

Draft

**PURCHASE AGREEMENT**

**between**

**[       ]**

**and**

**ERIC R. DINALLO AS LIQUIDATOR OF  
MIDLAND INSURANCE COMPANY**

**Dated as of \_\_, 2009**

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## PURCHASE AGREEMENT

**PURCHASE AGREEMENT** (this “Agreement”), dated as of July \_\_, 2009, by and between [.....], a New York insurance company (“Purchaser”), and Eric R. Dinallo, Superintendent of Insurance of the State of New York, in his capacity as Liquidator of the Midland Insurance Company, a New York insurance company in liquidation (the “Liquidator”). The Liquidator and the Purchaser are each a “Party” to the Agreement and are collectively referred to herein as the “Parties.”

### PRELIMINARY STATEMENT:

**WHEREAS**, the Liquidator desires to sell, and the Purchaser desires to purchase, certain assets of Midland Insurance Company, a New York insurance company in liquidation (the “Company”), including the right to recover on its reinsurance, pursuant to the Liquidation Plan for Midland Insurance Company.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements hereinafter set forth, the Parties hereto agree as follows:

### Article I. DEFINITIONS

Section 1.1. **Definitions.** Capitalized terms which are used in this Agreement, and not otherwise defined herein, shall have the meanings ascribed to them in Appendix A.

Section 1.2. **Interpretation.**

- (a) For purposes of this Agreement:
  - (i) the words “include,” “includes” and “including” shall be deemed to be followed by the words “without limitation”; and
  - (ii) the words “herein,” “hereof,” “hereto,” “hereunder,” and other words of similar meaning refer to this Agreement as a whole and not to any particular article, section, subsection or clause contained in this Agreement (unless there is specific reference to such article, section, subsection or clause); and
- (b) Unless the context otherwise requires, references herein:
  - (i) to Annexes, Articles, Sections, Exhibits and Schedules mean the Articles and Sections of, and the Annexes, Exhibits and Schedules attached to, this Agreement;
  - (ii) to an agreement, instrument or other document means such agreement, instrument or other document as amended, supplemented and modified from time to time to the extent permitted by the provisions thereof, this Agreement and applicable law;

(iii) to each term, whether stated in the singular or the plural, shall include both the singular and the plural;

(iv) to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder; and

(v) to a Person as a Holder of a Claim or Interest includes that Person's legal representatives, successors and assigns.

(c) The Annexes, Schedules and Exhibits referred to herein shall be construed with and as an integral part of this Agreement to the same extent as if they were set forth verbatim herein. Titles to Articles and headings of Sections are inserted for convenience of reference only and shall not be deemed a part of or to affect the meaning or interpretation of this Agreement.

## **Article II. PURCHASE AND SALE**

Section 2.1. **Purchase and Sale of Assets.** Upon the terms and subject to the conditions of this Agreement, on the Closing Date, the Liquidator shall sell, transfer, assign, convey and deliver to the Purchaser, free and clear of all Encumbrances, and the Purchaser shall purchase and accept from the Liquidator, all of the Liquidator's right, title and interest in, the Transferred Assets listed on Schedule 2.1 hereto.

## **Article III. PURCHASE PRICE**

Section 3.1. **Purchase Price.** The purchase price for the Transferred Assets (the "Purchase Price") shall be equal to the sum of:

- (a) The Opt-In Claim Payments;
- (b) The Opt-Out Claim Payments; and
- (c) The Profit Sharing Distributions.

Section 3.2. **Purchase Price Payment.** The Purchase Price shall be paid as follows:

(a) The Purchaser shall pay directly to the Holders of Pre-Effective Date Allowed Class Two Claims an amount equal to the Allowed Amounts of such Claims multiplied by the Opt-In Guaranteed Percentage, minus any Prior Distributions with respect to such Claims.

(b) The Purchaser shall make Opt-In Claim Payments directly to the Holders of Opt-In Claims under the Purchaser Reinsurance Agreement in the Determined Amount of such Claims multiplied by the Opt-In Guaranteed Percentage as and when such Claims are Determined in accordance with the Plan.

(c) The Purchaser shall make Opt-Out Claim Payments directly to the Holders of Opt-Out Claims under the Purchaser Reinsurance Agreement in the Allowed Amount of such Claims multiplied by the Opt-Out Guaranteed Percentage as and when directed by the Liquidator in accordance with the Plan.

(d) The Purchaser shall make Profit Sharing Distributions to Holders of Pre-Effective Date Allowed Claims and Determined Opt-In Claims as and when provided for by the Plan.

Section 3.3. **Determination of the Guaranteed Percentages.**

(a) **Preliminary Determination of the Guaranteed Percentages.** No later than ten (10) Business Days prior to the anticipated Closing Date, the Liquidator shall prepare and deliver to the Purchaser a written statement of the amount of Investment Assets and Cash that will be delivered to the Purchaser on the Closing Date, together with a statement of the Opt-In Guaranteed Percentage determined in accordance with the Bid and the Opt-Out Guaranteed Percentage determined by the Receivership Court.

(b) **Final Determination of the Guaranteed Percentages.** No later than sixty (60) days following the Closing Date, the Liquidator shall deliver to the Purchaser any Cash of the Company retained by the Liquidator that was or is not necessary for the payment of Administrative Expenses that were incurred prior to the Closing Date, together with a revised statement of the Opt-In Guaranteed Percentage determined in accordance with the Bid. The Opt-In Guaranteed Percentage may increase based on lower than anticipated Administrative Expenses, but shall in no event decrease.

(c) **Acceptance; Failure to Respond.** If the Purchaser does not deliver a notice disagreeing with the Liquidator's statement within five Business Days of receiving the statements in subsections (a) or (b) above, then the Liquidator's statement shall be final and binding on the Parties.

Section 3.4. **Profit Sharing.**

(a) "Profit," on any date, shall mean the amount to be determined by subtracting the Original Surplus from the sum of the Current Surplus at such date plus all prior Distributions of Profit to the Purchaser and Policyholders.

(b) The amount of Profit distributable to Holders of Pre-Effective Date Allowed Claims and Determined Opt-In Claims at a given time shall be the difference of the: (a) product of the Profit at such time minus the Purchaser's Fixed Profit multiplied by (i) the Policyholder's Percentage, or (ii) in the event the Purchaser has designated Multiple Policyholder's Percentages, the Multiple Policyholder's Percentages pursuant to the terms thereof, and (b) the amount of prior Profit Sharing Distributions to Policyholders.

(c) The amount of Profit to be distributed to the Purchaser shall be the sum of:

(i) (A) The Purchaser's Fixed Profit times the Holdback Percentage minus (B) prior Distributions of Profit with respect to the Purchaser's Fixed Profit plus

(ii) (A) Profit at such time minus the Purchaser's Fixed Profit with the resulting sum multiplied by the Purchaser's Percentage Profit, (B) multiplied by the Holdback Percentage, (C) minus the amount of prior Distributions of Profit with respect to the Purchaser's Percentage Profit.

(d) No Distributions of Profit shall be made until after the Initial Profit Accrual Date. Profit shall be determined as of the Initial Profit Accrual Date and annually thereafter as of the anniversary of such date (a "Profit Determination Date"). On or before forty-five (45) days after a Profit Determination Date, the Purchaser shall provide to the Liquidator a written calculation of the Profit which has accrued as of such Profit Determination Date, and the Purchaser's proposal to distribute the Purchaser's Fixed Profit, the Purchaser's Percentage Profit and Profit Sharing Distributions to Holders of Claims in accordance with this Agreement. Each Profit Sharing Distribution shall be paid thirty (30) days after approval thereof by the Liquidator. If the Liquidator does not agree with a determination of Profit by the Purchaser or the Purchaser's proposal to distribute such Profit, the Liquidator shall notify the Purchaser of such disagreement. No Distribution of Profit shall be made until such disagreement shall have been resolved. After the Initial Profit Accrual Date, Profit shall be distributed once every twelve (12) months until such time as the Liquidator shall determine that no further material Distributions of Profit will be owing. Profit Sharing Distributions shall be made Pro Rata to the Holders of Pre-Effective Date Allowed Claims and Determined Opt-In Claims. In making any Distribution of Profit, the Purchaser shall reserve out of such Distribution an amount necessary to pay a Pro Rata share of such Distribution to Opt-In Claimants whose claims may be Determined thereafter based on the Disputed Claims Reserve as of the date of such Distribution. The Purchaser shall only make Distributions of Purchaser's Fixed Profit and the Purchaser's Percentage Profit at such times as it shall make Profit Sharing Distributions to Holders of Pre-Effective Date Allowed Claims and Determined Opt-In Claims. No Distribution of Profit shall be made if, after making such Distribution, an Event of Default would exist.

Section 3.5. **Claim Service Agreements.** An Affiliate of the Purchaser shall serve as the Administrator under Claim Service Agreements with the Liquidator and the Purchaser. Under the Claim Service Agreements, the Administrator shall be obligated to provide all claim adjustment services requested by the Liquidator or the Purchaser. As compensation for the services under the Claim Service Agreements, the Purchaser shall pay to the Affiliate an amount equal to the Amortized LAE. Amortized LAE shall be determined each calendar quarter on the basis of financial information as of the calendar quarter most recently ended; the amount of Amortized LAE shall be determined within forty-five (45) days of the end of such calendar quarter and shall be immediately provided to the Liquidator. Each distribution of Amortized LAE may be paid thirty (30) days after such notice unless the Liquidator shall direct that such payment not be made. In addition, the Purchaser shall reimburse the Administrator for Allocated Loss Adjustment Expenses as and when paid by the Administrator. Payments of Allocated Loss Adjustment Expenses by the Administrator shall be subject to audit by the Liquidator from time to time in the discretion of the Liquidator as provided by the Claim Service Agreements.

Section 3.6. **Resolution of Disputes.** If the Purchaser delivers a notice (of the type described in Section 3.3(c) above) to the Liquidator in a timely manner, disagreeing with the Liquidator's statements described in Section 3.3(a) and Section 3.3(b) hereof, or if the Liquidator delivers a notice to the Purchaser of a disagreement with respect to a determination or Distribution of Profit calculated by the Purchaser pursuant to Section 3.4 hereof, or if the Liquidator delivers a notice to the Purchaser of a disagreement with respect to a determination of Amortized LAE described in Section 3.5 hereof, then the Purchaser and the Liquidator shall attempt in good faith to resolve such dispute within ten (10) Business Days from the date of such notice. If the Purchaser and the Liquidator cannot reach agreement within such period (or such longer period as they may mutually agree), then the dispute shall be promptly referred to the Receivership Court and resolved under procedures established by the Receivership Court.

#### **Article IV. CLOSING**

Section 4.1. **Closing Date.** The Closing shall be consummated on a date and at a time agreed upon by the Purchaser and the Liquidator, but in no event later than the second business day after the date on which the conditions set forth in Article XI and Article XII have been satisfied or waived, at the offices of the Liquidator, 123 William Street, New York, New York, or at such other time and place as shall be agreed upon by the Purchaser and the Liquidator. The time and date on which the Closing is actually held is referred to herein as the "Closing Date."

Section 4.2. **Purchaser's Closing Date Deliveries.** Subject to fulfillment or waiver (where permissible) of the conditions set forth in Article XII, at the Closing, the Purchaser shall deliver to the Liquidator all of the following:

- (a) Parental Support Agreement in the form of Annex A;
- (b) Purchaser Reinsurance Agreement in the form of Annex B;
- (c) Claim Service Agreement between the Liquidator and an Affiliate of the Purchaser in the form of Annex C;
- (d) Claim Service Agreement between the Purchaser and an Affiliate of the Purchaser in the form of Annex D;
- (e) Purchaser Endorsements in the form of Annex E;
- (f) Opt-In Reinsurance Certificate in the form of Annex F, any changes to which shall be in form and substance satisfactory to the Liquidator;
- (g) copies of the Purchaser's and Parent's Governing Documents certified as of a recent date by the Secretary of State in which they are incorporated as to such documents on file with such Secretary of State;

(h) certificate of good standing of the Purchaser and Parent issued as of a recent date by the Secretary of State of the states in which they are incorporated;

(i) certificate of the secretary or an assistant secretary of the Purchaser and the Parent, dated the Closing Date, in form and substance reasonably satisfactory to the Liquidator, certifying: (i) that there have not been any amendments to the Governing Documents of the Purchaser since the date of the certificate specified in Section 4.2(h), (ii) the resolutions of the Board of Directors of the Purchaser authorizing the execution and performance of the Plan, this Agreement, any Ancillary Agreement to which the Purchaser is a Party and the transactions contemplated hereby and thereby and authorizing the execution and performance of the Parental Support Agreement by the Parent and (iii) the incumbency and signatures of the officers of the Purchaser executing this Agreement and any Ancillary Agreement to which the Purchaser is a Party and the officers of Parent executing the Parental Support Agreement;

(j) the certificates contemplated by Section 12.3, duly executed by a duly authorized officer of the Purchaser and the Parent.

Section 4.3. **The Liquidator's Closing Date Deliveries.** Subject to fulfillment or waiver (where permissible) of the conditions set forth in Article XII, at the Closing, the Liquidator shall deliver to the Purchaser all of the following:

- (a) Cash;
- (b) Investment Assets;
- (c) A true and correct copy of the Plan Approval Order;
- (d) A true and correct copy of the Sale Approval Order;
- (e) All consents, waivers or approvals obtained by the Company with respect to the consummation of the transactions contemplated by this Agreement;
- (f) An Opt-Out Reinsurance Proceeds Assignment with respect to the Opt-Out Reinsurance Agreements; and
- (g) The Books and Records.

**Article V.**  
**REPRESENTATIONS AND WARRANTIES OF THE LIQUIDATOR**

As an inducement to the Purchaser to enter into this Agreement and to consummate the transactions contemplated hereby, the Liquidator represents and warrants to the Purchaser as of the date hereof and as of the Closing Date:

Section 5.1. **Organization of Company.** The Company was an insurance company domiciled in New York and is the subject of liquidation proceedings before the Receivership Court, and upon entry of the Plan Approval Order and the Sale Approval Order the Liquidator will have all requisite power and authority to execute and deliver this

Agreement and the Ancillary Agreements on behalf of the Company, to perform the obligations hereunder and to consummate the transactions contemplated hereby.

Section 5.2. **Authority.** Upon entry of the Plan Approval Order and the Sale Approval Order, this Agreement will constitute, and each of the Ancillary Agreements will constitute at Closing, legal, valid, and binding obligations of the Company, enforceable against the Company in accordance with their respective terms; *provided, however*, that the enforceability of the rights and remedies provided in this Agreement is subject to Insurance Law generally and to general principles of equity (whether or not considered in a court of law or equity).

Section 5.3. **Title to Property.** The Company has good and marketable title to the Transferred Assets free and clear of any and all Encumbrances and, upon delivery of the Transferred Assets to the Purchaser pursuant hereto, the Purchaser will acquire at Closing good and marketable title thereto, free and clear of any and all Encumbrances, other than any Encumbrances that may be created by, be caused by or result from the conduct of the Purchaser or an Affiliate of the Purchaser.

Section 5.4. **Financial Statements.**

(a) Schedule 5.4(a) contains unaudited statements of the Cash and Investment Assets as of [\_\_\_\_\_]

(b) Schedule 5.4(b) sets forth an accurate list of all proofs of claim which have been timely filed in the Receivership Case indicating, in each case, the Class assigned to such proof of claim by the Liquidator and whether the proof of claim has been Allowed or Disallowed.

Section 5.5. **Employee Matters.** The Company does not have any current employees. The Purchaser shall not have any obligations to prior Company employees, Liquidation Bureau employees or consultants engaged by the Liquidator or the Company. None of the Purchaser, the Parent, the Administrator or any of their Affiliates shall retain or engage any personnel of the Liquidator or professionals engaged by the Liquidator without the Liquidator's prior written consent.

Section 5.6. **Information Systems.** Schedule 5.6 lists: (a) all hardware, if any, (including computers, servers and peripheral devices and telecommunications devices) used in or necessary for the conduct of the businesses of the Company as currently conducted ("Hardware"), and (b) all software, if any, used in or necessary for the businesses and operations of the Company as currently conducted. Such Hardware and software cannot be transferred to the Purchaser without the consent of any licensors, lessors or owners of such Hardware and software. This subsection shall not limit the rights of the Liquidator, the Purchaser, and Purchaser's Affiliate to transfer and share Midland data consistent with their obligations under the Plan, the Purchase Agreement and Ancillary Agreements.

Section 5.7. **Absence of Changes.** For the period between the date hereof and the Closing Date:

- (a) The Receivership Court has not Allowed or Disallowed any Claim;
- (b) No Reinsurance Agreement has been terminated, commuted, amended or rescinded, other than as contemplated by the Plan or as consented to by the Purchaser;
- (c) No Encumbrance of any kind has been created or incurred on any of the Transferred Assets;
- (d) There has been no agreement by the Liquidator to take any action described in Section 5.7(a), (b) and (c), other than pursuant to the terms of the Plan or as consented to by the Purchaser; and
- (e) No event has occurred which would have a Material Adverse Effect on the Company.

**Article VI.**  
**REPRESENTATIONS AND WARRANTIES OF THE PURCHASER**

As an inducement to the Liquidator to enter into this Agreement and to consummate the transactions contemplated hereby, the Purchaser hereby represents and warrants to the Liquidator as of the date hereof and as of the Closing Date:

**Section 6.1. Corporate Authority.**

6.1.1. Incorporation; Good Standing. The Purchaser: (a) is an insurance company duly organized, validly existing and in good standing under the laws of New York, (b) has all requisite corporate (or the equivalent company) power to own its property and conduct its business as now conducted and as presently contemplated, (c) has all licenses, certificates, permits, franchises and other governmental authorizations necessary to own and operate its property and to conduct its business as now conducted and as presently contemplated, including any licenses required by the Insurance Department and all licenses and authorizations in all jurisdictions which require any Person controlling one or more insurance companies to be so licensed or authorized, except where the failure to have such licenses or authorizations would not have a Material Adverse Effect, (d) is in good standing as a foreign corporation (or similar business entity) and is duly authorized to do business in each jurisdiction where such qualification is necessary, except where a failure to be so qualified would not have a Material Adverse Effect, and (e) does not have any Subsidiaries.

6.1.2. Authorization. The execution, delivery and performance of this Agreement and the Ancillary Agreements and the transactions contemplated hereby and thereby: (a) are within the corporate authority of the Purchaser, (b) have been duly authorized by all necessary corporate proceedings, (c) do not conflict with or result in any breach or contravention of any provision of law, statute, rule or regulation to which the Purchaser is subject or any judgment, order, writ, injunction, license or permit applicable to such Person, and (d) do not

conflict with any provision of the Governing Documents of, or any agreement or other instrument binding upon, the Purchaser.

6.1.3. Enforceability. The execution and delivery of this Agreement and the Ancillary Agreements will result in valid and legally binding obligations of the Purchaser enforceable against it in accordance with the respective terms and provisions hereof and thereof.

Section 6.2. **Governmental Approvals.** The execution, delivery and performance by the Purchaser of this Agreement and the Ancillary Agreements and the transactions contemplated hereby and thereby do not require the approval or consent of, or filing with, any Governmental Authority other than those listed on Schedule 6.2 which shall have been obtained prior to the Closing Date.

Section 6.3. **Financial Statements.**

6.3.1. Fiscal Year. The Purchaser has a fiscal year which is the twelve months ending on December 31 of each calendar year.

6.3.2. Financial Statements. The Purchaser has delivered to the Liquidator copies of the financial statements of the Purchaser and the Parent for the fiscal year and the fiscal quarter then most recently ended. Such financial statements present fairly the financial position of the Purchaser as of the respective dates of such financial statements and the results of the Purchaser for the periods covered by such financial statements. The Statutory Annual Financial Statements of the Purchaser for the fiscal year then most recently ended comply in all material respects with applicable accounting requirements of the rules and regulations of the Insurance Department with respect thereto and have been prepared in accordance with the rules and regulations of the Insurance Department as such rules and regulations were in effect at the time of preparation and submission thereof. The Financial Statements of the Parent are in conformity with GAAP.

Section 6.4. **No Material Adverse Changes.** Except as set forth on Schedule 6.4 hereto, since the Balance Sheet Date there has been no event or occurrence which has had a Material Adverse Effect on the Purchaser or the Parent.

Section 6.5. **Franchises, Patents, Copyrights, etc.** The Purchaser possesses all material, patents, copyrights, trademarks, trade names, other intellectual property, franchises, licenses and permits, and rights in respect of the foregoing, adequate for the conduct of its business substantially as now conducted and as reasonably anticipated to be conducted without known conflict with any rights of others.

Section 6.6. **Litigation.** Except for the defense of claims asserted by insureds in the ordinary course of business against the Purchaser and as set forth in Schedule 6.6 hereto, there are no actions, suits, proceedings or investigations of any kind pending or threatened against the Purchaser before any Governmental Authority, that: (x) if adversely determined, might, either in any case or in the aggregate, (i) have a Material Adverse Effect, (ii) materially

impair the right of the Purchaser to carry on business substantially as now conducted by it and as reasonably anticipated to be conducted, or (iii) result in any substantial liability not adequately covered by insurance for which adequate reserves are not maintained on the balance sheet of the Purchaser in accordance with SAP, or for which adequate reserves are not maintained on the consolidated balance sheet of the Purchaser, or (y) question the validity of this Agreement or any of the Ancillary Agreements, or any action taken or to be taken pursuant hereto or thereto.

Section 6.7. **No Materially Adverse Contracts, etc.** The Purchaser is not subject to any Governing Document or other legal restriction, or any judgment, decree, order, law, statute, rule or regulation that has or is reasonably expected in the future to have a Material Adverse Effect. The Purchaser is not a party to any contract or agreement that has or is reasonably expected, in the judgment of the Purchaser's officers, to have any Material Adverse Effect.

Section 6.8. **Compliance with Other Instruments, Laws, etc.** The Purchaser is not in violation of any provision of its Governing Documents, or any agreement or instrument to which it may be subject or by which it or any of its properties may be bound or any decree, order, judgment, statute, license, rule or regulation, in any of the foregoing cases in a manner that could result in the imposition of substantial penalties or have a Material Adverse Effect.

Section 6.9. **No Event of Default.** No Event of Default has occurred and no set of circumstances exists which, but for the passage of time or the giving of notice or both, would result in an Event of Default.

Section 6.10. **Investment Company Act.** The Purchaser is not an "investment company," an "affiliated company" or a "principal underwriter" of an "investment company," as such terms are defined in the Investment Company Act of 1940, 15 U.S.C. Section 80a-1 *et seq.*

Section 6.11. **Disclosure.** No representation or warranty made by the Purchaser in this Agreement or any Ancillary Agreement contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements herein or therein not misleading in light of the circumstances in which they are made. There is no fact known to the Purchaser which has a Material Adverse Effect, or which is reasonably likely in the future to have a Material Adverse Effect.

## **Article VII. PRE-CLOSING COVENANTS**

The Parties covenant and agree that between the date hereof and the Closing Date:

Section 7.1. **Access to Information.** The Liquidator will provide the Purchaser and its representatives with reasonable access, upon prior written notice and during normal business hours, to employees of the Liquidator involved in the affairs of the Company and to all facilities, agents, accountants, actuaries, assets, and Books and Records of the Company. The Liquidator will furnish the Purchaser and such representatives during such period with all

such information and data (including without limitation copies of contracts and other books and records) concerning the business, operations, and affairs of the Company as the Purchaser or any of its representatives reasonably may request. The foregoing shall not require the Liquidator to permit any inspection, or to disclose any information, that in the reasonable judgment of the Liquidator would reasonably be expected to result in: (a) the waiver of any applicable attorney-client privilege, or (b) the violation of any applicable Law or regulation. The Parties shall act at all times in accordance with the terms and provisions of the Confidentiality Agreement.

Section 7.2. **Preserve Accuracy of Representations and Warranties; Notification.** Each Party shall refrain from taking any action which would render any representation or warranty contained in this Agreement inaccurate as of the Closing Date. Each Party shall promptly notify the other of: (a) any breach of any representation, warranty or covenant by such Party, or (b) any legal action, suit or proceeding that shall be instituted or threatened against such Party to restrain, prohibit or otherwise challenge the legality of any transaction contemplated by this Agreement.

Section 7.3. **Consents of Third Parties; Governmental Approvals.**

(a) The Liquidator and the Purchaser will act diligently and reasonably in attempting to secure the Sale Approval Order, and any other consent, approval or waiver, in form and substance reasonably satisfactory to the other Party, required to be obtained from any Party to consummate the transactions contemplated by this Agreement.

(b) During the period prior to the Closing Date, the Purchaser shall act diligently and reasonably, and the Liquidator, upon the request of the Purchaser, shall use its reasonable efforts to cooperate with the Purchaser: (i) in attempting to secure any consents and approvals of any Governmental Authority required to be obtained by the Purchaser in order to permit the consummation of the transactions contemplated by this Agreement; (ii) in satisfying any of the conditions precedent to the obligations of any of the Parties hereto; and (iii) in defending any lawsuits or other legal proceedings, whether judicial or administrative, challenging this Agreement or the performance of the obligations hereunder.

(c) The Purchaser and the Liquidator shall use their reasonable efforts to file not more than ten (10) days after the date hereof with the Federal Trade Commission and the Antitrust Division of the Department of Justice the notifications and other information required to be filed under the HSR Act with respect to the transactions contemplated hereby. Each Party warrants that all such filings by it will be, as of the date filed, true and accurate in all material respects and in material compliance with the requirements of the HSR Act. Each of the Purchaser and the Liquidator agrees to file any additional information requested by such agencies under the HSR Act and to make available to the other such information as each of them may reasonably request relative to its business, assets and property as may be required of each of them to file such additional information. Each of the Purchaser and the Liquidator will provide to the other copies of all correspondence between it (or its advisors or representatives) and any such agency relating to this Agreement or any of the matters described in this Section 7.3(c); *provided* that such correspondence does not contain or reveal confidential information of the Purchaser, the Liquidator or their respective Affiliates or violate the Confidentiality Agreement.

The Purchaser and the Liquidator agree that, except as either Party may otherwise agree, all telephonic calls and meetings with such agencies regarding the transactions contemplated hereby or any of the matters described in this Section 7.3(c) shall include representatives of each of the Purchaser and the Liquidator. Costs and expenses incurred by the Liquidator in connection with the foregoing shall be reimbursed by the Purchaser.

Section 7.4. **Operations Prior to the Closing Date.** Except as otherwise specifically contemplated by the Plan, this Agreement or any Ancillary Agreement or as set forth in Schedule 7.4, the Liquidator will not between the date hereof and the Closing Date:

- (a) compromise, settle, Allow or Disallow any Claim without the Purchaser's prior written consent;
- (b) compromise, settle, release or otherwise modify any Reinsurance Agreement without the Purchaser's prior written consent; or
- (c) authorize, commit or agree to take any of the foregoing actions.

#### **Article VIII. POST-CLOSING COVENANTS**

The Purchaser covenants and agrees that:

Section 8.1. **Punctual Payment.** The Purchaser will duly and punctually pay or cause to be paid the Opt-In Claim Payments, the Opt-Out Claim Payments, the Profit Sharing Distributions and all other the Purchaser's Obligations in accordance with their respective terms.

Section 8.2. **Maintenance of Office.** Until all of its obligations hereunder and under the Ancillary Agreements and the Plan shall have been fulfilled, the Purchaser will maintain its chief executive office at [ ] or at such other place in the United States of America as the Purchaser shall designate upon written notice to the Liquidator.

Section 8.3. **Records and Accounts.** Until all of its obligations hereunder and under the Ancillary Agreements and the Plan shall have been fulfilled, the Purchaser will: (a) keep true and accurate records and books of account in which full, true and correct entries will be made in accordance with SAP, and (b) maintain adequate accounts and reserves for all taxes (including income taxes), depreciation, depletion, obsolescence and amortization of its properties, contingencies, and other reserves.

Section 8.4. **Financial Statements, Certificates and Information.** The Purchaser will deliver to the Liquidator:

- (a) (i) as soon as practicable, but in any event not later than one hundred twenty (120) days after the end of each fiscal year of the Purchaser, the Statutory Annual Financial Statements of the Purchaser for such fiscal year, in each case to be delivered to the Liquidator simultaneously with the delivery of such financial statements to the Insurance Department, and (ii) simultaneously with delivery to the Insurance Department and in any event

not later than one hundred eighty (180) days after the end of each fiscal year of the Purchaser, the audited Statutory Annual Financial Statements of the Purchaser prepared by a nationally recognized accounting firm for such fiscal year, together with an actuarial opinion prepared by a nationally recognized actuary and management discussion and analysis for the Purchaser;

(b) as soon as practicable, but in any event not later than sixty (60) days after the end of the first three fiscal quarters of each fiscal year of the Purchaser (i) copies of the Statutory Quarterly Financial Statements of the Purchaser for such fiscal quarter, together with a certification by the principal financial or accounting officer of the Purchaser that the information contained in such financial statements fairly presents the financial position of the Purchaser on the date thereof (except for provisions for footnotes, reserves and accruals and subject to year-end adjustments), in each case to be delivered to the Liquidator simultaneously with the delivery of such financial statements to the Insurance Department;

(c) the financial statements referred to in Sections 8.4 (a) and (b) hereof shall include a presentation with respect to the Disputed Claim Reserve;

(d) simultaneously with the delivery of the financial statements referred to in subsections (a) and (b) above, a statement certified by the principal financial or accounting officer of the Purchaser (a "Compliance Certificate") setting forth in reasonable detail computations evidencing compliance with the covenants contained in Article X as of the end of the period then ended and (if applicable) reconciliations to reflect changes in SAP since the Balance Sheet Date;

(e) not later than one hundred twenty (120) days after the beginning of each fiscal year of the Purchaser, an actuarial opinion (accompanied by reasonably sufficient detail) as to the adequacy of the Disputed Claim Reserve as at the last day of such fiscal year. Each such opinion shall be prepared and delivered by an actuary of recognized national standing. Each such opinion shall be in scope and detail reasonably satisfactory to the Liquidator;

(f) copies of all accountants' management letters within ten (10) days of the receipt thereof; and

(g) promptly after request, such other financial data and information as the Liquidator may reasonably request from time to time.

Section 8.5. **Notices.**

(a) Promptly, and in any event within five (5) Business Days after becoming aware of the occurrence of any Event of Default, the Purchaser will notify the Liquidator in writing, together with a reasonably detailed description thereof. If any Person shall give any notice or take any other action in respect of a claimed default (whether or not constituting an Event of Default) under this Agreement, the Purchaser shall forthwith give written notice thereof to the Liquidator, describing the notice or action and the nature of the claimed default.

(b) The Purchaser will promptly upon becoming aware thereof, notify the Liquidator in writing of any claims asserted against the Purchaser or its assets which claims are not contemplated by the Plan.

(c) The Purchaser will, promptly upon becoming aware thereof, notify the Liquidator in writing of any change in the Rating of the Parent.

(d) Promptly, and in any event within five (5) Business Days after becoming aware of anything which would reasonably be expected to have a Material Adverse Effect, the Purchaser will notify the Liquidator in writing, together with a reasonably detailed description thereof.

Section 8.6. **Legal Existence; Maintenance of Properties.** The Purchaser will do or cause to be done all things necessary to preserve and keep in full force and effect its legal existence, rights and franchises as an insurance company domiciled and licensed in New York.

Section 8.7. **Inspection of Properties and Books, etc.**

(a) **General.** The Purchaser shall permit the Liquidator or any designated representative of the Liquidator, (i) to visit and inspect any of the properties of the Purchaser to examine the books of account of the Purchaser (and to make copies thereof and extracts therefrom), and (ii) to discuss the affairs, finances and accounts of the Purchaser and with, and to be advised as to the same by, its and their officers, and to conduct examinations and verifications (whether by internal examiners or independent auditors) of assets, all at such reasonable times and intervals as the Liquidator may reasonably request.

(b) **Communications with Accountants.** The Purchaser authorizes the Liquidator to communicate directly with the Purchaser's independent certified public accountants and authorizes such accountants to disclose to the Liquidator any and all financial statements and other supporting financial documents and schedules including copies of any management letter with respect to the business, financial condition and other affairs of the Purchaser. At the request of the Liquidator, the Purchaser shall deliver a letter addressed to such accountants, instructing them to comply with the provisions of this Section 8.7.

Section 8.8. **Insurance Regulatory Filings; Examination Reports.**

(a) The Purchaser will furnish to the Liquidator promptly (i) each material registration, filing or submission made with any Insurance Regulatory Authority, (ii) each material examination report or other similar material report submitted by the Purchaser to any Insurance Regulatory Authority, (iii) each notice of any material violation by the Purchaser of any material deficiency of the Purchaser under, any applicable laws relating to insurance companies or to persons controlling insurance companies, and (iv) any other material notice received by the Purchaser from any Insurance Regulatory Authority.

(b) The Purchaser will establish and maintain on its books the Disputed Claims Reserve which shall at all times be adequate, under SAP, to cover the total amount of all of its reasonably anticipated liabilities under all issued and outstanding policies under which it has or may have any liability. The Purchaser will at all times own assets qualifying as reserve assets under applicable laws in an aggregate amount at least equal to all of the Disputed Claims Reserve.

Section 8.9. **Establishment and Maintenance of Separate Account.** [In the event that the Purchaser is not a newly formed entity and has other liabilities, formation of a security or trust arrangement with respect to this transaction will be required.]

Section 8.10. **Publicity.** The initial press release and any communications to Holders of Claims announcing the transactions contemplated by this Agreement and the Ancillary Agreements shall be released by the Liquidator.

Section 8.11. **Access to Records after Closing.**

(a) Until all Policyholder Claims are paid, the Liquidator and its representatives shall have reasonable access to all of the Books and Records to the extent that such access may reasonably be required by the Liquidator. Such access shall be afforded by the Purchaser upon receipt of reasonable advance notice and during normal business hours. If the Purchaser shall desire to dispose of any of such Books and Records prior to the expiration of such period, the Purchaser shall, prior to such disposition, give the Liquidator a reasonable opportunity, at the Liquidator's expense, to segregate and remove such Books and Records as the Liquidator may select. The foregoing shall not in any way limit the rights of the Insurance Department to exercise any rights which it may have to examine or investigate the Purchaser.

(b) Until all Policyholder Claims are paid, the Purchaser and its representatives shall have reasonable access to all of the Books and Records relating to the Company which Books and Records the Liquidator may retain after the Closing Date. Such access shall be afforded by the Liquidator upon receipt of reasonable advance notice and during normal business hours.

(c) The transfer of the Books and Records to the Purchaser shall not limit the rights of the Liquidator to use any information in the Books and Records for any lawful purpose consistent with the Liquidator's Obligations under the Plan, this Agreement and the Ancillary Agreements.

Section 8.12. **Compliance with Law.**

The Purchaser will comply with all Laws to which it is subject and will obtain and maintain in effect all licenses, certificates, permits, franchises and other governmental authorizations necessary to the ownership of its properties or to the conduct of its business, in each case to the extent necessary to ensure that any non-compliance with such Laws does not, individually or in the aggregate, have a Material Adverse Effect.

Section 8.13. **Amendments to Reinsurance Agreements.** The Purchaser shall enter into Opt-In Reinsurance Certificates with the Opt-In Reinsurers in the form of Annex F attached hereto.

Section 8.14. **Further Assurances.** At any time and from time to time after the Closing Date, the Parties hereto agree to: (a) furnish upon reasonable request to each other such further assurances, information, documents, instruments of transfer or assignment, files and records, (b) promptly execute, acknowledge, and deliver any such further assurances, documents, instruments of transfer or assignment, files and books and records, and (c) do such

further acts and things, all as such other Party may reasonably request (and at such Party's expense) for the purpose of carrying out the intent of this Agreement, the Plan and the Ancillary Agreements and the documents referred to herein and therein.

**Article IX.**  
**CERTAIN NEGATIVE COVENANTS.**

The Purchaser covenants and agrees that, so long as any obligations remain under this Agreement, the Ancillary Agreements or the Plan:

Section 9.1. **Restrictions on Indebtedness.** The Purchaser will not create, incur, assume, guarantee or be or remain liable, contingently or otherwise, with respect to any Indebtedness other than:

- (a) the Purchaser's Obligations;
- (b) Amortized LAE;
- (c) Allocated Loss Adjustment Expense in connection with Disputed Claims;
- (d) Endorsements for collection, deposit or negotiation incurred in the ordinary course of business;
- (e) Indebtedness in respect of the Distributions permitted by Section 3.4;
- (f) the Disputed Claim Reserve;
- (g) Indebtedness in respect of taxes and assessments incurred in good faith and in the ordinary course of Purchaser's operations;
- (h) Indebtedness in respect of judgments or awards arising from Policyholder Claims that have been in force for less than the applicable period for taking an appeal, so long as execution is not levied thereunder or in respect of which the Purchaser shall at the time in good faith be prosecuting an appeal or proceedings for review and in respect of which a stay of execution shall have been obtained pending such appeal or review;
- (i) Indebtedness in respect of appeal or similar bonds obtained in the ordinary course of business; or
- (j) Indebtedness in connection with Investments in the ordinary course of business made in accordance with the Purchaser's investment policy and the Insurance Law.

Section 9.2. **Restrictions on Liens.** The Purchaser will not: (a) create or incur or suffer to be created or incurred or to exist any Lien upon any of its property or assets of any character, whether now owned or hereafter acquired, or upon the income or profits therefrom; (b) transfer any of such property or assets or the income or profits therefrom for the purpose of subjecting the same to the payment of Indebtedness or performance of any other obligation in priority to payment its unsecured creditors; (c) acquire, or agree or have an option to

acquire, any property or assets upon conditional sale or other title retention or purchase money security agreement, device or arrangement; (d) suffer to exist for a period of more than thirty (30) days after the same shall have been incurred any Indebtedness or claim or demand against it that if unpaid might by law or upon receivership or insolvency, or otherwise, be given any priority whatsoever over its unsecured creditors; or (e) sell, assign, pledge or otherwise transfer any “receivables” as defined in clause (g) of the definition of the term “Indebtedness,” with or without recourse; *provided* that the Purchaser may create or incur or suffer to be created or incurred or to exist:

(a) Liens to secure taxes, assessments and other government charges in respect of obligations not overdue or being contested in good faith or Liens on properties to secure claims for labor, materials or supplies in respect of obligations not overdue or being contested in good faith; and

(b) Liens on properties in respect of judgments or awards that have been in force for less than the applicable period for taking an appeal so long as execution is not levied thereunder or in respect of which the Purchaser shall at the time in good faith be prosecuting an appeal or proceedings for review and in respect of which a stay of execution shall have been obtained pending such appeal or review.

Section 9.3. **Restrictions on Investments.** The Purchaser will not make or permit to exist or to remain outstanding any Investment that does not comply with the Insurance Law. The Purchaser shall not own any assets other than the Reinsurance Recoverables, Investment Assets, Cash and other assets acquired under this Agreement. The Purchaser shall not own any material amount of Non-Admitted Investment Assets.

Section 9.4. **Restricted Payments.** The Purchaser will not make any Restricted Payments other than:

- (a) Amortized LAE;
- (b) Reimbursement of Allocated Loss Adjustment Expense to the Administrator;
- (c) Profits to the extent provided for in the Plan and this Agreement; and
- (d) Capital Distributions upon final payment of all Purchaser’s Obligations.

Section 9.5. **Mergers and Acquisitions.** The Purchaser will not become a party to any merger, amalgamation or consolidation, or agree to or effect any asset acquisition or stock acquisition or disposition. The Purchaser shall not, directly or indirectly, become acquired by any party other than the Parent. The Purchaser will not dispose of any material amount of its Assets outside the ordinary course of business without the prior approval of the Liquidator.

Section 9.6. **Fiscal Year.** The Purchaser will not change the date of the end of its fiscal year from that set forth in Section 6.3.1 hereof.

Section 9.7. **Sale and Leaseback.** The Purchaser will not enter into any arrangement, directly or indirectly, whereby the Purchaser shall sell or transfer any property owned by it in order then or thereafter to lease such property or lease other property that the Purchaser intends to use for substantially the same purpose as the property being sold or transferred.

Section 9.8. **Compliance with Environmental Laws.** The Purchaser will not: (a) use any Real Estate or any portion thereof for the handling, processing, storage or disposal of Hazardous Substances, (b) cause or permit to be located on any Real Estate any underground tank or other underground storage receptacle for Hazardous Substances, (c) generate any Hazardous Substances on any Real Estate, (d) conduct any activity at any Real Estate or use any Real Estate in any manner so as to cause a release (*i.e.* releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing or dumping) or threatened release of Hazardous Substances on, upon or into such Real Estate, or (e) otherwise conduct any activity at any Real Estate or use any Real Estate in any manner that would violate any Environmental Law or bring such Real Estate or the owner or lessee of such Real Estate into violation of any Environmental Law.

Section 9.9. **Employee Benefit Plans.** Neither the Purchaser nor any Affiliate will establish a Guaranteed Pension Plan.

Section 9.10. **Business Activities; Non-Admitted Assets.** The Purchaser will not engage directly or indirectly in any type of business other than the management and disposition of the Transferred Assets and the adjustment and payment of the Policyholder Claims. The Purchaser will not own any material amount of Non-Admitted Assets.

Section 9.11. **Modification of Documents.** The Purchaser will not consent to or agree to any amendment, supplement or other modification of any document approved by the Liquidator in connection with this Agreement.

Section 9.12. **Transactions with Affiliates.** Except as set forth on Schedule 9.12 hereto or with the prior approval of the Liquidator, the Purchaser will not engage in any transaction with any Affiliate, including any contract, agreement or other arrangement providing for the furnishing of services to or by, providing for rental of real or personal property to or from, or otherwise requiring payments to or from any such Affiliate or any corporation, partnership, trust or other entity in which any such Affiliate has a substantial interest or is an officer, director, trustee or partner, *provided however*, that nothing contained in this Section 9.13 shall prohibit the Purchaser from making payments otherwise permitted by Section 9.4 hereof. The Purchaser shall not form any new Subsidiary

## **Article X. FINANCIAL COVENANTS.**

The Purchaser covenants and agrees that, so long as any of the Purchaser's Obligations are outstanding:

Section 10.1. **Risk Based Capital.** The Purchaser will not permit its Risk Based Capital Ratio to be less than [ ]% at any time.

Section 10.2. **Admitted Assets to Disputed Claim Reserve.** The Purchaser will not permit the ratio of: (a) Admitted Assets as at the end of any Reference Period, to (b) the Disputed Claim Reserve for such Reference Period to be greater

[ ] (i) than \_\_.00:\_\_.00 at any time when the Rating of the Parent is [ ] on the last day of such Reference Period;

[ ] (ii) than \_\_.00:\_\_.00 at any time when the Rating of the Parent is [ ] on the last day of such Reference Period;

[ ] (iii) than \_\_.00:\_\_.00 at any time when the Rating of the Parent is [ ] on the last day of such Reference Period;

[ ] (iv) than \_\_.00:\_\_.00 at any time when the Rating of the Parent is [ ] on the last day of such Reference Period; and

[ ] (v) than \_\_.00:\_\_.00 at any time when the Rating of the Parent is [ ] on the last day of such Reference Period.

Section 10.3. **Minimum Statutory Surplus.** The Purchaser will not cause or permit the Statutory Surplus of the Purchaser at any time to be less than \$\_\_\_\_\_.

Section 10.4. **IRIS Tests.** The Purchaser will not permit four or more of the Purchaser's IRIS financial ratio values to be outside of the usual range established in the IRIS system.

## Article XI.

### CONDITIONS PRECEDENT TO OBLIGATIONS OF THE PURCHASER

The obligations of the Purchaser under this Agreement shall, at the option of the Purchaser (to the extent permissible under applicable law), be subject to the satisfaction, on or prior to the Closing Date, of the following conditions:

Section 11.1. **No Misrepresentation or Breach of Representations and Warranties.** Each of the representations and warranties of the Liquidator contained in this Agreement shall be true and correct in all material respects on the Closing Date as though made on the Closing Date (except to the extent that they expressly relate to an earlier date), except for changes therein specifically permitted by this Agreement or resulting from any transaction expressly consented to in writing by the Purchaser.

Section 11.2. **No Breach of Covenants.** The Liquidator shall have performed in all material respects all of its covenants and agreements required to be performed on or prior to the Closing Date.

Section 11.3. **No Material Adverse Effect.** There has been no event or occurrence which has had, or could reasonably be anticipated to result in, a Material Adverse Effect as to the Company.

Section 11.4. **The Liquidator's Certificate.** The Liquidator shall have delivered to the Purchaser a certificate, dated the Closing Date and signed on behalf of the Liquidator by a duly authorized representative of the Liquidator, confirming the conditions set forth in Section 11.1, Section 11.2, and Section 11.3 hereof as of the Closing Date.

Section 11.5. **No Restraint.** No injunction or restraining order shall have been issued by any court of competent jurisdiction and be in effect which restrains or prohibits any material transaction contemplated hereby.

Section 11.6. **Sale Approval Order.** The Plan Approval Order and the Sale Approval Order shall each have become a Final Order.

## Article XII.

### CONDITIONS PRECEDENT TO OBLIGATIONS OF THE LIQUIDATOR

The obligations of the Liquidator under this Agreement shall, at the option of the Liquidator (to the extent permissible under applicable law), be subject to the satisfaction, on or prior to the Closing Date, of the following conditions:

Section 12.1. **No Misrepresentation or Breach of Representations and Warranties.** Each of the representations and warranties of the Purchaser contained in this Agreement shall be true and correct in all material respects on the Closing Date as though made on the Closing Date (except to the extent that they expressly relate to an earlier date), except for changes therein specifically permitted by this Agreement or resulting from any transaction expressly consented to in writing by the Liquidator.

Section 12.2. **No Breach of Covenants.** The Purchaser shall have performed in all material respects all of its covenants and agreements required to be performed on or prior to the Closing Date.

Section 12.3. **No Material Adverse Effect.** There shall have been no event or occurrence which has had, or could reasonably be anticipated to result in, a Material Adverse Effect as to the Purchaser or the Parent.

Section 12.4. **Officer's Certificate.** The Purchaser shall have delivered to the Liquidator a certificate, dated the Closing Date and signed on behalf of the Purchaser by a duly authorized officer of the Purchaser, confirming the conditions set forth in Section 12.1, Section 12.2 and Section 12.2 hereof.

Section 12.5. **No Restraint.** No injunction or restraining order shall have been issued by any court of competent jurisdiction and be in effect which restrains or prohibits any material transaction contemplated hereby.

Section 12.6. **Governmental Approvals.** The Purchaser shall have received all approvals and actions of or by all Governmental Authorities necessary to consummate the transactions contemplated hereby, and required to be obtained prior to the Closing by applicable law.

**Article XIII.**  
**EVENTS OF DEFAULT; REMEDIES**

Section 13.1. **Event of Default.** An “Event of Default” shall exist if any of the following conditions or events shall occur and be continuing:

(a) The Purchaser defaults in the payment of any Purchaser Obligations for more than five (5) days after the same shall have been demanded of it in writing;

(b) The Purchaser or the Parent, as applicable, defaults in the performance of or compliance with any term contained herein, and under the Plan or any Ancillary Agreement and such default is not remedied within thirty (30) days after the earlier of: (i) an officer of the Purchaser obtaining actual knowledge of such default, and (ii) the Purchaser receiving written notice of such default from the Liquidator;

(c) Any representation or warranty made in writing by or on behalf of the Purchaser in this Agreement or in any writing furnished in connection with the transactions contemplated hereby proves to have been false or incorrect in any material respect on the date as of which made;

(d) An Insolvency Event shall have occurred with respect to the Purchaser; or

(e) One or more final judgments for the payment of money aggregating in excess of \$[\_\_\_\_\_] are rendered against the Purchaser which judgments are not, within sixty (60) days after entry thereof, bonded, discharged or stayed pending appeal, or are not discharged within sixty (60) days after the expiration of such stay.

Section 13.2. **Remedies.** If an Event of Default has occurred and is continuing, then:

(a) The Liquidator may proceed to protect and enforce its rights by an action at law, suit in equity or other proceeding, whether for the specific performance of any covenant or agreement contained herein or in the Ancillary Agreements or the Plan, or for an injunction against a violation of any of the terms hereof or thereof, or in aid of the exercise of any power granted hereby or thereby or by law or otherwise. The Receivership Court shall have exclusive jurisdiction over such action or proceeding and the Purchaser hereby submits to the personal jurisdiction and venue of the Receivership Court (to the extent required).

(b) The Liquidator may terminate the right of the Purchaser to make any Restricted Payment, including any payment of Amortized LAE on notice to the Purchaser.

(c) Upon demand by the Liquidator, the Purchaser will deliver or cause to be delivered to the Liquidator, for the benefit of the Holders of Claims, Acceptable Collateral as

collateral security for the Purchaser's Obligations. As of the date such collateral is granted, the fair market value of such Acceptable Collateral shall be not less than [\_\_\_]% of the Disputed Claim Reserve as of such date. Such collateral shall be granted and delivered pursuant to one or more security agreements, control agreements and other instruments as are reasonably acceptable to the Liquidator. Such agreements and instruments shall provide that such collateral will be released and restored to the Purchaser if the Purchaser shall have provided evidence satisfactory to the Liquidator that the Event of Default shall have been cured and the Liquidator shall have been reimbursed for all costs and expenses incurred in connection with enforcement of this Agreement. The Purchaser shall deliver Acceptable Collateral to the Liquidator immediately upon demand and shall not delay such delivery until agreements and instruments have been executed.

(d) Upon notice by the Liquidator, (i) the Liquidator may terminate the Claim Servicing Agreement and either resume direct administration of Disputed Opt-Out Claims or engage another Person to directly administer such Disputed Opt-Out Claims and (ii) the Liquidator may terminate any endorsement to Policies of Opt-In Holders and the Purchaser's right to administer Disputed Opt-In Claims and either resume administration of such Disputed Opt-In Claims or engage another Person to administer such Disputed Opt-in Claims. In the event that the Liquidator exercises the rights provided under this paragraph, the Liquidator shall be entitled to receive from the Purchaser damages in the amount of the costs and expenses incurred by the Liquidator (including the direct cost of Liquidation Bureau personnel and an allocated share of Liquidation Bureau overhead) in administering Claims or the costs incurred by the Liquidator in engaging another Person to administer Claims. In the event that the Liquidator exercises rights under this subparagraph, the Purchaser shall promptly deliver to the Liquidator the Assets and all Books and Records reasonably necessary to carry out the administration of Claims as well as access to Hardware and any applicable software pertaining to such Claims.

(e) Upon notice by the Liquidator, the Liquidator may terminate the Purchaser Reinsurance Agreement and exercise such rights and remedies as are provided therein, in addition to any remedies provided elsewhere in this Agreement, the Plan or any Ancillary Agreement.

The foregoing remedies are cumulative and shall not exclude any other right or remedy that the Liquidator may assert under the Plan, this Agreement, or the Law.

#### **Article XIV. TERMINATION**

Section 14.1. **Termination**. Anything contained in this Agreement to the contrary notwithstanding, this Agreement may be terminated at any time prior to the Closing Date:

- (a) by the mutual consent of the Purchaser and the Liquidator;
- (b) by the Purchaser in the event of any material breach by the Liquidator of any of the Liquidator's agreements, representations or warranties contained herein and the failure of the Liquidator to cure such breach within five (5) Business Days after receipt of notice from the Purchaser requesting such breach to be cured;

(c) by the Liquidator in the event of any breach by the Purchaser of any of the Purchaser's agreements, representations or warranties contained herein and the failure of the Purchaser to cure such breach within five (5) Business Days after receipt of notice from the Liquidator requesting such breach to be cured;

(d) by the Purchaser or the Liquidator if any court of competent jurisdiction or other Governmental Authority shall have issued a Final Order permanently restraining, enjoining or otherwise affecting a material term of or prohibiting the consummation of the Liquidation Plan, Purchase Agreement and the Ancillary Agreements contemplated hereby; or

(e) by the Purchaser or the Liquidator if the Closing shall not have occurred on or before [\_\_\_\_\_], 2010.

Section 14.2. **Notice of Termination.** Any Party desiring to terminate this Agreement pursuant to Section 14.1 shall give written notice of such termination to the other Party.

Section 14.3. **Effect of Termination.** If this Agreement shall be properly terminated pursuant to this Article XIV, all further obligations of the Parties under this Agreement shall be terminated without further liability of any Party to the other; *provided, however,* that if the Termination resulted from a breach of the Agreement by the Purchaser, then the Liquidator shall retain the deposit made by the Purchaser in connection with the Bid as liquidated damages.

## **Article XV. GENERAL PROVISIONS**

Section 15.1. **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns. No Party to this Agreement may assign its rights whether before or after the Closing or delegate its obligations under this Agreement without the express prior written consent of the other Parties to this Agreement.

Section 15.2. **Entire Agreement; Amendments.** This Agreement, the Plan, the Ancillary Agreements, the Annexes, Exhibits and Schedules referred to herein, and the Confidentiality Agreement contain the entire understanding of the Parties hereto with regard to the subject matter contained herein or therein, and supersede all other prior representations, warranties, agreements, understandings or letters of intent between or among any of the Parties hereto. This Agreement shall not be amended, modified or supplemented except by a written instrument signed by an authorized representative of each of the Parties hereto.

Section 15.3. **Notices.** All notices or other communications required or permitted hereunder shall be in writing and shall be deemed given or delivered when delivered personally or when sent by registered or certified mail or by private courier addressed as follows:

If to the Purchaser, to:

[ ]

with a copy to:

[ ]

If to the Liquidator, to:

New York Liquidation Bureau  
123 William Street  
New York, NY 10038  
Attention: General Counsel  
Telecopier: (212) [ ]

with a copy to:

Bingham McCutchen LLP  
One State Street  
Hartford, CT 06103  
Attention: Harold S. Horwich  
Telecopier: (860) 240-2583

or to such other address as such Party may indicate from time to time by a notice delivered to the other Party hereto.

Section 15.4. **Waivers.** Any term or provision of this Agreement may be waived, or the time for its performance may be extended, by the Party or Parties entitled to the benefit thereof. Any such waiver shall be validly and sufficiently authorized for the purposes of this Agreement if, as to any Party, it is authorized in writing by an authorized representative of such Party. The failure of any Party hereto to enforce at any time any provision of this Agreement shall not be construed to be a waiver of such provision, nor in any way to affect the validity of this Agreement or any part hereof or the right of any Party thereafter to enforce each and every such provision. No waiver of any breach of this Agreement shall be held to constitute a waiver of any other or subsequent breach.

Section 15.5. **Expenses.** Except as expressly set forth herein, each Party will pay all costs and expenses incident to its negotiation and preparation of this Agreement, the Plan and the Ancillary Agreements, and to its performance and compliance with all agreements and

conditions contained herein and therein on its part to be performed or complied with, including the fees, expenses and disbursements of its counsel and independent public accountants.

Section 15.6. **Partial Invalidity.** Wherever possible, each provision hereof shall be interpreted in such manner as to be effective and valid under applicable law, but in case any one or more of the provisions contained herein shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such provision shall be ineffective to the extent, but only to the extent, of such invalidity, illegality or unenforceability without invalidating the remainder of such invalid, illegal or unenforceable provision or provisions or any other provisions hereof, unless such a construction would be unreasonable.

Section 15.7. **Execution in Counterparts.** This Agreement may be executed in counterparts, each of which shall be considered an original instrument, but all of which shall be considered one and the same agreement, and shall become binding when one or more counterparts have been signed by each of the Parties hereto and delivered to the other Parties.

Section 15.8. **Disclaimer of Warranties.** The Liquidator does not make any representations or warranties with respect to any projections, forecasts or forward-looking information provided to the Purchaser. There is no assurance that any projected or forecasted results will be achieved. **EXCEPT AS TO THOSE MATTERS EXPRESSLY COVERED BY THE REPRESENTATIONS AND WARRANTIES IN THIS AGREEMENT, THE LIQUIDATOR IS SELLING THE TRANSFERRED ASSETS AND THE CLAIMS ON AN “AS IS, WHERE IS” BASIS AND THE LIQUIDATOR DISCLAIMS ALL OTHER WARRANTIES, REPRESENTATIONS AND GUARANTIES, WHETHER EXPRESS OR IMPLIED. THE LIQUIDATOR DOES NOT MAKE ANY REPRESENTATION OR WARRANTY AS TO MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE AND NO IMPLIED WARRANTIES WHATSOEVER. THE LIQUIDATOR’S REPRESENTATIONS AND WARRANTIES DO NOT SURVIVE THE CLOSING.**

Section 15.9. **Governing Law; Submission to Jurisdiction.** This Agreement shall be governed by and construed in accordance with the internal laws of the State of New York without reference to its choice of law rules. The Purchaser submits to the personal jurisdiction of the Receivership Court.

Section 15.10. **Dispute Resolution.** All disputes concerning the Plan, this Agreement and the Ancillary Agreements shall be resolved by the Receivership Court under procedures prescribed by the Receivership Court.

Section 15.11. **Tax Matters**

(a) For all Tax purposes, the purchase price for the Transferred Assets (as determined for federal income tax purposes) shall be allocated in the manner set forth on Schedule 15.11 (the “Allocation”), which schedule shall be prepared by the Purchaser in a manner consistent with Section 1060 of the Internal Revenue Code, and the regulations promulgated thereunder, and delivered by the Purchaser to the Liquidator for its review and

approval within thirty (30) days after the Closing Date. The Liquidator shall have thirty (30) days after receipt of the Allocation to notify the Purchaser in writing of any objections. If the Liquidator does not object in writing during such thirty (30) day period, the Allocation shall be final and binding on all Parties. If the Liquidator objects in writing during such thirty (30) day period, the Parties will attempt in good faith to resolve the disputed items. If the Parties are unable to reach an agreement within sixty (60) days of the Liquidator's receipt of the Allocation, any disputed items shall be referred to the Receivership Court for resolution, and the determination of the Receivership Court shall be final and binding on all Parties. The Parties each agree to file IRS Form 8594 consistent with the foregoing and in accordance with Section 1060 of the Internal Revenue Code and the regulations promulgated thereunder. Neither Party shall file any Tax Return or other document relating to Taxes that is inconsistent with such final Allocation, as determined pursuant to this section or in any discussion with or proceeding before any Governmental Authority or otherwise. If the Guaranteed Percentages should be adjusted pursuant to Section 3.3 of this Agreement, the Parties shall agree on a revised Allocation that will reflect such change. If the Parties cannot agree on any change, it will be made to all categories in the Allocation in the same proportion as the change in the Guaranteed Percentages.

(b) The Purchaser shall prepare and file (or cause to be prepared and filed) all Tax Returns in respect of all Transfer Taxes arising out of the consummation of the transactions contemplated hereby. Such Tax Returns shall be prepared in a manner that is consistent with the determination of the fair market values allocated to the Transferred Assets as contemplated by subsection (a). The Liquidator shall reasonably cooperate with the Purchaser in the preparation and filing of such Tax Returns.

(c) Notwithstanding any other provision herein, all Transfer Taxes shall be borne and paid by the Purchaser, when due, regardless of which Party may be liable therefor under applicable law.

(d) Any refunds of Taxes or Taxes imposed with respect to the Transferred Assets plus any interest received or due with respect thereto from or to the applicable Taxing Authority for any taxable period ending on or before the Closing Date (including refunds or credits arising by reason of an amended Tax Return filed after the Closing Date) shall be for the account of the Seller. Such refunds shall be distributed to the Holders of Allowed Claims and Determined Claims Pro Rata. The Purchaser shall make such distributions on behalf of the Liquidator upon transfer of the refunds to the Purchaser. The Purchaser may deduct the reasonable cost of making such distributions from the refund proceeds prior to making such distributions.

(e) [Protection for the Liquidator with respect to Taxes imposed by any Taxing Authority related to the sale of the Transferred Assets in the form of a revenue ruling, purchaser indemnity, escrow, insurance or otherwise to be agreed with the Purchaser.]

(f) The Transferred Assets will not include any tax records of the Company. The Purchaser agrees to cooperate with the Liquidator in any tax audit or related proceeding, including making available to the Liquidator copies of any Books and Records or other documents in the possession of the Company prior to the Closing Date that are included in the Transferred Assets.

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**IN WITNESS WHEREOF**, the Parties hereto have caused this Agreement to be executed as of the day and year first above written.

**[Purchaser]**

By: \_\_\_\_\_  
Name:  
Title:

**ERIC R. DINALLO AS LIQUIDATOR OF  
MIDLAND INSURANC COMPANY**

By: \_\_\_\_\_  
Name:  
Title:

Draft

Annex A  
Parental Support Agreement

Draft

Annex B  
Purchaser Reinsurance Agreement

Draft

Annex C  
Claim Service Agreement

Draft

Annex D  
Claim Service Agreement

Draft

Annex E  
Purchaser Endorsements

Draft

Annex F  
Opt-In Reinsurance Certificate

Draft

Schedule 2.1  
Transferred Assets

Draft

Schedule 5.4(a)  
Cash and Invested Assets

Draft

Schedule 5.4(b)  
Proofs of Claim

Draft

Schedule 5.6  
Hardware and Software

Draft

Schedule 6.2  
Governmental Approvals

Draft

Schedule 6.4  
Material Adverse Effects

Draft

Schedule 6.6  
Litigation

Draft

Schedule 7.4  
Operations Prior to Closing

Draft

Schedule 9.12  
Transactions with Affiliates

Draft

Schedule 15.11  
Allocation of Purchase Price

Draft

Appendix A  
Definitions