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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

17 HOWARD HUGHES PROPERTIES, INC. AND
 18 THE HOWARD HUGHES CORPORATION,

CASE NO.

19 Plaintiffs,

COMPLAINT

20 v.

JURY DEMAND

21 KERN RIVER GAS TRANSMISSION COMPANY,

22 Defendant.

PLAINTIFF'S ORIGINAL COMPLAINT AND APPLICATION FOR DECLARATORY
AND PERMANENT INJUNCTIVE RELIEF

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1 Plaintiffs HOWARD HUGHES PROPERTIES, INC. and THE HOWARD HUGHES
2 CORPORATION (collectively, "Howard Hughes") file this Original Complaint and Application
3 for Declaratory and Permanent Injunctive Relief against Defendant KERN RIVER GAS
4 TRANSMISSION COMPANY ("Kern River").
5

6 **I. JURISDICTION AND VENUE**
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8 1. An actual and justiciable controversy exists between Howard Hughes and Kern
9 River regarding the parties' respective rights, status, and obligations under contract as set forth
10 below. This court is authorized to declare the rights of the parties pursuant to the Federal
11 Declaratory Judgment Act, 28 U.S.C. §§2201-2202.
12

13 2. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C.
14 §§1332(a)(1) because Howard Hughes and Kern River are citizens of different states and the
15 amount in controversy exceeds \$75,000, excluding interest and costs.
16

17 3. Venue is proper in this district pursuant to 28 U.S.C. §1391(a)(2) because a
18 substantial part of the events or omissions giving rise to Howard Hughes's claims occurred in this
19 district, and because the property at issue is situated in this district. Venue is also proper in this
20 district by agreement of the parties.
21

22 **II. PARTIES**
23

24 4. Plaintiff HOWARD HUGHES PROPERTIES, INC. is a corporation organized
25 and existing under the laws of the State of Nevada, with its principal place of business in
26 Nevada.
27

28 5. Plaintiff THE HOWARD HUGHES CORPORATION is a corporation organized
and existing under the laws of the State of Delaware, with its principal place of business in
Nevada.
29

6. Defendant KERN RIVER GAS TRANSMISSION COMPANY ("Kern River") is a general partnership organized and existing under the laws of the State of Texas, with its principal place of business located in the State of Utah. Kern River does not have a registered agent for service of process in the State of Nevada.

III. FACTS

7. Howard Hughes Properties, Inc. and The Howard Hughes Corporation are real estate companies that own and have invested substantial amounts in developing a residential community in Summerlin, Clark County, Nevada. Located just outside of Las Vegas, Summerlin is a 22,500-acre, master-planned community with a population of approximately 100,000 residents. Summerlin consists of 19 "villages," each of which is comprised of multiple housing subdivisions. In addition to residential neighborhoods, Summerlin has a number of business parks, shopping centers, parks, hospitals and schools.

8. In 1990, Kern River began to construct and operate an interstate natural gas pipeline, part of which was planned to run across certain parcels of land within Summerlin (hereafter, the "Pipeline").¹ Kern River requested that Howard Hughes grant permanent and temporary easements across several miles of its property so that Kern River could construct and operate its pipeline. Howard Hughes refused Kern River's request because Summerlin was planned for and under residential development.

9. Unable to come to a mutually acceptable easement agreement, Kern River filed an eminent domain lawsuit against Howard Hughes, styled *Kern River Gas Transmission Company v. 54.61 acres, et al.*, Civil Case No. CV-S-90-938-PMP-LRL, in the United States District Court

¹ In 1990, Summerlin was owned by Howard Hughes Properties Limited Partnership, the predecessor-in-interest to Plaintiffs The Howard Hughes Corporation and Howard Hughes Properties, Inc. At that time, Howard Hughes Properties LP was the sole general partner of Summa Corporation ("Summa"). Summa managed Summerlin for Howard Hughes Properties LP. References herein to "Howard Hughes" shall include Howard Hughes Properties LP and Summa.

the right, going forward, to increase the pressure in the Pipeline to facilitate the transportation of greater quantities of natural gas.

10. Before the trial concluded, the parties entered into a Global Settlement Agreement ("Settlement Agreement"), and the District Court dismissed the action with prejudice and on the merits.² As part of the Settlement Agreement, the parties executed an easement agreement that was filed in the real property records of the Clark County, Nevada Recorder. *See Easement Agreement* ("Easement"), attached as Exhibit A.

11. Under the terms of the Easement and Settlement Agreement, Howard Hughes granted Kern River a right-of-way and easement for a natural gas pipeline operating with a maximum allowable operation pressure ["MAOP"] of 1,200 p.s.i.g.³ See Easement at 1. The Settlement Agreement also prohibits Kern River from attempting to increase or actually increasing the agreed-upon MAOP of the Pipeline.

12. In reliance upon the 1993 Easement and Settlement Agreement, Howard Hughes substantially designed, developed, marketed and sold portions of Summerlin. Summerlin blossomed as the fastest growing master-planned community in the United States. Today, the pipeline easement weaves through Summerlin's residential communities, as well as the hospitals and schools that serve those communities. In addition, the pipeline easement runs directly through Summerlin Village 17, which has not yet been developed.

² The terms of the Global Settlement Agreement require that it be kept confidential, aside from disclosure of the general fact that settlement of the litigation occurred. The Settlement Agreement also requires that in a case where disclosure to courts is necessary to enforce the terms of the agreement, the parties shall take reasonable action to prevent the Settlement Agreement from becoming a public record generally available to the public. A party making the disclosure must provide 10-day advance written notice to the other party. Accordingly, this Original Complaint shall serve as Howard Hughes's written notice of its intent to disclose the terms of the Settlement Agreement to the Court as part of this lawsuit. A copy of the Original Complaint is contemporaneously being transmitted to Kern River in accordance with the notice provisions of the Settlement Agreement. Howard Hughes will fully comply with any obligations to take reasonable action to prevent the Settlement Agreement from becoming public record generally available to the public.

³ "P.s.i.g." is the standard unit to measure pipeline pressure, and stands for "pounds per square inch gauge."

1 13. In 2007, after nearly 15 years without incident, and in violation of the express
2 terms of the Settlement Agreement, Kern River submitted a petition to the U.S. Department of
3 Transportation Pipeline Hazardous Materials Safety Administration, seeking approval to operate
4 the Pipeline at a higher pressure. Then, in 2008, Kern River filed an application with the Federal
5 Energy Regulatory Commission (the "Commission") to amend its certificate of public
6 convenience and necessity to operate the Pipeline at a higher MAOP. Kern River made its
7 request to the Commission contingent upon the Department of Transportation's approval of the
8 pressure increase. *Id.*

9
10 14. Specifically, Kern River requested that the Commission: (1) authorize Kern River
11 to construct, own, and operate certain new or modified pipeline facilities; (2) amend Kern River's
12 existing certificate authority to allow an increase in the Pipeline's MAOP from 1,200 p.s.i.g. to
13 1,333 p.s.i.g.; and (3) amend Kern River's existing certificate of authority to allow an increase in
14 the MAOP for certain gas meter and compressor stations.
15

16 15. Kern River's efforts before the Department of Transportation and the Commission
17 violate the Settlement Agreement, and implicate controversial issues that were permanently
18 resolved in 1993 by agreement. If this Court does not bring Kern River's actions to a halt,
19 further violations may occur in that Kern River must commence a condemnation action to
20 forcibly obtain an increase of the Pipeline's MAOP beyond the level permitted by the Easement.⁴
21

22 16. Thus, Howard Hughes seeks a declaration that the terms of the Easement and
23 Settlement Agreement are valid and enforceable as against Kern River and prohibit Kern River's
24 taking further action to increase the MAOP of the Pipeline within Summerlin; specific
25 performance of that contractual restriction and a permanent injunction to prevent Kern River
26

27 4 In addition to bringing this action, Howard Hughes has moved to intervene in the Commission
28 proceedings in an effort to prevent Kern River from gaining approval to increase the MAOP of the Pipeline.
(Howard Hughes's Motion to Intervene and Comments, Docket No. CP08-429-000, December 23, 2008).

1 from attempting to increase or increasing the MAOP of the Pipeline; or, alternatively, rescission
 2 of the Easement and/or reliance damages for Kern River's breach of contract..
 3

IV. CAUSES OF ACTION

A. First Cause of Action: Breach of Contract

17. Howard Hughes hereby re-alleges and incorporates by reference the allegations
 6 and facts contained in the foregoing paragraphs.
 7

18. When Kern River first constructed the Pipeline almost 20 years ago, Summerlin
 9 was barely developed. But Howard Hughes has long intended to develop Summerlin into a large
 10 residential community, as evidenced by the language of the Easement:
 11

12 Grantee [Kern River] understands that the uses planned by the Grantor [Howard
 13 Hughes] include but are not limited to paved streets with underground utilities,
 14 landscaping, lined and unlined flood control channels, and golf course fairways
 15 greens, tees and landscaping. *See* Easement at 3.

16 19. For the past 15 years, Summerlin has experienced significant growth as the
 20 population of Las Vegas has expanded rapidly. As a result of Howard Hughes's efforts to
 21 cultivate and expand the marketplace for premium homes in and around Las Vegas, Summerlin
 22 has become the fastest-growing master-planned community in the United States, and its
 23 population is projected to reach 200,000 by the development's anticipated completion date.
 24 Consequently, the parties' agreement to limit the MAOP of the Pipeline has become increasingly
 25 important as Summerlin becomes more densely populated. Summerlin's many neighborhoods,
 26 parks, schools, golf courses, hospitals and businesses are now in close proximity to the Pipeline.
 27

28 20. The Easement and Settlement Agreement between Howard Hughes and Kern
 29 River are valid and enforceable written contracts. Howard Hughes fully performed its
 30 obligations, but Kern River has materially breached the contracts by seeking an increase in the
 31 MAOP of the Pipeline through its applications to the Department of Transportation and the
 32 Commission.

1 21. Howard Hughes seeks specific performance of Kern River's obligations under the
 2 Easement and Settlement Agreement. Specific performance is proper relief in a contract suit
 3 involving real property, as in this case. *See, e.g., Stoltz v. Grimm*, 689 P.2d 927, 930 (Nev.
 4 1984). Also, specific performance is appropriate because a higher-pressure pipeline may
 5 contribute to marketplace concerns about safety, the mere perception of which could have an
 6 immeasurable negative impact on Summerlin's viability and appeal as a residential community.
 7 Therefore, Howard Hughes requests that the Court order Kern River to comply with the terms of
 8 the Easement and Settlement Agreement as written and to cease any further proceedings or
 9 efforts to increase the MAOP of the Pipeline.

10 22. Further, and in the alternative, Howard Hughes seeks its reliance interest damages
 11 to restore expenditures it made in reliance on the terms of the Easement and Settlement
 12 Agreement. In reliance on Kern River's written promise to maintain the Pipeline's pressure
 13 below 1,200 p.s.i.g. permanently, Howard Hughes incurred significant costs to design, develop
 14 and market Summerlin into a leading master-planned community. For the 15 years prior to Kern
 15 River's breach of contract, Howard Hughes spent millions of dollars on permanent amenities and
 16 infrastructure like roads, golf courses, schools, and hospitals, to attract and accommodate its
 17 growing population. Howard Hughes took these and other actions, including marketing efforts
 18 and communicating with its customers, in detrimental reliance on Kern River's promises with
 19 respect to the MAOP of the Pipeline. Accordingly, Howard Hughes requests that this Court
 20 award damages to compensate Howard Hughes for expenditures it made in reliance upon Kern
 21 River's promises under the Easement and Settlement Agreement.

22 23. Further, and in the alternative, Howard Hughes seeks rescission of the Easement.
 23 For Howard Hughes to receive the benefit of its bargain under the Easement and Settlement
 24 Agreement, the Pipeline must remain at a MAOP of 1,200 p.s.i.g. ***permanently***. The plain
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language of the Easement shows that Howard Hughes always intended to devote Summerlin to residential development. In reliance on the contractual restriction on MAOP, Howard Hughes incurred significant costs in designing and developing the property into a large, residential community over a period of 15 years. The contractual restriction on the MAOP of the Pipeline was, in effect, a "zero sum game": any amount of Kern River's performance less than "permanence" denies Howard Hughes its entire benefit under the contract. Kern River's breach was material, and goes to the very heart of the parties' rights and obligations under the Easement and Settlement Agreement. Therefore, Howard Hughes requests that the Court rescind the Easement, and return the parties to their earlier positions as if no easement had existed.

B. Second Cause of Action: Declaratory Judgment

24. Howard Hughes brings this claim for a declaratory judgment under both Federal Rule of Civil Procedure 57 and 28 U.S.C. §§2201, 2202.

25. Howard Hughes hereby re-alleges and incorporates by reference the facts and allegations contained in the foregoing paragraphs.

26. Despite the plain language of the 1993 Easement and Settlement Agreement, Kern River has undertaken efforts to increase the Pipeline's MAOP beyond 1,200 p.s.i.g. As discussed above, Kern River has already filed applications with the Department of Transportation and the Commission and, following any Commission approval, must commence a condemnation action against Howard Hughes to increase the MAOP of the Pipeline. Thus, a substantial controversy exists between parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

27. A declaratory judgment by this Court will serve a useful purpose in clarifying and settling the legal rights, duties, and obligations of Howard Hughes and Kern River under the Easement and Settlement Agreement. Therefore, Howard Hughes seeks a judgment declaring

1 that the contract provisions designed to limit MAOP on the Pipeline are valid and enforceable as
 2 against Kern River.

3 28. Specifically, Howard Hughes requests that this Court issue a declaration ordering
 4 that the Easement and Settlement Agreement:

5 (1) are valid and enforceable as against Kern River;

6 (2) prohibit Kern River from operating the Pipeline at an MAOP over 1,200 p.s.i.g.
 7 within the Summerlin development;

8 (3) prohibit Kern River from pursuing any administrative proceedings, including, but not
 9 limited to, an application to the Department of Transportation or the Commission, to increase the
 10 MAOP of the Pipeline; and

11 (4) prohibit Kern River from acting on and/or implementing any authority granted by the
 12 Department of Transportation or the Commission to commence a condemnation action for the
 13 increase of the Pipeline's MAOP beyond the level specified in the Easement and Settlement
 14 Agreement.

15 V. **APPLICATION FOR PERMANENT INJUNCTIVE RELIEF**

16 29. Howard Hughes hereby re-alleges and incorporates by reference the facts and
 17 allegations contained in the foregoing paragraphs.

18 30. Howard Hughes requests that this Court enter a permanent injunction against
 19 Kern River to prevent it from: (a) operating the Pipeline at an MAOP that exceeds 1,200 p.s.i.g.
 20 within Summerlin; (b) pursuing a grant of authority from the Department of Transportation or
 21 the Commission to increase the Pipeline's MAOP; or (c) acting on and/or implementing any
 22 certificate granted by the Commission, including commencing a condemnation action to increase
 23 the Pipeline's MAOP.

1 31. First, injunctive relief is proper in this case because Howard Hughes has a
2 substantial likelihood of succeeding on the merits of its claim. The facts set out above
3 demonstrate that Howard Hughes has a legitimate claim for breach of the Easement and
4 Settlement Agreement. Kern River has filed applications with the Department of Transportation
5 and the Commission in an effort to increase the Pipeline's MAOP within the Summerlin
6 development.

8 32. Furthermore, Kern River's actions threaten to cause Howard Hughes imminent
9 and irreparable injury. Pending the Commission's approval, Kern River must commence a
10 condemnation action against Howard Hughes to increase the MAOP of the Pipeline, and/or
11 construct new facilities and operate the Pipeline at pressures exceeding 1,200 p.s.i.g. within
12 Summerlin. If Kern River is successful in its condemnation action, and/or begins to operate the
13 Pipeline at an increased level of pressure, the land affected by the Easement will no longer be as
14 attractive for residential development. The diminution in property value attributable to the
15 Pipeline will be difficult, if not impossible, to ascertain. Also, a high-pressure underground
16 pipeline may contribute to marketplace concerns about safety, the mere perception of which
17 could cause injuries to Summerlin and Howard Hughes for which there is no adequate remedy at
18 law.

20 33. The threatened injury to Howard Hughes outweighs any conceivable injury that
21 might befall Kern River if the injunctive relief is granted. Under the current arrangement, Kern
22 River is able to efficiently transport large quantities of gas, and Howard Hughes is able to
23 responsibly market the surface estate that it planned for residential development over the last 15
24 years or more. This Court's grant of a permanent injunction will simply maintain the status quo.
25 However, if this injunction is denied, the higher-pressure pipeline may increase marketplace
26
27
28

1 concerns about safety, the mere perception of which could cause residential property in
 2 Summerlin to decline in value.

3 34. Public policy and the public interest would not be adversely affected by the
 4 issuance of the injunctive relief requested. Accordingly, this Court should grant this injunction
 5 to protect against a decline in the resale values of Summerlin residents' homes, and to prevent
 6 public misperceptions about the safety of the Pipeline.
 7

8 VI. ATTORNEYS' FEES AND COSTS

9 35. As a result of Kern River's actions, Howard Hughes retained counsel and seeks
 10 reimbursement for its reasonable attorneys' fees and costs, as authorized by 28 U.S.C. §2202,
 11 Nev. Rev. Stat. §30.120 (2008), and other applicable law.

12 VII. PRAYER

13 WHEREFORE, Howard Hughes respectfully requests that Kern River be cited to appear
 14 and answer this lawsuit, and that after trial or hearing, Howard Hughes have and recover the
 15 following:
 16

17 (a) an order for specific performance of Kern River's obligations under the Easement and
 18 Settlement Agreement, or alternatively, a judgment against Kern River for Howard Hughes's
 19 reliance damages for breach of contract, or, alternatively, an order rescinding the Easement;

20 (b) a declaration that the Easement and Settlement Agreement: (1) are valid and
 21 enforceable as against Kern River; (2) prohibit Kern River from operating the Pipeline⁵ at an
 22 MAOP in excess of 1,200 p.s.i.g. within Summerlin; (3) prohibit Kern River from further
 23 pursuing an application to the Department of Transportation or the Commission to increase the
 24 MAOP of the Pipeline; and (4) prohibit Kern River from acting on and/or implementing any
 25 certificate granted by the Department of Transportation or the Commission to commence a
 26

27 28 ⁵ "Pipeline," as defined in Section III., refers only to the portions of the Kern River interstate gas pipeline
 system that pass through parcels of land in Summerlin currently owned by Howard Hughes.

1 condemnation action, or otherwise acting to increase the Pipeline's MAOP beyond the level
 2 specified in the Easement;

3 (c) a permanent injunction to prevent Kern River from attempting to increase the MAOP
 4 of the Pipeline;

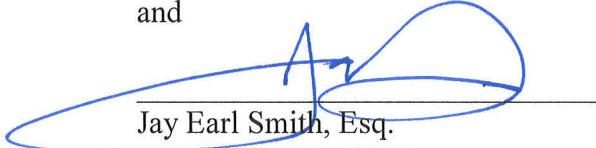
5 (d) reasonable and necessary attorneys' fees, costs of suit, and pre- and post-judgment
 6 interest as allowed by law; and

7 (e) such other and further relief to which Howard Hughes may be justly entitled.

8
 9 DATED this 13rd day of April, 2009.

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