

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS

SUPERIOR COURT

Docket No. 03-E-0106

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

**AFFIDAVIT OF PETER A. BENGELSDORF, SPECIAL DEPUTY
LIQUIDATOR, IN SUPPORT OF APPROVAL OF
LEASE AGREEMENT AND LEASE TERMINATION AGREEMENT**

I, Peter A. Bengelsdorf, depose and say:

1. I was appointed Special Deputy Liquidator of The Home Insurance Company (“Home”), by the Insurance Commissioner for the State of New Hampshire, as Liquidator (“Liquidator”) of Home. I submit this affidavit in support of the Liquidator’s Motion for Approval of Lease Agreement and Lease Termination Agreement. The facts and information set forth are either within my own knowledge gained through my involvement with this matter, in which case I confirm that they are true, or are based on information provided to me by others, in which case they are true to the best of my knowledge, information and belief.

2. Home has long had an office in Manchester, New Hampshire, and it has leased space at 286 Commercial Street since 1993. In 2003, the Liquidator entered a lease for 14,311 square feet on the third floor at 286 Commercial Street which, after exercise of an extension option, currently runs through July 31, 2010. The lease also provides for a second option to extend the term of the lease for another three year period, through July 31, 2013.

3. The amount of space required for the liquidation operations in Manchester has decreased due to reductions in liquidation staff and reduced need for storage. To address this issue, the Liquidator approached the landlord, 1870 Associates, in the fall of 2007 to inquire

whether the landlord would take back some of the space at 286 Commercial Street. In April 2008, the landlord advised that it would like to take back the entire space.

4. The Liquidator accordingly investigated available properties in the Manchester area through a real estate broker and the internet. Liquidation staff visited approximately fifteen properties, including office parks and other premises on Commercial Street. Several staff members and I visited the three final properties and selected the second floor space at 55 South Commercial Street as the most suitable. It provided the desired amount of space in a recently renovated building in a convenient location with ample parking. It was also the least expensive.

5. The Liquidator accordingly entered into negotiations with Langer Place, Inc., the landlord at 55 South Commercial Street, for that space. The Liquidator also entered negotiations with 1870 Associates regarding termination of the lease at 286 Commercial Street. The Liquidator has now entered into the Lease Agreement with Langer Place, Inc., and the Lease Termination Agreement with 1870 Associates. Copies of the Lease Agreement and Lease Termination Agreement are attached as Exhibits A and B to the Liquidator's motion. Both agreements are subject to approval by the Court. Lease Agreement § 21; Lease Termination Agreement § 7.

6. Under the Lease Agreement, the Liquidator will lease 6,300 square feet on the second floor of 55 South Commercial Street for a term of five years commencing August 1, 2008. Lease Agreement §§ 2, 3(a). The Liquidator has an option to extend the term for an additional two years and five months (to December 31, 2015) at the fair market rental value of the space as of August 1, 2013. *Id.* § 3(c). The Liquidator may also choose to surrender either an 1800 or 2700 square foot portion of the space for the extended term. *Id.* § 3(d). This will permit a reduction in lease costs if the liquidation does not then require the full leased space.

7. The Lease Agreement provides for an annual base rent of \$47,250. Lease Agreement § 4(a). It is a modified gross lease, and the annual base rent includes the tenant's pro rata share of real estate taxes, common area charges, maintenance and utilities (except for electricity and voice/data transmission services). Id. § 4(b). The rent is subject to an annual adjustment based on the consumer price index. Id. § 4(d).

8. The other provisions of the agreement, including covenants and insurance requirements, are set forth in the Lease Agreement. The Lease Agreement provides for assignment of the lease or subletting of all or a portion of the space on the written consent of the landlord, which consent shall not be unreasonably withheld. Lease Agreement § 6(g).

9. The Lease Termination Agreement provides for the Home liquidation to vacate the space at 286 Commercial Street between July 1 and August 15, 2008 upon seven days notice to the landlord. Lease Termination Agreement § 2. The lease for those premises will terminate on the date the premises are vacated, and the base monthly rent will be pro rated as of that date. Id. The Lease Termination Agreement acknowledges that an air conditioning unit and fire suppression system installed by Home will become the property of the lessor. Id. § 3. It provides that neither party will have any future obligations under the lease as of the termination date except for specified provisions (including responsibility for operating expenses pro-rated through the termination date and an indemnity with respect to liability arising from any claim based on an occurrence on the leased premises). Id. § 4. The other provisions, including mutual releases, are set forth in the Lease Termination Agreement.

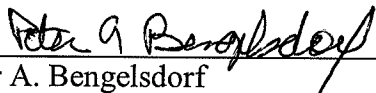
10. Together, the agreements provide for the Home liquidation to vacate the 286 Commercial Street space and move into the 55 South Commercial Street space on or before August 15, 2008. The Lease Termination Agreement allows some flexibility as to when the

move will actually occur because the build-out at 55 South Commercial Street, including installation of a data transmission line, will need to be completed before the move can occur. The Liquidator and both landlords want the move to take place as soon as possible. In the event that it proves possible to move into the new space before August 1, 2008, the Liquidator and Langer Place, Inc., intend to amend the Lease Agreement to provide an earlier occupancy date for a pro rated portion of monthly rent charges.

11. The agreements provide for the Home liquidation operations in New Hampshire to move to a space that is more appropriately sized to for the liquidation's present and future needs. The square footage will be reduced from 14,311 to 6,300. The agreements will also result in significant savings for the Home estate. The annual base rent will be reduced from \$175,309 under the existing lease for 286 Commercial Street to \$47,250 under the Lease Agreement for 55 South Commercial Street. Comparison of the base rents actually understates the annual savings because the base rent in the Lease Agreement includes heat and common area maintenance charges that were added to base rent under the old lease. Even adding in the \$81,000 one time charge for the build-out (which is not included in base rent, Lease Agreement § 2), the Home estate will achieve significant savings in the first year of the Lease Agreement. Taking into account the differing items included in base rent, the savings over the remaining term of the existing lease (through July 31, 2010) are projected to be over \$350,000. Including the option period through July 31, 2013, the savings would be approximately \$1 million. Based on information concerning the other properties considered, I believe that the rent under the Lease Agreement is a fair market rent for the space at 55 South Commercial Street, and the terms of the Lease Agreement are commercially reasonable.

12. For these reasons, I believe that the Lease Agreement and the Lease Termination Agreement are fair and reasonable and in the best interests of the Home liquidation and of the policyholders and creditors of Home.

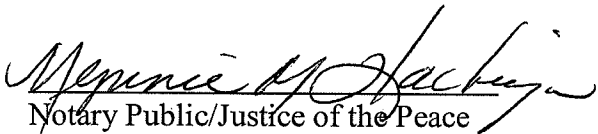
Signed under the penalties of perjury this 30TH day of May, 2008.



Peter A. Bengelsdorf
Special Deputy Liquidator of The Home Insurance
Company

STATE OF CALIFORNIA
COUNTY OF VENTURA

Subscribed and sworn to, before me, this 30 day of May, 2008.


Notary Public/Justice of the Peace

