy shall be liable on such specifically insured property only for such loss as shall be in excess of the amount payable by or recoverable from such more specific insurance.

19. Pair and Set

In the event of loss of, or damage to, any article or articles which are part of a set, the measure of loss of, or damage to, such article or articles shall be, at the **Insured's** option:

- A. a reasonable and fair proportion of the total value of the set, giving consideration to the importance of said article or articles.
- B. the full value of the pair or set provided that the **Insured** surrenders the remaining article or articles of the pair or set to the Company

20. Partial Payment of Loss

In the event of a loss covered by this policy, it is understood and agreed that this **Insurer** will allow partial payments of claims subject to the policy provisions and the normal policy adjustment provisions.

To obtain said partial claim payment; the **Insured** shall submit a partial Proof of Loss with supporting documentation. It shall be lawful for the **Insured** to make claim in accordance with the valuation provisions contained in this policy.

21. Permission

Permission is hereby granted for any buildings to be and remain vacant and unoccupied without limit of time and without prejudice to the **Insured's** right of recovery for claim under this policy.

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Any change in occupancy or use of the premises or any increase in hazard shall not prejudice the **Insured's** right of recovery for claim under this policy.

22. Premium Adjustment

Premium adjustment for location and value will be performed on a quarterly basis.

23. Priority of Payments

Any recoveries made under this policy shall first apply to loss or damage not insured by the excess policy(ies). Upon exhaustion of this policy's limit, the excess policy(ies) shall step down and be liable for the loss in excess of the amount attributed to this policy as respects loss or damage insured there under subject to the excess policy(ies) limits.

24. Proof and Payment of Loss

A detailed Proof of Loss shall be filed with the **Insurer** as soon as practicable. Loss shall be adjusted with the Risk Management Department of the **Insured**, and all adjusted claims shall be paid to the **Insured** or its order. The **Insurer** will pay for covered loss within Thirty (30) days after receiving the sworn proof of loss, if:

1. the **Insured** has complied with all the terms of the policy; and
2. the **Insurer** has reached agreement with the **Insured** or an appraisal award has been made.

For loss adjustment purposes, the **Insured** shall be considered as sole unconditional owner of the insured property, any contract or lease to the contrary notwithstanding.

25. Salvage and Recoveries

After expenses incurred in salvage or recovery are deducted, any salvage or other recovery, except recovery through subrogation proceedings and from underlying as described herein, shall accrue entirely to the benefit of the **Insurer** until the sum paid by the **Insurer** has been recovered, except for any amount assumed by the **Insured** beyond any payment made under this policy, which amount shall accrue entirely to the benefit of the **Insured** until such amount has been recovered by the **Insured**.

26. Reporting

Reporting of changes to locations and values will be provided by the **Insured** 60 days of the end of each quarter.

27. Required by Law

Any provisions, required by Law to be stated in policies issued by a subscriber hereto, shall be deemed to have been stated herein unless the statutes narrow or limit the coverage afforded by this policy and do not bar a policy from providing broader coverage.

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28. Service of Suit

It is agreed that in the event of the failure of the **Insurer** to pay an amount claimed to be due hereunder, the **Insurer**, at the request of the **Insured**, will submit to the jurisdiction of any court of competent jurisdiction within the United States and will comply with all requirements necessary to give such court jurisdiction and all matters arising here under shall be determined in accordance with the law and practice of such court, and the **Insurer** agrees that any action or proceeding against it for recovery of any claim under or by virtue of this insurance shall not be barred if commenced within the time prescribed therefore in the statutes of the State having jurisdiction.

29. Severability of Interest

Each of the **Insureds** covered by this policy will have the same protection and obligations as if the policy has been issued individually to each of them. However, the inclusion of more than one **Insured** will not operate to increase the limit of liability of the **Insurer** beyond the limit of liability stated in this policy.

30. Stepdown Dropdown

In determining the amount of any loss or damage for which this policy is excess, the total loss caused by any combination of loss or damage, one or more of which is insured against under the primary policy, shall be used even though such loss or damage is not insured against under this excess policy.

1. Any recoveries made under the primary policy shall first apply to loss or damage not insured against by this policy. Upon exhaustion of the primary policy limits, this policy shall step down and be liable for the loss in excess of the amount attributed to the primary policy as respects loss or damage insured hereunder subject to the limit of this policy.
2. If there is any other excess insurance insuring the property insured hereunder for loss or damage insured against in the primary policy but not insured by this policy, this policy shall then allocate any loss recoveries made under the primary policy in the same proportion as the amount of loss or damage insured against by this policy bears to the combined total loss. Upon exhaustion of the primary policy limits, this policy shall step down and be liable for the loss in excess of the amount attributed to the primary policy as respects loss or damage insured hereunder subject to the limit of this policy.
3. Paragraph 2. shall not apply, however, when the amount of loss attributed to loss or damage insured under the primary policy, but not insured under this policy, exceed the total amount of insurance provided by the primary and excess coverage's with respect to said loss or damage. In this situation, any recoveries made under the primary policy shall first apply to loss or damage not insured by this policy. Upon exhaustion of the primary policy limits, this policy shall step down and be liable for the loss in excess of the amount attributed to the primary policy as respects loss or damage insured hereunder subject to the limit of this policy.
4. It is further agreed, in the event the **flood** and/or **earthquake** annual aggregate limits of any underlying policy are diminished or exhausted in any one policy year, the coverage provided under this policy for **flood** and/or **earthquake** shall apply as excess of any undiminished or unexhausted limits subject to the **underlying policy** deductibles.

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31. Subrogation and Subrogation Waiver

1. It is agreed that upon payment of any loss, this **Insurer** is subrogated to all the rights of the **Insured** to the extent of such payment.

Any release or waiver of liability entered into by the **Insured** in the normal course of their business prior to loss (including bills of lading and/or receipts from carriers, bailees, warehouseman, lighterman, processors, limiting or releasing their liability) hereunder shall not affect this insurance or the right of the **Insured** to recover hereunder.

2. The right of subrogation against the **Insured's** subsidiary, affiliated, or associated corporations or companies, joint ventures, partnerships or individuals, or any other party required to be insured as described herein, or any other corporations or companies associated with the **Insured** through ownership or management is waived. At the option of the **Insured**, subrogation is waived against any tenant or landlord of the **Insured**.

3. In the event of any payment under this policy, the **Insurer** shall be subrogated to the extent of such payment to all the **Insured's** rights of recovery therefore. The **Insured** shall execute all papers required and shall do anything that may be necessary to secure such right. The **Insurer** will act in concert with all other interests concerned, i.e., the **Insured** and any other company (ies) participating in the payment of any loss as primary or excess **Insurers**, in the exercise of such rights of recovery. If any amount is recovered, after deducting the costs or recovery, such amount shall be divided between the interests concerned in the proportion of their respective interests. If there should be no recovery, the expense of proceedings shall be shared proportionately by the interests instituting the proceedings.

32. Sue and Labor

In case of actual or imminent loss or damage, it shall be lawful and necessary for the **Insured**, their factors, servants or assignees, to sue, labor and travel for, in and about the defense, safeguard and recovery of the property insured hereunder, or any part thereof, without prejudice of this insurance, nor shall the acts of the **Insured** or these **Insurers** in recovering, saving, and preserving the property insured in case of loss or damage, be considered a waiver or acceptance of an abandonment. The **Insurers** will contribute according to their proportion of the sum hereby insured.

33. Suit Against the Company

No suit or action on this policy for the recovery of any claim shall be sustainable in any court of law or equity unless the **Insured** shall have fully complied with all the requirements of this policy; however, if there is any dispute between the **Insured** and the **Insurer** as to whether the **Insured** has fully complied with all the requirements of this policy, such a dispute may be resolved in a suit or action on the policy for recovery of any claim. The **Insurer** agrees that any action or proceedings against it for recovery of any loss under this policy shall not be barred if commenced within two years and one day after the **Insured** provides notice to the **Insurer** in accordance with Clause 22 above, which period shall be tolled from the date of notice until the date that the **Insured** receives the **Insurer's** final coverage decision (this two year and one day period is referred to as the "limitations period"). However, the limitations period shall not apply if by the laws of the State of the address of the **Insured** such a limitation is invalid or if the

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laws of the jurisdiction in which any such action is brought permit a longer period of time within which to commence such a suit. Furthermore, any tolling of the limitations period shall not preclude the **Insured** from bringing a suit or any other proceeding regarding recovery for any loss or of any claim hereunder during the period of tolling or at any other time. Prosecution of a suit by the **Insured** shall not be barred due to the failure of the **Insurer** to timely advise and notify the **Insured** of the expiration of any applicable dates to file and commence said suit.

It is agreed that in the event of the failure of the **Insurer** to pay any amount claimed to be due hereunder or in the event of any other dispute relating to this policy, the **Insurer**, at the request of the **Insured**, will submit to the jurisdiction of any court of competent jurisdiction within the United States and will comply with all of the requirements necessary to give such court jurisdiction and all matters hereunder shall be determined in accordance with the law and practice of such court, not including the court's law regarding choice of law. The **Insurer** shall not transfer, change venue, or remove, or seek to transfer, change venue, or remove any lawsuit filed by the **Insured** in any such court.

34. Titles of Paragraphs

The several titles of the various paragraphs of this form (and of Endorsements and Supplemental Contracts, if any, are hereafter attached to this policy) are inserted solely for convenience or reference and shall not be deemed in any way to limit or affect the provisions to which they relate.

35. Underlying Insurance

Permission is granted for the **Insured** to purchase insurance on all or any part of the deductible and against all or any of the perils covered by this policy. The existence of such underlying insurance shall not prejudice or affect any recovery otherwise payable under this policy.

15. Definitions

The following terms whenever used in this policy shall mean:

A. Accidental Occurrence

A sudden and accidental occurrence which does not result from physical loss or damage.

However, accidental occurrence does not include, under any circumstances, coverage for hostile or warlike action, nuclear reaction or radiation or pollution and contamination as excluded in Clauses 6.A., 6.B. and 6. F.

B. Architect/Engineering/Professional Fees

Any cost associated with the preparation of plans for the repair or reconstruction of the damaged property.

C. Attraction Properties

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Properties, not operated by the **Insured**, which attract potential customers to the vicinity of the **Insured's** location.

D. Contingent Time Element Location

Property that directly or indirectly prevents a direct supplier of goods and/or services to the **Insured** from rendering their goods and/or services, or property that prevents direct customers of goods and/or services from the **Insured** from accepting **Insured's** goods and/or services.

E. Earthquake

Earthquake is defined as the shaking or trembling of the earth that is tectonic in origin, including, but not limited to Earthquake aftershocks, volcanic eruption (the sudden **Occurrence** of a violent discharge of steam and volcanic material) or earth sinking, rising or shifting, regardless of any other cause or event contributing concurrently or in any other sequence of loss. However, physical loss or damage by fire, explosion, sprinkler leakage, riot, civil commotion, vandalism, malicious mischief, or theft resulting from Earthquake will not be considered to be loss by Earthquake within the terms and conditions of this Policy.

Tsunami is considered Earthquake under this Policy.

F. EDP Systems

Electronic Data Processing Systems, transferring equipment, computer systems, telecommunications systems or electronic control equipment and component parts (including, but not limited to, air conditioning systems, auxiliary generating systems, and other related power supplies).

G. EDP Media

All forms of data, converted data, electronically converted data and/or programs and/or applications and/or instructions and/or media vehicles employed in the **Insured's** data processing or production operations.

H. Equipment Breakdown

The term "Equipment Breakdown" is defined solely for the determination of the limits of liability and/or deductible(s) and application of the sue and labor section only. The term "Equipment Breakdown" shall not limit or define the perils or coverages provided elsewhere in this policy.

A. The term "Equipment Breakdown" shall mean:

- (1) Any condition or **Accidental Occurrence** within boilers or fired or unfired vessels owned by, operated by, or under the control of the **Insured** and subject to pressure or vacuum including piping or apparatus attached to and forming a part thereof, except that the words "any condition or **Accidental Occurrence**" shall not include explosion, other than explosion of the parts of a steam boiler containing steam or water, steam piping, steam turbines, or steam engines;
- (2) Mechanical breakdown of any machine or apparatus arising out of any condition or

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Accidental Occurrence within such machine or apparatus;

- (3) Electrical injury or disturbance to electrical appliances, devices, fixtures, wiring, or other electrical or electronic equipment caused by electrical currents artificially generated.

However, the term “Equipment Breakdown” does not include:

- (1) Loss or damage from fire or from the use of water or other means to extinguish fire; and
- (2) The normal operation of any safety or protective device;

B. The term “Equipment Breakdown” shall not apply to the following property:

- (1) Property in transit;
- (2) Property while in the course of construction, erection, installation, or assembly;
- (3) Electronic data processing systems used for administrative, statistical or accounting purposes;
- (4) Any sewer piping, any piping forming a part of a fire protective system, or any water piping other than:
 - (a) boiler feed water piping;
 - (b) boiler condensate return piping;
 - (c) water piping used in a heat transfer system for cooling, humidifying, or space heating purposes;
- (5) Any vehicle, aircraft, or self-propelled equipment or floating vessel
- (6) Any elevator, crane, ladle or bucket, hoist, power shovel, drag line, excavator, scale, or conveyor, but not excluding any pressure vessel, gears, engines, or electrical equipment used with a machine.

I. Fine Arts

Fine Arts shall include but not be limited to bona fide works of art, works of rarity, works of historical values, works of artistic merit, photographs, (positives and negatives) lithographs, illustrations, galley proofs, original records, and similar property.

J. Fire Brigade Charges/Fire Extinguishing Expenses

Fire fighting and/or containment charges and/or fire department service charges and other extinguishing expenses for which the **Insured** is assessed.

K. Flood

Waves, tide or tidal water, rapid accumulation of surface waters, or the rising (including overflowing or breaking of boundaries) of lakes, reservoirs, rivers, streams or other bodies of water, and mudslide or mudflow, regardless of any other cause or event contributing

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concurrently or in any other sequence of loss. However, physical loss or damage by fire, explosion, sprinkler leakage, riot, civil commotion, vandalism, malicious mischief, or theft resulting from Flood will not be considered to be loss by Flood within the terms and conditions of this Policy.

Tsunami is considered Earthquake under this Policy.

Flood/storm surge as a result of a Named Windstorm are not considered Flood under this policy.

L. Hazardous Substances

Means any substance other than ammonia that has been declared to be hazardous to health by a governmental agency.

M. Insurer

Lexington Insurance Company

N. Lease Interest

The excess rent paid for the same or similar replacement property over actual rent payable plus cash bonuses or advance rent paid (including any maintenance or operating charges) for each month during the unexpired term of the **Insured's** lease.

O. Named Windstorm

A storm that has been declared and named by the National Weather Service to be a Hurricane, Typhoon, Tropical Cyclone, or Tropical Storm

Flood/storm surge as a result of Named Windstorm are considered Named Windstorm under this policy.

P. Net Lease Interest

That sum which placed at 8% interest compounded annually would equal the Lease Interest (less any amounts otherwise payable hereunder).

Q. New Madrid Counties

Arkansas	Clay, Craighead, Crittenden, Cross, Greene, Jackson, Lawrence, Mississippi, Poinsett, Randolph, Sharp
Illinois	Alexander, Bond, Clinton, Franklin, Hardin, Jackson, Jefferson, Johnson, Madison, Massac, Monroe, Perry, Pope, Pulaski, Randolph, Saline, St. Clair, Union, Washington, Williamson
Indiana	Gibson, Pike, Posey, Vanderburgh, Warrick
Kentucky	Ballard, Calloway, Carlisle, Fulton, Graves, Hickman, Livingston, Marshall, McCracken
Mississippi	Bolivar, Coahoma, De Soto, Marshall, Tate, Tunica
Missouri	Bollinger, Butler, Cape Girardeau, Dunklin, Franklin, Iron, Jefferson, Madison, Mississippi, New Madrid, Pemiscot, Perry, Reynolds, St. Charles, St. Francois, St. Genevieve, St. Louis, Scott, Stoddard, Warren, Washington, Wayne

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Tennessee	Crockett, , Dyer, Fayette, Gibson, Hardeman, Haywood, Lake, Lauderdale, Madison, Obion, Shelby, Tipton

R. Occurrence

Means the aggregate loss by any peril or combination of perils insured against arising out of a single event.

When the term applies to **Named Windstorm**, it shall be defined as the sum total of all losses arising out of or caused by the same atmospheric disturbance during any period of 72 consecutive hours. The **Insured** shall have the right to elect the moment from which the 72 hour period shall be deemed to have commenced, provided always that no elected period of 72 hours shall commence within the period of any previous **Occurrence**. This 72 hour stipulation shall also apply to loss caused by freezing, when caused by the same weather system.

When the term applies to **Earthquake**, it shall be defined as the sum total of all the **Insured's** losses sustained during any period of 168 hours by reason of one **Earthquake** or a series of **Earthquakes** or earth movement including but not limited to volcanic eruption. The **Insured** may elect the moment from which the 168 hour period shall be deemed to have commenced, provided always that no elected period of 168 hours shall commence within the period of any previous **Occurrence**.

When the term applies to **Flood**, it shall be defined as the sum total of all losses sustained by reason of one **Flood** or a series of **Floods**.

When the term applies to theft or vandalism and malicious mischief or riot, the sum total of all losses of property and/or interests insured herein resulting from one or more fraudulent or dishonest acts committed by a person(s) acting alone or in collusion with others shall constitute one **Occurrence**.

S. Ordinary Payroll

Ordinary Payroll is the entire payroll expense for all employees of the **Insured** except officers, executives, employees under contract, and other critical employees.

T. Pacific Northwest is defined as property located in the following counties:

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

U. Property in Yard

Shall mean all common area property at a location that is not attached to any building including but not limited to: trees, plants, shrubs, land improvements, gazebos, cabanas, swimming pools, mail boxes, signs, and outdoor lighting.

V. "Special Flood Hazard Area" or "SFHA"

Locations within areas of 100-year flooding as defined by the Federal Emergency Management Agency (FEMA).

Exhibit 1-K

W. Tier 1 Counties

Alabama	Baldwin, Mobile
Florida	Entire State
Georgia	Bryan, Camden, Chatham, Glynn, Liberty, McIntosh
Hawaii	Entire State
Louisiana	Cameron, Iberia, Jefferson, Lafourche, Orleans, Plaquemines, St. Bernard, St. Mary, St. Tammany, Terrebonne, Vermillion
Mississippi	Hancock, Harrison, Jackson
North Carolina	Beaufort, Brunswick, Carteret, Craven, Dare, Hyde, New Hanover, Onslow, Pamlico, Pender
South Carolina	Beaufort, Berkley, Charleston, Colleton, Georgetown, Horry, Jasper
Texas	Aransas, Brazoria, Calhoun, Cameron, Chambers, Galveston, Harris, Jackson, Jefferson, Kennedy, Kleberg, Matagorda, Nueces, Orange, Refugio, San Patricio, Victoria, Willacy

X. Underlying Policy

An insurance policy issued to the **Insured** which is similar as respects the terms and conditions of this policy and issued for limits below the attachment point or deductible of this policy.

Y. Valuable Papers & Records

Written, printed or otherwise inscribed documents, securities, and records including but not limited to books, maps, films, drawings, abstracts, evidence of debt, deeds, mortgages, mortgage files, manuscripts and micro or electronically/magnetically inscribed documents, but not including the monetary value of monies and/or securities.

Exhibit 1-K

Endorsement #1

Insured: The Howard Hughes Corporation, et al

Insurance Company: Lexington Insurance Company

Policy Number: 021469162

Effective Date of Endorsement: April 1, 2015

It is agreed that the following is hereby made a part of this policy.

MOLD/FUNGUS CLAUSE

In consideration of the premium charged, it is hereby understood and agreed that this policy is amended as follows.

The **Insurer** shall not be liable for any loss or damage in the form of, caused by, arising out of, contributed to, or resulting from fungus, mold(s), mildew or yeast; or any spores or toxins created or produced by or emanating from such fungus, mold(s), mildew or yeast;

- (a) fungus includes, but is not limited to, any of the plants or organisms belonging to the major group fungi, lacking in chlorophyll, and including mold(s), rusts, mildews, smuts, and mushrooms;
- (b) mold(s) includes, but is not limited to, any superficial growth produced on damp or decaying organic matter or on living organisms, and fungi that produce mold(s);
- (c) spores means any dormant or reproductive body produced by or arising or emanating out of any fungus, mold(s), mildew, plants, organisms or microorganisms, regardless of any other cause or event that contributes concurrently or in any sequence to such loss.

This exclusion shall not apply to any loss or damage in the form of, caused by, contributed to or resulting from fungus, mold(s), mildew or yeast, or any spores or toxins created or produced by or emanating from such fungus, mold(s), mildew or yeast which the **Insured** establishes is a direct result of a Covered Loss not otherwise excluded by the Policy, provided that such fungus, mold(s), mildew or yeast loss or damage is reported to the **Insurer** within twelve months from the expiration date of this Policy.

All other terms, conditions, definitions, exclusions, limitations and provisions of the Policy remain the same.

Exhibit 1-K

Endorsement #2

Insured: The Howard Hughes Corporation, et al

Insurance Company: Lexington Insurance Company

Policy Number: 021469162

Effective Date of Endorsement: April 1, 2015

Joint Loss Agreement

In the event that this policy is either a boiler and machinery/equipment breakdown, all risk, named peril, difference in conditions, or an earthquake property insurance policy, which covers the same property or the same location(s), as one or more of the other policies, it is agreed that:

If there is a disagreement between the **Insurers** under this policy and such other policies either as to:

- 1) whether such damages or destruction is insured against by the boiler and machinery/equipment breakdown, all risk, named peril, difference in conditions, or an earthquake insurance policy, or
- 2) the extent of participation of this policy and such other policies in a loss which is insured against, partially or wholly, by any one of all of said policies;

this **Insurer** shall, upon written request of the **Insured**, pay to the **Insured** its proportional share of the loss which is in disagreement, but in no event more than this **Insurer** would have paid if the other said policies had not been in effect, subject to the following conditions:

- 1) the amount of the loss which is in disagreement, after making provisions for any undisputed claims payable under the said policies and after the amount of the loss is agreed upon by the **Insured** and the **Insurers**, is limited to the minimum amount remaining payable under this policy and such other policy(ies);
- 2) the **Insurers** underwriting each policy in disagreement shall simultaneously pay to the **Insured** their proportional share of said amount which is in disagreement;
- 3) the payments by the **Insurers** hereunder and acceptance of the same by the **Insured** signify the agreement of the **Insurers** to submit to and proceed with arbitration within ninety days of such payments.

One arbitrator shall be appointed by each **Insurer**, and one additional arbitrator shall be appointed by consent of the others. The decision by the arbitrators shall be binding on the **Insurers** and that judgment upon such award may be entered in any court of competent jurisdiction;

- 4) the **Insured** agrees to cooperate in connection with such arbitration, but not to intervene therein;
- 5) these provisions shall not apply unless each of the said policies in disagreement are similarly endorsed;

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- 6) acceptance by the **Insured** of sums paid pursuant to these provisions, including an arbitration award, shall not operate to alter, waive, surrender or in any way affect the rights of the **Insured** against any of the **Insurers**.

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Endorsement #3

Insured: The Howard Hughes Corporation, et al

Insurance Company: Lexington Insurance Company

Policy Number: 021469162

Effective Date of Endorsement: April 1, 2015

ELECTRONIC DATA ENDORSEMENT

1. Electronic Data Exclusion

Notwithstanding any provision to the contrary within the Policy or any endorsement thereto, it is understood and agreed as follows:-

- a) This Policy does not insure loss, damage, destruction, distortion, erasure, corruption or alteration of ELECTRONIC DATA from any cause whatsoever (including but not limited to COMPUTER VIRUS) or loss of use, reduction in functionality, cost, expense of whatsoever nature resulting therefrom, regardless of any other cause or event contributing concurrently or in any other sequence to the loss.

ELECTRONIC DATA means facts, concepts and information converted to a form useable for communications, interpretation, or processing by electronic and electromechanical data processing or electronically controlled equipment and includes programs, software, and other coded instructions for the processing and manipulation of data or the direction and manipulation of such equipment.

COMPUTER VIRUS means a set of corrupting, harmful or otherwise unauthorized instructions or code including a set of maliciously introduced unauthorized instructions or code, programmatic or otherwise, that propagate themselves through a computer system or network of whatsoever nature. COMPUTER VIRUS includes but is not limited to 'Trojan Horses', 'worms' and 'time or logic bombs'.

- b) However, in the event that a peril listed below results from any of the matters described in paragraph a) above, this Policy, subject to all its terms, conditions and exclusions, will cover physical damage occurring during the Policy period to property insured by this Policy directly caused by such listed peril.

Listed Perils are as follows:

Fire, explosion, riot, civil commotion, vehicle or aircraft impact or collision, sonic boom, theft, sprinkler leakage, sinkhole collapse, Flood, Earthquake or volcanic action, if and to the extent such perils are already covered by this or by any underlying policy.

2. Electronic Data Processing Media Valuation

Notwithstanding any provision to the contrary within the Policy or any endorsement thereto, it is understood and agreed as follows:-

Should electronic data processing media insured by this Policy suffer physical loss or damage insured by this Policy, then the basis of valuation shall be the cost to repair, replace or restore such media to

Exhibit 1-K

the condition that existed immediately prior to such loss or damage, including the cost of reproducing any ELECTRONIC DATA contained thereon, providing such media is repaired, replaced or restored. Such cost of reproduction shall include all reasonable and necessary amounts, incurred by the Assured in recreating, gathering and assembling such ELECTRONIC DATA. If the media is not repaired, replaced or restored the basis of valuation shall be the cost of the blank media. However this Policy does not insure any amount pertaining to the value of such ELECTRONIC DATA to the Assured or any other party, even if such ELECTRONIC DATA cannot be recreated, gathered or assembled.

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Endorsement #4

Insured: The Howard Hughes Corporation, et al

Insurance Company: Lexington Insurance Company

Policy Number: 021469162

Effective Date of Endorsement: April 1, 2015

Upgrade to Green

This endorsement modifies insurance provided by the policy:

The **Insured** will pay the increased cost incurred by the **Insured** to repair or replace lost or damaged building to the same general size at the same site or lost or damaged personal property for the same general use, to the minimum requirements of applicable green standards, including necessary and incurred costs to:

- hire professionals accredited pursuant to applicable green standards to participate in the repair or replacement of the building or personal property (professional fees);
- register or certify the repaired or replaced building or personal property pursuant to applicable green standards (registration fees);
- dispose of debris, certified pursuant to applicable green standards, at recycling facilities, if such debris can be recycled (recycling costs);

This Premises Coverage does not include any increase in costs, loss or damage:

- to clean up or remove pollutants from land, water or air either inside or outside of a building
- to clean up, remove, restore or replace covered property because of the presence of fungus either inside or outside of a building
- to clean up, remove, restore or replace polluted land, water or air either inside or outside of a building; or
- attributable to any green standards that were in effect, but the **Insured** did not comply with, before loss

This Upgrade To Green Standards Premises Coverage does not apply to:

- loss or damage caused by or resulting from fire which ensues from nuclear reaction or radiation, or radioactive contamination;
- the Fungus Clean-up Or Removal Premises Coverage or Pollutant Clean-up or Removal Additional Coverage; or
- Stock

The most the **Insurer** will pay in any occurrence under this Premises Coverage is the lesser of the applicable:

- Increased cost percentage of the covered direct physical loss or damage to building or personal property; or
- Limit Of Insurance for Upgrade To Green Standards – Property Damage shown in the Schedule above.

Premises Coverage's

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If a separate Limit of Insurance for Professional Fees, Registration Fees, Recycling Costs or Ventilation Costs is shown in the Schedule above, that Limit Of Insurance is the most the **Insurer** will pay for such fees or costs and is part of and will reduce the applicable Limit Of Insurance for Upgrade To Green Standards.

If Business Income With Extra Expense, Business Income with Extra Expense and Research and Development Income, Rental Income, Business Income without Extra Expense or Extra Expense is shown above, the following is added under Limits Of Insurance only with respect to the applicable premises shown in the schedule above:

Limits of Insurance

Subject to the applicable Limit Of Insurance for Business Income, Rental Income or Extra Expense shown in the Declarations, the most the **Insurer** will pay in any one occurrence for business income or rental income loss and extra expense, if such coverage is provided, attributable to any increase in the period of restoration for time required to repair or replace property to meet the minimum requirements of green standards, is the applicable Limit Of Insurance for Upgrade To Green Standards – Business Income, Rental Income or Extra Expense shown in the Schedule above.

Any payment the **Insurer** makes for **business income** or **rental income** loss and **extra expense**, if such coverage is provided, attributable to any increase in the **period of restoration** for time required to repair or replace **property** to meet the minimum requirements of **green standards**, will reduce the applicable Limit Of Insurance for Business Income, Rental Income or Extra Expense shown in the Declarations.

If the applicable Limit Of Insurance for Business Income, Rental Income or Extra Expense is less than or has been reduced to an amount that is less than the applicable Limit Of Insurance for Upgrade To Green Standards – Business Income, Rental Income Or Extra Expense, then the remaining applicable Limit Of Insurance for Business Income, Rental Income or Extra Expense is the most that will be available for any other payment.

If Business Income With Extra Expense, Business Income With Extra Expense And Research And Development Income, Rental Income, Business Income Without Extra Expense or Extra Expense is shown above, the following is added under Loss Payment Limitations:

Loss Payment Limitations

The **Insurer** will not pay for any increase in loss attributable to any increase in the **period of restoration** for time required to repair or replace **property**:

- at **dependent business premises**;
 - **in transit**;
 - at an exhibition, fair or trade show;
 - while being shipped by air;
 - at any other premises not shown in the Declarations and not shown in the Schedule above,
- to meet the minimum requirements of **green standards**.

Definitions

Exhibit 1-K

Under Definitions and only with respect to the premises shown in the Schedule above, the following are added:

Green standards means:

- the LEED^R Green Building Rating SystemTM of the United States Green Building Council;
- requirements of the Green Globes Assessment And Rating System of the Green Building Initiative;
- Energy Star^R qualified requirements; or
- other generally accepted site development, water savings, energy efficiency, materials selection and other environmental quality standards for the design and construction of **building or personal property**.

Increased cost percentage means the applicable Upgrade To Green Standards Increased Cost Percentage – Property Damage shown in the Schedule above.

Under Definitions, and only with respect to the premises shown in the Schedule above, **period of restoration** is deleted and replaced with the following:

Period of restoration means the period of time that, for **business income**, begins:

- A. immediately after the time of direct physical loss or damage by a **covered peril to property**; or
- B. on the date **operations** would have begun if the direct physical loss or damage had not occurred, when loss or damage to any of the following delays the start of **operations**:
 - 1. new **buildings** whether complete or under construction;
 - 2. alterations or additions to existing **buildings**; or
 - 3. **personal property** consisting of materials, machinery, equipment, supplies and temporary structures used in the construction of, or for making additions to, alterations or repairs to the structure.

Period of restoration means the period of time that, for **extra expense**, begins immediately after the time of direct physical loss or damage by a **covered peril to property**.

Period of restoration will continue until the **Insured's operations** are restored, with reasonable speed, to the level which would generate the **business income** amount that would have existed if no direct physical loss or damage occurred, including the time required to:

- A. repair or replace the **property**;
- B. repair or replace the **property** to comply with the minimum standards of any enforceable ordinance or law that:
 - 1. regulates the repair or replacement of any **property**;
 - 2. requires the tearing down of parts of any **property** not damaged by a **covered peril**; and
 - 3. is in force prior to the date of the direct physical loss or damage; or
- C. repair or replace the **building or personal property** to meet the requirements of **green standards**,

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not to exceed the applicable number of days shown as Extended Period in the Declarations, beginning on the date that:

- for manufacturing risks, the lost or damaged **property** is actually repaired or replaced and production capability is restored to the level that existed prior to the date the direct physical loss or damage occurred; or
- for all other risks, the lost or damaged **property** is actually repaired or replaced and the **Insured's operations** are restored.

The expiration date of this policy will not cut short the **period of restoration**.

If loss or damage occurs at a:

- **dependent business premises**; or
- utility,

for the purpose of determining **period of restoration** following such loss or damage, **property** includes:

- **personal property of a utility**; or
- **personal property of a dependent business premises**.

In determining the **business income** amount that would have existed if no direct physical loss or damage occurred, the **Insurer** will reduce such amount to the extent necessary to reflect unfavorable economic conditions attributable to the impact the **covered peril** had in the geographic area where the lost or damage **property** is located.

Period of restoration does not include any increased period required to comply with any ordinance or law:

- that the **Insured** was required to comply with before the direct physical loss or damage;
- involving any **property** outside the legal boundary of the premises shown in the Declarations;
- that regulates the repair or replacement of any **property** that was lost or damaged by an excluded peril. If direct physical loss or damage is caused by or results from both a **covered peril** and an excluded peril, the **period of restoration** only includes the length of time required to repair or replace the **property** lost or damaged by a **covered peril**; or
- that requires any insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of **fungus** or **pollutants**, except as provided under the Fungus Clean-up Or Removal Premises Coverage or the Pollutant Clean-up Or Removal Additional Coverage.

All other terms and conditions remain unchanged

Exhibit 1-K
ENDORSEMENT # 005

This endorsement, effective 12:01 AM 04/01/2015

Forms a part of policy no.: 021469162

Issued to: THE HOWARD HUGHES CORPORATION

By: LEXINGTON INSURANCE COMPANY

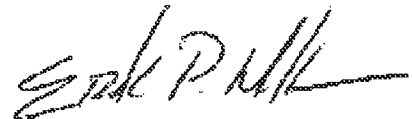
ANTI-STACKING ENDORSEMENT

The following condition is added to the policy:

If this insurance and any other insurance issued to the Insured by the Company or any entity that the Company controls, is controlled by or is under common control with applies to the same loss, claim, suit, occurrence, or accident, whichever is applicable, the maximum limit of insurance under all insurance available will not exceed the highest applicable limit of insurance available under any one policy.

However, this condition does not apply to any other insurance issued to the Insured by the Company or any entity that the Company controls, is controlled by or is under common control with which is specifically intended to be primary to, in excess of, or quota share with the policy to which this endorsement is attached.

All other terms and conditions of the policy remain the same.



Authorized Representative OR
Countersignature (In states where applicable)

Exhibit 1-K
POLLUTION, CONTAMINATION, DEBRIS REMOVAL
EXCLUSION ENDORSEMENT

1. Property Not Covered

This policy does not cover land, land values or water.

2. Pollution and Contamination Exclusion.

This policy does not cover loss or damage caused by, resulting from, contributed to or made worse by actual, alleged or threatened release, discharge, escape or dispersal of CONTAMINANTS or POLLUTANTS, all whether direct or indirect, proximate or remote or in whole or in part caused by, contributed to or aggravated by any physical damage insured by this policy.

Nevertheless, if fire is not excluded from this policy and a fire arises directly or indirectly from seepage or contamination or pollution, any loss or damage insured under this policy arising directly from that fire is insured, subject to the provisions of this policy.

CONTAMINANTS or POLLUTANTS means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste, which after its release can cause or threaten damage to human health or human welfare or causes or threatens damage, deterioration, loss of value, marketability or loss of use to property insured hereunder, including, but not limited to, bacteria, virus, or hazardous substances as listed in the Federal Water, Pollution Control Act, Clean Air Act, Resource Conservation and Recovery Act of 1976, and Toxic Substances Control Act or as designated by the U. S. Environmental Protection Agency. Waste includes materials to be recycled, reconditioned or reclaimed.

This exclusion shall not apply when loss or damage is directly caused by fire, lightning, aircraft impact, explosion, riot, civil commotion, smoke, vehicle impact, windstorm, hail, vandalism, malicious mischief. This exclusion shall also not apply when loss or damage is directly caused by leakage or accidental discharge from automatic fire protective systems.

3. Asbestos, Dioxin or Polychlorinated Biphenols Exclusions

This policy does not cover -

- a) Asbestos, dioxin or polychlorinated biphenols (hereinafter all referred to as "Materials") removal from any good, product or structure unless the asbestos is itself damaged by fire, lightning, aircraft impact, explosion, riot, civil commotion, smoke, vehicle impact, windstorm or hail, vandalism, malicious mischief, leakage or accidental discharge from automatic fire protective system.
- b) Demolition or increased cost of reconstruction, repair, debris removal or loss of use necessitated by the enforcement of any law or ordinance regulating such Materials;
- c) Any governmental direction or request declaring that such Materials present in or part of or utilized on any undamaged portion of the insured's property can no longer be used for the purpose for which it was intended or installed and must be removed or modified.

The exception to exclusion 3(a), above, does not apply to payment for the investigation or defense of any loss, damage or any undamaged portion of the insured's property can no longer be used for the purpose for which it was intended

4. Debris Removal Exclusion

The Company will pay the expense within the sum insured to remove debris of insured property damaged or destroyed by an insured peril during the policy term.

The Company will not pay the expense to:

- a) Extract contaminants or pollutants from the debris; or
- b) Extract contaminants or pollutants from land or water; or

Exhibit 1-K

- c) Remove, restore or replace contaminated or polluted land or water; or
- d) Remove or transport any property or debris to a site for storage or decontamination required because the property or debris is affected by pollutants or contaminants, whether or not such removal, transport, or decontamination is required by law or regulation.

It is a condition precedent to recovery under this extension that the Company shall have paid or agreed to pay for direct physical loss or damage to the property insured hereunder and that the Insured shall give written notice to the Company of intent to claim for cost of removal of debris or cost to clean up not later than 180 days after the date of such physical loss or damage.

5. Authorities Exclusion

Notwithstanding any of the provisions of this policy, the Company shall not be liable for loss, damage, costs, expenses, fines or penalties incurred or sustained by or imposed on the Insured at the order of any Government Agency, Court or other Authority arising from any cause whatsoever.

Exhibit 1-K

LEXINGTON INSURANCE COMPANY Standard Property Conditions

This endorsement effective 04/01/2015 forms a part of Policy Number 021469162
issued to THE HOWARD HUGHES CORPORATION

by

LEXINGTON INSURANCE COMPANY (hereinafter called "the Company").

In consideration of the premium charged, the following clauses are hereby made applicable under this policy.

MINIMUM EARNED PREMIUM CLAUSE

In the event of cancellation of this policy by the Insured, a minimum premium of \$131,250 shall become earned, any provision of the policy to the contrary notwithstanding.

Failure of the Insured to make timely payment of premium shall be considered a request by the Insured for the Company to cancel on the Insured's behalf. In the event of such cancellation for non-payment of premium, the minimum earned premium shall be due and payable; provided, however, such cancellation shall be rescinded if the Insured remits and the Company receives the full policy premium with 10 days after the date of issuance of the cancellation notice. Such remittance and acceptance by the Company shall not effect the minimum earned premium provision of this endorsement. In the event of any other cancellation by the Company, the earned premium shall be computed pro-rata, not subject to the minimum earned premium.

POLICY DEDUCTIBLE

Each claim for loss or damage separately occurring shall be adjusted separately and from each such adjusted claim, the amount of \$25,000 shall be deducted. Notwithstanding the foregoing, the deductible amount applying to certain peril(s) insured against by this policy shall be as follows:

\$ 25,000	deductible applying to	AOP AND AS PER POLICY FORM
	deductible applying to	
	deductible applying to	
	deductible applying to	
	deductible applying to	

In the event of any other insurance covering the property insured hereunder, whether or not concurrent, the deductible(s) specified herein shall apply in full against that portion of any claim for loss or damage which the Company is called upon to pay under the provisions of the Apportionment Clause irrespective of any provisions to the contrary of such other insurance.

CANCELLATION CLAUSE

Except and to the extent of the Minimum Earned Premium Clause which is part of this policy, this clause supersedes other cancellation clauses made a part of this policy.

CANCELLATION: This policy may be cancelled by the Insured by surrender thereof to the Company or by mailing to the Company written notice stating when thereafter such cancellation shall be effective. This policy may be cancelled by the Company by mailing to the Insured, at the mailing address shown in this policy or last known address, written notice, stating when, not less than 90 days thereafter (10 days for non-payment of premium) such cancellation shall be effective. The effectiveness of cancellation is not dependent on the return of unearned premium with the notice. Proof of mailing of notice as aforesaid shall be sufficient proof of notice. The effective date and hour of cancellation stated in the notice shall become the end of the policy period. Delivery of such written notice either by the Insured or the Company shall be equivalent to mailing. If the Insured cancels, earned premium shall be computed in accordance with the customary short rate table and procedure. If the Company cancels, earned premium shall be computed pro rata. Premium adjustment shall be made as soon as practicable after cancellation becomes effective.

SERVICE OF SUIT CLAUSE

Service of Suit: In the event of failure of the Company to pay any amount claimed to be due hereunder, the Company, at the request of the Insured, will submit to the jurisdiction of a court of competent jurisdiction within the United States. Nothing in this condition constitutes or should be understood to constitute a waiver of the Company's rights to commence an action in any court of competent jurisdiction in the United States to remove an action to a United States District Court or to seek a transfer of a case to another court as permitted by the laws of the United States or of any state in the United States. It is further agreed that service or process in such suit may be made upon Counsel, Legal Department, Company stated on Declarations, 99 High Street, Boston, Massachusetts 02110, or his or her representative, and that in any suit instituted against the Company upon this policy, the Company will abide by the final decision.

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of such court or of any appellate court in the event of an appeal.

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

WAR RISK EXCLUSION CLAUSE

The Company shall not be liable for any loss, caused directly or indirectly, by (1) hostile or warlike action in time of peace or war, whether or not declared, including action in hindering, combating or defending against an actual, impending or expected attack (a) by government or sovereign power (dejure or de facto) or by any authority maintaining or using military, naval or air forces; or (b) by military, naval or air forces; or (c) by an agent of any such government, power, authority or force (2) any weapon of war employing atomic fission or radioactive force whether in time of peace or war, whether or not its discharge was accidental; (3) insurrection, rebellion, revolution, civil war, usurped power, or action taken by government authority in hindering, combating, or defending against such an occurrence, seizure or destruction; (4) any consequence of any of the foregoing.

NUCLEAR EXCLUSION CLAUSE

The Company shall not be liable for loss by nuclear reaction or nuclear radiation or radioactive contamination all whether controlled or not, and whether such loss be direct or indirect, proximate or remote, or be in whole or in part caused by, contributed to, or aggravated by the peril(s) insured against in this policy. If the peril of fire is insured under this policy, then, subject to the foregoing and all provisions of this policy, direct loss by fire resulting from nuclear reaction or nuclear radiation or radioactive contamination is insured against by this policy.

SALVAGE AND RECOVERY CLAUSE

All salvages, recoveries and payments recovered or received either prior or subsequent to a loss settlement under this policy shall be applied as if recovered or received prior to the said settlement and all necessary adjustments shall be made by the parties hereto, including deduction of the Company's cost of recovery or salvage.

REPORTING CLAUSE

Notwithstanding that the Insured may be obligated to report full values for premium purposes, the Company's maximum limit of liability shall not exceed that amount stated as the policy limit of liability.

PROOF OF LOSS AND PAYMENT

The Insured shall complete and sign a sworn proof of loss within ninety (90) days after the occurrence of a loss (unless such period be extended by the written agreement of the Company) stating the time, place and cause of loss, the interest of the Insured and of all others in the property, the sound value thereof and the amount of loss or damage thereto, and all other insurance thereon. All adjusted claims shall be due and payable thirty (30) days after the presentation and acceptance of satisfactory proof(s) of loss at the office of the Company at Lexington Insurance Company, c/o ACPC, P.O. Box 2310, Alpharetta, GA 30009, Claim reporting information can also be found on our website, www.lexingtoninsurance.com.

GOVERNMENT ACTIVITY CLAUSE

The Company shall not be liable for loss or damage caused by or resulting from: (1) the seizure or destruction of property insured by this policy by any government body, including any customs or quarantine action, or (2) confiscation or destruction of any property by order of any government or public authority, except an order to destroy property to prevent the spread of fire or explosion.

IN WITNESS WHEREOF, the Company has caused this policy to be executed and attested, but this policy shall not be valid unless countersigned in the Declarations by one of its duly authorized representatives.


Secretary

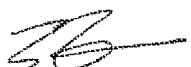

President

Exhibit 1-K

ENDORSEMENT

This endorsement, effective 12:01 AM 04/01/2015

Forms a part of policy no.: 021469162

Issued to: THE HOWARD HUGHES CORPORATION

By: LEXINGTON INSURANCE COMPANY

WAR AND TERRORISM EXCLUSION ENDORSEMENT

(Applies to locations outside the United States of America, its territories and possessions)

This endorsement modifies insurance provided by the policy:

Notwithstanding any provision to the contrary within this insurance or any endorsement thereto, it is agreed that this insurance excludes loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any of the following regardless of any other cause or event contributing concurrently or in any other sequence to the loss:

1. War, invasion, acts of foreign enemies, hostilities or warlike operations (whether war be declared or not), civil war, rebellion, revolution, insurrection, civil commotion assuming the proportions of or amounting to an uprising, military or usurped power; or
2. Any act of terrorism.

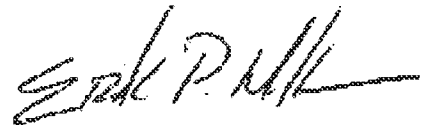
For the purpose of this endorsement an act of terrorism means an act including, but not limited to, the use of force or violence and/or the threat thereof, of any person or group(s) of persons, whether acting alone or on behalf of or in connection with any organization(s) or government(s), committed for political, religious, ideological or similar purposes including the intention to influence any government and/or to put the public, or any section of the public, in fear.

This endorsement also excludes loss, damage, cost or expense of whatsoever nature directly or indirectly caused by, resulting from or in connection with any action taken in controlling, preventing, suppressing or in any way relating to 1. and/or 2. above.

If the Underwriters allege that by reason of this exclusion, any loss, damage, cost or expense is not covered by this insurance the burden of proving the contrary shall be upon the Assured.

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

All other terms and conditions of the policy remain the same.



Authorized Representative OR
Countersignature (In states where applicable)

Exhibit 1-K
ENDORSEMENT

This endorsement, effective 12:01 AM 04/01/2015

Forms a part of policy no.: 021469162

Issued to: THE HOWARD HUGHES CORPORATION

By: LEXINGTON INSURANCE COMPANY

COMBINED PROPERTY/BOILER & MACHINERY MILLENNIUM ENDORSEMENT

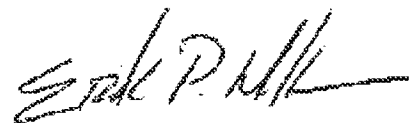
This policy is hereby amended as follows:

- A. The Insurer will not pay for Damage or Consequential Loss directly or indirectly caused by, consisting of, or arising from, the failure of any computer, data processing equipment, media microchip, operating systems, microprocessors (computer chip), integrated circuit or similar device, or any computer software, whether the property of the Insured or not, and whether occurring before, during or after the year 2000 that results from the inability to:
1. correctly recognize any date as its true calendar date;
 2. capture, save, or retain, and/or correctly manipulate, interpret or process any data or information or command or instruction as a result of treating any date other than its true calendar date; and/or
 3. capture, save, retain or correctly process any data as a result of the operation of any command which has been programmed into any computer software, being a command which causes the loss of data or the inability to capture, save, retain or correctly process such data on or after any date.
- B. It is further understood that the Insurer will not pay for the repair or modification of any part of an electronic data processing system or its related equipment, to correct deficiencies or features of logic or operation.
- C. It is further understood that the Insurer will not pay for Damage or Consequential Loss arising from the failure, inadequacy, or malfunction of any advice, consultation, design, evaluation, inspection, installation, maintenance, repair or supervision done by the Insured or for the Insured or by or for others to determine, rectify or test, any potential or actual failure, malfunction or inadequacy described in A. above.

Such Damage or Consequential Loss described in A, B, or C above, is excluded regardless of any other cause that contributed concurrently or in any other sequence.

This endorsement shall not exclude subsequent Damage or Consequential Loss, not otherwise excluded, which itself results from a Defined Peril. Defined Peril shall mean fire, lightning, explosion, aircraft or vehicle impact, falling objects, windstorm, hail, tornado, hurricane, cyclone, riot, strike, civil commotion, vandalism, malicious mischief, earthquake, volcano, tsunami, freeze or weight of snow, sudden and accidental breakdown of an object, including mechanical and electrical breakdown.

All other terms, conditions and exclusions of this policy remain unchanged.



AUTHORIZED REPRESENTATIVE

OR Countersignature (In states where applicable)

LEX 1198

LEX 195 2 CR 2118

Exhibit 1-K
ENDORSEMENT

This endorsement, effective 12:01 AM 04/01/2015

Forms a part of policy no.: 021469162

Issued to: THE HOWARD HUGHES CORPORATION

By: LEXINGTON INSURANCE COMPANY

COMBINED PROPERTY/BOILER & MACHINERY MILLENNIUM ENDORSEMENT

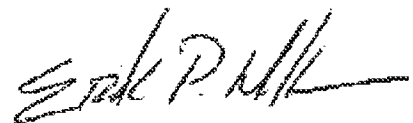
This policy is hereby amended as follows:

- A. The Insurer will not pay for Damage or Consequential Loss directly or indirectly caused by, consisting of, or arising from, the failure of any computer, data processing equipment, media microchip, operating systems, microprocessors (computer chip), integrated circuit or similar device, or any computer software, whether the property of the Insured or not, and whether occurring before, during or after the year 2000 that results from the inability to:
1. correctly recognize any date as its true calendar date;
 2. capture, save, or retain, and/or correctly manipulate, interpret or process any data or information or command or instruction as a result of treating any date other than its true calendar date; and/or
 3. capture, save, retain or correctly process any data as a result of the operation of any command which has been programmed into any computer software, being a command which causes the loss of data or the inability to capture, save, retain or correctly process such data on or after any date.
- B. It is further understood that the Insurer will not pay for the repair or modification of any part of an electronic data processing system or its related equipment, to correct deficiencies or features of logic or operation.
- C. It is further understood that the Insurer will not pay for Damage or Consequential Loss arising from the failure, inadequacy, or malfunction of any advice, consultation, design, evaluation, inspection, installation, maintenance, repair or supervision done by the Insured or for the Insured or by or for others to determine, rectify or test, any potential or actual failure, malfunction or inadequacy described in A. above.

Such Damage or Consequential Loss described in A, B, or C above, is excluded regardless of any other cause that contributed concurrently or in any other sequence.

This endorsement shall not exclude subsequent Damage or Consequential Loss, not otherwise excluded, which itself results from a Defined Peril. Defined Peril shall mean fire, lightning, explosion, aircraft or vehicle impact, falling objects, windstorm, hail, tornado, hurricane, cyclone, riot, strike, civil commotion, vandalism, malicious mischief, earthquake, volcano, tsunami, freeze or weight of snow, sudden and accidental breakdown of an object, including mechanical and electrical breakdown.

All other terms, conditions and exclusions of this policy remain unchanged.



AUTHORIZED REPRESENTATIVE

OR Countersignature (In states where applicable)

LEX 1199

LEX 196 2 CR 2119

APP - K

Debes v. General Star Indem. Co.

Court of Appeals of Texas, Ninth District, Beaumont

July 1, 2013, Submitted; July 10, 2014, Opinion Delivered

NO. 09-12-00527-CV

Reporter

2014 Tex. App. LEXIS 7473 *

WALLACE DEBES, Appellant v. GENERAL STAR INDEMNITY COMPANY, Appellee

Prior History: [*1] On Appeal from the 136th District Court, Jefferson County, Texas. Trial Cause No. D-191,415-A.

Debes v. Cahoots Entm't, Inc., 2014 Tex. App. LEXIS 7471 (Tex. App. Beaumont, July 10, 2014)

Disposition: AFFIRMED.

Case Summary

Overview

HOLDINGS: [1]-In this breach of contract action, the summary judgment evidence established that appellant was not a party to the insurance contract where appellant was not identified in the policy or in any endorsement to the policy as a named insured or an additional insured, and appellant had not presented any argument or evidence to otherwise support a finding that he was a named or additional insured under the policy; [2]-The insurance policy did not contain any language that clearly and fully spelled out an intent on behalf of the insurer and the insured to confer a direct benefit on appellant; [3]-The lease did not impose any contractual obligation, including an obligation to purchase insurance coverage, on appellant.

Outcome

Judgment affirmed.

Counsel: For Appellant: Kenneth D. Furlow, Beaumont.

For Appellee: W. Montgomery Briscoe, David K. Loveless, Eggleston & Briscoe, LLP, Houston.

Judges: Before McKeithen, C.J., Kreger and Horton, JJ.

Opinion by: CHARLES KREGER

Opinion

MEMORANDUM OPINION

Appellant Wallace Debes challenges the trial court's summary judgment in favor of appellee General Star Indemnity Company ("General Star"). In one issue, Debes asserts that the trial court erred in granting summary judgment in favor of General Star on Debes's breach of contract claim because genuine issues of material fact exist as to whether Debes was a third-party beneficiary of a policy issued by General Star that insured a commercial building owned by Debes. We affirm.

I. Factual and Procedural Background

Debes owns commercial property located at 315 I-10 North in Beaumont, Texas. In February 2004, Debes entered into a written lease with Cahoots Entertainment, Inc. ("Cahoots"), wherein Cahoots agreed to lease the property from Debes.¹ Debes signed the lease as the landlord, and Brian O'Quinn, in his capacity as the president of Cahoots, signed the lease as the tenant. In addition, Brian O'Quinn and his father, Jeffrey O'Quinn, each executed a personal guaranty of the lease.

With the exception of a two-week period during which the building on the property was closed for renovations, Cahoots operated "Alibi's" night club on the property continuously from June 7, 2004 until July 4, 2011. On July 4, 2011, a fire occurred in the building on the property, causing substantial damage to the building and its contents.

Danna O'Quinn, the wife of Brian O'Quinn, purchased a commercial property insurance policy from General Star, which covered the premises when the fire occurred. Danna is neither an officer nor director of Cahoots. She is also not a party to or a guarantor of the lease. The policy identifies "DANNA O'QUINN DBA: ALIBI'S" as the "Named Insured." No other person or entity is identified as a named insured or additional insured in the policy or in any endorsement to the policy.

After the fire, Danna made [*3] a claim under the policy for certain losses to improvements to the building and for the loss of personal property. General Star adjusted the claim and paid Danna \$429,211.93 in damages. Debes also made a claim under the policy for damages to the building from the fire and demanded payment from General Star, but General Star denied coverage on his claim.

Debes subsequently filed suit against General Star for breach of contract, alleging that General Star failed to compensate him under the policy for his property losses due to the fire. Debes also asserted breach of contract claims against Cahoots, Brian O'Quinn, Danna O'Quinn, and Jeffrey O'Quinn. General Star filed a traditional motion for summary judgment, arguing that Debes lacked standing to assert a breach of contract claim against General Star because Debes was neither an insured nor third-party beneficiary to the insurance policy. After a hearing, the trial court granted summary judgment in favor of General Star. General Star then filed an unopposed motion for severance, which the trial court granted, severing Debes's claim against General Star into a new cause and making the order granting General Star's motion for summary judgment [*4] a final, appealable order. Debes timely filed a notice of appeal.

¹ The original term of the lease [*2] was for thirty-six months, commencing April 1, 2004. The lease, therefore, expired by its own terms on April 1, 2007. The record does not reflect whether Debes and Cahoots entered into a subsequent written agreement to renew the lease. However, the evidence suggests that Cahoots continued to occupy the property until July 4, 2011, when the fire occurred.

II. Issue Presented

In one two-part issue, Debes argues that the trial court erred in granting summary judgment in favor of General Star on his breach of contract claim because genuine issues of material fact exist as to whether Debes is an intended third-party beneficiary under the insurance contract between General Star and Danna O'Quinn, and whether Debes will become a third-party beneficiary under the insurance contract if and when he obtains a judgment on his claims against Cahoots, Brian O'Quinn, Jeffery O'Quinn, and Danna O'Quinn. In response, General Star argues that the trial court correctly granted summary judgment in its favor on Debes's breach of contract claim because Debes is neither a party nor a third-party beneficiary to the insurance contract and, thus, lacks standing to enforce the insurance contract. General Star also argues that the evidence on which Debes relies to create a fact issue as to his third-party beneficiary status is inadmissible and does not constitute competent summary judgment evidence.

III. Standard of Review

We review the trial court's decision to grant a motion for summary judgment [*5] de novo. [*Tex. Mun. Power Agency v. Pub. Util. Comm'n of Tex.*, 253 S.W.3d 184, 192 \(Tex. 2007\)](#). Summary judgment is proper when the movant establishes that there is no genuine issue of material fact and that he is entitled to judgment as a matter of law. See *Tex. R. Civ. P.* 166a(c); [*Am. Tobacco Co. v. Grinnell*, 951 S.W.2d 420, 425 \(Tex. 1997\)](#). "[T]he question on appeal . . . is not whether the summary judgment proof raises fact issues[,] . . . but is whether the summary judgment proof establishes as a matter of law that there is no genuine issue of fact as to one or more of the essential elements of the plaintiff's cause of action." See [*Gibbs v. Gen. Motors Corp.*, 450 S.W.2d 827, 828 \(Tex. 1970\)](#) (emphasis omitted); see also [*Gonzalez v. Mission Am. Ins. Co.*, 795 S.W.2d 734, 736 \(Tex. 1990\)](#). When a defendant moves for summary judgment, it must either: (1) disprove at least one element of the plaintiff's theory of recovery, or (2) plead and conclusively prove each element of an affirmative defense. [*Cathey v. Booth*, 900 S.W.2d 339, 341 \(Tex. 1995\)](#).

If the movant meets its burden, the burden then shifts to the non-movant to raise a genuine issue of material fact precluding summary judgment. [*6] [*Walker v. Harris*, 924 S.W.2d 375, 377 \(Tex. 1996\)](#). The evidence raises a fact issue if reasonable and fair-minded jurors could differ in their conclusions in light of all of the summary judgment evidence. See [*Goodyear Tire & Rubber Co. v. Mayes*, 236 S.W.3d 754, 755 \(Tex. 2007\)](#). To determine if the non-movant has raised a fact issue, "a reviewing court must examine the entire record in the light most favorable to the nonmovant, indulging every reasonable inference and resolving any doubts against the motion." [*City of Keller v. Wilson*, 168 S.W.3d 802, 824 \(Tex. 2005\)](#).

IV. Discussion

In its motion for summary judgment and on appeal, General Star argues that Debes lacks standing to assert a breach of contract claim against General Star because Debes is neither an insured nor a third-party beneficiary to the insurance policy. "In Texas, 'standing' denotes the presence of a real controversy between the parties that will actually be determined by the judicial declaration sought." [*Maddox v. Vantage Energy, LLC*, 361 S.W.3d 752, 756 \(Tex. App.—Fort Worth 2012, pet. denied\)](#) (citing [*Austin Nursing Ctr., Inc. v. Lovato*, 171 S.W.3d 845, 849 \(Tex. 2005\)](#)). Standing is a necessary component of subject [*7] matter jurisdiction, without which a court lacks authority to hear a case. See [*Tex. Ass'n of Bus. v. Tex. Air Control*](#)

[Bd., 852 S.W.2d 440, 444-45 \(Tex. 1993\)](#). To establish standing to assert a claim for breach of contract, a party must prove its privity to the agreement or that it is a third-party beneficiary. [Brown v. Mesa Distribs., Inc., 414 S.W.3d 279, 284 \(Tex. App.—Houston \[1st Dist.\] 2013, no pet.\)](#); [Ostrovitz & Gwinn, LLC v. First Specialty Ins. Co., 393 S.W.3d 379, 387 \(Tex. App.—Dallas 2012, no pet.\)](#).

A. Privity under the Insurance Policy

"[P]rivacy is established by proving that the defendant was a party to an enforceable contract with either the plaintiff or a party who assigned its cause of action to the plaintiff." *OAIC Commercial Assets, L.L.C. v. Stonegate Vill., L.P.*, 234 S.W.3d 726, 738 (Tex. App.—Dallas 2007, pet. denied) (quoting [Redmon v. Griffith, 202 S.W.3d 225, 239 \(Tex. App.—Tyler 2006, pet. denied\)](#)). In the present case, the summary judgment evidence establishes that Debes is not a party to the insurance contract. "Generally, a property-insurance policy is a personal contract between the insured and the insurer." [Ostrovitz & Gwinn, 393 S.W.3d at 388](#). Here, the [*8] only "Named Insured" listed on the "Common Policy Declarations" page and the "Commercial Property Coverage Part Declarations" page is "DANNA O'QUINN DBA: ALIBI'S." Debes is not identified in the policy or in any endorsement to the policy as a named insured or an additional insured, and Debes has not presented any argument or evidence to otherwise support a finding that he is a named or additional insured under the policy.

Further, there is no evidence that Danna assigned her breach of contract claim to Debes against General Star. During its investigation of Danna's insurance claim, General Star examined Danna under oath. General Star attached the transcript of the examination as an exhibit to its motion for summary judgment. Danna's testimony during the examination establishes that she has never entered into a contract with Debes. Absent evidence that Danna had a contract with Debes, Danna's testimony precludes a finding that she contractually assigned her contract rights under the policy to Debes. See [D Design Holdings, L.P. v. MMP Corp., 339 S.W.3d 195, 200-01 \(Tex. App.—Dallas 2011, no pet.\)](#) ("An assignment is a contract between the assignor and assignee and operates by way of agreement [*9] or contract."). Debes has not argued or presented any evidence that he was assigned a breach of contract claim by Danna or anyone else purportedly in privity with General Star under the policy. Accordingly, we conclude that the summary judgment evidence established, as a matter of law, that Debes is not in privity with General Star under the policy.

B. Third-Party Beneficiary Status

We next consider whether Debes presented evidence raising a genuine issue of material fact as to his standing as a third-party beneficiary to the policy. In Texas, a third party may enforce a contract made between other parties only if the parties to the contract intended to secure some benefit to the third party, and only if the contracting parties entered into the contract directly for the third party's benefit. See [MCI Telecomms. Corp. v. Tex. Utils. Elec. Co., 995 S.W.2d 647, 651 \(Tex. 1999\)](#). If the contract confers only an indirect, incidental benefit to the third party, the third party cannot enforce the contract. [Tawes v. Barnes, 340 S.W.3d 419, 425 \(Tex. 2011\)](#).

Traditionally, Texas courts have presumed that a party contracts only for its own benefit. [Basic Capital Mgmt., Inc. v. Dynex Commercial, Inc., 348 S.W.3d 894, 900 \(Tex. 2011\)](#); [*10] [MCI Telecomms., 995 S.W.2d at 651](#). Therefore, "[t]here is a strong presumption in Texas law against third-party beneficiary agreements," and a court "must look to the terms of the contract to determine whether the contracting parties

expressly demonstrated an intent to depart from that presumption." [*Ortega v. City Nat'l Bank*, 97 S.W.3d 765, 773 \(Tex. App.—Corpus Christi 2003, no pet.\)](#); see also [*Tawes*, 340 S.W.3d at 425](#) ("Traditionally, Texas courts have maintained a presumption against third-party beneficiary agreements."); [*Marine Creek Partners, Ltd. v. Caldwell*, 926 S.W.2d 793, 795 \(Tex. App.—Fort Worth 1996, no writ\)](#) (noting that a third party faces a "difficult burden" in establishing a contractual third-party beneficiary claim).

"In determining whether a third party can enforce a contract, the intention of the contracting parties is controlling." [*Basic Capital*, 348 S.W.3d at 900](#) (quoting [*MCI Telecomms.*, 995 S.W.2d at 651](#)). "A court will not create a [third-party] beneficiary contract by implication." *Id.*; [*In re Citgo Petroleum Corp.*, 248 S.W.3d 769, 775 \(Tex. App.—Beaumont 2008, orig. proceeding\)](#) (per curiam). The intention to contract for or confer a direct benefit to a third [*11] party must be clearly and fully spelled out in the agreement itself, or enforcement by the third party must be denied. [*Basic Capital*, 348 S.W.3d at 900](#) (quoting [*MCI Telecomms.*, 995 S.W.2d at 651](#)). "In other words, the party claiming third-party beneficiary status will succeed or fail according to the terms of the contract." [*Marine Creek*, 926 S.W.2d at 795](#) (quoting [*Brunswick Corp. v. Bush*, 829 S.W.2d 352, 354 \(Tex. App.—Fort Worth 1992, no writ\)](#)). "The fact that a person is directly affected by the parties' conduct, or that he may have a substantial interest in a contract's enforcement, does not make him a third-party beneficiary." [*Maddox*, 361 S.W.3d at 757](#) (internal quotes omitted); [*Rivera v. S. Green Ltd. P'ship*, 208 S.W.3d 12, 22-23 \(Tex. App.—Houston \[14th Dist.\] 2006, pet. denied\)](#). In determining the contracting parties' intent, "[a]ll doubts must be resolved against conferring third-party beneficiary status." [*Tawes*, 340 S.W.3d at 425](#). Therefore, "[i]f there is any reasonable doubt as to the contracting parties' intent to confer a direct benefit on the third party by way of the contract, the third-party beneficiary claim must fail." [*Ortega*, 97 S.W.3d at 773](#).

To qualify as a third-party [*12] beneficiary, the plaintiff must show that he is either a donee or creditor beneficiary of the contract. [*Stine v. Stewart*, 80 S.W.3d 586, 589 \(Tex. 2002\)](#); [*MCI Telecomms.*, 995 S.W.2d at 651](#). In the present case, Debes argues that he is a creditor beneficiary to the insurance policy. A creditor beneficiary is one to whom the performance promised will come in satisfaction of a legal duty owed to him by the promisee of the agreement. [*Stine*, 80 S.W.3d at 589](#). The legal duty owed to the third party may be an indebtedness, a contractual obligation, or other legally enforceable commitment. *Id.* "To qualify as a creditor beneficiary, the maker of the contract . . . must not only have intended to confer a benefit upon the third party . . . , but it also must have intended for the third-party to have the right to enforce the agreement." [*Rivera*, 208 S.W.3d at 23](#) (citing [*MJR Corp.*, 760 S.W.2d 4, 16 \(Tex. App.—Dallas 1988, writ denied\)](#)); see also [*Ortega*, 97 S.W.3d at 774](#). Unless both intents are clearly and fully exhibited in the four corners of contract, the third party remains no more than an incidental beneficiary to the contract. See [*Rivera*, 208 S.W.3d at 23](#); [*Ortega*, 97 S.W.3d at 774](#).

In determining [*13] whether General Star and Danna intended to secure a benefit to Debes by way of the insurance policy and whether they entered into the policy directly for Debes's benefit, we must examine the text of the policy. See [*MCI Telecomms.*, 995 S.W.2d at 652](#). When interpreting a contract, we examine and consider the entire writing in an effort to harmonize and give effect to all of its provisions so that none will be rendered meaningless. [*Stine*, 80 S.W.3d at 590](#); [*MCI Telecomms.*, 995 S.W.2d at 652](#). "No single provision taken alone will be given controlling effect; rather, all the provisions must be considered with reference to the whole instrument." [*Seagull Energy E & P, Inc. v. Eland Energy, Inc.*, 207 S.W.3d 342, 345 \(Tex. 2006\)](#) (quoting [*Coker v. Coker*, 650 S.W.2d 391, 393 \(Tex. 1983\)](#)).

Reviewing the insurance policy as a whole, as we must, we conclude that the policy does not contain any language that clearly and fully spells out an intent on behalf of General Star and Danna to confer a direct benefit on Debes. As noted, Debes is not listed as a named insured or an additional insured in the policy or in any endorsement to the policy. Debes is not identified by name anywhere in the policy, [*14] either as an insured, an owner of covered property, a loss payee, or otherwise. The policy contains no language indicating that, by entering into the insurance contract, General Star and Danna intended to secure a direct benefit for, or contracted for the primary benefit of, the owners of covered property, generally. In this respect, we note that section E.4.e of the "Building and Personal Property Coverage Form," under the heading "Loss Payment," addresses payments by General Star to "owners of lost or damaged property if other than [the named insured]." Specifically, section E.4.e states in relevant part:

We may adjust losses with the owners of lost or damaged property if other than you. If we pay the owners, such payments will satisfy your claims against us for the owners' property. We will not pay the owners more than their financial interest in the Covered Property.

In *Ostrovitz & Gwinn*, the Dallas Court of Appeals examined a commercial property insurance policy to determine whether the owner of a commercial building that was damaged during a fire was a third-party beneficiary under the policy issued to the tenant of the building. [393 S.W.3d at 383, 389](#). The policy contained a provision [*15] identical to General Star's provision, and likewise organized under section E.4.e. [Id. at 389](#). In that case, the policy identified the tenant as the named insured. [Id. at 383, 389](#). The owner of the property was not listed as a named or additional insured under the policy, but was identified in an endorsement to the policy as a loss payee. [Id. at 383](#). Concluding that the language of section E.4.e did not clearly and fully express an intention by the insurer and the tenant to confer a direct benefit on the owner of the property, the court explained:

On our reading of section E.4.e, [the insurer] reserves the right—but assumes no obligation—to adjust losses with and pay an owner of covered property who is not a named insured. The provision further establishes that such payments will count towards satisfaction of any claim by the named insured. But section E.4.e does not clearly show an intent by Tenant and [the insurer] to confer a direct benefit on [the owner]. Rather, section E.4.e seems to confer a right on [the insurer] by giving [the insurer] the option of paying the owners of covered property, even if the owners are not named insureds, and providing that such payments will satisfy [*16] the named insured's claim for the owner's property.

[Id. at 389](#). In concluding that section E.4.e did not support the owner's claim that it was a third-party beneficiary to the insurance contract, the court focused on the fact that the language of section E.4.e did not contractually obligate the insurer to adjust losses with or pay the owner of the covered property. [Id. at 389-90](#). Instead, it merely gave the insurer the right, to be exercised at the insurer's sole option, to adjust the owner's losses and pay the owner in the event of a covered loss. [Id. at 389](#). Based on the policy language, the court concluded that the intent of the contracting parties in agreeing to section E.4.e was not to confer a benefit on the third-party property owner, but to reserve a right in favor of the insurer. *Id.* Accordingly, the court concluded that the insurance policy did not "clearly and fully spell out the necessary intention" by the tenant and the insurer to confer a direct benefit on the owner of the property to make the owner a third-party beneficiary of the policy. [Id. at 392](#).

We agree with the reasoning in *Ostrovitz* and conclude that section E.4.e of General Star's policy does not clearly and unequivocally [*17] spell out an intention by General Star and Danna to confer a direct benefit on Debes, as an "owner[] of lost or damaged property[.]" Like the policy provision in *Ostrovitz*, section E.4.e of the policy before us does not contain language that contractually obligates General Star to adjust

losses with or make a payment to an owner of lost or damaged property in the event of a covered loss. Instead, section E.4.e merely expresses an intention by the parties to confer a right on General Star by giving General Star the option of paying the owner and providing that any such payments will satisfy the named insured's claim for the owner's property. We conclude, therefore, that section E.4.e does not confer third-party beneficiary status on Debes.

Further, we note that the policy contains no language that identifies any indebtedness, contractual obligation, or other legal duty owed by either Danna or General Star to Debes, and it contains no language requiring either Danna or General Star to undertake any action to discharge or protect any indebtedness, contractual obligation, or other legal duty owed to Debes. Compare [Stine, 80 S.W.3d at 590](#) (concluding that plaintiff was third-party creditor [*18] beneficiary to contract where contract identified existing obligation owed to plaintiff and expressed an intent that defendant satisfy that obligation), with [Ortega, 97 S.W.3d at 774-76](#) (concluding that the plaintiffs were not third-party beneficiaries when the contract failed to identify any legal obligation owed to the plaintiffs and did not require either party to the contract to undertake any action to satisfy any legal obligation owed to the plaintiffs). There is also no language in the policy that indicates that Debes may sue to enforce the policy to secure the performance of an action intended to discharge or protect a legal obligation owed to him. See [Ortega, 97 S.W.3d at 774](#). Reviewing the insurance policy as a whole, we agree with General Star that the policy does not express an intention by General Star and Danna to secure a benefit to Debes, and it contains no language indicating that they entered into the insurance contract with the intent to directly benefit Debes. Accordingly, at most, the policy language establishes that Debes was only an incidental beneficiary to the insurance contract.

Despite the plain language of the policy, Debes argues that genuine issues of material [*19] fact exist as to whether he is a third-party beneficiary to the policy because, he contends, the policy was purchased for the purpose of satisfying Cahoots's contractual obligation under the lease to purchase insurance coverage for the protection of Debes's interest in the leased property. Therefore, Debes argues, he is a creditor beneficiary under the policy and can enforce the policy to collect insurance proceeds for the damage to his building. We disagree.

First, in order for Debes to be a third-party creditor beneficiary to the insurance policy with standing to enforce the policy against General Star, Debes was required to identify a legal obligation owed to him by Danna under the policy, that General Star's performance under the policy was intended to satisfy. See [Stine, 80 S.W.3d at 589](#) ("[A]n agreement benefits a 'creditor' beneficiary if, under the agreement, 'that performance will come to him in satisfaction of a legal duty owed to him by the promisee.'"). Debes, however, failed to identify or present evidence of a legal obligation owed by Danna to Debes.² Danna is neither a party nor a guarantor to the lease. The lease, therefore, does not impose any contractual obligation, [*20] including an obligation to purchase insurance coverage, on Danna. Further, General Star presented summary judgment evidence establishing that Danna has never entered into a contractual relationship with Debes at any time. Debes made no effort to contradict this evidence with competent summary judgment evidence of his own. We conclude that General Star conclusively established that Danna did not owe a legal obligation to Debes that General Star's performance under the policy was intended to satisfy.

² Debes does not argue and has presented no evidence that Danna has personal liability under the lease by virtue of the fact that she is the wife of Brian O'Quinn, who personally guaranteed the lease. See [Tex. Fam. Code Ann. § 3.201](#) (West 2006). Therefore, we express no opinion on the merits of such an argument.

Second, contrary to Debes's argument, the lease does not require the purchase of insurance coverage protecting Debes's interest in the leased property. Article X of the lease, entitled "INSURANCE; FIRE & CASUALTY DAMAGE," states, in relevant part:

Tenant shall maintain fire and extended coverage insurance in a minimum amount of \$500,000.00 on the **PREMISES** (the "Casualty Insurance") for [*21] it's [sic] own benefit, subject to the following provisions of this paragraph.

Landlord shall repair any damage or destruction to the **PREMISES** (but not to **Tenant's** property) caused by any peril covered by the Casualty Insurance, to the extent **Landlord** receives proceeds from the Casualty Insurance.

The plain language of the lease establishes that Cahoots, as "Tenant," was required to purchase fire and extended coverage insurance for Cahoots's own benefit. Although Article X requires Debes, as "Landlord," to make certain repairs to the property "to the extent **Landlord** receives proceeds from" the insurance obtained by Cahoots, nothing in Article X requires Cahoots or anyone else to obtain insurance coverage for the benefit or protection of Debes. Therefore, Debes has failed to identify a contractual obligation owed to him by anyone, including Cahoots, to purchase insurance coverage protecting his interest in the leased property.

Despite the clear language of Article X, Debes argues that the parties to the lease actually intended for Cahoots to purchase insurance coverage for the leased premises for the benefit of both Cahoots *and* Debes. This intent, he contends, is evidenced by certain statements [*22] allegedly made by Jeffrey O'Quinn to Debes during a meeting to negotiate the terms of the lease. In support of this argument, Debes relies only on the following allegations contained in paragraph 4 of his response to General Star's motion for summary judgment:

Debes and Jeffrey O'Quinn had been business partners prior to the execution of the subject Lease. Both Debes and Jeffrey O'Quinn met at the office of Kenneth D. Furlow to discuss the terms of the Lease. Jeffrey O'Quinn wanted to pay for the fire and other casualty insurance and agreed to carry at least \$500,000.00 for the protection of Landlord and an additional amount to protect Tenant. Jeffrey O'Quinn wanted Cahoot's [sic] to be able to dictate the repairs to be done out of the payment of insurance, so the language was for that purpose, however, Debes is definitely a third party beneficiary under the policy.

At the end of his summary judgment response, Debes included a "Sworn Affidavit," in which Debes stated, under oath: "I am duly authorized to sign this Affidavit and have personal knowledge of the correctness and truth of the allegations in this Motion." Debes did not attach any other affidavits or evidence to his response. [*23] It is well-settled that "[a] party may not support its response to a motion for summary judgment with a document in the form of an affidavit in which the party attempts to verify the truth and correctness of all 'allegations and facts' in the response." [*Olsen v. Comm'n for Lawyer Discipline*, 347 S.W.3d 876, 886 \(Tex. App.—Dallas 2011, pet. denied\)](#); see also [*Livingston Ford Mercury, Inc. v. Haley*, 997 S.W.2d 425, 431 \(Tex. App.—Beaumont 1999, no pet.\)](#); [*Keenan v. Gibraltar Sav. Ass'n*, 754 S.W.2d 392, 394 \(Tex. App.—Houston \[14th Dist.\] 1988, no writ\)](#). "Such a document amounts to nothing more than a verified responsive pleading, which is not competent summary judgment evidence." [*Olsen*, 347 S.W.3d at 886](#); see also [*Livingston Ford*, 997 S.W.2d at 431](#). Rather, "[t]o effectively oppose a motion for summary judgment, the affidavit must *itself* set forth facts and show that the affiant is competent to testify to those facts." [*Olsen*, 347 S.W.3d at 886](#) (internal quotes omitted); see also [*Webster v. Allstate Ins. Co.*, 833 S.W.2d 747, 749 \(Tex. App.—Houston \[1st Dist.\] 1992, no writ\)](#). Accordingly, we find that the sworn statements

contained in paragraph 4 of Debes's summary judgment response do not [*24] constitute competent summary judgment evidence and are insufficient to raise a fact issue precluding summary judgment in favor of General Star.

Finally, even if the statements contained in paragraph 4 of Debes's summary judgment response constituted competent summary judgment evidence, they do not raise a genuine issue of material fact as to Debes's status as a third-party beneficiary to the insurance policy. As stated above, in order for Debes to be a third-party creditor beneficiary to the insurance policy with standing to enforce the policy against General Star, Debes was required to identify a legal obligation owed to him by Danna that General Star's performance under the policy was intended to satisfy. See [Ortega, 97 S.W.3d at 774](#). The statements contained in paragraph 4 of Debes's response, however, relate only to alleged agreements made by Jeffrey O'Quinn on behalf of himself or possibly Cahoots; they do not constitute evidence of any legal obligation owed by Danna to Debes. In other words, even if we assume that Jeffrey O'Quinn did orally agree during the lease negotiations to purchase at least \$500,000 in fire and other casualty insurance for the protection of Debes and to [*25] purchase additional insurance for the protection of Cahoots, as Debes argues, such an agreement does not impose any sort of contractual obligation on Danna that General Star's performance under the insurance policy was intended to satisfy. Therefore, the statements contained in paragraph 4 of Debes's summary judgment response do not raise a fact issue as to whether Debes was a third-party beneficiary to the insurance policy. We overrule the first part of Debes's sole issue on appeal.

Debes also argues that he will become a third-party creditor beneficiary to the insurance contract if and when he obtains a judgment on his claims against Cahoots, Jeffrey O'Quinn, Brian O'Quinn, and Danna O'Quinn. Therefore, Debes contends, the trial court erred in granting summary judgment in favor of General Star when the issue of the other defendants' liability to Debes remains unresolved. Debes relies heavily on [P.G. Bell Co. v. U.S. Fid. & Guar. Co., 853 S.W.2d 187 \(Tex. App.—Corpus Christi 1993, no writ\)](#), in support of this argument.

In *P.G. Bell*, a contractor entered into a contract with a subcontractor for the subcontractor to erect precast concrete slabs in connection with a construction project. [*26] [Id. at 188](#). As part of the contract, the subcontractor agreed to present the contractor with certificates of insurance proving it had comprehensive general liability coverage. *Id.* In accordance with the terms of the contract, the subcontractor presented the contractor with proof of a comprehensive general liability insurance policy. *Id.* The policy covered all sums the subcontractor would become legally obligated to pay for damage to covered property of the contractor and provided that the insurer of the policy had a right and duty to defend any suit filed against the subcontractor related to property covered by the policy. *Id.* After the subcontractor cracked one of the slabs during the construction project and refused to pay for the damages, the contractor filed suit against the subcontractor and subsequently took a default judgment against it. *Id.* After the issuer of the policy refused to pay the judgment awarded the contractor, the contractor filed suit against the issuer of the policy, alleging claims for breach of contract, breach of the duty of good faith and fair dealing, violations of the Deceptive Trade Practices Act, and to recover the amount of the default judgment taken [*27] against the subcontractor. *Id.* The insurer filed a motion for summary judgment, asserting, *inter alia*, that the contractor could not bring a breach of contract claim against the insurer because it was not a party to the insurance policy. [Id. at 188-89](#). The trial court granted summary judgment in favor of the insurer. [Id. at 189](#).

On appeal, the contractor argued that the trial court erred in granting summary judgment on its breach of contract claim against the insurer because the contractor was a judgment creditor of the subcontractor and,

under the terms of the policy, was entitled to enforce the policy against the insurer to recover the amount of the default judgment up to policy limits. [Id. at 189](#). The court reversed and remanded the trial court's order granting summary judgment in favor of the insurer. [Id. at 193](#). The court explained:

This court recently held that an entity becomes a [third-party] beneficiary to an insurance contract when it obtains a judgment against the insured; at that time, the entity becomes a [third-party] judgment creditor. [Third-party] judgment creditors are bound by the rights, duties, and obligations of the insured under the terms and conditions of the [*28] contract between the insurance company and the insured.

[Id. at 189](#) (citations omitted). The court then pointed to the following language of the policy, which expressly provided that a third party who has secured a judgment against the insured could enforce the policy against the insurer to recover the amount of the judgment under the policy to the extent of the policy limits:

5. Action Against Company No action shall lie against the Company unless . . . the amount of the **Insured's** obligation to pay shall have been fully determined . . . by judgment against the **Insured** after actual trial Any person or organization or the legal representative thereof who has secured such judgment or written agreement shall thereafter be entitled to recover under this policy to the extent of the insurance afforded by this policy.

[Id. at 190](#) (emphasis in original). Relying on this policy language, the court concluded that the contractor became a third-party beneficiary to the insurer's liability policy when it obtained the default judgment against the subcontractor and that the contractor had standing to assert a breach of contract cause of action against the insurer to recover the amount of the default [*29] judgment up to the policy limits. [Id. at 189-90](#).

We find [P.G. Bell](#) to be distinguishable from the present case. The insurance policy in *P.G. Bell* was a third-party liability policy. Third-party insurance "requires the insurer to perform its duty to indemnify not directly to the insured[,] but directly, on the insured's behalf, to a third-party claimant injured by the insured's conduct." [Hartman v. St. Paul Fire & Marine Ins. Co., 55 F. Supp. 2d 600, 603 \(N.D. Tex. 1998\)](#) (applying Texas law) (citing 1 ERIC MILLS HOLMES & MARK S. RHODES, APPLEMAN ON INSURANCE 2D § 3.3 (1st ed.1996)) ("Liability insurance is customarily described and classified as third-party insurance because the liability insurer's duty to pay runs not directly to the insured but directly (on the insured's behalf) to a third-party claimant who is injured by the insured's conduct."). The intent of the parties to a third-party liability contract is to indemnify, and if the third-party obtains a judgment, the policy confers a direct benefit to a third-party claimant injured by the insured. As such, a third-party claimant who has obtained a judgment against the insured for a covered loss under the third-party liability policy [*30] has been held to be a third-party beneficiary to the liability policy. See [P.G. Bell, 853 S.W.2d at 189](#); [Filley v. Ohio Cas. Ins. Co., 805 S.W.2d 844, 847 \(Tex. App.—Corpus Christi 1991, writ denied\)](#).

By contrast, the insurance policy in the present case is a first-party property coverage policy. The purpose of first-party insurance is to "reimburse[] the insured for losses that he incurs as a result of injury to himself or damage to property that he owns or leases." [Am. Nat'l Fire Ins. Co. v. Hammer Trucking, Inc., No. 2-04-327-CV, 2006 Tex. App. LEXIS 9774, 2006 WL 3247906, at *2 n.16 \(Tex. App.—Fort Worth Nov. 9, 2006, pet. denied\)](#) (mem. op.) (quoting 1 BARRY R. OSTRAGER & THOMAS R. NEWMAN, HANDBOOK ON INSURANCE COVERAGE DISPUTES § 12.12(a) (12th ed. 2004)). "The classic example of first-party insurance is property insurance." [Hartman, 55 F. Supp. 2d at 603](#) (quoting HOLMES & RHODES, APPLEMAN ON

INSURANCE 2D § 3.2). Unlike third-party liability policies, first-party "[p]roperty insurance policies are 'intended solely to indemnify the insured for his actual monetary loss by the occurrence of the disaster[.]'" *Highlands Ins. Co. v. City of Galveston ex. rel. Bd. of Trustees of Galveston Wharves*, 721 S.W.2d 469, 471 (Tex. App.—Houston [14th Dist.] 1986, writ ref'd n.r.e.) [*31] (quoting 4 J. APPLEMAN, INSURANCE LAW & PRACTICE § 2107 (rev. 1969)). Because the policy in the present case is a first-party policy, the purpose of which is to indemnify the insured, Danna O'Quinn, for her own direct losses, we find the rule established in [P.G. Bell](#) to be inapplicable to the present case.

Further, unlike the policy in [P.G. Bell](#), the insurance policy in the present case does not contain any language that provides a third party who has secured a judgment against an insured for a covered loss with a right to enforce the policy against the insurer to recover the amount of the judgment up to the policy limits. Such contract language was central to the court's holding in *P.G. Bell* that the contractor was a third-party beneficiary to the policy. See [P.G. Bell, 853 S.W.2d at 190](#); see also [Basic Capital, 348 S.W.3d at 900](#) (concluding that a contract confers third-party beneficiary status if "[t]he intention to contract or confer a direct benefit to a third party must be clearly and fully spelled out or enforcement by the third party must be denied."). Accordingly, the absence of similar policy language expressly providing Debes with a right to recover under the policy also [*32] renders the *P.G. Bell* case inapplicable to the present case. We overrule the second part of Debes's sole issue on appeal.

General Star has established as a matter of law that Debes was not in contractual privity with General Star and was not a third-party beneficiary to the insurance policy. Debes, therefore, lacked standing to bring a claim against General Star for breach of the insurance contract. We conclude that the trial court properly granted summary judgment in favor of General Star on Debes's breach of contract claim. We affirm the trial court's order.

AFFIRMED.

CHARLES KREGER

Justice

Submitted on July 1, 2013

Opinion Delivered July 10, 2014

APP - L

Tex. Ins. Code § 541.060

*** This document is current through the 2025 Regular Session and the 2nd C.S. of the 89th Legislature. ***

Sec. 541.060. Unfair Settlement Practices.

(a) It is an unfair method of competition or an unfair or deceptive act or practice in the business of insurance to engage in the following unfair settlement practices with respect to a claim by an insured or beneficiary:

(1) misrepresenting to a claimant a material fact or policy provision relating to coverage at issue;

(2) failing to attempt in good faith to effectuate a prompt, fair, and equitable settlement of:

(A) a claim with respect to which the insurer's liability has become reasonably clear; or

(B) a claim under one portion of a policy with respect to which the insurer's liability has become reasonably clear to influence the claimant to settle another claim under another portion of the coverage unless payment under one portion of the coverage constitutes evidence of liability under another portion;

(3) failing to promptly provide to a policyholder a reasonable explanation of the basis in the policy, in relation to the facts or applicable law, for the insurer's denial of a claim or offer of a compromise settlement of a claim;

(4) failing within a reasonable time to:

(A) affirm or deny coverage of a claim to a policyholder; or

(B) submit a reservation of rights to a policyholder;

(5) refusing, failing, or unreasonably delaying a settlement offer under applicable first-party coverage on the basis that other coverage may be available or that third parties are responsible for the damages suffered, except as may be specifically provided in the policy;

(6) undertaking to enforce a full and final release of a claim from a policyholder when only a partial payment has been made, unless the payment is a compromise settlement of a doubtful or disputed claim;

(7) refusing to pay a claim without conducting a reasonable investigation with respect to the claim;

(8) with respect to a Texas personal automobile insurance policy, delaying or refusing settlement of a claim solely because there is other insurance of a different kind available to satisfy all or part of the loss forming the basis of that claim; or

(9) requiring a claimant as a condition of settling a claim to produce the claimant's federal income tax returns for examination or investigation by the person unless:

- (A)** a court orders the claimant to produce those tax returns;
- (B)** the claim involves a fire loss; or
- (C)** the claim involves lost profits or income.

(b) Subsection (a) does not provide a cause of action to a third party asserting one or more claims against an insured covered under a liability insurance policy.

History

Enacted by [Acts 2003, 78th Leg., ch. 1274 \(H.B. 2922\), § 2](#), effective April 1, 2005.

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