

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**

**LIQUIDATOR'S MOTION FOR APPROVAL
OF SECOND LEASE MODIFICATION**

Roger A. Sevigny, Insurance Commissioner of the State of New Hampshire, as Liquidator ("Liquidator") of The Home Insurance Company ("Home"), hereby moves that the Court enter an order approving a Second Partial Surrender and Extension of Term Agreement (the "Second Lease Modification") between the Liquidator and 59 Maiden Lane Associates, LLC (the "Landlord"), concerning Home's operational headquarters at 59 Maiden Lane, New York, New York. As reasons therefor, the Liquidator states as follows:

1. Home entered into a lease with the Landlord's predecessor-in-interest Mitchell E. Rudin, as Receiver for Olympia & York Maiden Lane Company, LLC, dated as of December 1998 (as amended, the "Lease") for office space and storage space located at 59 Maiden Lane, New York, New York. This space was the operational headquarters of Home and U.S. International Reinsurance Company ("USI Re") (collectively, the "Companies") prior to entry of the Orders of Liquidation. Affidavit of Peter A. Bengelsdorf, Special Deputy Liquidator, in Support of Approval of Second Lease Modification ("Bengelsdorf Affidavit") ¶ 3.

2. After the liquidation began, the Liquidator and the Landlord entered a Partial Surrender and Extension of Lease Agreement dated as of October 3, 2003 (the "Lease Modification"). Under the Lease Modification, Home surrendered space on the 17th floor of 59 Maiden Lane and extended the term of the Lease to December 31, 2008. This reflected the

reduced operations of Home and USI Re after entry of the Orders of Liquidation. The Lease Modification was approved by the Court in the Order Approving Lease Modification Amendment issued October 22, 2003. Bengelsdorf Aff. ¶ 4.

3. Pursuant to the Lease, Home currently leases the entire 5th floor (37,719 rentable square feet) and a portion of the basement storage space of 59 Maiden Lane (the “Premises”) for a term expiring December 31, 2008. Bengelsdorf Aff. ¶ 5.

4. As set forth in the Liquidator’s reports, the Liquidator has organized a stand-alone operation to conduct the liquidation of the Companies. The Liquidator has benefited from the experience and knowledge of personnel previously employed at Home’s operational headquarters in New York City by engaging those personnel as part of the liquidation staff. The Liquidator also has taken advantage of the existing New York facilities in establishing an operational base for the liquidation. The Liquidator anticipates that the liquidation will continue to have operations in New York City after the existing Lease term expires on December 31, 2008. However, the liquidation operation is gradually consolidating and reducing its need for storage space, and the liquidation does not need the basement storage space presently included within the Lease. Bengelsdorf Aff. ¶ 6.

5. In these circumstances, the Liquidator engaged in discussions with the Landlord to seek to surrender the basement storage space and extend the term of the Lease of the 5th floor space after December 31, 2008. Subject to approval by the Court, the Liquidator and the Landlord have now entered the Second Lease Modification. The Second Lease Modification provides that Home will surrender all of the basement storage space on December 15, 2005 and pay to the Landlord a lump sum of \$200,000 towards the rent and additional rent that would have been due for that space through the end of the Lease. In return, the Landlord will release Home

from any obligations attributable to the basement storage space. The Landlord and Home also agreed to otherwise extend the term of the Lease for two years, until December 31, 2010. The rental rate for the two additional years will be \$28.00 per square foot, which is less than the existing rate of \$31.50 per square foot. The Landlord and Home further agreed that Home has an option for two further years at the then market rate. The other provisions of the Second Lease Modification are set forth in the copy of the Second Lease Modification attached as Exhibit A hereto. Bengelsdorf Aff. ¶ 7.

6. The Second Lease Modification provides that the Landlord may terminate the Second Lease Modification in the event the Court has not approved it by December 15, 2005 (the date on which Home is to surrender the basement space). Bengelsdorf Aff. ¶ 8.

7. The Second Lease Modification will benefit the liquidation in two ways. First, it will save approximately \$487,000 compared to the existing Lease. The Lease presently obligates Home to pay approximately \$1.477 million (plus electricity) per year through December 31, 2008 for the 5th floor and basement space. The Second Lease Modification, by contrast, would obligate Home to pay approximately \$1.28 million (plus electricity) per year through December 31, 2008 for the 5th floor alone. The Second Lease Modification represents an annual savings of approximately \$197,000 plus the electricity for the basement (approximately \$31,800) compared to the existing Lease. The Second Lease Modification is thus estimated to save the liquidation approximately \$487,000 over the remaining 2006-2008 term of the Lease (\$197,000 per year under the Lease plus \$31,800 per year in electricity minus the one-time \$200,000 surrender payment). Bengelsdorf Aff. ¶ 9.

8. Second, the Second Lease Modification provides space for projected liquidation operations during 2009 and 2010 at a rate consistent with current market rates for similar space

and avoids moving expense. The cost of the two year extension for 2009-2010 will be approximately \$1.14 million (plus electricity) per year, or \$2.28 million (plus electricity) in total. This is approximately \$132,000 less per year than the present payments under the Lease for the 5th floor (a total of \$264,000 over the term of the extension). Based on discussions with a real estate broker, this rate is consistent with market rates for space like that at 59 Maiden Lane. In the absence of an extension, the liquidation operations (including the information technology facility) would need to be relocated at year end 2008, at significant expense. Bengelsdorf Aff. ¶ 10.

9. The liquidation needs to retain its presence in New York, where its operations and staff presently work and reside, to assure continuity of its operations. In addition, the terms and conditions of the Second Lease Modification are consistent with commercial real estate transactions of a similar type. The Second Lease Modification is the result of extensive arms-length negotiations with the Landlord. It provides for the surrender of certain space, which the liquidation no longer requires, and an extension of the term regarding the space that is necessary for the liquidation's current and future operations, as now contemplated. Bengelsdorf Aff. ¶ 11.

10. The Liquidator submits that the Second Lease Modification is fair and reasonable and that it is in the best interests of the policyholders and other creditors of Home. The Second Lease Modification will provide for continuity of the liquidation's affairs, allowing it to maintain its operations and necessary staff in its New York office, while simultaneously permitting it to surrender leased space it no longer requires, all on commercially reasonable terms. See Bengelsdorf Aff. ¶ 12.

WHEREFORE, the Liquidator requests that his motion be granted and that the Court enter an Order in the form submitted herewith approving the Second Lease Modification.

Respectfully submitted,

ROGER A. SEVIGNY, COMMISSIONER OF
INSURANCE OF THE STATE OF NEW HAMPSHIRE
SOLELY AS LIQUIDATOR OF THE HOME
INSURANCE COMPANY,

By his attorneys,

KELLY A. AYOTTE
ATTORNEY GENERAL

J. Christopher Marshall
Civil Bureau
New Hampshire Department of Justice
33 Capitol Street
Concord, NH 03301-6397
(603) 271-3650



J. David Leslie
Eric A. Smith
Rackemann, Sawyer & Brewster
One Financial Center
Boston, MA 02111
(617) 542-2300

November 10, 2005

Certificate of Service

I hereby certify that a copy of the foregoing Liquidator's Motion for Approval of Second Lease Modification Agreement was sent, this 10th day of November, 2005, by first class mail, postage prepaid to all persons on the attached service list.



Eric A. Smith

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

In the Matter of the Liquidation of
The Home Insurance Company
Docket No. 03-E-0106

SERVICE LIST

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

Gary Lee, Esq.
Pieter Van Tol, Esq.
Lovells
16th Floor
900 Third Avenue
New York, New York 10022

Gail M. Goering, Esq.
Adam Goodman, Esq.
Eric Haab, Esq.
Lovells
One IBM Plaza
330 N. Wabash Avenue, Suite 1900
Chicago, Illinois 60611

Andre Bouffard, Esq.
Eric D. Jones, Esq.
Downs Rachlin Martin PLLC
199 Main Street
P.O. Box 190
Burlington, Vermont 05402-0190

Peter G. Callaghan, Esq.
Preti, Flaherty, Beliveau, Pachos
& Haley, PLLP
57 North Main Street
P.O. Box 1318
Concord, New Hampshire 03302-1318

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

George T. Campbell, III, Esq.
Robert A. Stein, Esq.
Robert A. Stein & Associates, PLLC
One Barberry Lane
P.O. Box 2159
Concord, New Hampshire 03302-2159

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

Jack B. Gordon, Esq.
Fried, Frank, Harris, Shriver
& Jacobson, LLP
1001 Pennsylvania Avenue
Washington, D.C. 20004

Andrew W. Serell, Esq.
Rath, Young and Pignatelli
One Capital Plaza
P.O. Box 1500
Concord, New Hampshire 03302-1500

Stephan P. Parks, Esq.
Doreen F. Connor, Esq.
Wiggin & Nourie, P.A.
670 North Commercial Street, Suite 305
P.O. Box 808
Manchester, New Hampshire 03105-0808

Michael Cohen, Esq.
Cohen & Buckley, LLP
1301 York Road
Baltimore, Maryland 21093

Exhibit A

SECOND PARTIAL SURRENDER AND EXTENSION OF TERM AGREEMENT**SECOND PARTIAL SURRENDER AND EXTENSION OF TERM**

AGREEMENT (this "Agreement") dated as of the 10th day of November, 2005 by and between 59 MAIDEN LANE ASSOCIATES, LLC, a New York limited liability company, having an office at c/o AmTrust Realty Corp., 250 Broadway, New York, New York 10007 ("Landlord") and THE HOME INSURANCE COMPANY, IN LIQUIDATION, a New Hampshire corporation, having an office at 59 Maiden Lane, New York, New York 10038 ("Tenant").

WITNESSETH:**WHEREAS:**

A. Landlord's predecessor-in-interest, Mitchell E. Rudin, as Receiver for Olympia & York Maiden Lane Company, LLC, and Tenant heretofore entered into a certain lease dated as of December 22, 1998, which lease was amended by that certain letter agreement dated March, 1999, that certain letter agreement dated April 12, 1999, that certain letter agreement dated June 10, 1999, that certain letter agreement dated October 1, 1999, that certain Substitution of Space and Extension of Term Agreement dated as of November 14, 2001 and that certain Partial Surrender and Extension of Term Agreement dated as of October 3, 2003 (such lease, as the same has been amended, is hereinafter called the "Lease"), with respect to a portion of the building known as 59 Maiden Lane, New York, New York (the "Building") for a term expiring on December 31, 2008 or on such earlier date upon which said term may expire or be terminated pursuant to any conditions of limitation or other provisions of the Lease or pursuant to law;

B. Pursuant to the provisions of the Lease, Tenant currently occupies the entire rentable portion of the fifth (5th) floor and a portion of the basement in the Building (collectively, the "Demised Premises"); and

C. The parties hereto desire to modify the Lease to provide for: (i) the termination of the Lease with respect to and the surrender by Tenant to Landlord of the portion of the Demised Premises located in the basement of the Building; (ii) the extension of the term of the Lease; and (iii) the amendment of the Lease to incorporate an option to extend the term of the Lease, all on such terms, provisions and conditions as are more particularly hereinafter set forth.

NOW, THEREFORE, in consideration of the premises and mutual covenants hereinafter contained, the parties hereto agree as follows:

1. All terms contained in this Agreement and not otherwise defined herein shall, for the purposes hereof, have the same meanings ascribed to them in the Lease.

2. The term of the Lease is hereby extended to and including December 31, 2010 and the "Expiration Date" as set forth in the Lease shall be December 31, 2010, subject to extension pursuant to the provisions of the option to extend set forth in Section 8 of this Agreement. All references in the Lease to the "Term" shall be deemed to mean, unless expressly stated otherwise, the Term including any renewals thereof.

3. Subject to the terms and conditions of this Agreement, Tenant hereby surrenders to Landlord the portion of the Demised Premises located in the basement of the Building (the "Surrender Space") effective as of December 15, 2005 (the "Surrender Date") for

the remainder of the term of the Lease, and the estate and interest of Tenant in and to the Surrender Space shall be wholly extinguished as of the Surrender Date. On or before the Surrender Date, Tenant shall vacate from and surrender the Surrender Space to Landlord in the condition required by Section 22.1 of the Lease. If Tenant does not surrender the Surrender Space on or before the Surrender Date, Landlord shall be entitled to exercise all of the rights and remedies available to Landlord as a result of such holding over under the Lease, at law, in equity or otherwise, including, without limitation, under the provisions of Paragraph 22.2(a) of the Lease.

4. In consideration for Landlord's entering into this Agreement and accepting the surrender of the Surrender Space, Tenant shall pay to Landlord an early termination fee in the sum of Two Hundred Thousand and 00/100 Dollars (\$200,000.00) on or before the second business day after the date Tenant obtains the Court Approval (as hereinafter defined). Upon (i) receipt of such payment by Landlord, (ii) the surrender of the Surrender Space in accordance with the provisions of Section 3 of this Agreement, and (iii) receipt by Tenant of the Court Approval, the Lease shall terminate with respect to the Surrender Space, but in no event shall such termination occur prior to the Surrender Date.

5. Tenant hereby represents and covenants that nothing has been or will be done or suffered whereby the Lease, or the term or estate thereby granted or the Surrender Space, or any part thereof, or any alterations, decorations, installations, additions and improvements in and to the Surrender Space, or any part thereof, have been or will be encumbered in any way whatsoever, and that Tenant owns and will own the Lease and has and will have good right to

surrender the same with respect to the Surrender Space in accordance with the terms of this Agreement, and that no party other than Tenant has acquired or will acquire through or under Tenant any right, title or interest in or to the Lease or the Surrender Space, or any part thereof, or in or to said alterations, decorations, installations, additions and/or improvements or any part thereof. The provisions of this Section 5 shall survive the Surrender Date.

6. Subject to the terms and conditions of this Agreement, Landlord shall accept the surrender of the Surrender Space in accordance with the terms of this Agreement as of the Surrender Date. In consideration of such surrender by Tenant and the acceptance of such surrender by Landlord, Tenant and Landlord do hereby mutually release each other, their respective shareholders, members, affiliates, investors, officers, attorneys, successors and assigns of and from any and all claims, damages, obligations, liabilities, actions and causes of action, of every kind and nature whatsoever, known or unknown arising under or in connection with the Surrender Space after the Surrender Date, except that nothing herein contained shall be deemed to constitute a release or discharge of Tenant with respect to: (i) any obligation under the Lease except as provided in this Agreement with respect to the Surrender Space; and (ii) any obligation pursuant to this Surrender Agreement.

7. (a) Landlord and Tenant agree that as of the Surrender Date, the Demised Premises shall be deemed to contain 37,719 rentable square feet consisting of the entire fifth floor of the Building.

(b) During the period commencing on the Surrender Date and for the remainder of the term of the Lease:

(1) the fixed rent payable by Tenant to Landlord for the Demised

Premises shall be as follows:

(a) from the Surrender Date until and including December 31, 2005, at the rate of ONE MILLION THREE HUNDRED FORTY-SIX THOUSAND EIGHT HUNDRED NINETY-THREE and 50/100 (\$1,346,893.50) DOLLARS per annum;

(b) from January 1, 2006 until and including December 31, 2008, at the rate of ONE MILLION ONE HUNDRED EIGHTY-EIGHT THOUSAND ONE HUNDRED FORTY-EIGHT and 50/100 (\$1,188,148.50) DOLLARS per annum; and

(c) from January 1, 2009 until and including December 31, 2010, at the rate of ONE MILLION FIFTY-SIX THOUSAND ONE HUNDRED THIRTY-TWO and 00/100 (\$1,056,132.00) DOLLARS per annum.

(2) with respect to the additional rent payable by Tenant pursuant to Article 4 of the Lease:

(d) from the Surrender Date until and including December 31, 2005, "Tenant's Proportionate Tax Share" as set forth in Section 4.1(d) of the Lease shall mean 4.826%; and "Tenant's Proportionate Operating Share" as set forth in Section 4.7(d) of the Lease shall mean 4.826%; and

(e) from January 1, 2006 and thereafter throughout the term of the Lease, "Tenant's Proportionate Tax Share" as set forth in Section 4.1(d) of the Lease shall

mean 3.85%; and "Tenant's Proportionate Operating Share" as set forth in Section 4.7(d) of the Lease shall mean 3.85%.

8. The following shall be added as Article 39 to the Lease:

"Article 39
Extension of Term

39.1. (a) Subject to the provisions of Section 39.4 hereof, Tenant, at Tenant's sole option, shall have the right to extend the term of this Lease for one additional term of two (2) years commencing on January 1, 2011 (hereinafter referred to as the "Commencement Date of the Extension Term") and ending on December 31, 2012 (such additional term is hereinafter called the "Extension Term") provided that:

(i) Tenant shall give Landlord notice (hereinafter called the "Extension Notice") of its election to extend the term of the Lease not later than nine (9) months prior to the Expiration Date and time shall be of the essence with respect to the timely giving of the Extension Notice, and

(ii) Tenant shall not be in default under this Lease either as of the time of the giving of the Extension Notice or the Commencement Date of the Extension Term (which requirement Landlord may waive in its sole and absolute discretion), and

(iii) As of the date of the giving of the Extension Notice and as of the Commencement Date of the Extension Term, the Tenant named herein shall be in actual occupancy of the entire Demised Premises, provided that such occupancy requirement may be waived by Landlord in its sole discretion at any time.

(b) The fixed rent payable by Tenant to Landlord during the Extension Term shall be the higher of (i) the fair market rent for the Demised Premises as determined by Landlord and set forth in a written notice to Tenant, which determination shall be as of the date (hereinafter called the "Determination Date") occurring six (6) months prior to the Commencement Date of the Extension Term and which determination shall be made by Landlord and given in writing to Tenant within a reasonable period of time after the occurrence of the Determination Date, or (ii) an amount equal to twelve (12) times the sum of the monthly fixed rent and additional rent for Taxes and Operating Expenses payable by Tenant with respect to the Demised Premises for the last full month of the initial term of this Lease, without giving effect to any

abatement, credit or offset then in effect (hereinafter called the "Original Term Escalated Rent").

For the purposes of determining the fair market rent for the Demised Premises during the Extension Term pursuant to this Article 39, the determination shall take into account all then-relevant factors.

39.2 (a) In the event Tenant gives the Extension Notice in accordance with the provisions of Section 39.1 hereof and Tenant disputes the amount of the fair market rent as determined by Landlord pursuant to Section 39.1(b) hereof, then at any time on or before the date occurring thirty (30) days after Tenant has been notified by Landlord of Landlord's determination of the fair market rent, Tenant may initiate the arbitration process provided for herein by giving notice to that effect to Landlord, and if Tenant so initiates the arbitration process such notice shall specify the name and address of the person designated to act as an arbitrator on its behalf. If Tenant fails to initiate the arbitration process as provided above, time being of the essence, then Landlord's determination of the fixed rent during the Extension Term shall be conclusive. Within twenty (20) days after the Landlord's receipt of notice of the designation of Tenant's arbitrator, Landlord shall give notice to Tenant specifying the name and address of the person designated to act as an arbitrator on its behalf. If Landlord fails to notify Tenant of the appointment of its arbitrator within such 20 day period, the appointment of the second arbitrator shall be made in the same manner as hereinafter provided for the appointment of a third arbitrator in a case where the two arbitrators appointed hereunder and the parties are unable to agree upon such appointment. The two arbitrators so chosen shall meet within ten (10) days after the second arbitrator is appointed, and shall together appoint a third arbitrator (the "Third Arbitrator"). In the event of their being unable to agree upon such appointment within seven (7) Business Days, the Third Arbitrator shall be selected by the parties themselves if they can agree thereon within a further period of five (5) Business Days. If the parties do not so agree, then either party, on behalf of both and on notice to the other, may request such appointment by the American Arbitration Association (or any successor organization thereto) in accordance with its rules then prevailing or if the American Arbitration Association (or such successor organization) shall fail to appoint said Third Arbitrator within twenty (20) days after such request is made, then either party may apply, on notice to the other, to any court having jurisdiction for the appointment of such Third Arbitrator. The fair market rent specified by Landlord's arbitrator shall herein be called "Landlord's Submitted Value"; the fair market rent specified by Tenant's arbitrator shall herein be called "Tenant's Submitted Value". Within five (5) days after the appointment of such Third Arbitrator, Landlord's arbitrator shall submit Landlord's Submitted Value to such Third Arbitrator and Tenant's arbitrator shall submit Tenant's Submitted Value to such third arbitrator. Such Third Arbitrator shall, within twenty (20) days after the end of such five (5) day period, make his own determination of the fair market rent for the Demised Premises and send copies of his determination promptly to both Landlord and Tenant

specifying whether Landlord's Submitted Value or Tenant's Submitted Value was closer to the determination by such Third Arbitrator of the fair market rent of the Demised Premises. Whichever of Landlord's Submitted Value or Tenant's Submitted Value shall be closer to the determination by such Third Arbitrator shall conclusively be deemed to be the fair market rent and the fair market rent, so determined, shall be applied to determine the fixed rent for the Demised Premises during the Extension Term; provided, however that in no event shall the fixed rent for the Extension Term be less than the Original Term Escalated Rent. All arbitrators shall be real estate brokers having at least 10 years experience in the leasing of first class office buildings in Midtown/Downtown Manhattan.

(b) Each party shall pay the fees and expenses of the one of the two original arbitrators appointed by or for such party, and the fees and expenses of the third arbitrator and all other expenses (not including the attorneys fees, witness fees and similar expenses of the parties which shall be borne separately by each of the parties) of the arbitration shall be borne by the parties equally.

(c) Each of the arbitrators selected as herein provided shall have at least ten (10) years experience in the leasing and renting of office space in first class office buildings in Midtown/Downtown Manhattan and shall not have been employed by either Landlord or Tenant during the preceding five (5) years.

(d) In the event the Tenant initiates the aforesaid arbitration process and as of the Commencement Date of the Extension Term the amount of the fair market rent has not been determined, Tenant shall continue to pay the Original Term Escalated Rent and when the determination has actually been made, an appropriate retroactive adjustment shall be made as of the Commencement Date of the Extension Term. In the event that such determination shall result in an overpayment by Tenant of any fixed rent, such overpayment shall be credited by Landlord to Tenant against fixed rent becoming due after such determination.

39.3 Except as provided in Section 39.1 hereof, Tenant's occupancy of the Demised Premises during the Extension Term shall be on the same terms and conditions as are in effect immediately prior to the expiration of the initial term of this Lease; *provided, however*, Tenant shall have no further right to extend the term of this Lease pursuant to this Article 39 and Tenant shall not be entitled to any rental abatement or work allowance provided herein.

39.04 If Tenant does not timely send the Extension Notice pursuant to the provisions of Section 39.1 hereof, this Article 39 shall have no force or effect and shall be deemed deleted from this Lease. Time shall be of the essence with respect to the giving of the Extension Notice. The termination of this Lease during the initial term hereof shall also terminate and render void any option or right on Tenant's part to extend the term of this Lease pursuant to this Article 39 whether or not such option

or right shall have theretofore been exercised. None of Tenant's options or elections set forth in this Article 39 may be severed from this Lease or separately sold, assigned or transferred.

39.5 If Tenant exercises its right to extend the term of this Lease for the Extension Term pursuant to this Article 39, the phrases "the term of this lease" or "the term hereof" as used in this Lease, shall be construed to include the Extension Term, and the Expiration Date shall be construed to be the date of the expiration of the Extension Term.

39.6 If the term of this Lease is extended for the Extension Term, then Landlord or Tenant can request the other party hereto to execute, acknowledge and deliver an instrument in form for recording setting forth the exercise of Tenant's right to extend the term of this Lease and the last day of the Extension Term."

9. Simultaneously with the execution of this Agreement, Landlord and Tenant are completing and executing the (a) New York State Combined Real Estate Transfer Tax Return Credit Line Mortgage Certificate (TP-584) and (b) The New York City Real Property Transfer Tax Return. Landlord shall file such returns, with the New York State Department of Taxation and Finance and the New York City Department of Finance, respectively. Tenant hereby agrees to pay to the extent imposed with respect to the surrender of the Surrender Space and this Agreement any New York State Real Estate Transfer Tax (hereinafter called "Transfer Tax") and any New York City Real Property Transfer Tax ("RPT Tax"). Tenant agrees to indemnify and hold Landlord harmless from any obligation for any such Transfer Tax and/or RPT Tax and any loss, liability, cost or expense that Landlord may incur by reason of Tenant's failure to pay same in a timely manner. The provisions of this Section 8 shall survive the Surrender Date.

10. Each of Tenant and Landlord covenants, represents and warrants to the other that neither party has had any dealings or communications with any broker or agent in

connection with this Agreement and the surrender contemplated hereby. Each of Tenant and Landlord covenants and agrees to pay, hold harmless and indemnify the other from and against any and all cost, expense (including reasonable attorneys' fees and court costs), loss and liability for any compensation, commissions, or charges arising from a breach of the foregoing representation. The provisions of this Section 9 shall survive the Surrender Date.

11. Except as modified by this Agreement, the Lease and all covenants, agreements, terms and conditions thereof shall remain in full force and effect and are hereby in all respects ratified and confirmed.

12. This Agreement shall not be binding upon Landlord unless and until it is signed by Landlord and a fully executed counterpart thereof is delivered to Tenant.

13. Each of the persons executing this Agreement on behalf of Landlord and Tenant represents that he or she has been so duly authorized by Landlord and Tenant.

14. This Agreement contains the entire agreement between the parties, and any executory or oral agreement hereinbefore or hereafter made shall be ineffective to change, modify, discharge or effect an abandonment of it in whole or in part unless such agreement is made after the date hereof and is in writing and signed by the party against whom enforcement of the change, modification, discharge or abandonment is sought.

15. The covenants, agreements, terms and conditions contained in this Agreement shall bind and inure to the benefit of the parties hereto and their respective successors and, except as otherwise provided in the Lease, their respective assigns.

16. This Agreement shall be governed by and interpreted in accordance with the laws of the State of New York.

17. This Agreement may be executed in any number of counterparts, each of which shall, when executed, be deemed to be an original and all of which shall be deemed to be one and the same instrument. The transmission by telecopier of a copy of the signature page from this Agreement executed by the transmitting party, together with instructions that same may be attached to a copy of this Agreement being held by the recipient of such transmission, shall constitute execution and delivery of this Agreement by the transmitting party.

18. If any provisions of this Agreement or the application thereof to any person or circumstance shall, for any reason and to any extent, be invalid or unenforceable, the remainder of this Agreement and the application of that provision to other persons or circumstances shall not be affected but rather shall be enforced if and to the extent permitted by law.

19. This Agreement shall be construed without regard to any presumption or other rule requiring construction against the party causing this Agreement to be drafted.

20. All terms and words used in this Agreement, shall be deemed to include the singular where plural form is used, the plural where singular form is used, and any other gender, all as the context may require,

21. (a) Notwithstanding any provision of this Agreement to the contrary, this Agreement is conditioned upon the approval (the "Court Approval") of the Superior Court of


Merrimack County, New Hampshire (the "Court"), in connection with Tenant's liquidation proceeding entitled *In the Matter of the Liquidation of The Home Insurance Company*, Docket No. 03-E-0106.

(b) Tenant shall make a true and complete application to the Court for the Court Approval within two (2) business days following the date of this Agreement and shall use its commercially reasonable efforts to obtain the Court Approval as soon as reasonably practicable and shall furnish Landlord with a copy of the Court Approval upon receipt thereof. If, despite such commercially reasonable efforts, Tenant does not obtain the Court Approval on or prior to the Surrender Date, then Landlord shall have the right, upon notice to Tenant, to terminate this Agreement at any time prior to Tenant's obtaining of the Court Approval. If Landlord does not terminate this Agreement and the Court Approval is not obtained by January 31, 2006, then either party shall have the right, on notice to the other, to terminate this Agreement at any time prior to Tenant's obtaining of the Court Approval. In the event this Agreement is so terminated, this Agreement shall be null and void ipso facto, and of no force and effect, the amount paid by Tenant pursuant to Section 4 of this Agreement shall be returned to Tenant, and the Lease shall remain in full force and effect.

22. Any notice (as defined in the Lease) given pursuant to this Agreement shall be given in accordance with the provisions of Section 30.1 of the Lease.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

59 MAIDEN LANE ASSOCIATES, LLC,
Landlord

By: 
Name: Nathan Aber
Title: Manager

THE HOME INSURANCE COMPANY, IN
LIQUIDATION, Tenant

By: _____
Name:
Title:

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

59 MAIDEN LANE ASSOCIATES, LLC,
Landlord

By: _____
Name: Nathan Aber
Title: Manager

THE HOME INSURANCE COMPANY, IN
LIQUIDATION, Tenant

By: Peter Bengelsdorf
Name: Peter Bengelsdorf
Title: Special Deputy Liquidator