

REDACTED

**REINSURANCE COMMUTATION  
AGREEMENT, SETTLEMENT AND RELEASE**

**THIS REINSURANCE COMMUTATION AGREEMENT, SETTLEMENT AND RELEASE** (the "Agreement") is made and entered into as of April , 2003, (the "Effective Date") by and between Paula T. Rogers, New Hampshire Commissioner of Insurance, solely in her capacity as Rehabilitator (the "Rehabilitator") of THE HOME INSURANCE COMPANY IN REHABILITATION ("Home"), and GERLING GLOBAL REINSURANCE CORPORATION - U.S. BRANCH CONSTITUTION INSURANCE COMPANY and Gerling Global Reinsurance Corporation of America (f/k/a Constitution Reinsurance Corporation) (collectively, "Gerling").

**WITNESSETH:**

**WHEREAS**, Home and Gerling entered into certain reinsurance agreements (the "Reinsurance Agreements") pursuant to which Home ceded to Gerling, and Gerling accepted from Home, a certain share of Home's liabilities as more fully reflected in the percentages of participation and periods for each respective Reinsurance Agreement as set forth therein; and

**WHEREAS**, in addition to their past and present obligations under the Reinsurance Agreements, Home and Gerling recognize and understand that a portion of their respective obligations thereunder may become due in the future; that these future obligations and liabilities cannot be determined in an amount certain at this time; and that a commutation of these past, present and uncertain obligations and the parties' past and present obligations will resolve all pending and outstanding issues between the parties and will eliminate the uncertainty of contingent liabilities for presently unresolved and/or unasserted claims with respect to the Reinsurance Agreements; and

**WHEREAS**, the parties agree that it is mutually in their best interests to fully and finally settle and commute their respective past, present and future rights, obligations and liabilities (whether known or unknown) under the Reinsurance Agreements with immediate effect and

enter into mutual releases relating thereto, all in accordance with the terms and conditions hereinafter contained.

**NOW THEREFORE**, intending to be legally bound, in consideration of the promises, covenants, representations, warranties, payments, agreements and other good and valuable consideration recited and set forth herein, the sufficiency of which is mutually acknowledged, the parties agree as follows:

1. Within seven (7) days after execution of this Agreement by Home, Gerling will pay to Home the sum of \$ [REDACTED] (the "Net Settlement Sum") in full and final settlement of any and all past, present and future liabilities due or potentially due from the parties to this Agreement to each other under the Reinsurance Agreements, with time being of the essence in the performance by Gerling in effecting such payment. The payment of the Net Settlement Sum shall be effected by wire transfer as follows:

Citizens Bank, Manchester, NH, USA  
ABA No. [REDACTED]  
For the Account of The Home Insurance Company in  
Rehabilitation  
Account No. [REDACTED]

2. Without prejudice to Home's right to terminate this Agreement under Paragraph 3 below, if Gerling fails to pay any portion of the Net Settlement Sum within seven (7) days after execution of this Agreement by Home, Gerling shall pay (a) interest on any unpaid amounts at the rate of [REDACTED] per annum; and (b) any and all costs, including reasonable attorneys fees, incurred by Home in recovering the Net Settlement Sum in full (the "Collection Costs"). The acceptance by Home together with all interest and Collection Costs due in respect of late payment as determined and calculated as aforesaid shall (subject to the terms of this Agreement) constitute a full and final settlement and release hereunder as if payment of the Net Settlement Sum had been made in full within seven (7) days after execution by Home of this Agreement.

3. Notwithstanding the provisions of Paragraph 2 above, in the event that Gerling fails to pay any portion of the Net Settlement Sum within seven (7) days after execution of this

Agreement by Home (and notwithstanding any claim that may be asserted by Home for interest and Collection Costs) Home shall be entitled, at its sole discretion, to either seek enforcement of this Agreement or, by notice in writing to Gerling, to terminate this Agreement, in which event (a) this Agreement shall be null and void; and (b) all of the rights and obligations of the parties with respect to the Reinsurance Agreements shall be fully reinstated as if this Agreement had never been made.

4. Subject to the terms of this Agreement and in consideration of and as a condition precedent to the timely payment of the Net Settlement Sum by Gerling, Home on behalf of itself, its officers, directors, employees, agents, attorneys, affiliates, shareholders, parents, predecessors, successors and assigns, hereby releases and discharges Gerling, its officers, directors, employees, agents, attorneys, affiliates, shareholders, parents, predecessors, successors and assigns to the extent permitted by law from any and all adjustments, obligations, offsets, actions, causes of action, suits, debts, dues, sums of money, accounts, reckonings, premiums, returned premiums, unearned premiums, losses, salvage, commissions, variances, expenses, acts, omissions, executions, bonds, bills, covenants, contracts, controversies, agreements, promises, damages, judgments, claims and demands whatsoever, all whether known or unknown in law or in equity, which Home ever had, now has, or hereafter may have against Gerling by reason of any matter whatsoever arising out of or in connection with or in relation to the Reinsurance Agreements. Additionally, Home fully understands and expressly waives its rights and benefits under any provision of law which substantially provides that:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

5. Subject to the terms and conditions of this Agreement, and in consideration of the release of Gerling by Home pursuant to Paragraph 4 above, Gerling on behalf of itself, its officers, directors, employees, agents, attorneys, affiliates, shareholders, parents, predecessors, successors and assigns, hereby releases and discharges Home, its officers, directors, employees, agents, attorneys, affiliates, shareholders, parents, predecessors, successors and assigns to the extent permitted by law from any and all adjustments, obligations, offsets, actions, causes of

action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, premiums, returned premiums, unearned premiums, losses, salvage, commissions, variances, expenses, acts, omissions, executions, covenants, contracts, controversies, agreements, promises, damages, judgments, claims and demands whatsoever, all whether known or unknown in law or in equity, which Gerling ever had, now has, or hereafter may have against Home by reason of any matter whatsoever arising out of or in connection with or in relation to the Reinsurance Agreements. Additionally, Gerling fully understands and expressly waives its rights and benefits under any provision of law which substantially provides that:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

6. This Agreement shall be binding upon and shall inure to the benefit of the parties. The parties each represent and warrant that they have not prior hereto assigned or otherwise transferred to any other entity any of the rights, entitlements or interests in or to the reinsurance agreements committed and released hereunder.

7. This instrument embodies the final, complete and entire agreement between the parties and is the product of their own independent legal advice and analysis. No other representations, understandings or agreements have been made or relied upon in the making of this Agreement other than those specifically set forth or referred to herein.

8. Notwithstanding anything to the contrary contained herein, in the event that any of the parties hereto becomes obligated under the law respecting debtors and creditors of the United States, the State of New York, or any other competent jurisdiction, including without limit Section 7425 of the Insurance Law of the State of New York and any applicable provisions of the New Hampshire general laws, to repay or return to the other party, or to a rehabilitator, successor, liquidator or trustee of the other party all or any portion of the consideration hereunder, then that party agrees to make such repayment or return forthwith and, upon such repayment or return, this Agreement shall be null and void. In addition, in the event that all or any portion of the consideration hereunder is deemed to be a voidable transfer under any laws

referred to above, and any other party, including without limit the parties to this Agreement or any of their officers, directors or shareholders, becomes obligated to repay or return all or any portion of the consideration, then the original recipient agrees to unconditionally repay or return such consideration, or portion thereof, forthwith and, upon such repayment or return, this Agreement shall be null and void.

9. If any provision of this Agreement is invalid, unenforceable or illegal under the law of any jurisdiction, such provision shall be deemed severable from the balance of this Agreement, and the validity and enforceability of the remaining provisions of this Agreement, and the validity and enforceability of such provision in any other jurisdiction shall not be affected thereby. In the event of such invalidity, enforceability or illegality, the parties shall negotiate in good faith to amend this Agreement through the insertion of additional provisions which are valid, enforceable and legal and which reflect, to the extent possible, the economic and other purposes contained in the invalid, unenforceable or illegal provision.

10. The parties hereby agree that, subject to Paragraphs 3 and 8 above, this Agreement shall take precedence over and supersede the Reinsurance Agreements and that notwithstanding anything to the contrary contained therein, this Agreement shall operate as a full and final settlement, commutation and release of the respective rights, obligations and liabilities of the parties under the Reinsurance Agreements. In addition, the parties and their respective successors and assigns absolutely and unconditionally covenant and agree that upon consummation of the transactions contemplated by this Agreement, neither will demand, claim or file suit or initiate arbitration proceedings against the other with respect to any matters relating to or arising out of the Reinsurance Agreements.

11. The failure of any party to enforce at any time any of the provisions of this Agreement shall in no way be construed to be a waiver of such provisions, nor in any way to affect the validity of this Agreement, or any part hereof, or the rights of such party to thereafter enforce each and every such provision.

12. The parties hereby agree to promptly execute any and all supplemental agreements, releases, affidavits, waivers, and all other documents of any nature or kind, which

may reasonably be required to implement the provisions or objectives of this Agreement.

13. (a) Gerling represents and warrants that it is a legally constituted entity in good standing; that it is not insolvent; that it is duly authorized to enter into this Agreement and the transactions contemplated herein; that the representative signing this Agreement is fully authorized to execute this Agreement on its behalf; that all requisite and necessary approvals have been obtained to consummate the transactions contemplated by this Agreement and that no additional authorization is needed from any regulatory authority in this regard; that no other agreement, undertaking, contract or matter is known to exist that might render this Agreement void, voidable or unenforceable; and that it has read this Agreement, that it understands its contents and that it is executing it freely and voluntarily with an intent to be bound by its terms; and (b) the Rehabilitator represents and warrants that she is duly authorized to enter into this Agreement and the transactions contemplated herein, and that the Special Deputy Commissioner signing this Agreement is fully authorized to execute this Agreement on her behalf.

14. The parties acknowledge that they have entered into this Agreement in reliance on their own independent investigation and analysis of the matters forming the subject of this Agreement and their rights and obligations with respect thereto, and not on the basis of any representation by any other party hereto except those representations contained in this Agreement.

15. This Agreement shall inure to the benefit of and bind the parties and their respective predecessors, parents, affiliates, subsidiaries, successors and assigns (including their rehabilitators, liquidators or other statutory successors) to the maximum extent permitted by law.

16. No supplement, amendment, variation, modification, waiver or termination of this Agreement shall be effective unless in writing and signed by the parties.

17. It is hereby agreed that the parties, including but not limited to their attorneys, agents, representatives and affiliates, will not disclose the terms of this Agreement to anyone

other than is necessary to effectuate the terms of this Agreement; except that the parties may disclose the terms of this Agreement to and through their attorneys, accountants, reinsurers, retrocessionaires and auditors for a legitimate business purpose where a specific need for such disclosure arises in the judgment of such attorneys, accountants, reinsurer and auditors, or in response to lawful process. Notwithstanding the foregoing, nothing in this provision shall restrict the ability of the parties to disclose the terms of this Agreement to regulatory entities or in connection with reports and statements that they may be required from time to time to file or submit to government agencies.

18. The parties believe that the consideration for this Agreement, provided in exchange for the parties' mutual promises made herein, is fair and reasonable and that they have each received and/or paid fair market value for the reinsurance protection being commuted. The parties further agree to provide each other with an appropriate affidavit to this effect if such an affidavit becomes necessary to uphold or enforce the legitimacy of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement by their respective authorized officers.

**Paula T. Rogers, New Hampshire Commissioner of Insurance,  
solely in her capacity as Rehabilitator of  
The Home Insurance Company In Rehabilitation**

By: Peter Bangelsdorf Dated: 4-24-03

Name: Peter Bangelsdorf  
Special Deputy Commissioner  
Title: The Home Insurance Company in Rehabilitation

**Gerling Global Reinsurance Corporation — U.S. Branch**

By: [Signature]

Dated: 4-28-03

Name: KEVIN MC CARTHY

Title: President

**Constitution Insurance Company**

By: [Signature]

Dated: 4-28-03

Name: KEVIN MC CARTHY

Title: President

**Gerling Global Reinsurance Corporation of America**

(f/k/a Constitution Reinsurance Corporation)

By: [Signature]

Dated: 4-28-03

Name: KEVIN MC CARTHY

Title: President