

PURCHASER REINSURANCE AGREEMENT

THIS PURCHASER REINSURANCE AGREEMENT (this “Agreement” or the “Purchaser Reinsurance Agreement”), is dated as of _____, 2009, by and between [.....], a New York insurance company 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 this Agreement and are collectively referred to herein as the “Parties.”

PRELIMINARY STATEMENT

WHEREAS, the Parties are, simultaneously with this Agreement, entering into a Purchase Agreement providing for the purchase of substantially all of the assets of the Company and payment of Policyholder Claims pursuant to the Liquidation Plan for Midland Insurance Company; and

WHEREAS, pursuant to the Purchase Agreement, the Liquidator is required to cede and Purchaser is required to reinsure Policyholder Claims upon the terms set forth in this Agreement.

NOW, THEREFORE, in consideration of the Transferred Assets under the Purchase Agreement and the mutual covenants and agreements hereinafter set forth, the Parties intending to be legally bound, hereto agree as follows:

Article I. DEFINITIONS

Section 1.1. **Definitions.** The capitalized terms which are used in this Agreement, and not otherwise defined in this Agreement, 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";
 - (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. 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. TERM

Section 2.1 This Agreement shall take effect on the Closing Date, and shall remain in full force and effect until this Agreement is terminated by the mutual written consent of the Liquidator and the Purchaser or as provided in Article XV hereof.

Article III. BUSINESS INSURED

Section 3.1 This Agreement covers all Policies issued at any time covering risks in any location.

Article IV. REINSURANCE

Section 4.1 **Opt-In and Pre-effective Date Allowed Claims.** The Purchaser shall indemnify the Company for the Opt-in Guaranteed Percentage of the Determined Amount of each Opt-In Claim and the Allowed Amount of each Pre-Effective Date Allowed Claim.

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Section 4.2 **Opt-Out Claims.** The Purchaser shall indemnify the Company for the Opt-Out Guaranteed Percentage of the Allowed Amount of each Opt-Out Claim.

Section 4.3 **ALAE.** The Purchaser shall indemnify the Company for the entire amount of any Allocated Loss Adjustment Expense incurred by the Liquidator in connection with any Policyholder Claim after the Closing Date.

Section 4.4 **ECO and XPL Losses.** The Purchaser shall indemnify the Company for the entire amount of any ECO and XPL Losses arising out of or related to any Policyholder Claim after the Closing Date. The Liquidator maintains that neither the Liquidator nor the Company may be held liable for either ECO or XPL Losses, and the foregoing provision shall not be construed as an admission that the Liquidator or the Company may be liable for ECO or XPL Losses.

Article V. LOSSES AND LOSS SETTLEMENTS

Section 5.1 **Following form.** The Purchaser shall be subject in all respects to the same terms, conditions, waivers and interpretations, and to the same modifications, cancellations and alterations of the Policies as the Company.

Section 5.2 **Follow the fortunes and settlements.** The Purchaser shall be unconditionally bound to pay the Opt-in Guaranteed Percentage of any Pre-Effective Date Allowed Claims, the Opt-in Guaranteed Percentage of any Determined Opt-In Claims and the Opt-Out Guaranteed Percentage of any Allowed Opt-Out Claims, regardless of whether such Claims are settled or litigated to resolution.

Section 5.3 **Notice.** The Liquidator shall not be required to provide notice to the Purchaser that any Policyholder Claim has been Allowed or Determined, except that the Liquidator shall be required to furnish the Purchaser within a reasonable period with any notice of determination with respect to an Opt-in Claim that is covered by an Opt-Out Reinsurer. The Liquidator shall provide notice to the Purchaser, within a reasonable time, of any demand which would give rise to an ECO and XPL Loss. The Liquidator shall provide notice to the Purchaser, within a reasonable time, if the Liquidator intends to incur any Allocated Loss Adjustment Expense. The failure to provide any notice provided for herein in a timely manner shall not be a defense to the Purchaser's obligation to pay ECO or XPL Losses or Allocated Loss Adjustment Expense except to the extent that the Purchaser has been materially prejudiced thereby.

Section 5.4 **Cooperation in defense.** The Purchaser and the Liquidator shall cooperate with each other in the defense of any Policyholder Claim or ECO or XPL Loss and shall afford each other the opportunity to associate in connection with such defense.

Article VI. PURCHASER'S REPRESENTATIONS AND ACKNOWLEDGEMENT

Section 6.1 **Sophisticated reinsurer.** The Purchaser has sufficient knowledge and experience in financial, business and other relevant matters to be capable of evaluating the risks and merits of entering into and performing this Agreement. In entering into this Agreement, the

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Purchaser is not relying on any representation as to any past or present fact or circumstance, or on any representation, prediction or estimation as to any future fact or circumstance, whatsoever made by or on behalf of the Liquidator or the Company.

Section 6.2 **Waiver of defenses.** The Purchaser hereby knowingly and voluntarily waives any and all defenses to payment under this Agreement that are based on misrepresentation and/or nondisclosure as to the subject matter of this Agreement at or prior to the Purchaser's execution and delivery of this Agreement, and agrees not to seek rescission of this Agreement because of any actual or alleged misrepresentation and/or non-disclosure as to the subject matter of this Agreement at or prior to the Purchaser's execution and delivery of this Agreement.

Article VII. INURING REINSURANCE

Section 7.1 The Purchaser shall have the benefit of any Reinsurance Agreement entered into prior to the Closing Date. The reinsurance provided under this Agreement shall not replace, limit or reduce the liability of any Reinsurer.

Article VIII. PAYMENT AND CUT-THROUGH

Section 8.1 **Payment.** The Purchaser shall satisfy its obligations under Section 4.1 of this Agreement by making payments directly to the Holders of the Policyholder Claims as and when provided by the Plan. The Purchaser shall satisfy its obligations under Section 4.2 of this Agreement by paying the Holder of any Allowed Opt-Out Claim as and when directed by the Liquidator. The Purchaser shall satisfy its obligations under Sections 4.3 and 4.4 of this Agreement by paying the Liquidator or the Administrator within ten (10) business days of receiving notice of such amounts.

Section 8.2 **Cut-Through.** Holders of Determined Opt-In Claims and Holders of Pre-Effective Date Allowed Claims shall have the right to make demand on, and bring legal action against, the Purchaser for payment of the Opt-In Guaranteed Percentage of the Allowed Amount of a Pre-Effective Date Allowed Claim or the Determined Amount of an Opt-In Claim. Such demand and legal action shall be made in accordance with the Purchaser Endorsement.

Article IX. SALVAGE AND OTHER RECOVERIES

Section 9.1 **Purchaser's rights to recovery.** The Purchaser shall be entitled to any reimbursement obtained or recovery made by the Company after the Effective Date with respect to any Policyholder Claim paid by the Purchaser.

Section 9.2 **Control of enforcement.** The Purchaser shall have the right to control the enforcement of any rights under Section 9.1 with regard to Claims covered only by Opt-In Reinsurers upon payment of the amounts owed pursuant to Article IV hereof. The Liquidator shall, at the request of the Purchaser and upon payment by the Purchaser of the amounts owed pursuant to Article IV hereof, enforce any rights under Section 9.1 with regard to Claims covered

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in whole or in part by one or more Opt-Out Reinsurers. The Purchaser shall timely reimburse and indemnify the Liquidator for any costs or expenses incurred by the Liquidator in connection with the enforcement of such rights. The Liquidator shall not be obligated to pay such costs or expenses from the Administrative Expense Reserve. The Liquidator may delegate the Liquidator's obligations under this Section to the Administrator under the Claim Service Agreement. The Liquidator shall not be obligated to take any action in connection with the enforcement of the rights under Section 9.1 if the Liquidator determines that such action would not be in good faith or would be contrary to applicable law, the Plan, the Purchase Agreement, the Ancillary Agreements, or otherwise inconsistent with the Liquidator's duties under Article 74 of the Insurance Law.

**Article X.
RESERVES; COVENANTS**

Section 10.1 The Purchaser shall maintain legal reserves in accordance with SAP in connection with Disputed Claims and Allocated Loss Adjustment Expenses and otherwise comply with the covenants in Articles VIII, IX and X of the Purchase Agreement.

**Article XI.
ERRORS AND OMISSIONS**

Section 11.1 Neither the Company nor the Purchaser shall be relieved from any liability under this Agreement because of an inadvertent act, failure to act, delay, omission or error if such Party rectifies such act, neglect, delay, omission or error within a reasonable period of time after discovery by an executive officer of such Party.

**Article XII.
OFFSET**

Section 12.1 Amounts due as between the Company and the Purchaser under this Agreement may not be offset, recouped or otherwise used in defense of an obligation, *provided* however if an Insolvency Event shall occur as to the Purchaser, the Company, in the sole discretion of the Liquidator, may offset any balance or amount due from the Purchaser against amounts due to the Purchaser under this Agreement or any other agreement between the Parties.

**Article XIII.
INTEGRATION WITH OTHER AGREEMENTS**

Section 13.1 This Agreement shall not limit or supersede the obligations of the Purchaser under the Plan or the Purchaser Agreement. In the event that there is a conflict between the terms of the Purchase Agreement or the Plan, on the one hand, and this Agreement on the other hand, the terms of the Purchase Agreement or the Plan shall control.

**Article XIV.
DISPUTE RESOLUTION**

Section 14.1 Any dispute under this Agreement between the Purchaser and the Liquidator shall be resolved by the Receivership Court under procedures prescribed by the Receivership Court.

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

Section 15.1 **Events 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 obligation under this Agreement for more than five (5) days after receiving written demand of the same;
- (b) the Purchaser shall default in the performance of or compliance with any term contained herein, other than terms of payment, 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) an Event of Default shall have occurred under and as defined in the Purchase Agreement or any Ancillary Agreement.

Section 15.2. **Remedies**. If an Event of Default has occurred and is continuing; then:

- (a) the Liquidator may demand that all payments made pursuant to Sections 4.1 and 4.2 of this Agreement be made directly to the Liquidator and, in such event, the right of the Holders of Opt-In Claims and Holders of Pre-Effective Date Allowed Claims under Section 8.2 of this Agreement shall terminate.
- (b) the Liquidator may terminate the Purchaser’s rights under Sections 7.1 and 9.1 of this Agreement and thereby undertake to enforce any Reinsurance Agreement for the benefit of the Company and collect any salvage or subrogation recoveries for the Company.
- (c) the Liquidator may enforce all of the rights hereunder simultaneously with any other rights or remedies which the Liquidator may have under the Plan, the Purchase Agreement and the Ancillary Agreements. Such rights and remedies shall be cumulative with the foregoing rights and remedies.

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**Article XVI.
GENERAL PROVISIONS**

Section 16.1. **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 Party to this Agreement.

Section 16.2. **Entire Agreement; Amendments.** This Agreement, the Plan, the Purchase Agreement, 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 16.3. **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 Purchaser, to:

[]

with a copy to:

[]

If to Liquidator, to:

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

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with a copy to:

Bingham McCutchen LLP
1 State St.
Hartford, CT 06103
Attention: Harold S. Horwich
Telecopier: (860) 240-2800

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

Section 16.4. **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 16.5. **Expenses.** Except as expressly set forth herein, each Party hereto will pay all of its own costs and expenses incident to its negotiation and preparation of this Agreement and to its performance and compliance with all agreements and conditions contained herein on its part to be performed or complied with, including the fees, expenses and disbursements of its counsel and independent public accountants.

Section 16.6. **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 16.7. **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 16.8. **Disclaimer of Warranties.** Liquidator does not make any representations or warranties with respect to any projections, forecasts or forward-looking information provided to Purchaser. There is no assurance that any projected or forecasted results will be achieved. **LIQUIDATOR DISCLAIMS ALL WARRANTIES, REPRESENTATIONS AND GUARANTEES WHETHER EXPRESS OR IMPLIED. THE LIQUIDATOR'S REPRESENTATIONS AND WARRANTIES DO NOT SURVIVE THE CLOSING.**

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Section 16.9. **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.

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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: