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

AFFIDAVIT OF PETER A. BENGELSDORF, SPECIAL DEPUTY LIQUIDATOR, IN SUPPORT OF MOTION FOR APPROVAL OF RETURN OF EXCESS COLLATERAL

I, Peter A. Bengelsdorf, hereby depose and say:

1. I was appointed Special Deputy Liquidator of the Home Insurance Company ("Home") by the Insurance Commissioner of the State of New Hampshire, as Liquidator ("Liquidator") of Home. I submit this affidavit in support of the Liquidator's Motion for Approval of Return of Excess Collateral. The facts and information set forth are either within my own knowledge gained through my involvement with this matter, in which case I confirm that they are true, or are based on information provided to me by others, in which case they are true to the best of my knowledge, information, and belief.

2. The Liquidator brings this motion because Home holds funds received by Home as security for the obligations of policyholders or reinsurers to Home. The funds were either received as cash deposits or result from drawing down on other forms of collateral, such as letters of credit ("LOCs"). In certain cases, the funds are no longer needed as security because the policyholder's or reinsurer's obligations to Home have been satisfied and the Liquidator does not expect any further activity on the account that would give rise to additional obligations to Home. As described below and in the motion, the funds and other collateral held by Home were not intended to be assets of Home but instead to be security to ensure that funds were available to

reimburse Home. When there are no more reimbursement obligations, the collateral is required to be returned. The Liquidator accordingly seeks approval to return excess collateral funds and other collateral to the policyholders that provided the collateral.

3. The Liquidator holds funds and other collateral as security for the obligations of policyholders or reinsurers to Home. The collateral was posted in connection with three types of arrangements:

- Deductible reimbursement arrangements. Home and certain policyholders entered deductible agreements under which the policyholders agreed to reimburse Home for amounts Home paid under the policies up to specified "deductible" amounts. The policyholders also entered into security agreements with Home to provide security for their obligations to Home under the deductible agreements.

- Retrospective premium plans. Home and certain policyholders entered retrospective premium plan agreements under which the policyholders agreed to pay "retrospective premiums" to Home to reimburse Home for amounts it paid under the policies. The premium agreements for these paid loss retrospective plans and incurred loss retrospective plans require the policyholders to provide security to Home for their obligations to Home under the agreements.

- Captive reinsurance arrangements. Certain policyholders entered arrangements under which "captive" reinsurers (typically reinsurers affiliated with the policyholder) reinsured Home for Home's obligations to the policyholders under the policies. As part of these arrangements, Home and the policyholders entered into security agreements under which the policyholder provided security to Home for the reinsurer's obligations to Home.

4. Under each of these arrangements, Home received deposits, LOCs, bonds or rights in trust accounts to secure the obligations of the policyholder or reinsurer to Home. Home (pre-liquidation) and the Liquidator (post-liquidation) held the deposit or drew down on the LOC as permitted by the relevant agreement. The deposits or draw down proceeds were commingled with Home assets, but Home recorded the amounts as "in escrow" in Home's records. The Liquidator has continued that practice.

5. As the liquidation has progressed, the Liquidator has identified policyholder deductible, retrospective premium or captive reinsurance arrangements under which the

Liquidator does not anticipate having any further claims, either because the policyholder has not pursued claims in the liquidation or because the policyholders' claims have been resolved and no further claims are expected. Since the Liquidator does not expect any further underlying claims, the Liquidator does not anticipate making any further claims for deductible or retrospective premium or captive reinsurance reimbursements. The Liquidator accordingly seeks approval to return the remaining – and now excess – funds or other collateral to the policyholders who posted the collateral, and to return additional collateral to other policyholders in the future.

6. Deductible reimbursement security agreements. Home entered deductible reimbursement and security agreements with various policyholders under which the policyholder deposited funds and/or posted LOCs to secure the policyholders' deductible reimbursement obligations to Home. The agreements varied somewhat over the years, but they generally include provisions like those discussed below. (The Liquidator does not attach examples because the agreements are voluminous and reveal details of the policyholders' insurance programs.)

7. The deductible reimbursement security agreements typically require the insured to provide security for its obligations by depositing with Home a "Deposit Fund" representing an estimate of reimbursable amounts over a set period and by posting an LOC in a percentage of reserves for incurred amounts within the deductible. The agreements generally include the following terms:

- Home may draw down on the Deposit Fund and/or LOC if the insured becomes subject to bankruptcy proceedings or defaults on its obligations.
- Home may use the proceeds of the Deposit Fund or LOC only to satisfy the policyholder's obligations to Home. Some agreements provide that Home "agrees that it will use and apply any amounts which it may withdraw from the Deposit Fund and/or draw down on the LOC solely for the purpose of reimbursing the COMPANY in accordance with the deductible provision of the POLICIES for the deductible

amounts and allocated loss expense it has paid or may pay." Others specify that Home "may apply such cash to the payment of: (i) claims for damages; (ii) allocated loss adjustment expenses; and (iii) any other debt owed to COMPANY . . . by the INSURED . . . ."

- Home shall return excess collateral to the insured when, in Home's opinion, Home has been reimbursed for deductible amounts and all claims arising under the policies have been closed. In those circumstances, the agreements generally provide that Home "shall promptly return to the INSURED any remaining amount of the proceeds from the Deposit Fund and the proceeds from the LOC."

Under these agreements, (1) the funds are deposited and LOC posted as security for the obligations of the insured to Home, (2) Home is to use the proceeds only to reimburse itself for covered loss and expenses, and (3) when in Home's opinion there is no further need for the security the remaining amounts are to be returned to the insured.

8. Retrospective plan premium agreements. Under the retrospective plan premium agreements, the policyholders agreed to provide Home with LOCs or trust funds and, in some instances, deposited funds to secure the policyholders' retrospective premium obligations to Home. The agreements typically required the insured to provide security to Home either by delivering a promissory note and a letter of credit or a Trust Agreement for a trust account.

9. The agreements generally provide that:

- Home may draw on the LOC or trust account where the insured becomes bankrupt or defaults. In that case, Home "may convert [the security] into cash." Some agreements also provide for Home to draw on the LOC where the insured fails to provide a replacement LOC.

- Home may only use the drawn funds to pay the Insured's obligations to Home, and must otherwise hold them apart from its general assets: Home "may apply such cash to pay any debt owed to [Home] by the insured" and "[s]hould such cash be more than the Insured's obligation to Company, Company shall deposit the excess in a separate account in the name of the Company, in a bank or trust company and apart from its general assets, for use as part of the collateral required hereunder for payment of any other debts owed to Company by the Insured." A trust agreement may emphasize the point by providing that "The Beneficiary [Home] hereby covenants to the Grantor that it shall use and apply any withdrawn Assets . . . only for the purpose of paying the Beneficiary the premiums due the Beneficiary under the

> Premium Agreement and the amounts paid within the policy deductible under the Deductible Agreement."

Under the retrospective premium agreements, (1) the LOC is posted or the Trust Account established as security for the obligations of the insured to Home, (2) Home is to use the LOC proceeds or Trust Account withdrawals only to pay amounts due Home from the Insured, and (3) Home is to hold excess funds in a separate account apart from its general assets. The agreements do not by their terms provide that any ultimately remaining amounts are to be returned to the insured, but given the other provisions such a requirement is clearly implied.

10. <u>Captive reinsurance arrangements</u>. Under captive reinsurance arrangements, the policyholder posts security for the reinsurer's performance of its obligations to Home.

11. Under typical agreements, the insured agrees to provide an LOC as security and, as further security, funds designated as a "Loss Fund." The Loss Fund may be held in Home's general accounts and used to pay loss, expense and unearned premium when Home pays them prior to reimbursement. The agreements generally provide that:

- If the insured does not replenish the Loss Fund or reimburse Home for amounts it pays, Home may draw down on the LOC.
- If the insured posting the security is involved in bankruptcy proceedings or fails to replace the LOC when necessary, Home may "draw down the full amount" of the LOC and hold the proceeds as security for the insured's or reinsurer's payments.
- Home agrees to return excess security. "When in the reasonable opinion of the HOME, all potential losses and related expenses have been paid, HOME shall return to INSURED any remaining amounts."

12. Prior to liquidation, Home kept records tracking deposits and other security posted by policyholders, including proceeds received when Home drew down on LOCs, bonds or trust accounts. Home also tracked the amounts due from policyholders for deductibles and retrospective premiums and amounts due from reinsurers on captive reinsurance arrangements. Home generally billed the policyholder or reinsurer for such amounts and sought to collect them

from the policyholder or reinsurer. However, when collection efforts failed or the policyholder was bankrupt, Home would collect the amounts by deducting them from the deposit or security reflected on Home's books. In certain instances as permitted by the agreements, Home drew down on the LOC, bond or trust account and held the proceeds. The deposits or proceeds of security provided by policyholders were tracked separately by Home and referred to as "escrow," although the amounts were usually commingled with Home funds.

13. Since the liquidation started, the Liquidator has continued to track the deposits and security, including the proceeds of LOCs, bonds and trust accounts. The Liquidator has also continued to track and bill amounts due on deductibles, retrospective premiums and captive reinsurance arrangements based on claims allowed in the liquidation. When amounts due were not paid, the Liquidator continued to collect collateral by deducting the reimbursement amounts from the deposits or proceeds reflected on Home's books. In certain instances, the Liquidator has drawn down on LOCs posted by policyholders. The Liquidator has kept records of the amounts collected from the collateral by deducting reimbursement amounts from the "escrow" amounts reflected in the liquidation's records.

14. The Liquidator has identified a number of insureds with policies subject to deductibles, retrospective premiums, or captive reinsurance arrangements that have had no claims for several years, and in some instances since before the liquidation commenced. In many instances, there has been no contact with the policyholders for years. While some of the policyholders have received claim allowances during the liquidation, none of these policyholders have open POCs, and some did not file any POCs. Based on a review of Home's records concerning these accounts, the Liquidator does not expect there to be any further claims under the policies involved.

15. As of December 31, 2020, the number of these "closed" policyholder accounts and the total excess collateral funds held by the Liquidator on those closed accounts was:

Arrangement	# Closed Accounts	$ Excess Funds Held Collateral
Deductible	47	$1,483,526
Retrospective	0	0
Captive	36	$1,099,458.58
Total:	83	$2,582,984.58

The amount of excess collateral funds involved in the closed accounts ranges from $500 to $400,000. The Liquidator proposes to return the excess collateral on these accounts to the policyholders who posted the collateral.

16. The Liquidator also holds collateral on a number of "open" policyholder accounts. The total collateral presently held on those open accounts as security for the policyholders' or reinsurers' ongoing obligations to Home was as of December 31, 2020:

Arrangement	# Open Accounts	$ Funds Held Collateral	$ LOC, Bond or Trust Account Collateral
Deductible	65	$1,793,431	$12,787,334
Retrospective	6	$270,781	$2,316,683
Captive	9	$1,465,380.78	$8,436,668
Total:	80	$3,529,592.78	$23,540,685

The Liquidator proposes to return collateral funds held on these accounts to policyholders as the accounts close and the Liquidator no longer expects to have further claims to the security. The Liquidator will also release the LOCs, bonds or trust accounts when that collateral is no longer needed.

17. The Liquidator requests approval to return the excess deposits, proceeds of LOCs or other collateral, and other types of collateral to the policyholders who provided the security. Return of the collateral is warranted because the Liquidator no longer needs to retain the collateral to protect the Home estate, and because the collateral is subject to a contractual right of return and – as explained in the motion – is not part of Home's general assets.

18. The collateral is no longer needed. The policyholder accounts involved do not have any open claims, and the Liquidator does not expect that there will be any further claims under the policies. To ensure that the accounts do not present any potential future exposure, the Liquidator will require the policyholder involved to waive any additional claims against Home under the policies and contracts involved as a condition to return of the excess collateral.

19. For the reasons set forth in the motion, the collateral deposits, proceeds and other collateral held by Home and now the Liquidator are not part of Home's general assets. Amounts held under security agreements like those at issue here are not part of the insolvent insurer's estate. They are instead held subject to the policyholders' right to the return of collateral amounts that are not necessary as security for their obligations to Home.

20. The Liquidator proposes to contact the policyholders that deposited the security by mail and/or by email (if an email address is available) at their last known addresses reflected in the Home liquidation records. If a policyholder does not respond, the Liquidator will conduct a reasonable internet search for a current address and again attempt contact by mail and, if an email address is available, by email.

21. The Liquidator will advise the policyholder of the remaining deposit or other collateral and request a release of any further claims against Home under the Home policies and the contractual arrangement(s) involved. The release will ensure that there is no reason to retain

the collateral on account of potential future deductible, retrospective or reinsurance obligations. Once the release is received, the Liquidator will return the excess collateral to the policyholder.

22. If a policyholder cannot be located through this process, the Liquidator will turn over the unclaimed excess funds to the New Hampshire State Treasurer in accordance with RSA 402-C:47, I, before the liquidation closes. The policyholder will be able to obtain its excess security from the State Treasurer in accordance with that statute.

Signed under the penalties of perjury this 25 day of August, 2021.

Peter A Bengelsdorf

Peter A. Bengelsdorf
Special Deputy Liquidator of The Home Insurance Company

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached and not the truthfulness, accuracy or validity of that document.

STATE OF CALIFORNIA
COUNTY OF VENTURA

On Aug 25, 2021 before me, Alexander Ilao, Notary Public, personally appeared Peter A. Bengelsdorf, Special Deputy Liquidator of The Home Insurance Company, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

ALEXANDER ILAO
Commission No. 2276966
NOTARY PUBLIC-CALIFORNIA
VENTURA COUNTY
My Comm. Expires FEBRUARY 8, 2023
NCC1

Signature Alexander Ilao
Signature of Notary Public