

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

Docket No. 217-2003-EQ-00106

**In the Matter of the Liquidation of
The Home Insurance Company**

**LIQUIDATOR'S MOTION FOR APPROVAL OF
THIRD AMENDMENT TO NEW YORK LEASE**

David J. Bettencourt, Insurance Commissioner of the State of New Hampshire, as Liquidator ("Liquidator") of The Home Insurance Company ("Home"), hereby moves for approval of an amendment to the lease for the liquidation's offices at 61 Broadway, New York, New York. The proposed Third Amendment of Lease ("Third Amendment") between the Liquidator and RXR 61 Broadway Owner LLC ("Landlord") is attached as Exhibit A. As reasons therefor, the Liquidator states:

Background

1. Home had its principal offices in New York City for decades before it was placed in liquidation in 2003. In 2003, Home's offices occupied several floors of a large skyscraper at 59 Maiden Lane, New York, New York. The Liquidator sought to reduce lease expense in light of the needs of the liquidation as compared to Home in run-off. In 2010, the Liquidator negotiated a new lease for significantly less space in the pre-World War II building at 61 Broadway, New York, New York. Affidavit of Peter A. Bengelsdorf, Special Deputy Liquidator, in Support of Motion for Approval of Third Amendment to New York Lease ("Bengelsdorf Aff.") ¶ 3.

2. The Liquidator moved for approval of the Agreement of Lease dated March 29, 2010 ("Lease") between the Liquidator and 61 Broadway Owner LLC for space at 61 Broadway

on April 5, 2010. The Court approved the Lease on April 21, 2010. The original leased space totaled approximately 24,000 square feet consisting of the entire sixth floor and certain basement space at 61 Broadway. The Lease has an expiration date of January 31, 2026. It was subject to certain options to reduce space and an option to extend the term of the lease for an additional five years if notice to extend is provided by January 31, 2025. Bengelsdorf Aff. ¶ 4.

3. As the liquidation has progressed, the Liquidator's need for space for operations and storage has decreased. Accordingly, the Liquidator has exercised options to reduce the space occupied by the Home liquidation. The Liquidator exercised one option by an Amendment to Lease dated May 24, 2017 and another by the Second Amendment of Lease dated January 11, 2021. Under the Lease, as amended by these two amendments, the Home liquidation presently occupies approximately 7,949 square feet at 61 Broadway consisting of a portion of the sixth floor and certain ancillary basement space. Bengelsdorf Aff. ¶ 5.

4. During the pandemic, the liquidation staff and consultants for the most part transitioned to working remotely from home. They continue to work remotely. Only a few staff are regularly in the office. The office space provides for meetings, the work by the few staff routinely in the office, and records, and it holds the liquidation's computer servers and related information technology operations. Bengelsdorf Aff. ¶ 6.

5. The Lease includes an option for the Liquidator to extend the Lease for an additional five years, from January 31, 2026 to January 31, 2031, if notice to extend is provided by January 31, 2025. Given the progress of the liquidation and the reduced need for office space in the current remote work environment, the Liquidator does not believe it appropriate to extend the lease for the existing space for the additional five years. However, the Liquidator believes it

would be desirable to continue to have space at 61 Broadway for a lesser period after the expiration of the current lease on January 31, 2026. See Bengelsdorf Aff. ¶ 7.

6. The Landlord has advised the Liquidator that, due to the office real estate market in New York City and an outstanding loan on 61 Broadway, the Landlord and the lender need flexibility to terminate the Lease to allow for potential other plans for the building. Bengelsdorf Aff. ¶ 8.

7. In the circumstances, the Landlord and the Liquidator have agreed on the Third Amendment to Lease to extend the Lease for a period while providing both the Landlord and the Liquidator with some flexibility concerning termination of the Lease. Bengelsdorf Aff. ¶ 9.

8. The Third Amendment is a negotiated result acceptable to both the Liquidator and the Landlord. It is subject to approval by the Court. Third Amendment § 16. Bengelsdorf Aff. ¶ 10.

9. The Third Amendment provides for an extension of the Lease at least until August 1, 2027 and, if not terminated at that point by the Landlord, provides both the Liquidator and the Landlord with the ability to terminate the Lease on six months' notice. The Lease, as amended by the Third Amendment, will expire on January 31, 2031 if it has not been previously terminated. Bengelsdorf Aff. ¶ 11.

10. The Third Amendment achieves this by providing for an extension of the Lease to January 31, 2031 subject to rights to terminate. Section 2 provides for the extension to January 31, 2031, and the rights to terminate are set forth in Section 7. Bengelsdorf Aff. ¶ 12.

11. Section 7(a) provides each of the Liquidator and the Landlord with the option to terminate the Lease on any date on or after August 1, 2027 on six months' prior written notice. Section 7(b) provides the Landlord with the option to terminate the Lease any time between

August 1, 2026 and August 1, 2027 on six months' prior written notice. If the Landlord exercises this second termination option, however, the Liquidator may elect to give a notice of partial retention. In that case, the Liquidator may remain in a retained portion of the space which includes the computer room and a meeting space until August 1, 2027, and the Landlord will provide Home with substitute storage space in the building rent free in lieu of the basement space. The Landlord has also agreed to relocate Home's records from the basement to the substitute storage space at Landlord's cost. Third Amendment § 7(b)(I). In the event the liquidation space is so reduced, the rent will be reduced to 26.96% of the rent for the existing space. Third Amendment § 7(b)(III). Bengelsdorf Aff. ¶13.

12. The practical effect of the Third Amendment is to allow the liquidation's critical Information Technology operations to remain at 61 Broadway for 18 months after the existing Lease would expire without extending the Lease for five years after the existing Lease would expire. Relocating the computer equipment at the expiration of the existing Lease on January 31, 2026 would be a significant expense. Under the Third Amendment, the liquidation operations can remain in the existing 61 Broadway space until at least August 1, 2026 (six months longer than under the existing Lease) and can remain in the critical parts of the existing space until at least August 1, 2027 (18 months longer than under the existing Lease) without exercising the existing option to extend until January 31, 2031. Assuming that the Lease has not been terminated as of August 1, 2027, the Liquidator and the Landlord can then each choose to terminate the Lease on six months' notice. The Liquidator has thus obtained an 18-month extension of the key liquidation operations, and potentially more if needed, without binding the estate to pay for five years as under the existing Lease option. Bengelsdorf Aff. ¶ 14.

13. During the extended period, the liquidation operation will continue to reduce in number and to dispose of records so that less space will be necessary in the future. The liquidation's Information Technology team will continue to prepare to transition the remaining records needed for the conclusion of the liquidation from the existing computer servers to a smaller PC environment with reduced size and posing fewer maintenance demands. The Liquidator anticipates that, if there is a need to relocate after August 1, 2027, the costs of the move will be significantly less than if the move were to occur at the expiration of the existing Lease on January 31, 2026. Similarly, the cost of relocating and new space for the computer operation will be reduced. Bengelsdorf Aff. ¶ 15.

14. The economic terms under the Third Amendment are materially the same as those under existing Lease. The Third Amendment continues the rent and terms of the Lease as of the scheduled expiration at January 31, 2026 subject to a 2% annual increase commencing February 1, 2026. Third Amendment § 3. In the event the Landlord terminates the Lease and the Liquidator elects to retain only reduced space, the rent will be reduced to 26.96% of the rent for the existing space. Third Amendment § 7(b)(III). Bengelsdorf Aff. ¶ 16.

15. The Liquidator anticipates that by the termination of the Lease, as amended by the Third Amendment, the liquidation will be able to operate on a remote basis with space to be let on a month-to-month basis or other short-term rental when needed. The Liquidator has experience with such arrangements, as the New Hampshire office has operated in month-to-month rental space for the past several years. In addition, the Landlord has advised if the need should arise, that there is space available in other Landlord owned buildings. See Bengelsdorf Aff. ¶ 17.

16. The Liquidator recommends approval of the Third Amendment as fair and reasonable and as in the best interests of the liquidation of Home. It is fair and reasonable in that (a) it provides a negotiated extension of the Lease for an additional 18 months and potentially for longer depending on the liquidation's needs without requiring the exercise of the existing 5-year extension, and (b) it continues the economic terms of the existing Lease forward with only the 2% adjustment for inflation. It is in the best interest of the liquidation and its creditors because the negotiated extension will minimize disruption to the liquidation and permit the continued reduction of the liquidation operations so that less space will be required if and when the liquidation operation needs to move. See Bengelsdorf Aff. ¶ 18.

WHEREFORE, the Liquidator requests that the Court:

- A. Grant this Motion for Approval of Third Amendment of Lease;
- B. Enter an order in the form submitted herewith approving the Third Amendment to Lease; and
- C. Grant such other and further relief as justice may require.

Respectfully submitted,

DAVID J. BETTENCOURT, INSURANCE
COMMISSIONER OF THE STATE OF
NEW HAMPSHIRE, SOLELY AS
LIQUIDATOR OF THE HOME
INSURANCE COMPANY,

By his attorneys,

JOHN M. FORMELLA
ATTORNEY GENERAL

Christopher G. Bond
Christopher.G.Bond@doj.nh.gov
NH Bar ID No. 20161
Civil Bureau
New Hampshire Department of Justice
33 Capitol Street
Concord, NH 03301-6397
(603) 271-3650

/s/ Eric A. Smith

J. David Leslie
dleslie@verrill-law.com
NH Bar ID No. 16859
Eric A. Smith
easmith@verrill-law.com
NH Bar ID No. 16952
Verrill Dana LLP
One Federal Street, 20th Floor
Boston, MA 02110
(617) 309-2600

October 10, 2024

Certificate of Service

I hereby certify that a copy of the foregoing Liquidator's Motion for Approval of Third Amendment to New York Lease, the Affidavit of Peter A. Bengelsdorf, and the Proposed Order, were sent this 10th day of October, 2024, by first class mail, postage prepaid to all persons on the attached service list.

/s/ Eric A. Smith
Eric A. Smith
NH Bar ID No. 16952

STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

**In the Matter of the Liquidation of
The Home Insurance Company
Docket No. 217-2003-EQ-00106**

Lisa Snow Wade, Esq.
Orr & Reno
One Eagle Square
P.O. Box 3550
Concord, New Hampshire 03302-3550

Gary S. Lee, Esq.
James J. DeCristofaro, Esq.
Kathleen E. Schaaf, Esq.
Morrison & Foerster
250 West 55th Street
New York, NY 10019-9601

Joseph G. Davis, Esq.
Willkie Farr & Gallagher, LLP
1875 K Street, N.W.
Washington, DC 20006

Thomas W. Ladd, Esq.
McCarter & English, LLP
Four Gateway Center
100 Mulberry Street
Newark, NJ 07102

Michael K. Robles, Esq.
Crowell & Moring
590 Madison Avenue
20th Floor
New York, New York 10022-2544

Stephanie V. Corrao, Esq.
Crowell & Moring
1001 Pennsylvania Avenue, N.W.
Washington, DC 20004-2595

David M. Spector, Esq.
Dennis G. LaGory, Esq.
Schiff Hardin LLP
6600 Sears Tower
Chicago, Illinois 60606

Martin P. Honigberg, Esq.
Sulloway & Hollis, P.L.L.C.
9 Capitol Street
P.O. Box 1256
Concord, New Hampshire 03302-1256

Richard Mancino, Esq.
Willkie Farr & Gallagher, LLP
787 Seventh Avenue
New York, New York 10019

Albert P. Bedecarre, Esq.
Quinn Emanuel Urguhart Oliver & Hedges LLP
50 California Street, 22nd Floor
San Francisco, California 94111

Robert M. Horkovich, Esq.
Robert Y. Chung, Esq.
Anderson Kill & Olick, P.C.
1251 Avenue of the Americas
New York, New York 10020

Jeffrey W. Moss, Esq.
Morgan Lewis & Bockius, LLP
One Federal Street
Boston, Massachusetts 02110

Joseph C. Tanski, Esq.
John S. Stadler, Esq.
Nixon Peabody LLP
100 Summer Street
Boston, Massachusetts 02110

Gregory T. LoCasale, Esq.
White and Williams, LLP
One Liberty Place, Suite 1800
Philadelphia, Pennsylvania 19103-7395

John A. Hubbard
615 7th Avenue South
Great Falls, Montana 59405

Mark J. Andreini, Esq.
Jones Day
North Point
901 Lakeside Avenue
Cleveland, Ohio 44114-1190

Paul A. Zevnik, Esq.
Morgan, Lewis & Bockius LLP 1111
Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Tred R. Eyerly, Esq.
Damon Key Leon Kupchak Hastert 1003
Bishop Street, Suite 1600
Honolulu, HI 96813

David H. Simmons, Esq.
Mary Ann Etzler, Esq.
Daniel J. O'Malley, Esq.
deBeaubien, Knight, Simmons, Mantzaris
& Neal, LLP
332 North Magnolia Drive
P.O. Box 87
Orlando, FL 32801

Doreen F. Connor, Esq.
Primmer Piper Eggleston & PC
P.O. Box 3600
Manchester, NH 03105

Kyle A. Forsyth, Esq.
Commercial Litigation Branch/Civil Division
United States Department of Justice
P.O. Box 875
Washington, D.C. 20044-0875

Michael J. Tierney, Esq.
Wadleigh, Starr & Peters, PLLC
95 Market Street
Manchester, New Hampshire 03101

Harry L. Bowles
306 Big Hollow Lane
Houston, Texas 77042

Michael S. Lewis, Esq.
Rath Young Pignatelli
One Capital Plaza
Concord, New Hampshire 03302-1500

Keith Dotseth, Esq.
Larson King
2800 Wells Fargo Place
30 East Seventh Street, Suite 2800
Saint Paul, Minnesota 55101

Michel Y. Horton, Esq.
Morgan, Lewis & Bockius LLP 300 South
Grand Avenue, 22nd Floor
Los Angeles, California 90071

Joseph C. Safar
Jessica L.G. Moran
K&L Gates LLP
210 Sixth Ave.
Pittsburgh, PA 15222

Christopher J. Valente, Esq.
K&L Gates LLP
1 Congress Street, Suite 2900
Boston, Massachusetts 02114

Mr. Edward Crosby
P.O. Box 155
Crowell, TX 79227

Ms. Patricia Erway
16604 Rialto Dr.
Winter Garden, FL 34787

Mark C. Rouvalis, Esq. Steven J. Dutton, Esq.
Viggo C. Fish, Esq.
McLane Middleton, P.A.
900 Elm Street, 10th Floor
Manchester, NH 03101

Mark R. Goodman, Esq.
Joseph T. McCullough IV, Esq.
Peter B. Steffen, Esq.
Freeborn & Peters LLP
311 South Wacker Dr., Suite 3000
Chicago, IL 60606

Derek D. Lick, Esq.
Sulloway & Hollis, P.L.L.C.
9 Capitol Street
Concord, NH 03301

Mr. Howard Campbell
10011 Mosher Hollow Road Cattaraugus,
NY 14719

Linda Faye Peeples
P.O. Box 974
Fresno, TX 77545

Roland Jackson
Chief Executive Officer, Director
Catalina Services, UK Limited
1 Alie Street, 1st Floor
London, England E1 8DE

David Himelfarb, Esq.
McCarter & English, LLP
265 Franklin Street, 14th Fl.
Boston, MA 02110

EXHIBIT A

THIRD AMENDMENT OF LEASE

THIS THIRD AMENDMENT OF LEASE is made as of October 8, 2024 (this "Amendment") between **RXR 61 BROADWAY OWNER LLC**, a Delaware limited liability company having an address at 75 Rockefeller Plaza, New York, New York 10019 ("Landlord") and **DAVID J. BETTENCOURT, NEW HAMPSHIRE COMMISSIONER OF INSURANCE, SOLELY IN HIS CAPACITY AS LIQUIDATOR OF THE HOME INSURANCE COMPANY**, having an office at 61 Broadway, New York, New York 10006 ("Tenant").

WITNESSETH:

WHEREAS, Landlord and Tenant are parties to an Agreement of Lease dated as of March 29, 2010 (the "Original Lease"), as amended by Amendment of Lease dated May 24, 2017 (the "First Amendment"), and Second Amendment of Lease dated as of January 11, 2021 (the "Second Amendment"; the Original Lease as amended by the First Amendment and the Second Amendment being hereinafter called, the "Lease") now covering a portion of the sixth (6th) floor consisting of the areas shown as Unit C and Unit B-3 on Exhibit G to the Second Amendment (the "Premises") in the building located at 61 Broadway, New York, New York (the "Building") as more particularly described in the Lease.

WHEREAS, the term of the Lease is scheduled to expire on January 31, 2026; and

WHEREAS, Landlord and Tenant desire to extend the term of the Lease and otherwise amend the Lease on the terms and conditions hereinafter set forth.

NOW THEREFORE, in consideration of the mutual promises and agreements herein contained, and other good and valuable consideration the sufficiency and receipt of which is hereby acknowledged, the parties hereby agree as follows:

1. **Defined Terms**: All capitalized terms used but not otherwise defined in this Amendment shall have the meanings ascribed to them in the Lease. The provisions of this Amendment shall supersede any inconsistent provisions contained in the Lease, regardless of whether such inconsistent provisions are contained in the body of the Lease or in any rider, exhibit or schedule thereto, or in any amendment, modification, letter, notice or other written instrument executed in connection therewith or sent pursuant thereto. All references in this Amendment and the Lease to "this Lease," "this lease," or the "Lease," or similar references, shall mean the Lease as amended by this Amendment.

2. **Extension of Term**: The term of the Lease is hereby extended for the period (the "Extended Term") from February 1, 2026 (the "Extended Term Commencement Date") through and including January 31, 2031 (the "Extended Term Expiration Date"), unless sooner terminated as set forth in the Lease, on all of the terms and conditions of the Lease except as otherwise set forth in this Amendment. During the Extended Term, Tenant may continue to use the Storage Space for no additional charge other than electricity charges as provided in Section

1.B. of the Lease and otherwise in accordance with the applicable provisions of the Lease. All references in the Lease to the Expiration Date shall mean the Extended Term Expiration Date.

3. **Fixed Rent:** During the Extended Term, Tenant shall pay Rent for the Premises in the manner set forth in the Lease, at annual rates as follows:

February 1, 2026 - January 31, 2027	\$382,744.35 per annum	\$31,895.36 per month
February 1, 2027 - January 31, 2028	\$390,399.24 per annum	\$32,533.27 per month
February 1, 2028 - January 31, 2029	\$398,207.22 per annum	\$33,183.94 per month
February 1, 2029 - January 31, 2030	\$406,171.37 per annum	\$33,847.61 per month
February 1, 2030 - January 31, 2031	\$414,294.79 per annum	\$34,524.57 per month

The parties agree that the Premises shall conclusively be deemed to contain 7,949 rentable square feet.

4. **Modification of Base Tax Year:** Commencing on the Extended Term Commencement Date the term “Base Tax Year” as defined in clause (i) of Section 1.A of the Lease shall mean the Tax Year commencing on July 1, 2026 and ending on June 30, 2027.

5. **Security:** Landlord and Tenant acknowledge that Landlord is holding the sum of \$178,125.00 as security for Tenant’s obligations under the Lease as provided in Article 33 of the Lease. Landlord shall continue to hold and disburse such security as provided in Article 33 of the Lease during the Extended Term.

6. **“As-Is” Condition:** Tenant acknowledges and agrees that it is currently in occupancy of and fully familiar with the Premises and that neither Landlord nor Landlord’s agents have made any representations, warranties or promises, either express or implied, with regard to the physical condition of the Premises and Tenant agrees to accept the Premises in their “as is” condition. Landlord shall not be required to perform any work or to make any alterations or decorations or install any fixtures, equipment or improvements or make any repairs or replacements to or in any portion of the Premises to prepare the same for Tenant’s occupancy; provided, however, that the foregoing shall not limit any maintenance, repair or restoration obligations of Landlord as set forth in the Lease.

7. **Mutual Right to Terminate:**

(a) **Termination Effective No Earlier Than August 1, 2027.** During the Extended Term, Landlord and, provided Tenant is not in default under the Lease beyond the expiration of all applicable notice, grace or cure periods at the time Tenant gives the Termination Notice or on the Termination Date (as such capitalized terms are hereinafter defined), Tenant shall each have the right to terminate the Lease, effective no earlier than August 1, 2027 (the “Earliest Termination Date”) which is the date that is eighteen (18) months after the Extended Term Commencement Date. Such right to terminate the Lease may be exercised by giving at least six (6) months’ prior written notice to the other party (the “Termination Notice”) setting forth the date on which the Lease shall terminate (the “Termination Date”). The Termination Notice may be

given at any time after (but not before) the Extended Term Commencement Date. The Termination Date specified in the Termination Notice shall be no earlier than the later to occur of the following dates: (i) the Earliest Termination Date (that is, August 1, 2027), or (ii) the date which is six (6) months after the date the Termination Notice is given to the other party.

(b) Termination (or Partial Termination) Effective Prior to August 1, 2027. Notwithstanding the provisions of subparagraph (a), Landlord shall also have the right to terminate the Lease effective as of a date prior to the Earliest Termination Date (that is, prior to August 1, 2027) pursuant to, and subject to the conditions of, this subparagraph (b). Landlord may give a Termination Notice which specifies a Termination Date in the Termination Notice that is earlier than the Earliest Termination Date; provided, however, that (i) Landlord may not give such Termination Notice prior to the Extended Term Commencement Date; and (ii) Landlord may not specify a Termination Date that is earlier than six (6) months after the date that the Termination Notice has been given to Tenant. (For clarity, the effect of the preceding sentence is that the earliest possible Termination Date that may be specified in a Termination Notice given by Landlord pursuant to this subparagraph (b) is August 1, 2026, and then only if Landlord gives such Termination Notice on February 1, 2026 which is the Extended Term Commencement Date.) In the event that Landlord gives a Termination Notice pursuant to this subparagraph (b) which sets forth a Termination Date that is earlier than the Earliest Termination Date (such date, "Landlord's Partial Early Termination Date"), Tenant may elect, by giving written notice to Landlord (the "Partial Retention Notice") within thirty (30) days after receipt of the Termination Notice, to remain in occupancy for the Partial Retention Period (as hereinafter defined) of the portion of the Premises shown by shading on Exhibit A annexed hereto (the "Retained Premises"). If Tenant timely gives the Partial Retention Notice as set forth above, then Tenant may remain in occupancy of the Retained Premises after Landlord's Partial Early Termination Date for an additional period of time (the "Partial Retention Period") ending on the earlier to occur of the following dates: (x) the termination date set forth in the Partial Retention Notice, or (y) the Earliest Termination Date (that is, August 1, 2027). If Tenant timely gives the Partial Retention Notice, then:

(I) on Landlord's Partial Early Termination Date, the Lease shall end and expire with respect to all of the Premises (including the Storage Space) other than the Retained Premises (the Premises less the Retained Premises being hereinafter called the "Terminated Premises") with the same force and effect as if such date were the date scheduled for the expiration of the term of the Lease with respect to the Terminated Premises, and Tenant shall vacate and surrender the Terminated Premises in the condition required by the Lease; provided, however, that Landlord shall make available to Tenant, rent-free and at no cost to Tenant, alternative storage space within the Building ("Substitute Storage Space"), which Substitute Storage Space shall be no smaller in floor area than 2/3 of the floor area of the existing Storage Space under the Lease unless otherwise agreed upon in writing by the parties, and Landlord shall relocate, at Landlord's sole cost and

expense, Tenant's records and other materials then located in the existing Storage Space to the Substitute Storage Space;

(II) Landlord shall, at Landlord's expense, construct a demising wall to separate the Retained Premises from the Terminated Premises;

(III) during the Partial Retention Period, (x) the Rent for the Retained Premises shall be 26.96 % percent of the amount payable from time to time as Rent for the Premises, and (y) Tenant's Proportionate Share shall mean 0.2985% for purposes of determining Tenant's escalation payment under Article 28 of the Lease during the Partial Retention Period;

(IV) at the end of the Partial Retention Period, the Lease shall end and expire with respect to the entire Premises with the same force and effect as if such date were the date scheduled for the expiration of the term of the Lease and Tenant shall vacate and surrender the Retained Premises and the Substitute Storage Space to Landlord in the condition required by the Lease.

If Landlord gives a Termination Notice pursuant to this subparagraph (b) and Tenant does not timely give the Partial Retention Notice, then on Landlord's Partial Early Termination Date the Lease shall end and expire with respect to the entire Premises and the Storage Space with the same force and effect as if such date were the date scheduled for the expiration of the Term of the Lease, and Tenant shall vacate and surrender the Premises and the Storage Space in the condition required by the Lease.

8. **Acknowledgments:** In consideration of Landlord entering into this Amendment, Tenant hereby states, represents and warrants the following to Landlord:

(i) To the best of Tenant's knowledge, Landlord is not default under the Lease. The Lease is in full force and effect, and, except as modified by this Amendment, has not been modified, changed or otherwise amended.

(ii) The execution hereof shall not be deemed a waiver of any of the existing or future rights and remedies of Landlord, except as expressly set forth in this Amendment.

(iii) The execution of this Amendment has been duly authorized and the person signing on behalf of Tenant has the full power and authority to do so.

(iv) This Amendment shall not be effective unless same shall have been signed by the Landlord and delivered to the Tenant.

(v) Except as set forth in Article 42.O of the Lease, neither this Amendment nor the Lease nor any memorandum thereof or hereof shall be recorded and any

attempt at recordation shall constitute a material event of default hereunder and shall further be null and void.

9. **Broker:** Each party represents and warrants to the other that it did not deal with any broker or finder in connection with this Amendment. Tenant shall indemnify, defend, protect and hold Landlord harmless from and against any and all damages, liabilities, settlement payments, costs and expenses (including reasonable attorneys' fees incurred in defending an action or claim or enforcing this indemnity) which Landlord may incur by reason of any claim of or liability to any broker, finder or like agent arising out of any dealings claimed to have occurred between Tenant and the claimant in connection with this Amendment, or the above representation being false. Landlord shall indemnify, defend, protect and hold Tenant harmless from and against any and all damages, liabilities, settlement payments, costs and expenses (including reasonable attorneys' fees incurred in defending an action or claim or enforcing this indemnity) which Tenant may incur by reason of any claim of or liability to any broker, finder or like agent arising out of any dealings claimed to have occurred between Landlord and the claimant in connection with this Amendment, or the above representation being false. The provisions of this Article shall survive the expiration or earlier termination of the Lease and this Amendment.

10. **OFAC Representation:** Landlord and Tenant each represent to the other that as of the date of this Amendment: (a) the party making the representation (the "Representing Party") is not, and shall not be, an Embargoed Person, (b) none of the funds or other assets of the Representing Party are or shall constitute property of, or are or shall be beneficially owned, directly or indirectly, by any Embargoed Person, (c) no Embargoed Person shall have any interest of any nature whatsoever in the Representing Party, with the result that the investment in the Representing Party (whether directly or indirectly) is or would be prohibited by law or the Lease or is or would be in violation of law, and (d) none of the funds of the Representing Party are or shall be derived from any unlawful activity with the result that the investment in the Representing Party (whether directly or indirectly) is or would be prohibited by law or the Lease or is or would be in violation of law. "Embargoed Person" means a person, entity or government (i) identified on the Specially Designated Nationals and Blocked Persons List maintained by the United States Treasury Department Office of Foreign Assets Control and/or any similar list maintained pursuant to any authorizing statute, executive order or regulation and/or (ii) subject to trade restrictions under United States law, including, without limitation, the International Emergency Economic Powers Act, 50 U.S.C. § 1701 et seq., The Trading with the Enemy Act, 50 U.S.C. App. 1 et seq., and any Executive Orders or regulations promulgated under any such laws, with the result that the investment in the Representing Party (whether directly or indirectly) is or would be prohibited by law or the Lease.

11. **Modification/Confirmation:** The Lease, as amended by this Amendment, contains the entire agreement between the parties thereto relating to the transactions contemplated thereby, and all prior or contemporaneous agreements, understandings, representations and statements, oral or written, are merged therein. This Amendment may not be modified or amended other than by a written instrument executed by both parties. Except as specifically modified and amended by this Amendment, there are no other changes or modifications to the Lease and all of

the terms, covenants and conditions of the Lease are hereby ratified and confirmed and shall continue to be and remain in full force and effect.

12. **Counterparts:** This Amendment may be executed in two or more counterparts, and all counterparts so executed shall for all purposes constitute one agreement binding on all of the parties hereto, notwithstanding that all parties shall not have executed the same counterparts. Facsimile or electronic mail signatures or signatures electronically inserted and verified by software such as DocuSign or Adobe Sign shall be deemed originals.

13. **Successors and Assigns:** The covenants, agreements, terms, provisions and conditions contained in this Amendment shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

14. **Waiver of Jury Trial:** Landlord and Tenant hereby waive trial by jury in any action, proceeding or counterclaim brought by either party against the other on any matters in any way arising out of or connected with the Lease, the relationship of Landlord and Tenant, or Tenant's use or occupancy of the Premises.

15. **Governing Law:** This Amendment shall be governed in all respects by the laws of the State of New York.

16. **Court Approval.**

(a) Notwithstanding any provision of this Amendment to the contrary, this Amendment is conditioned upon Tenant's receipt of approval (the "**Court Approval**") of the Superior Court of Merrimack County, New Hampshire (the "**Court**"), in connection with Tenant's liquidation proceeding entitled *In the Matter of the Liquidation of The Home Insurance Company*, Docket No. 03-E-0106.


(b) Tenant shall apply to the Court for the Court Approval promptly following the full execution and delivery of this Amendment and shall use its commercially reasonable efforts to obtain the Court Approval as soon as reasonably practicable and shall furnish Landlord with notice of such Court Approval within three (3) business days of Tenant's receipt thereof, such notice to contain a copy of the Court Approval. If despite such commercially reasonable efforts, the Court does not approve the Lease by that date which is ninety (90) days after the date of this Amendment as first set forth above, either Landlord or Tenant may terminate this Amendment upon three (3) business days' notice to the other party given at any time thereafter and prior to Tenant's receipt of the Court Approval, whereupon this Amendment shall be null and void ipso facto, and of no force and effect.

[SIGNATURES APPEAR ON NEXT PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Amendment as of the date first set forth above.

LANDLORD

RXR 61 BROADWAY OWNER LLC

By: 
Name: Frank Pusinelli
Title: Authorized Person

TENANT

DAVID J. BETTENCOURT, NEW HAMPSHIRE COMMISSIONER OF INSURANCE, SOLELY IN HIS CAPACITY AS LIQUIDATOR OF THE HOME INSURANCE COMPANY


By: 
Name: Peter A. Bengelsdorf
Title: special deputy liquidator

EXHIBIT A

Retained Premises

