

**THE STATE OF NEW HAMPSHIRE**

**MERRIMACK, SS**

**SUPERIOR COURT**

**Docket No. 217-2003-EQ-00106**

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

**MOTION FOR APPROVAL OF REINSURANCE  
COMMUTATION AGREEMENT WITH SWISS RE**

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 in the form submitted herewith approving a Reinsurance Commutation Agreement, Settlement and Release (the “Commutation Agreement”) between the Liquidator and Swiss Reinsurance America Corporation (“SRAC”), Westport Insurance Corporation, Swiss Reinsurance Company Ltd, and Swiss Re Europe S.A., on their own behalf and on behalf of their predecessors and successors, and their corporate entities, branches, affiliates and subsidiaries (collectively, “Swiss Re”). As reasons for this motion, the Liquidator respectfully states:

1. This motion seeks approval of the Commutation Agreement between the Liquidator and Swiss Re. A redacted copy of the Commutation Agreement (with economic terms removed) is attached as Exhibit 1. A complete copy of the Commutation Agreement is attached to the Confidential Affidavit of Peter A. Bengelsdorf, Special Deputy Liquidator, in Support of Approval of Reinsurance Commutation Agreement with Swiss Re (“Bengelsdorf Confidential Affidavit”) submitted herewith under seal. The Commutation Agreement is subject to approval by the Court. Commutation Agreement ¶ 1. Bengelsdorf Confidential Affidavit ¶ 2.

2. As a part of its business, Home entered into reinsurance agreements with numerous reinsurers under which Home ceded and the reinsurers assumed a portion of Home's obligations. Collection of reinsurance is the principal asset marshalling task of the Home liquidation. Bengelsdorf Confidential Affidavit ¶ 3.

3. Certain Swiss Re companies and Home have entered commutation agreements in the past, including the commutation agreements approved by the Court on December 2, 2008 and November 1, 2010. This Commutation Agreement resolves all remaining uncommuted reinsurance agreements between Swiss Re and Home, except for the Swiss Re's participation in the Agency Managers Pool which is addressed in the ROM Reinsurance Management commutation that is the subject of a motion being filed simultaneously with this motion. Bengelsdorf Confidential Affidavit ¶ 4.

4. Swiss Re companies, including SRAC, Westport Insurance Corporation, Swiss Reinsurance Company Ltd, and Swiss Re Europe S.A., reinsured Home under various reinsurance agreements during the period 1971 through 1996, including pool business. These contracts include both treaties (which cover exposures for various classes of business) and facultative certificates (which cover exposures from a particular Home policy or policies), and they provide reinsurance coverage for a broad spectrum of risks. Bengelsdorf Confidential Affidavit ¶ 5.

5. Home provided Swiss Re companies with reinsurance coverage under other reinsurance agreements. Bengelsdorf Confidential Affidavit ¶ 6.

6. Home thus "ceded" reinsurance to Swiss Re (which "assumed" the exposures), and Home also "assumed" reinsurance from Swiss Re (which "ceded" the exposures). The Liquidator seeks to recover from Swiss Re the value of Home's ceded reinsurance to Swiss Re

less the value of Swiss Re's ceded reinsurance to Home, which Swiss Re asserts as offset.

Bengelsdorf Confidential Affidavit ¶ 7.

7. The Commutation Agreement provides for the commutation of all of Home's remaining ceded business to Swiss Re (except the Agency Managers Pool business) and all of Swiss Re's remaining ceded business to Home. Commutation Agreement, fifth Whereas clause, ¶¶ 3-4. It is intended as a comprehensive resolution, and it is accordingly contingent on approval of the ROM commutation agreement concerning Agency Pool Managers business. Commutation Agreement, ninth Whereas clause, ¶ 1. Bengelsdorf Confidential Affidavit ¶ 8.

8. The Commutation Agreement provides for the full and final settlement of all past, present and future obligations and liabilities under the commuted reinsurance agreements for a payment to Home of a settlement sum. Commutation Agreement tenth Whereas clause, ¶¶ 2, 8. Bengelsdorf Confidential Affidavit ¶ 9.

9. The Commutation Agreement provides that Swiss Re will pay the settlement sum to the Liquidator by wire transfer within ten business days after the Court's approval of the Commutation Agreement. Commutation Agreement ¶ 2. The Commutation Agreement acknowledges that SRAC is a creditor of Home under business ceded to Home's predecessor City Insurance Company, and that SRAC is entitled to offset that credit balance against amounts it will be obligated to pay to fund its share of the ROM Commutation Agreement. Commutation Agreement, eighth Whereas clause, ¶ 2. Bengelsdorf Confidential Affidavit ¶ 10.

10. The other provisions of the Commutation Agreement, including mutual releases of all matters under the commuted reinsurance agreements (Commutation Agreement ¶¶ 3-4), are set forth in the Commutation Agreement. Bengelsdorf Confidential Affidavit ¶ 10.

11. The Commutation Agreement and certain supporting materials have been provided to members of the National Conference of Insurance Guaranty Funds' Subcommittee on The Home Insurance Company in Liquidation ("NCIGF Subcommittee"), who have entered confidentiality agreements. The NCIGF Subcommittee has advised the Liquidator that it has no objections to the Commutation Agreement. Bengelsdorf Confidential Affidavit ¶ 13.

12. The Bengelsdorf Confidential Affidavit summarizes the reasons that support the determination to enter the Commutation Agreement. Bengelsdorf Confidential Affidavit ¶¶ 9-14. For the reasons set forth in the Bengelsdorf Confidential Affidavit, the Liquidator submits that the Commutation Agreement is fair and reasonable and in the best interests of the policyholders and other creditors of Home. The Commutation Agreement will convert future reinsurance obligations into immediate cash and avoid delay in the collection of reinsurance. See Bengelsdorf Confidential Affidavit ¶ 14.

WHEREFORE, the Liquidator respectfully requests that this Court:

- A. Grant this Motion for Approval of Reinsurance Commutation Agreement with Swiss Re;
- B. Enter an Order in the form submitted herewith approving the Commutation Agreement; and
- C. Grant such other and further relief as justice may require.

Respectfully submitted,

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

By his attorneys,

JOSEPH A. FOSTER  
ATTORNEY GENERAL

J. Christopher Marshall,  
NH Bar ID No. 1619  
Civil Bureau  
New Hampshire Department of Justice  
33 Capitol Street  
Concord, NH 03301-6397  
(603) 271-3650



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J. David Leslie  
NH Bar ID No. 16859  
Eric A. Smith  
NH Bar ID No. 16952  
Rackemann, Sawyer & Brewster P.C.  
160 Federal Street  
Boston, MA 02110  
(617) 542-2300

May 4, 2016

**Certificate of Service**

I hereby certify that a copy of the foregoing Motion for Approval of Reinsurance Commutation Agreement with Swiss Re and the Proposed Order Approving Reinsurance Commutation Agreement with Swiss Re were sent, this 4<sup>th</sup> day of May, 2016, by first class mail, postage prepaid to all persons on the attached service list. The Confidential Affidavit being filed under seal was not so served.



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Eric A. Smith  
NH Bar ID No. 16952

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

In the Matter of the Liquidation of  
The Home Insurance Company  
Docket No. 217-2003-EQ-00106

SERVICE LIST

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

Gary S. Lee, Esq.  
James J. DeCristofaro, Esq.  
Kathleen E. Schaaf, Esq.  
Morrison & Foerster  
1290 Avenue of the Americas  
New York, New York 10104-0050

Robert A. Stein, Esq.  
The Stein Law Firm, PLLC  
One Barberry Lane  
P.O. Box 2159  
Concord, New Hampshire 03302-2159

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

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

David H. Simmons, Esq.  
Mary Ann Etzler, Esq.  
Daniel J. O'Malley, Esq.  
deBeaubien, Knight, Simmons,  
Mantzaris & Neal, LLP  
332 North Magnolia Avenue  
P.O. Box 87  
Orlando, Florida 32801

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

Richard Mancino, Esq.  
Willkie Farr & Gallagher, LLP  
787 Seventh Avenue  
New York, New York 10019

Joseph G. Davis, Esq.  
Willkie Farr & Gallagher, LLP  
1875 K Street, N.W.  
Washington, DC 20006

Albert P. Bedecarre, Esq.  
Quinn Emanuel Urguhart Oliver & Hedges LLP  
50 California Street, 22<sup>nd</sup> Floor  
San Francisco, California 94111

Jeffrey W. Moss, Esq.  
Morgan Lewis & Bockius, LLP  
One Federal Street  
Boston, Massachusetts 02110

Gerald J. Petros, Esq.  
Hinckley, Allen & Snyder LLP  
50 Kennedy Plaza, Suite 1500  
Providence, Rhode Island 02903

Christopher H.M. Carter, Esq.  
Hinckley, Allen & Snyder LLP  
11 South Main Street, Suite 400  
Concord, New Hampshire 03301

Robert M. Horkovich, Esq.  
Robert Y. Chung, Esq.  
Anderson Kill & Olick, P.C.  
1251 Avenue of the Americas  
New York, New York 10020

Andrew B. Livernois, Esq.  
Ransmeier & Spellman, P.C.  
One Capitol Street  
P.O. Box 600  
Concord, New Hampshire 03302-0600

John A. Hubbard  
615 7<sup>th</sup> Avenue South  
Great Falls, Montana 59405

Paul W. Kalish, Esq.  
Ellen M. Farrell, Esq.  
Timothy E. Curley, Esq.  
Crowell & Moring  
1001 Pennsylvania Avenue, N.W.  
Washington, DC 20004-2595

Harry L. Bowles  
306 Big Hollow Lane  
Houston, Texas 77042

Gregory T. LoCasale, Esq.  
White and Williams, LLP  
One Liberty Place, Suite 1800  
Philadelphia, Pennsylvania 19103-7395

Kyle A. Forsyth, Esq.  
Commercial Litigation Branch/Civil Division  
United States Department of Justice  
P.O. Box 875  
Washington, D.C. 20044-0875

W. Daniel Deane, Esq.  
Nixon Peabody LLP  
900 Elm Street, 14<sup>th</sup> Floor  
Manchester, New Hampshire 03861

Joseph C. Tanski, Esq.  
John S. Stadler, Esq.  
Nixon Peabody LLP  
100 Summer Street  
Boston, Massachusetts 02110

Steven J. Lauwers, Esq.  
Michael S. Lewis, Esq.  
Rath Young Pignatelli  
One Capital Plaza  
Concord, New Hampshire 03302-1500

Robert E. Murphy, Esq.  
Michael J. Tierney, Esq.  
Wadleigh, Starr & Peters, PLLC  
95 Market Street  
Manchester, New Hampshire 03101

Mark J. Andreini, Esq.  
Jones Day  
North Point  
901 Lakeside Avenue  
Cleveland, Ohio 44114-1190



**REINSURANCE COMMUTATION  
AGREEMENT, SETTLEMENT AND RELEASE**

**THIS REINSURANCE COMMUTATION AGREEMENT, SETTLEMENT  
AND RELEASE** (the "Agreement") effective on the Effective Date, which date is set  
forth herein, is made and entered into by and between

**ON THE FIRST PART**

Roger A. Sevigny, New Hampshire Insurance Commissioner, solely in his  
capacity as Liquidator (the "Liquidator") of The Home Insurance Company ("Home"),  
and

**ON THE SECOND PART**

Swiss Reinsurance America Corporation (hereafter "SRAC"), Westport Insurance  
Corporation, Swiss Reinsurance Company Ltd, and Swiss Re Europe S.A., on their own  
behalf, on behalf of their predecessors and successors, and on behalf of each and every  
one of their corporate entities, branches, affiliates and subsidiaries (collectively referred  
to as "Swiss Re").

The Liquidator, Home and Swiss Re are referred to collectively herein as the  
"Parties."

**WITNESSETH:**

**WHEREAS**, Home and Swiss Re entered into various reinsurance agreements,  
pursuant to which Home ceded liabilities to Swiss Re, which assumed such liabilities  
from Home subject to the terms and conditions of the agreements (the "Ceded  
Reinsurance Agreements"), which Ceded Reinsurance Agreements include liabilities  
ceded by Home to SRAC (the "SRAC Ceded Reinsurance Agreements");

**WHEREAS**, Swiss Re and Home entered into various reinsurance agreements,  
pursuant to which Swiss Re ceded liabilities to Home, which assumed such liabilities  
from Swiss Re subject to the terms and conditions of the agreements (the "Assumed

Reinsurance Agreements"), which Assumed Reinsurance Agreements include liabilities ceded by SRAC to Home (the "SRAC Assumed Reinsurance Agreements");

WHEREAS, the Ceded Reinsurance Agreements and the Assumed Reinsurance Agreements are referred to collectively herein as the "Reinsurance Agreements," and the SRAC Ceded Reinsurance Agreements and the SRAC Assumed Reinsurance Agreements are referred to collectively herein as the "SRAC Reinsurance Agreements";

WHEREAS, Home is in liquidation pursuant to the June 13, 2003 Order of Liquidation issued by the Superior Court of the State of New Hampshire, Merrimack County (the "Liquidation Court"), pursuant to which the Liquidator was appointed as the Liquidator of Home;

WHEREAS, the Parties previously entered into certain commutation agreements that resolved liabilities to one another under certain reinsurance agreements, but which did not fully and finally resolve all potential liabilities under all of the Reinsurance Agreements, and it is now intended that the Parties will resolve, settle, and commute all liabilities remaining between them pursuant to all the uncommuted Reinsurance Agreements existing between and among them except for Agency Managers Inc. Pool ("Agency Managers Pool") business which is being separately addressed;

WHEREAS, SRAC is a member of the Agency Managers Pool;

WHEREAS, ROM Reinsurance Management Co., Inc. ("ROM"), on behalf of the Agency Managers Pool members including SRAC, and the Liquidator of Home have executed a commutation agreement (the "ROM Commutation Agreement"), the effectiveness of which is contingent upon approval by the Liquidation Court;

WHEREAS, Swiss Re is a creditor of Home pursuant to certain of the Assumed and Ceded Reinsurance Agreements, including a reinsurance agreement whereby SRAC ceded business to City Insurance Company through H.S. Weavers, and for which business the current billed but unpaid balance is [REDACTED] (hereafter the "City Insurance Balance"), and SRAC is entitled to offset the City Insurance Balance against

amounts it will be obligated to pay to fund its share of the ROM Commutation Agreement;

**WHEREAS**, if the ROM Commutation Agreement is not approved by the Liquidation Court it is the intent of the Parties that this Agreement shall be null and void and of no force and effect;

**WHEREAS**, the Parties have agreed that a full and complete commutation of all liabilities under the Reinsurance Agreements results in a net payment from SRAC to Home in the amount of [REDACTED] not including the City Insurance Balance and SRAC's obligations under the ROM Commutation Agreement;

**WHEREAS**, subject to the approval of the Liquidation Court of the ROM Commutation Agreement and this Agreement, the Parties wish to fully and finally resolve any and all remaining obligations and liabilities arising under the Reinsurance Agreements with the intent of the Parties being to end all obligations and relationships between and among them in their entirety;

**WHEREAS**, in addition to their past and present obligations under the Reinsurance Agreements, Home and Swiss Re 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 future 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 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. This Agreement shall only become effective on the date that the Liquidator and Swiss Re receive a copy of Orders of the Liquidation Court (a) approving this Agreement, and (b) approving the ROM Commutation Agreement (the "Effective Date"). The enforceability of this Agreement is conditioned upon approval by the Liquidation Court of both this Agreement and the ROM Commutation Agreement. If Home exercises its right to treat the ROM Commutation Agreement as null and void for failure to pay timely under paragraph 3 of that agreement, then this Agreement shall be of no force or effect.

2. The agreed consideration to be remitted by Swiss Re to Home for the commutation of the Reinsurance Agreements is [REDACTED] (the "Settlement Sum"). Swiss Re shall remit the Settlement Sum within 10 business days after the Effective Date to Home by wire transfer to the following account:

Citizens Bank, Manchester, NH, USA  
ABA No. [REDACTED]  
For the Account of The Home Insurance Company in Liquidation  
Account No. [REDACTED]  
Attention: Efraim Abramsohn

The Settlement Sum shall be transferred free and clear of and without any deduction for or on account of any set-off or counterclaim. The Parties acknowledge that SRAC is entitled to offset the City Insurance Balance against amounts it will be obligated to pay to fund its share of the ROM Commutation Agreement.

3. Subject to the terms and conditions of this Agreement and the Liquidation Court approvals recited herein, the Liquidator on behalf of Home, its officers, directors, employees, agents (including its Special Deputy Liquidator), attorneys, subsidiaries, affiliates, shareholders, parents, and their respective predecessors, successors and assigns, irrevocably and unconditionally releases and discharges Swiss Re, its officers, directors, employees, agents, attorneys, subsidiaries, affiliates, shareholders, parents, and their respective predecessors, successors and assigns to the extent permitted by applicable law

from any and all liabilities, adjustments, obligations, offsets, actions, causes of action, suits, debts, dues, sums of money, accounts, reckonings, premiums, return premiums, unearned premiums, losses, salvage, specialties, commissions, variances, expenses, acts, omissions, bonds, bills, covenants, contracts, controversies, agreements, promises, trespasses, damages, judgments, extents, executions, claims and demands whatsoever, all whether known or unknown to one or both parties, suspected or unsuspected, fixed or contingent, in law, admiralty or equity, which the Liquidator and/or Home ever had, now has, or hereafter may have against Swiss Re by reason of any matter whatsoever arising out of or in connection with or in relation to the Reinsurance Agreements. Additionally, the Liquidator fully understands and expressly waives his rights and benefits with respect to the Reinsurance Agreements 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.

4. Subject to the terms of this Agreement and the Liquidation Court approvals recited herein, Swiss Re on behalf of itself, its officers, directors, employees, agents, attorneys, subsidiaries, affiliates, shareholders, parents, and their respective predecessors, successors and assigns, irrevocably and unconditionally releases and discharges the Liquidator and Home and their respective officers, directors, employees, agents (including its Special Deputy Liquidator), attorneys, subsidiaries, affiliates, shareholders, parents, and their respective predecessors, successors and assigns to the extent permitted by applicable law from any and all liabilities, adjustments, obligations, offsets, actions, causes of action, suits, debts, dues, sums of money, accounts, reckonings, premiums, return premiums, unearned premiums, losses, salvage, specialties, commissions, variances, expenses, acts, omissions, bonds, bills, covenants, contracts, controversies, agreements, promises, trespasses, damages, judgments, extents, executions, claims and demands whatsoever, all whether known or unknown to one or both parties, suspected or unsuspected, fixed or contingent, in law, admiralty or equity, which Swiss Re ever had, now has, or hereafter may have against the Liquidator and/or Home by reason of any matter whatsoever arising out of or in connection with or in

relation to the Reinsurance Agreements. Additionally, Swiss Re fully understands and expressly waives its rights and benefits with respect to the Reinsurance Agreements 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. This Agreement shall, subject to its approval by the Liquidation Court, 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 applicable law. The Parties each represent and warrant that neither they nor their predecessors have prior hereto assigned or otherwise transferred to any other entity any of the rights, entitlements or interests in or to the Reinsurance Agreements.

6. This Agreement embodies the final, complete and entire agreement between the Parties with respect to the subject matter hereof. 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. No 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.

7. If any provision of this Agreement is invalid, unenforceable or illegal under the law of any applicable 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, unenforceability 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.

8. Subject to the provisions of paragraph 1, the Parties hereby agree that 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.

9. The failure of any Party hereto 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.

10. The Parties, without further consideration, agree to execute and deliver such other documents and take such other action as may be necessary to effect and implement this Agreement.

11. The Parties agree and acknowledge that this Agreement is being entered into solely as a commercial accommodation, without regard to the respective positions of the Parties regarding their rights and obligations under and in terms of the Reinsurance Agreements. As such, the Parties agree that this Agreement shall never at any time for any purpose be considered as an admission of liability or responsibility on the part of any Party hereto regarding any aspect of the Reinsurance Agreements, other than with respect to the terms and conditions herein contained.

12. (a) Swiss Re 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 persons signing this Agreement are 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; 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 the Agreement's contents and that the Agreement is being executed freely and voluntarily with an intent for it to be bound by the Agreement's terms; and (b) the Liquidator represents and warrants that, subject to the Liquidation Court's approval, he is duly authorized to enter into this Agreement and the transactions contemplated herein; that no other agreement, undertaking, contract or matter is known to exist that might render this Agreement void, voidable or unenforceable; that he has read this Agreement, understands its contents, and that the person signing this Agreement is fully authorized to execute this Agreement freely and voluntarily on his behalf with an intent for the Liquidator to be bound by its terms.

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

14. 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 as 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, reinsurers 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, or in support of a motion for approval by the Liquidation Court.

15. The Parties represent that the consideration for this Agreement, provided in exchange for the Parties' mutual promises made herein, is fair and reasonable. The Parties shall 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.



16. This Agreement may be executed in multiple counterparts, each of which, when so executed and delivered, shall be an original, but such counterparts shall together constitute one and the same instrument. The Parties agree that a signature sent by facsimile or electronic mail to the other Party shall have the same force and effect as an original signature.

17. All notices required or permitted by this Agreement shall be in writing and delivered (a) by hand and by email or (b) by facsimile transmission and by email directed to:

If to Swiss Re:

William E. Flaherty  
Swiss Reinsurance America Corp.  
475 N. Martingale Road, Suite 1200  
Schaumburg, IL 60173  
Email: [REDACTED]  
Fax Number: [REDACTED]

If to the Liquidator:

Russell Bogin, Vice President and Reinsurance Counsel  
The Home Insurance Company in Liquidation  
61 Broadway  
New York, New York 10006  
Email: [REDACTED]  
Fax: [REDACTED]

or at such other address, email or fax number of which the addressee may from time to time have notified the addressor. A notice shall be deemed to have been sent and received on the day it is delivered by hand and emailed or on the day on which transmission is confirmed, if faxed, and emailed. If such day is not a business day or if the notice is received after ordinary office hours (time of place of receipt), the notice shall be deemed to have been sent and received on the next business day.

18. This Agreement shall be governed by and construed in accordance with the laws of the State of New Hampshire without regard to the conflicts of law provisions thereof. The Parties agree that the Liquidation Court shall be the exclusive venue for any dispute between the Parties arising out of this Agreement and the Parties agree to submit to the jurisdiction of the Liquidation Court for such purposes.

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

**Roger A. Seigny, New Hampshire Insurance Commissioner,  
solely in his capacity as Liquidator of The Home Insurance Company**

By: Peter A. Bengelsdorf

Printed Name: Peter A. Bengelsdorf

Title: Special Deputy Liquidator

Date: 4-4-16

Swiss Reinsurance America Corporation

By: W. E. Flaherty

Printed Name: W. E. FLAHERTY

Title: SVP

Date: MARCH 30 2016

Westport Insurance Corporation

By: W. E. Flaherty

Printed Name: W. E. FLAHERTY

Title: SVP

Date: MARCH 30, 2016

Swiss Reinsurance Company Ltd

By: P. Fortin

Printed Name: Prisca Fortin Arpagaus  
Senior Account Manager

Title: \_\_\_\_\_

Date: 4/4/2016

SwissRe Europe S.A.

By: Alfons Brodschelm

Printed Name: Alfons Brodschelm

Title: Vice President

Date: 31.3.2016

Swiss Reinsurance America Corporation

By: Anthony J. Marumbo

Printed Name: Anthony J. Marumbo

Title: SVP

Date: MARCH 30, 2016

Westport Insurance Corporation

By: Anthony J. Marumbo

Printed Name: ANTHONY J. MARUMBO

Title: SVP

Date: MARCH 30, 2016

Swiss Reinsurance Company Ltd

By: Priya Pawar

Printed Name: Priya Pawar  
Senior Account Manager

Title: \_\_\_\_\_

Date: 4/4/2016

SwissRe Europe S.A.

By: Neolyos Theodossiadis

Printed Name: Neolyos Theodossiadis

Title: Vice President

Date: 31.3.2016