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CIVIL
DISTRICT COURT

**ORLEANS PARISH CIVIL DISTRICT COURT
STATE OF LOUISIANA**

NO.: 2009 - 4705

SECTION: "5"

DIVISION: "K"

**BCR SAFEGUARD HOLDING, L.L.C.; JAC SAFEGUARD HOLDING, L.L.C. AND
SAFEGUARD DEVELOPMENT GROUP II, L.L.C.**

versus

**MORGAN STANLEY DEAN WITTER INVESTMENT MANAGEMENT INC.,
FORMERLY KNOWN AS MORGAN STANLEY ASSET MANAGEMENT INC. AND
PPF SAFEGUARD, LLC**

FILED: _____

DEPUTY CLERK

FOURTH AMENDED AND SUPPLEMENTAL PETITION FOR DAMAGES

NOW INTO COURT, through undersigned counsel, come plaintiffs BCR Safeguard Holding, L.L.C.; JAC Safeguard Holding, L.L.C. and Safeguard Development Group II, L.L.C. ("Plaintiffs"), who respectfully file this Fourth Amended and Supplemental Petition for Damages prior to any answer having been filed in this matter, in order to supplement their allegations and causes of action as follows:

PARTIES - PLAINTIFFS

1. Plaintiff BCR Safeguard Holding, L.L.C. ("BCR") is a limited liability company organized under the laws of the state of Delaware, with its managing member domiciled in the State of Georgia.
2. Plaintiff JAC Safeguard Holding, L.L.C. ("JAC") is a limited liability company organized under the laws of the state of Delaware, with its managing member domiciled in the State of Louisiana.
3. Plaintiff Safeguard Development Group II, L.L.C. ("Safeguard Development") is a limited liability company organized under the laws of Louisiana and domiciled in New Orleans, Louisiana.

PARTIES - DEFENDANTS

4. Defendant PPF Safeguard, LLC (“PPF Safeguard”) is a limited liability company organized under the laws of Delaware, with, upon information and belief, its sole member domiciled in the State of Georgia, and a member of Safeguard Storage Properties, LLC.

5. Defendant Prime Property Fund, LLC (“Prime Property Fund,” together with PPF Safeguard, “PPF”) is the sole member of the general partner of the sole member of PPF Safeguard, thus its ultimate owner, and is a limited liability company organized under the laws of Delaware, with, upon information and belief, its domicile in the State of Georgia.

6. Defendant Morgan Stanley Real Estate Advisor, Inc. (“Morgan Stanley”) is a foreign corporation licensed to do and doing business in the State of Louisiana with its principal place of business located in Fulton County, Georgia. Morgan Stanley serves as the agent of defendant PPF Safeguard with respect to the subject matter of this dispute.

7. Defendant Safeguard Storage Properties, LLC (“Safeguard Storage”) is a Delaware Limited Liability Company with its principal place of business in Fulton County, Georgia.

8. All defendants to this matter (jointly “Defendants”) are liable jointly and *in solido* to Plaintiffs for all damages alleged herein.

JURISDICTION AND VENUE

9. This Court has the legal power to hear and determine this matter pursuant to Louisiana Constitution Article V, §16 because the value of the claims asserted herein, exclusive of interest, court costs, attorneys’ fees or penalties, exceeds the amount required to confer jurisdiction with this Court.

10. Jurisdiction is also vested in this Court as this controversy involves policies of insurance issued and delivered in the State of Louisiana, to Louisiana insureds, insuring Louisiana properties.

11. Jurisdiction is also proper in this judicial district because one of the plaintiffs and two of the Defendants are domiciled in the State of Georgia, precluding federal diversity jurisdiction.

12. Venue is proper in this judicial district pursuant to Louisiana Code of Civil Procedure articles 76 and 123, because it is a case related to the underlying facts at issue in a case titled *Safeguard Storage Properties, LLC, et al. v. Donahue-Favret Contractors, Inc., et al.*, Civil Action No. 07-9359 (the “Insurance Litigation”) currently pending in this venue; because it is the most convenient venue available and because one of the plaintiffs is domiciled in this district.

GENERAL ALLEGATIONS

13. Safeguard Storage’s predecessor was founded in New Orleans in 1989 by Bruce Roch, Jr. Mr. Roch owns all of the membership units of plaintiff BCR, which was the Administrative Member of Safeguard Storage until July 30, 2009. On May 31, 2005, PPF invested in and became a member of Safeguard Storage by entering into the Amended and Restated Limited Liability Company Agreement of Safeguard Storage Properties, LLC (the “Safeguard LLC Agreement”). The other parties to the Safeguard LLC Agreement are plaintiffs BCR, JAC and Safeguard Development.

14. Defendant PPF Safeguard is managed by Morgan Stanley, which is its sole advisor and makes all decisions on its behalf.

15. Safeguard Storage is one of the largest self-storage owners in the nation.

16. On or about August 29, 2005, Hurricane Katrina devastated the City of New Orleans and the Gulf South.

17. At the time Hurricane Katrina hit the Gulf South, Safeguard Storage had approximately \$100,000,000.00 worth of development pending.

18. Safeguard Storage suffered millions of dollars in real and personal property damage as a result of Hurricane Katrina’s destruction.

19. Safeguard Storage suffered the loss of hundreds of millions of dollars in business interruption, development and other lost opportunities, including lost profits and lost rents as a result of Hurricane Katrina.

20. Safeguard Storage suffered the loss of millions of dollars in extra expenses incurred as a result of the devastation of Hurricane Katrina and relocation expenses, including but not limited to the cost of establishing temporary and new offices, housing and executive recruiting expenses.

21. Safeguard Storage also suffered damages including but not limited to:

- a. Repair and remediation expenses;
- b. Loss of accounts receivable;
- c. Insurance claim preparation expenses, including but not limited to the cost of consultants, engineers, accountants and other professionals;
- d. Redirection of employee resources;
- e. Construction delays and increased construction costs;
- f. Coverage for rebuilding as a result of the devastation of Hurricane Katrina;
- g. The loss of present business and contracts;
- h. The loss of future business and contracts; and
- i. Costs, expenses and attorneys' fees.

22. Defendant Morgan Stanley has the responsibility of placing insurance for defendants PPF Safeguard and Prime Property. Morgan Stanley obtained coverage for Safeguard Storage under Morgan Stanley's property insurance program.

23. Morgan Stanley placed insurance for Safeguard Storage in Lexington Insurance Co.; Bituminous Casualty Company; Ace American Insurance Company; Allied World Assurance Company; American International Specialty Lines Insurance Company; Axis Reinsurance Company; Axis Specialty Limited; Certain Underwriters at Lloyd's of London; Continental Casualty Company; Federal Insurance Company; Great Lakes UK (a/k/a Great Lakes Reinsurance (UK), PLC); Illinois Union Insurance Company; International Insurance Company of Hannover; Employers Insurance Company of Wausau; Pacific Insurance Company, Ltd.; SR International Insurance Company, Ltd. and XL Insurance American, Inc. ("the Insurers").

24. In or about December 2005, Morgan Stanley took sole responsibility over the negotiations with the Insurers of Safeguard Storage for damages suffered by Safeguard Storage and all of its members during and in the aftermath of Hurricane Katrina.

25. Plaintiffs believed that Morgan Stanley, because of its control over two members of the Safeguard Storage Management Committee, because it served as managing agent of PPF Safeguard, and/or because it was independently obligated for the responsibility to handle the negotiation of the Hurricane Katrina-related claim and litigation on behalf of Safeguard Storage

and its members, would act in their best interests and deal with the Insurers fairly and in good faith, rather than to advance Morgan Stanley's separate interests.

26. In 2006, without an adequate analysis of the breadth of Safeguard Storage's insurance claims, Morgan Stanley attempted to convince Plaintiffs to settle Safeguard Storage's Hurricane Katrina claims for approximately six million dollars.

27. Morgan Stanley never ultimately negotiated a settlement with the Insurers.

28. The approval to file litigation on behalf of Safeguard Storage was one of a very limited number of approvals needed from all of the members of Safeguard Storage for Safeguard Storage to act. *See* Safeguard Storage LLC Agreement, § 9.02(i). Except for those limited areas where such approval was required, BCR, as Administrative Member, had "the sole and exclusive right, power, authority and discretion to conduct the business and affairs" of Safeguard Storage. *See* Safeguard Storage LLC Agreement, § 9.01.

29. Under the Safeguard Storage LLC Agreement, Section 9.02(i), a four-person Management Committee was required to unanimously approve the filing of any litigation involving more than \$250,000.00. The Management Committee contained two members to be designated by defendant Prime and who were expressly required in the Safeguard Storage LLC Agreement to be two employees of Morgan Stanley, and two members who were designated by Plaintiffs. The Management Committee members selected and designated by Prime remained during all time periods relevant to this Petition the Morgan Stanley employees named in the Safeguard Storage LLC Agreement, full-time Morgan Stanley employees operating under the direction and control of Morgan Stanley.

30. Until the final hour of the time allowed for the filing of a lawsuit against insurance companies for damages suffered as a result of Hurricane Katrina, Morgan Stanley and the Morgan Stanley-appointed-and-employed Management Committee Members refused to provide the approval required to file suit against Safeguard Storage's Insurers.

31. Morgan Stanley relented and provided this approval only after a representative of Plaintiffs threatened legal action against Morgan Stanley and the Morgan Stanley-appointed managers for breach of fiduciary duty.

32. The truth is that Morgan Stanley did not want to pursue Safeguard Storage's insurance claim, either through settlement or litigation, in any meaningful way. That is because Morgan Stanley (as distinguished from its principal, PPF Safeguard) has no equity interest in Safeguard Storage and would gain little or nothing from an insurance recovery by Safeguard Storage. In particular, Morgan Stanley stood to gain nothing from the fact that Plaintiff BCR stood to receive up to 40% of the net proceeds from an insurance recovery, which would have been distributed to the members under Section 7.02 of the Safeguard Storage LLC Agreement.

33. Further, Morgan Stanley believed that an insurance recovery that fairly compensated Safeguard Storage's insured losses would jeopardize Morgan Stanley's ability to obtain insurance coverage for its properties or, at a minimum, greatly increase the future cost of Morgan Stanley's coverage. As Morgan Stanley representatives explained to the sole member of BCR and Safeguard Development, Morgan Stanley viewed Safeguard Storage's insurance claim simply as a "wealth transfer" from Morgan Stanley to Safeguard Storage and its members, because Safeguard Storage and its members – particularly the Plaintiffs – would benefit, but Morgan Stanley would pay.

34. Morgan Stanley also believed that allowing the Plaintiffs to remain in control of Safeguard and pursuing the full value of Safeguard Storage's claims would jeopardize Morgan Stanley's investment banking and other business relationships with the Insurer Defendants.

35. The Insurers exploited this conflict of interest. Internal documents now obtained through the Insurance Litigation indicate that the Insurers contemplated cancellation of Morgan Stanley's insurance based on the Insurance Litigation and notified Morgan Stanley's corporate management of this threat. In an email string between Insurers' representatives on and around September 25, 2007, one of the representatives wrote "Our placing broker has come back from Lloyds and the lead on current placement is considering issuing notice of cancellation due to this.....we need to get to the bottom of this, and assume have Morgan Stanley corporate seek to clarify the matter."¹

¹ See email string between certain Insurers' representatives, attached to Plaintiffs' Petition for Damages as Exhibit 1.

36. Internal documents obtained in the Insurance Litigation likewise confirm that Morgan Stanley perceived the risk to its own interests if Safeguard Storage pressed its claim for full compensation. In October of 2007, defendants Morgan Stanley's risk manager Bruce Plummer ("Plummer") wrote to other Morgan Stanley employees and representatives of the Insurers that "[t]he London market has raised concern regarding the position being taken by SafeGuard on the submitted claim. BI [business interruption] loss estimates of \$100mm are being spoken aloud which is concerning for underwriters... and may hinder their participation at renewal."² In a later email dated November 4, 2007 an Insurer's representative wrote to Morgan Stanley and certain other Insurers' representatives: "failure to take decisive action may very well result in markets not wanting to participate in renewal."³

37. In sum, although Morgan Stanley agreed to pursue Safeguard Storage's insurance claim and although Morgan Stanley serves as the agent for Safeguard Storage member PPF Safeguard and Prime Property, and although Morgan Stanley controlled half of Safeguard Storage's Management Committee and therefore controlled critical financial interests of Safeguard Storage and the Plaintiffs, Morgan Stanley did not want Safeguard Storage to recover its insured losses because of the perceived adverse effect on Morgan Stanley's own interests. As a result, Morgan Stanley did not pursue that insurance claim effectively during the almost two years that it was entrusted to Morgan Stanley, to the detriment and loss of Safeguard Storage and its members, including Plaintiffs.

38. For the same reasons that Morgan Stanley did not want Safeguard Storage to file suit against the Insurers, Morgan Stanley does not want Safeguard Storage to pursue that suit effectively. As a result, since the filing of suit, Morgan Stanley has hindered and obstructed Safeguard Storage's prosecution of the Insurance Litigation in various ways.

39. For example, Morgan Stanley initially refused to provide Plaintiffs with copies of the insurance policies covering the damages suffered during Hurricane Katrina and allowed Safeguard Storage to labor under a false belief about the extent of the available coverage. Just

² See email string between defendants Morgan Stanley employee Plummer and certain Insurers' representatives, attached to Plaintiffs' Petition for Damages as Exhibit 2.

³ See email between Morgan Stanley employees and certain Insurers' representatives, attached to Plaintiffs' Petition for Damages as Exhibit 4.

before the Insurance Litigation was filed, a partial policy was provided to Plaintiffs or their representative. Sometime after the Insurance Litigation was filed, Morgan Stanley provided Plaintiffs or their representative with some of the remaining policies of insurance covering Safeguard Storage, but never with all of the policies. Upon receipt and review of the incomplete insurance policies, Plaintiffs discovered that those policies were much more expansive than Morgan Stanley had previously apprised. In fact, those policies provided for billions of dollars in property coverage, billions of dollars in business interruption coverage, coverage for extra expenses incurred, as well as coverage for rebuilding.

40. Further, Plaintiffs have now learned that Morgan Stanley privately communicated to the Insurers that Morgan Stanley wishes to resolve the Insurance Litigation and Safeguard Storage's insurance claim quickly and on terms favorable to the Insurers because of the anticipated effect of the claim on Morgan Stanley's ability to obtain insurance coverage at favorable rates. Through these communications, Morgan Stanley has given the Insurers good reason to believe that they can delay, defeat, or minimize Safeguard Storage's claim by exploiting Morgan Stanley's willingness to place its self-interest ahead of the interests of Safeguard Storage and its members; and particularly to wrest control of Safeguard Storage from the Plaintiffs, denying the Plaintiffs the fruits of Safeguard Storage's business, including but not limited to any proceeds of the Insurance Litigation. The Insurers have taken advantage of this "inside track" by doing nothing to resolve Safeguard Storage's claim despite the Insurers' obvious obligation to do so.

41. Even worse, it has now become apparent that, throughout the pendency of the Insurance Litigation, Morgan Stanley has been providing Safeguard Storage's litigation strategy and other information to Safeguard Storage's Insurers and their attorneys.

42. As an example, on January 22, 2008, a meeting was held between Insurers and Morgan Stanley regarding renewing Morgan Stanley's policies of insurance. Present at that meeting was the risk manager of Morgan Stanley, Bruce Plummer. In an email summary of the meeting, a representative of one of the Insurers wrote, "Bruce Plummer has set up a management team to assist him on this claim, consisting of senior executives from both Morgan Stanley and Safeguard Storage. Counsel for Safeguard, is now including Bruce Plummer on all reports.... Bruce Plummer and his team have now retained Navigant as the CPA to assist them in their

analysis of this matter. Navigant will report to Bruce and his team.... Plummer will provide via AON, Underwriters with a copy of the Navigant report when received....”⁴

43. The hiring of CPA Navigant by Safeguard Storage’s litigation team was a confidential and privileged litigation strategy which was not to be shared with Insurer defendants in the Insurance Litigation.

44. The report of Safeguard Storage’s CPA Navigant was a confidential and privileged document which was not to be shared with Insurer defendants in the Insurance Litigation.

45. Morgan Stanley privately provided the Insurer Defendants with information that the Insurers used to in order to respond to discovery in the Insurance Litigation. “Bruce [Morgan Stanley’s risk manager] has agreed to act as liaison on this matter, and will assist Underwriters in obtaining any documentation required, subject to their in-house counsel’s review and approval. This relates to placing information in the Marsh files which are required for us to complete the interrogatories.”⁵

46. On February 8, 2008, one of the Insurers’ representatives wrote to another: “following our meeting with Bruce Plummer in your offices in late January, we understood that Bruce was to set up a committee of Morgan Stanley and Safeguard executives to oversee this matter, and had instructed Navigant to undertake a separate investigation of the claim and provide this team with an overview and separate analysis of the claim quantum” and “we would appreciate [Plummer’s] comments on these recent developments [receipt of an amended Petition in the Insurance Litigation, increasing the claim], especially as I believe he is due to meet several representatives from London who participate in this risk...”⁶

⁴ See email summary of meeting between certain Insurers’ representatives, attached to Plaintiffs’ Petition for Damages as Exhibit 6.

⁵ *Id.*

⁶ See email between certain Insurers’ representatives, attached to Plaintiffs’ Petition for Damages as Exhibit 7.

47. Finally, knowing that Morgan Stanley's Bruce Plummer was the conduit to Safeguard Storage's litigation strategy, the Insurers met with Plummer at an insurance symposium to discuss the Insurance Litigation. In late February of 2008 Plummer sums up that discussion in an email to an Insurer's representative, outlining their meeting of the minds to set up a "process" going forward in the Insurance Litigation.⁷

48. Morgan Stanley handles insurance claims differently when it, rather than Safeguard Storage, is the beneficiary. Upon information and belief, defendant Morgan Stanley has settled at least two insurance claims in which Morgan Stanley did have a financial interest, with the same Insurers sued in the Insurance Litigation.

49. Hindered and obstructed by Morgan Stanley's private and improper efforts to undermine Safeguard Storage's claim, Safeguard Storage has prosecuted the Insurance Litigation since August 2007. In this process, Safeguard Storage has incurred millions of dollars of attorneys' fees and expenses, with only minimal payment from its Insurers to compensate for the crippling losses that Safeguard Storage suffered in August 2005, more than four years ago.

50. Throughout the communications between the Insurers and Morgan Stanley, representatives of the Insurers repeatedly inquired whether Morgan Stanley and PPF had the ability to control the other investors in Safeguard Storage, *i.e.*, the Plaintiffs. Further, they pressured Morgan Stanley and/or PPF to exercise such control and thereby limit Safeguard Storage's pursuit of the Insurance Litigation, particularly its sizeable business interruption losses. Through Section 11.03 of the Safeguard LLC Agreement (the "Buy/Sell" Provision), Morgan Stanley and PPF set about to gain that control over Safeguard Storage and its insurance claim by eliminating the Plaintiffs as equity holders.

51. Under the Buy/Sell provision, one member of Safeguard Storage could force the other to sell its share of Safeguard Storage for an amount equal to what that member would receive if the company were sold to a buyer for an all-cash price specified in the Buy/Sell Offer and then liquidated to pay all debts. The member receiving the Buy/Sell offer had to sell its ownership interest to the offering member at the price specified by the offering party unless it could buy out

⁷ See February 2008 email string between Morgan Stanley representative Bruce Plummer and an Insurer's representative, attached to Plaintiffs' Second Amended and Supplemental

the offering member for the amount essentially equal to what that offering member would receive if the company were sold and then liquidated.

52. On March 31, 2009, concerned by Morgan Stanley's reluctance to aggressively pursue the lost profits business-interruption claim that Safeguard Storage's expert witnessess had projected at approximately \$379 million, BCR's Bruce Roch inquired whether Morgan Stanley would cause PPF to "go to the documents," meaning to exercise the buy/sell provisions of the Safeguard Storage LLC Agreement. Morgan Stanley's personnel promised Mr. Roch that Morgan Stanley would not do so.

53. Again on April 1, 2009, Mr. Roch inquired whether Morgan Stanley would "go to the documents," because if so he would know to divert his focus from the pursuit of the Insurance Litigation and instead focus efforts on responding to any imminent buy/sell. Again, he was told to keep his efforts focused on Safeguard Storage's pursuit of the Insurance Litigation, that Morgan Stanley would not cause PPF to invoke the buy/sell.

54. Morgan Stanley and PPF knew that, in order to buy out PPF's almost 95% share of Safeguard, the Plaintiffs would have to raise almost 19 times the amount that PPF would have to pay to buy out Plaintiffs. On top of that, the Plaintiffs would have had (under the terms of the Safeguard Storage LLC Agreement) to find a lender in this tight and cautious credit market willing to assume the approximately \$290 million of Safeguard Storage debt held by Prime Property Fund, something that PPF would not have to do if it bought the Plaintiffs' interests. Doing either of those things was made even more difficult because Morgan Stanley and PPF had delayed and impeded Safeguard Storage's prosecution of the Katrina litigation, thereby greatly increasing Safeguard Storage's expenses while weakening Safeguard Storage's financial condition. Indeed, one of the Morgan Stanley-controlled Management Committee members told the principal of BCR that Morgan Stanley and PPF did not believe that Plaintiffs could afford to buy out PPF in a Buy/Sell and so would be forced to sell.

55. Morgan Stanley knew that, by invoking the Buy/Sell on behalf of PPF, it could remove Plaintiffs from Safeguard and BCR as Administrative Member. The defendants, through

invocation of the Buy/Sell, intended to shut down BCR's inquiries into its conflict of interest and disloyal conduct and to dispose of the Katrina Coverage Litigation as it wished.

56. On May 14, 2009, Morgan Stanley caused PPF to invoke the LLC Agreement's Buy/Sell provision through issuance of a Buy/Sell Offer to the Plaintiffs. The Buy/Sell Notice was issued at an all-cash price that did not fairly reflect the value of the Katrina Coverage Litigation. Under the timing provisions of § 11.03 of the LLC Agreement, the Plaintiffs were required to elect whether to be a "Non-Purchasing Member" or a "Purchasing Member" by July 24, 2009.

57. During the Buy/Sell election period, between the time of the Buy/Sell Notice and July 24, 2009, Morgan Stanley took a number of actions to inhibit the Plaintiffs' ability to elect to be "Purchasing Members," including but not limited to filing two lawsuits against the Plaintiffs, dramatically increasing the frequency of called Management Committee meetings, issuing capital calls beyond the scope of those allowed by the Safeguard Storage LLC Agreement, and issuing information and data requests to BCR of a burdensome nature and also beyond the scope of those provided for in the Safeguard Storage LLC Agreement.

58. Due to the actions taken by Morgan Stanley and PPF, the Plaintiffs were unable to obtain financing that would have enabled them to elect to become "Purchasing Members" under the Buy/Sell provision of the Safeguard Storage LLC Agreement.

59. The Plaintiffs did not make an election by July 24, 2009; by the terms of the LLC Agreement, they were then deemed to be "Non-Purchasing Members."

60. Effective July 30, 2009, pursuant to the expiration of the Buy/Sell election period, Morgan Stanley caused PPF to consummate the Buy/Sell transaction by arranging and executing the closing of the transaction to buy out Plaintiffs under the Buy/Sell provision at the unfairly low price specified by Morgan Stanley and PPF.

61. As alleged below, that invocation of the Buy/Sell was a breach of fiduciary duty by Morgan Stanley and PPF, a breach of the Safeguard LLC Agreement by PPF and by Morgan Stanley acting both as agent of PPF and in its independent capacity under § 9.07 of the LLC Agreement, and a breach of the implied covenant of good faith and fair dealing by both Morgan Stanley and PPF, and otherwise wrongful due to (1) Morgan Stanley's reason and motive for causing the invocation of that provision, (2) the timing of invoking that provision relative to a

recovery on the Katrina insurance claim, and (3) the unfair and inadequate Buy/Sell price specified by Morgan Stanley and PPF.

62. As this Petition was originally filed, the Plaintiffs sought to remedy their damages incurred as a proximate result of the defendants' conduct through seeking damages, as well as seeking both (1) injunctive relief against transfer of ownership interests in Safeguard Storage pursuant to the Buy/Sell provision of the LLC Agreement until the Hurricane Katrina coverage litigation was concluded, and (2) declaratory relief that the transfer of ownership interests in Safeguard Storage pursuant to the Buy/Sell provision of the LLC Agreement is in violation of Article XI of the LLC Agreement.

63. The defendants, through their counsel, have repeatedly represented to this Court that the Plaintiffs' claims encompass a claim for damages arising from the difference between the Buy/Sell price specified by Morgan Stanley and PPF and the actual value of Safeguard Storage had the Katrina coverage litigation been allowed to go through first and had not been diminished by the actions of the defendants.

64. Because, following the filing of the Original Petition in this matter and the subsequent First and Second Amended Petitions, the defendants first invoked the Buy/Sell provision and then caused the closing to occur, the Plaintiffs amended their petition on September 28, 2009, to conform their allegations and relief sought with regard to the violation of Article XI of the LLC Agreement to seek damages arising from the unfair Buy/Sell price and other conduct of the defendants, pursuant to § 23.03 of the LLC Agreement.

**FIRST CAUSE OF ACTION - BREACH OF THE SAFEGUARD LLC AGREEMENT
AND THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING**

65. Plaintiffs adopt by reference and incorporate all previous allegations in all preceding paragraphs as if fully set forth herein.

66. As a result of entering the LLC Agreement, PPF Safeguard owed contractual and fiduciary duties to its fellow members in Safeguard Storage, the Plaintiffs, including the duty to prevent its agent Morgan Stanley from acting on behalf of PPF Safeguard in bad faith and unfairly towards Plaintiffs.

67. Morgan Stanley controlled all actions of two members of Safeguard Storage's Management Committee and agreed to act as the agent of Safeguard and its members in pursuing the Katrina Insurance claim against the Insurers. As such, Morgan Stanley exercised control over a valuable asset of Safeguard Storage, Safeguard Storage's Katrina Insurance Claim.

68. Among other things, Morgan Stanley and PPF Safeguard owed duties to negotiate the highest amount of proceeds possible from Safeguard Storage's insurers to compensate the members for damages incurred as a result of Hurricane Katrina.

69. Similarly, Morgan Stanley and PPF owed duties to all of the members of Safeguard Storage, including Plaintiffs, to protect (and not to disclose) their litigation strategies in the Insurance Litigation brought against Safeguard Storage's Insurers.

70. Morgan Stanley and PPF breached their duties to Plaintiffs by failing for self-interested and disloyal reasons to make reasonable efforts to settle with the Safeguard Storage Insurers for an amount that would compensate Safeguard Storage and its members for damages incurred as a result of Hurricane Katrina and causing Plaintiffs and Safeguard Storage to pay costly legal fees to litigate against Safeguard Storage's Insurers that would have been unnecessary had Morgan Stanley and PPF properly fulfilled their duties. Compounding this failure, Morgan Stanley and PPF delayed Safeguard Storage's filing of litigation against the Insurers for two years, due to its failure to comply with its duties to act in the best interest of Safeguard Storage and its members, by acting to favor its own interests at the expense and to the detriment of Safeguard Storage and its members, which further delayed and frustrated a timely resolution of these claims.

71. Morgan Stanley and PPF breached their duties to Plaintiffs by sharing litigation strategies and other confidential and privileged information in the Insurance Litigation with Safeguard Storage's Insurers and by committing the other acts and/or omissions set forth above.

72. Further, Morgan Stanley and PPF breached their duties by causing PPF to invoke the Buy/Sell, and by creating circumstances that prevented the Plaintiffs from becoming "Purchasing Members" under the Buy/Sell provision, for the purpose of removing the Plaintiffs from Safeguard Storage, gaining control over the Katrina Insurance Litigation, and excluding the Plaintiffs from any participation in the future profits of Safeguard Storage, including but not limited to proceeds from recovery in the Insurance Litigation.

73. Morgan Stanley had independent sources of duty to the Plaintiffs. Section 9.07 of the Safeguard Storage LLC Agreement, titled "Third Parties," provides:

Subject to the requirements set forth in Section 9.02 above, the Company may employ, engage or retain any Persons (including any Affiliate of any Member) to act as developers, brokers, accountants, attorneys, engineers or in such other capacities as may be necessary or desirable in connection with the Company's business, and the Members shall be entitled to rely in good faith upon the recommendations, reports and advice given them by any such Persons or entities in the course of their professional engagement.

74. Morgan Stanley also had fiduciary and good faith duties to the Plaintiffs through its control over two of the Safeguard Storage Management Committee members.

75. Morgan Stanley's management actions in procuring insurance coverage and its other actions related to insurance issues on behalf of Safeguard Storage and its members as set forth herein were within the professional actions denominated in § 9.07 of the Safeguard Storage LLC Agreement, and were also governed by its duties arising from control of half of the Management Committee of Safeguard Storage. By the express terms of § 9.07, and under the law generally, Plaintiffs were entitled to rely on Morgan Stanley to act in good faith to pursue the insurance claim.

76. As a result of Morgan Stanley and PPF's conduct as set forth herein, Plaintiffs have suffered injury. Those injuries include, without limitation, loss of the financial benefits that Plaintiffs would have received from a resolution of the insurance litigation but for the interference and delay caused by Defendants' misconduct, the incurring of additional costs (including capital investments) as a result of that delay and interference, and the financial losses Plaintiffs suffered as a result of Defendants' wrongful invocation of the Buy/Sell Provision, including but not limited to the loss of control of and ownership interest in Safeguard Storage, the loss of the ability to be a "Purchasing Member" of Safeguard Storage, and all future profits from Safeguard Storage.

77. As a proximate cause of the foregoing, Plaintiffs have been injured in an actual amount to be proven at trial, and should be awarded damages in accordance with the evidence, plus attorneys' fees and costs.

SECOND CAUSE OF ACTION - BREACH OF FIDUCIARY DUTY

78. Plaintiffs adopt by reference and incorporate all previous allegations in all preceding paragraphs as if fully set forth herein.

79. PPF Safeguard owed a fiduciary duty to its Safeguard Storage co-members, the Plaintiffs, with regard to the control it exercised over aspects of the Safeguard Storage LLC.

80. As the managing agent of defendant PPF, a co-member in Safeguard Storage, and as controller of two members of Safeguard Storage's Management Committee, Morgan Stanley owed Plaintiffs fiduciary duties of honesty, loyalty, care and compliance.

81. Among other things, Morgan Stanley and PPF had a fiduciary duty to Plaintiffs to negotiate the highest amount of proceeds possible from Safeguard Storage's Insurers to compensate the Safeguard Storage members for damages incurred as a result of Hurricane Katrina.

82. Morgan Stanley also had a fiduciary duty to Plaintiffs to protect (and certainly not to disclose) their litigation strategies in the Insurance Litigation brought against Safeguard Storage's Insurers.

83. Morgan Stanley breached its fiduciary duty to Plaintiffs by failing for self-interested and disloyal reasons to make reasonable efforts to settle with the Safeguard Storage Insurers for an amount that would compensate Safeguard Storage and its members for damages incurred as a result of Hurricane Katrina and causing Plaintiffs and Safeguard Storage to pay costly legal fees to litigate against Safeguard Storage's Insurers that would have been unnecessary had Morgan Stanley properly fulfilled its duties. Compounding this failure, Morgan Stanley and PPF delayed Safeguard Storage's filing of litigation against the Insurers for two years, due to Morgan Stanley's disloyal conduct in failing to comply with its duties to Safeguard Storage and its members by acting to favor its own interests at the expense and to the detriment of Safeguard Storage and its members, which further delayed and frustrated a timely resolution of these claims.

84. Morgan Stanley and PPF breached their fiduciary duty to Plaintiffs by sharing litigation strategies and other confidential and privileged information in the Insurance Litigation with Safeguard Storage's Insurers.

85. As a result of Morgan Stanley's and PPF's conduct, Plaintiffs have suffered injury. In addition to Safeguard Storage's losses, plaintiffs BCR, JAC and Safeguard Development have uniquely suffered the loss of millions of dollars because, if the proceeds of an insurance settlement or judgment had been distributed earlier, then Plaintiffs would have received a larger share of the proceeds than they would if distributed at the time of the filing of this lawsuit or at a later date.

86. Also in addition to Safeguard Storage's losses, Plaintiffs BCR, JAC and Safeguard Development suffered the loss of millions of dollars of loss due to mark downs in the portfolio of Plaintiffs due to the downturn in the economy between the time Morgan Stanley should have settled the insurance matter and the time of ultimate recovery.

87. Also in addition to Safeguard Storage's losses, Plaintiffs have suffered the loss of control over and ownership interest in Safeguard Storage, the loss of the ability to be a "Purchasing Member" of Safeguard Storage, and the loss of all future profits from Safeguard Storage, including but not limited to the proceeds of the Insurance Litigation.

88. Further, Morgan Stanley breached its fiduciary duties to Plaintiffs by causing PPF to invoke the Buy/Sell for the purpose of ousting the Plaintiffs from Safeguard Storage, consequently gaining control over the Insurance Litigation, and excluding the Plaintiffs from any participation in the profits of Safeguard Storage, including but not limited to recovery on the proceeds of the Insurance Litigation. Plaintiffs have suffered financial losses as a result of these actions.

89. As a proximate cause of the foregoing, Plaintiffs have been injured in an actual amount to be proven at trial, and should be awarded damages in accordance with the evidence, plus attorneys' fees and costs.

THIRD CAUSE OF ACTION – TORTIOUS INTERFERENCE WITH CONTRACT

90. Plaintiffs adopt by reference and incorporate all previous allegations in all preceding paragraphs as if fully set forth herein.

91. As a result of entering the Safeguard Storage LLC Agreement, PPF Safeguard was subject to the implied contractual covenant of good faith and fair dealing and owed other contractual and fiduciary duties to its fellow members in Safeguard Storage.

92. As set forth above, Morgan Stanley was the managing agent for Prime, the sole member of PPF. Through that control, Morgan Stanley's knowing and intentional actions proximately caused PPF to breach the LLC Agreement by wrongfully inducing PPF Safeguard to breach the Safeguard Storage LLC Agreement and the implied contractual covenant of good faith and fair dealing to its fellow members by, among other things:

(a) failing to negotiate the highest amount of proceeds possible from the Insurers to compensate the members for damages incurred as a result of Hurricane Katrina,

(b) sharing litigation strategies and other confidential and privileged information in the Insurance Litigation with the Insurers,

(c) failing for self-interested and disloyal reasons to make reasonable efforts to settle with the Insurers for an amount that would compensate the Plaintiffs for damages incurred as a result of Hurricane Katrina,

(d) causing Plaintiffs to pay costly legal fees to litigate against the Insurers that would have been unnecessary had PPF properly fulfilled its duties, delaying Safeguard Storage's filing of litigation against the Insurers for two years, due to its conflict of interest and frustrating a timely resolution of these claims,

(e) invoking the Buy/Sell for the purpose of excluding the Plaintiffs from any control over or ownership interest in Safeguard Storage, and of preventing the Plaintiffs from becoming "Purchasing Members" of Safeguard Storage, and of precluding Plaintiffs, the sole disinterested members of Safeguard Storage, from prosecuting the Insurance Litigation, and

(f) attempting to exclude the Plaintiffs from any participation in the future profits of Safeguard Storage, including without limitation recovery of the proceeds of the Insurance Litigation.

93. As a result of Morgan Stanley's and PPF's conduct as set forth herein, Plaintiffs have suffered injury. Those injuries include, without limitation, loss of the financial benefits that Plaintiffs would have received from a resolution of the insurance litigation but for the interference and delay caused by Defendants' misconduct, the incurring of additional costs (including capital investments) as a result of that delay and interference, and the financial losses Plaintiffs suffered as a result of Defendants' wrongful invocation of the Buy/Sell Provision. As a

proximate cause of the foregoing, Plaintiffs have been injured in an actual amount to be proven at trial, and should be awarded damages in accordance with the evidence, plus attorneys' fees and costs.

FOURTH CAUSE OF ACTION - CIVIL CONSPIRACY

94. Plaintiffs adopt by reference and incorporate all previous allegations in all preceding paragraphs as if fully set forth herein.

95. Through their actions and inactions, more fully described herein, Defendants knowingly and intentionally acted in concert with each other and with the Insurers to wrongfully dislodge the Plaintiffs from any control over or ownership interest in Safeguard Storage, to wrongfully disable the Plaintiffs from becoming "Purchasing Members" of Safeguard Storage, and to wrongfully thwart the Plaintiffs from receiving any profits from Safeguard Storage, including but not limited to insurance proceeds, much less the highest amount of proceeds possible from the Insurers to compensate Safeguard Storage's members for damages incurred as a result of Hurricane Katrina.

96. Through their actions and inactions, more fully described herein, Defendants knowingly acted intentionally and in concert with each other and with the Insurers to breach the fiduciary duty owed by defendant Morgan Stanley to Safeguard Storage and its members by, among other things, sharing Safeguard Storage's legal strategies and other confidential and privileged information in the Insurance Litigation with the Safeguard Storage's Insurers, and misrepresenting the intentions of Morgan Stanley and PPF with regard to the invocation of the Buy/Sell provision.

97. In furtherance of this conspiracy and in response to the urging of the Insurers, Morgan Stanley and PPF invoked the Buy/Sell provision as described above.

98. Defendants and the Insurers acted as described herein according to a commonly understood and accepted plan of action, all for the purposes of preventing the Plaintiffs from having any control over or ownership interest in Safeguard Storage, including but not limited to any interest in the attainment of the highest amount of insurance proceeds possible from Insurers to compensate the members of Safeguard Storage for damages incurred as a result of Hurricane Katrina.

99. There was a meeting of the minds between and among Defendants to commit the unlawful acts alleged herein. The conspiracy to commit these intentional and willful overt acts, proximately caused and continues to cause damages to Plaintiffs as set forth herein.

100. As a result of the conduct of the Defendants, Plaintiffs have suffered injury to their business and property and have incurred actual damages and losses in an amount to be proven at trial.

**FIFTH CAUSE OF ACTION – AIDING AND ABETTING
BREACH OF FIDUCIARY DUTY**

101. Plaintiffs adopt by reference and incorporate all previous allegations in all preceding paragraphs as if fully set forth herein.

102. PPF Safeguard, as the majority member of Safeguard Storage, owed fiduciary and contractual duties to Safeguard Storage and to the Plaintiffs, including the implied covenant to act in good faith and with fair dealing.

103. Through the conduct alleged above, PPF has breached its fiduciary and contractual duties and duty to act in good faith and with fair dealing with regard to the Insurance Litigation.

104. Through the conduct alleged above, PPF has breached its fiduciary and contractual duties and duty to act in good faith and with fair dealing by invoking the Buy/Sell at an unfair price for the purpose of gaining control over the Katrina Insurance Litigation, and precluding Plaintiffs, the sole disinterested members of Safeguard Storage, from prosecuting the Katrina Insurance Litigation, and excluding the Plaintiffs from any participation in the recovery on that claim.

105. As set forth above, Morgan Stanley in some instances acted as agent for PPF, and controlled two members of Safeguard Storage's Management Committee by operation of the LLC Agreement. Through that control, Morgan Stanley directed PPF Safeguard and knowingly participated in, and wrongfully aided and abetted, PPF Safeguard's breach of fiduciary duties under the Safeguard Storage LLC Agreement and the implied contractual covenant of good faith and fair dealing.

106. As a result of Morgan Stanley and PPF's conduct as set forth herein, Plaintiffs have suffered injury. Those injuries include, without limitation, loss of the financial benefits that Plaintiffs would have received from a resolution of the insurance litigation but for the

interference and delay caused by Defendants' misconduct, the incurring of additional costs (including capital investments) as a result of that delay and interference, and the financial losses Plaintiffs suffered as a result of Defendants' wrongful invocation of the Buy/Sell Provision, including the loss of the ability to become the "Purchasing Member" and the loss of all future profits from Safeguard Storage (including but not limited to the proceeds from the Insurance Litigation).

107. As proximately caused by the foregoing, Plaintiffs have been injured in an actual amount to be proven at trial, and should be awarded damages in accordance with the evidence, plus attorneys' fees and costs.

SIXTH CAUSE OF ACTION - CLAIM FOR ADVANCEMENT OF EXPENSES

108. Plaintiffs adopt by reference and incorporate all previous allegations in all preceding paragraphs as if fully set forth herein.

109. Pursuant to § 18-108 of the Delaware Limited Liability Company Act and Articles IX and XXV of the Safeguard Storage LLC Agreement, Plaintiffs are entitled to reimbursement of their reasonable legal and other reasonable out of pocket expenses as they are incurred for claims by or asserted against them in any way relating to or arising from their actions as Managing Members or Members of Safeguard or their actions arising out of or incidental to any act performed or omitted to be performed by them in connection with Safeguard Storage or the Safeguard Storage LLC Agreement.

110. Without limitation, Plaintiffs are entitled to advancement of attorney fees and other costs incurred to defend and answer claims of wrongdoing and mismanagement by BCR and JAC in conjunction with Safeguard Storage and the Safeguard Storage LLC Agreement that have been asserted both informally and formally by PPF and/or Safeguard Storage. Plaintiffs are also entitled to advancement of attorney fees and other costs incurred to prosecute this action, and to defend against any claims asserted either formally or informally by PPF and/or Safeguard Storage with regard to the invocation, pricing, or consummation of the Buy/Sell provision. Yet, on behalf of Safeguard, PPF has expressly refused to advance or otherwise indemnify BCR and JAC for those expenses and denied any obligation to do so.

111. Accordingly, Plaintiffs are entitled to recover fees and expenses from Safeguard Storage in an amount to be proved, together with interest and the additional reasonable legal fees and expenses associated with vindicating their rights to advancement.

SEVENTH CAUSE OF ACTION – DETRIMENTAL RELIANCE

112. Plaintiffs adopt by reference and incorporate all previous allegations in all preceding paragraphs as if fully set forth herein.

113. As detailed herein, Morgan Stanley personnel represented to the Plaintiffs that Morgan Stanley would not cause PPF to invoke the Buy/Sell provision, and encouraged the Plaintiffs to maintain their focus on developing and pursuing the Insurance Litigation rather than exerting efforts to respond to any imminent Buy/Sell offer.

114. The Plaintiffs reasonably relied on Morgan Stanley's representations and took no actions to strengthen their position and ability to become "Purchasing Members" under the Buy/Sell provision in the event of a Buy/Sell Notice.

115. In further reliance on Morgan Stanley's representations, the Plaintiffs determined not to enter into settlement negotiations with the Insurers below the \$75 million layer of coverage. As a result, the claim in the Insurance Litigation remained a contingent asset, making it impossible for Plaintiffs to become the "Purchasing Members" under the Buy/Sell provision.

116. As a result of the Plaintiffs' reasonable reliance on Morgan Stanley's representations, when Morgan Stanley caused PPF to invoke the Buy/Sell provision the Plaintiffs were unable to respond by electing to be "Purchasing Members," and the Plaintiffs lost all control over or ownership interest in Safeguard Storage, including any interest in future profits of Safeguard Storage, including but not limited to proceeds from the Insurance Litigation.

117. As proximately caused by the foregoing, Plaintiffs have been injured in an actual amount to be proven at trial, and should be awarded damages in accordance with the evidence, plus attorneys' fees and costs.

EIGHTH CAUSE OF ACTION - LUTPA

118. Plaintiffs adopt by reference and incorporate all previous allegations in all preceding paragraphs as if fully set forth herein.

119. The Louisiana Unfair Trade Practices and Consumer Protection Law, La. R.S. 51:1401, et seq. ("LUTPA"), prohibits unfair or deceptive methods, acts or practices in trade or commerce.

120. The Defendants have collaborated amongst themselves, intentionally and in concert, to engage in unfair and deceptive trade practices for the purpose and with the effect of excluding the Plaintiffs from participating in the property management and self-storage business of Safeguard Storage.

121. As a direct consequence of the unlawful trade practices employed by the Defendants, the Plaintiffs have been and continue to be damaged, including loss of control over or ownership interest in Safeguard Storage, with the attendant loss of revenues and profits from Safeguard Storage, including but not limited to proceeds from the Insurance Litigation.

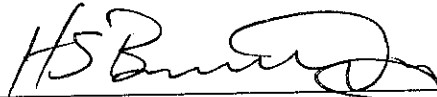
122. As proximately caused by the foregoing, Plaintiffs have been injured in an actual amount to be proven at trial, and should be awarded damages in accordance with the evidence, plus attorneys' fees and costs and all other damages to which they are entitled under LUTPA.

WHEREFORE, Plaintiffs pray that, after due proceedings be had, there be judgment rendered herein in their favor and against Defendants, declaring the Defendants are to be liable and indebted unto Plaintiffs, jointly and *in solido*, for

- a. all damages as are just and reasonable under the circumstances,
- b. judicial interest from the date of judicial demand; and
- c. the award of costs, expenses and reasonable attorneys' fees in favor of Plaintiffs and against Defendants to the fullest extent authorized by law; and
- d. such other and further relief which the Court deems necessary and proper at law and in equity and that may be just and reasonable under the circumstances of this matter.

Plaintiffs also pray for injunctive relief, in the form of a Court order demanding that Defendants immediately cease and desist from providing Safeguard Storage's litigation strategies to Safeguard Storage's Insurers in the Insurance Litigation.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that I have on this 9th day of February, 2010 served a copy of the foregoing upon the following counsel of record by electronic mail and U.S. Mail:

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