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Superior Court of California  
County of San Francisco

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Insurance Commissioner of the State of California  
in his Capacity as Conservator of Majestic Insurance  
Company

**EXEMPT from filing fees per Govt.  
Code § 6103**

SUPERIOR COURT OF THE STATE OF CALIFORNIA  
CITY AND COUNTY OF SAN FRANCISCO

DAVE JONES, INSURANCE  
COMMISSIONER OF THE STATE OF  
CALIFORNIA,

Applicant,

v.

MAJESTIC INSURANCE COMPANY, and  
DOES 1-50, inclusive,

Respondents.

Case No. CPF-11-511261

**DECLARATION OF DAVID E.  
WILSON IN SUPPORT OF  
INSURANCE COMMISSIONER DAVE  
JONES' MOTION FOR ORDER  
APPROVING REHABILITATION  
PLAN FOR MAJESTIC INSURANCE  
COMPANY**

**Date: June 2, 2011  
Time: 9:30 a.m.  
Dept: 301  
Judge: Hon. Peter J. Busch**

1 I, DAVID E. WILSON, hereby declare and state as follows:

2 1. I am the Chief Executive Officer and Special Deputy Insurance Commissioner of  
3 the Conservation & Liquidation Office ("CLO") of the California Department of Insurance  
4 ("CDI") and have held this position since 2005, when I was appointed as CEO of the CLO by the  
5 California Insurance Commissioner and confirmed by the California State Senate. I make this  
6 declaration in support of the Insurance Commissioner Dave Jones' Motion for Order Approving  
7 the Rehabilitation Plan for Majestic Insurance Company ("Rehabilitation Motion"). The  
8 following facts are known by me to be true and correct and of my own personal knowledge,  
9 except to those which I have expressed as being based upon my information and belief, and if  
10 called upon to testify thereto I would and could competently do so.

11 2. I have more than 30 years of experience in management, finance and insurance  
12 industries, and have a Bachelor of Arts in Accounting. From 1973 to 1989, I served in several  
13 managerial positions with Ernst & Young, rising from a staff accountant to become partner in  
14 1986. From 1989 to 1991, I was the senior vice president and Chief Financial Officer of Rocky  
15 Mountain Health Care Corporation. Thereafter, until 2005 when I became the CEO of the CLO, I  
16 was president of D.E. Wilson & Associates Inc., a national insurance consulting firm working  
17 with troubled insurance organizations.

18 3. In my position at the CLO I have responsibility for overseeing the management of  
19 insurers that are placed under the control of the California Insurance Commissioner  
20 ("Commissioner") in court-supervised conservation and liquidation proceedings. I also provide  
21 assistance to the Commissioner and his team of advisors when they seek to avoid formal  
22 conservation proceedings by working with a troubled insurer to shore up its financial health.  
23 From time to time, I am also appointed by the Commissioner pursuant to Insurance Code section  
24 733(g) as a Special Insurance Examiner to assist the Insurance Commissioner in his statutory  
25 examinations of insurers.

26 4. On February 9, 2010, I was appointed Special Insurance Examiner to assist the  
27 Commissioner in his ongoing examination of Majestic Insurance Company ("Majestic"), a  
28 California-domiciled workers' compensation insurer headquartered at 101 California St., 22<sup>nd</sup>

1 Floor, San Francisco, California 94111. Majestic, a member of an insurance holding company  
2 system, is a wholly-owned subsidiary of Embarcadero Insurance Holdings, Inc. ("Embarcadero").  
3 Embarcadero, a California corporation, is a subsidiary of Majestic USA Capital, Inc. ("Majestic  
4 USA"), which in turn is a subsidiary of Majestic Capital Ltd. ("Majestic Capital"), a publicly  
5 traded company on the NASDAQ stock exchange. Majestic offers workers' compensation  
6 coverage to employers in California, New York, New Jersey, Arizona, Nevada and other states. I  
7 am to serve as Deputy Conservator of Majestic under the Order conserving Majestic upon its  
8 entry by the Court.

9         5. As a result of my appointment as Special Insurance Examiner of Majestic, I am  
10 knowledgeable about Majestic's financial condition and the attempts made by its corporate  
11 parents to obtain additional financial backing for Majestic during 2010 and 2011. I provide the  
12 Court with a brief summary of these attempts to assist the Court in evaluating the Rehabilitation  
13 Motion and the plan for the rehabilitation of Majestic described therein ("Rehabilitation Plan").  
14 In 2008 the CDI commenced its periodic statutory examination of the affairs and financial  
15 condition of Majestic. During the course of the examination, the Commissioner's staff concluded  
16 that Majestic was under severe financial strain. Majestic suffered a decrease in net earned  
17 premiums and an increase in its loss ratios. A major contributing factor to Majestic's financial  
18 strain was the fact that it suffered a downgrading of its A.M. Best rating from an A- (excellent)  
19 to a B++(good) in December of 2009, an increase in the costs of reinsuring Majestic's business,  
20 and overall difficult market condition resulting from the weakness in business and economic  
21 condition in the United States. In addition, Majestic's parent was under investigation by the New  
22 York Attorney General in connection with certain self-insured group administration practices, and  
23 several lawsuits had been filed in connection with their discontinued New York fee-based  
24 management services business.

25         6. To address the downgrading of its A.M. Best rating, Majestic entered into a  
26 strategic alliance through a quota share agreement with AmTrust North America, Inc.  
27 ("AmTrust"), effective April 1, 2010, an A rated insurer, under which AmTrust authorized  
28 Majestic to issue insurance policies of AmTrust affiliated insurers, subject to Majestic's

1 agreement to reinsure substantially all of the claims under those policies. This arrangement,  
2 commonly referred to as a "fronting" arrangement, allowed Majestic to retain a significant  
3 portion of the insurance business of customers, such a governmental entities or trusts, that are  
4 required by law or their bylaws to obtain insurance only from an A rated carrier. In addition, to  
5 attempt to address the need for increased capitalization of Majestic, Majestic Capital formed a  
6 Special Committee of its Board of Directors to investigate, among other things, ways to  
7 strengthen Majestic's financial position. It retained Macquarie Capital, an investment banking  
8 firm, to explore strategic alternatives to increase financial strength, which Majestic Capital  
9 publicly stated "could include a sale, merger or other business combination, a sale of shares or  
10 other recapitalization, a joint venture or a sale or spinoff of assets." See Item 2, Management's  
11 Discussion and Analysis of Financial Results of Operations, Form 10Q, Majestic Capital, Ltd.,  
12 for quarterly period ended June 30, 2010, printed from the Securities and Exchange Commission  
13 website and attached hereto as Exhibit 1.

14 7. On September, 21, 2010, Majestic Capital entered into an agreement with Bayside  
15 Capital Partners LLC ("Bayside") under which Bayside would merge with Majestic Capital, Ltd.  
16 This merger, if consummated, would allow Majestic access to increased capitalization. However,  
17 Bayside withdrew from the merger agreement on March 21, 2011, based on deterioration in the  
18 financial condition of Majestic and other related factors. After Bayside terminated the merger  
19 agreement, Majestic's A.M. Best rating downgraded again, to B (fair). This rating is below what  
20 most insurance brokers (and their respective Errors & Omissions insurers) consider to be  
21 "secure," which further damaged Majestic's ability to maintain the viability of its business.

22 8. Throughout the early months of 2011, there continued to be multiple issues of  
23 serious concern regarding Majestic's financial condition. The most serious was that Majestic had  
24 a loss and loss adjustment expense reserve deficiency and unearned premium reserve deficiency  
25 of approximately \$46 million as of December 31, 2010, as determined by the CDI and detailed in  
26 the Declaration of the CDI's Chief Actuary Ronald Dahlquist filed in support of Insurance  
27 Commissioner Dave Jones' Motion For Order Approving Rehabilitation Plan for Majestic  
28 Insurance Company. Market and policyholder uncertainty about the continued financial viability

1 of Majestic reached an apex at the time of the withdrawal of Bayside from the merger and  
2 Majestic management reported that they expected to have great difficulty retaining their insureds  
3 coming up for renewal on April 1, 2011, as well as maintaining their valuable relationships with  
4 their broker network. These developments materially increased the possibility that the  
5 Commissioner would be required to place Majestic into conservation in order to protect  
6 policyholders and injured worker claimants.

7 9. Around the time of Bayside's termination of its proposed merger with Majestic  
8 Capital, AmTrust, which is the general agent for and manager of a group of A-rated workers'  
9 compensation and specialty insurers which had become familiar with Majestic based on the  
10 fronting relationship described above, came forward to both Majestic and the Commissioner and  
11 advised that AmTrust would be interested in purchasing the assets and assuming the insurance  
12 liabilities of Majestic, the assumption of Majestic leases, and in providing new employment  
13 opportunities for the majority of Majestic's employees. Most significantly, AmTrust was  
14 proposing to assume, through a loss portfolio transfer reinsurance agreement, all Majestic's  
15 outstanding insurance claim liabilities without an aggregate limit or cap on the amount of loss  
16 reinsured. Given Majestic's financial condition, AmTrust proposed that the transactions be  
17 completed through a judicially supervised conservation and rehabilitation proceeding.

18 10. The CDI was familiar with AmTrust based on the fact that CDI's financial  
19 examination was ongoing during the entire period the AmTrust fronting agreement was being  
20 developed and put in place. In addition, the CDI conducted independent due diligence of the  
21 financial strength of AmTrust and its insurance company affiliates. Based on that experience and  
22 review, CDI determined that AmTrust's proposal presented a viable option for the protection of  
23 Majestic's policyholders and injured worker claimants. Of particular importance to the  
24 Commissioner was the fact that AmTrust had already demonstrated its ability to address the  
25 difficult financial condition of Majestic and the fact that AmTrust was fully knowledgeable about  
26 the financial condition of Majestic, and thus would be a well-informed and knowledgeable  
27 Rehabilitation Plan participant. The Commissioner immediately began to engage, with Majestic,  
28 in negotiations which led to the Rehabilitation Agreement. The Rehabilitation Agreement,

1 together with its exhibits, forms the core of the Commissioner's proposed Rehabilitation Plan. A  
2 true and correct copy of the Majestic Insurance Company Rehabilitation Agreement is attached  
3 hereto as Exhibit 2. The CDI agreed with AmTrust that Majestic's financial condition was such  
4 that the proposed transactions should be conducted through a court-supervised conservation and  
5 rehabilitation process, without delay.

6 11. I am familiar with the terms of the Rehabilitation Agreement and Rehabilitation  
7 Transaction Agreements negotiated between the CDI, Majestic and AmTrust. As an expert in the  
8 conservation and rehabilitation of troubled insurers, I have concluded that these agreements are  
9 fair, just and reasonable, and address the obligation of the Conservator to protect the interests of  
10 Majestic's policyholders, creditors, the public and Majestic's shareholder. Under the  
11 Rehabilitation Plan, Majestic claims liabilities will be reinsured without an aggregate cap on the  
12 amount of policy benefits that AmTrust will be required to pay to fully satisfy claims covered by  
13 Majestic's policies. Such uncapped and unlimited reinsurance is rarely offered to financially  
14 troubled insurers by workout partners because of the risk of adverse development beyond current  
15 actuarial projections. The risk of adverse development is particularly acute in workers'  
16 compensation insurance because of tail and other factors that present challenges in projecting the  
17 ultimate cost of claim liabilities. It should be noted that the Conservator will continue to  
18 negotiate and discuss with AmTrust certain technical provisions of the Rehabilitation Transaction  
19 Agreements, and those discussions may result in minor changes. The current versions of these  
20 agreements are Exhibits A through C to Exhibit 2 to my declaration and they capture the material  
21 terms contemplated by the Rehabilitation Plan.

22 12. The only potential insurance claims which will not be covered without limitation  
23 under the Rehabilitation Plan are claims under policies of insurance issued by Majestic on and  
24 before the 1970s by Great Western Insurance Company, a small California property and casualty  
25 insurer acquired by Majestic as part of another transaction in the 1970s. These liabilities were  
26 transferred to Golden Eagle Insurance Company in the 1980s, but when Golden Eagle failed in  
27 1997, the contingent liability on these expired legacy policies reverted back to Majestic. Majestic  
28 no longer has any documentation concerning these policies, nor does Majestic have any reason to

1 believe that covered claims can or will arise under these policies. However, in the unlikely event  
2 that claims do arise under these Great Western policies, the claims will be covered under the  
3 Rehabilitation Plan by AmTrust, but with an aggregate limit of \$1 million on all such claims.

4 13. Based on the analysis and evaluation described above, including the work of the  
5 CDI's financial analysis team led by Al Bottalico and the CDI's Chief Actuary, Ronald  
6 Dahlquist, the Commissioner has concluded that the Rehabilitation Plan described in the  
7 Commissioner's Motion, the Rehabilitation Agreement and the Rehabilitation Transaction  
8 Agreements, is fair and reasonable, and provides significantly greater benefits to policyholders,  
9 claimants, and creditors than they would obtain under a statutory liquidation of Majestic. The  
10 Rehabilitation Plan also provides continuity of insurance coverage and claims administration for  
11 Majestic policyholders. In addition to the benefits to policyholders and creditors, the  
12 Rehabilitation Plan provides for continued employment opportunities for the majority Majestic's  
13 employees on terms comparable to those they enjoyed at Majestic. I agree with these  
14 conclusions, and believe that the approval and consummation of the Rehabilitation Plan is in the  
15 best interests of Majestic's policyholders, claimants, creditors and its shareholder.

16 14. Finally, absent material deterioration in Majestic's assets or an unexpected  
17 increase in liabilities, the closing of the transactions contemplated under the Rehabilitation Plan  
18 should leave the Majestic conservation estate with more than \$15 million in residual assets to  
19 apply towards expenses of administration and the satisfaction of general creditor claims and other  
20 interests, in the priority order prescribed under Insurance Code section 1033(a).

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15. For reasons described above, the Rehabilitation Plan should be approved by the Court and the Commissioner should be authorized to implement the Plan transactions forthwith.

Executed this 21<sup>st</sup> day of April, 2011.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

David E. Wilson  
David E. Wilson

OHS WEST:261131171.1

# **EXHIBIT**

# **1**

# **Exhibit 1**

10-Q 1 maj\_10q-063010.htm FORM 10-Q

UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

FORM 10-Q

☒ QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE  
SECURITIES EXCHANGE ACT OF 1934

For the quarterly period ended June 30, 2010

OR

☐ TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE  
SECURITIES EXCHANGE ACT OF 1934

For the transition period from \_\_\_\_\_ to \_\_\_\_\_

Commission file number: 001-32705

**Majestic Capital, Ltd.**

*(Exact name of registrant as specified in its charter)*

**Bermuda**

*(State or other jurisdiction of  
incorporation or organization)*

**98-0521707**

*(I.R.S. Employer  
Identification No.)*

**PO Box HM 2062, Hamilton HM HX, Bermuda**

*(Address of principal executive offices)*

**Not Applicable**

*(Zip Code)*

**(441) 295-6689**

*(Registrant's telephone number, including area code)*

**CRM Holdings, Ltd.**

*(Former Name or Former Address, if Changed Since Last Report)*

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.

Yes ☒

No ☐

Indicate by check mark whether the registrant has submitted electronically and posted on its corporate Web site, if any, every Interactive Data File required to be submitted and posted pursuant to Rule 405 of Regulation S-T during the preceding 12 months (or for such shorter period that the registrant was required to submit and post such files).

Yes ☐

No ☐

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer ☐

Accelerated filer ☐

**ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL RESULTS OF OPERATIONS**

In this report, we use the terms "Company," "we," "us" or "our" to refer to Majestic Capital and its subsidiaries on a consolidated basis, unless otherwise indicated or unless the context otherwise requires.

**Cautionary Statement**

This document contains forward looking statements, which include, without limitation, statements about our plans, strategies and prospects. These statements are based on our current expectations and projections about future events and are identified by terminology such as "may," "will," "should," "expect," "scheduled," "plan," "seek," "intend," "anticipate," "believe," "estimate," "aim," "potential," or "continue" or the negative of those terms or other comparable terminology. These statements are subject to certain risks and uncertainties that could cause actual results to differ materially from historical earnings and those presently anticipated or projected. Although we believe that our plans, intentions and expectations are reasonable, we may not achieve such plans, intentions or expectations.

The following are some of the factors that could affect financial performance or could cause actual results to differ materially from estimates contained in or underlying our forward-looking statements:

- the cyclical nature of the insurance and reinsurance industry;
- premium rates;
- investment results;
- legislative and regulatory changes;
- the estimation of loss reserves and loss reserve development;
- reinsurance may be unavailable on acceptable terms, and we may be unable to collect reinsurance;
- the status or outcome of legal and/or regulatory proceedings;
- the occurrence and effects of wars and acts of terrorism;
- the effects of competition;
- failure to retain key personnel;
- economic downturns;
- natural disasters; and
- the reasons discussed in our Annual Report on Form 10-K for the fiscal year ended December 31, 2009 under the heading "Part II. — Item 1A — Risk Factors."

You should carefully read this quarterly report, the documents that we reference herein and the documents we have filed as exhibits, together with all other documents we have filed with the SEC, with the understanding that our actual future results, levels of activity, performance and achievements may be different from what we expect and that these differences may be material. We qualify all of our forward looking statements by these cautionary statements. We undertake no obligation to update any of the forward looking statements after the date of this report to conform those statements to reflect the occurrence of unanticipated events, except as required by applicable law.



## Overview

We are a specialty provider of workers' compensation insurance products. Through our subsidiaries, we seek to provide quality products and services that fit the needs of our insureds and clients and are dedicated to developing and maintaining a mutually beneficial, long-term relationship with them. Our workers' compensation insurance coverage is offered to employers in California, New York, New Jersey, Arizona, Nevada, and other states.

## Executive Summary

Our net loss from continuing operations for the six months ended June 30, 2010 was \$11.6 million compared to a net loss of \$10.3 million for the six months ended June 30, 2009. The major factors contributing to our six-month net loss were:

- a decrease in net earned premiums; and
- an increased current accident year loss ratio.

*Net Earned Premiums.* Our net earned premiums have declined through the first six months of 2010. This resulted from primarily three items: a downgraded A.M. Best rating, increased reinsurance costs, and difficult market conditions. First, in December 2009, A.M. Best downgraded Majestic's financial strength rating from "A-" to "B++". As a result, we were not able to retain and compete for certain rating sensitive business written on or after January 1, 2010. Second, we ceded a greater amount of premiums to third party reinsurers, based on increased costs associated with our excess of loss reinsurance treaty and a higher ceding percentage on our quota share reinsurance year-over-year. Third, ongoing weakness in business and economic conditions in the U.S. and competitive market and difficult pricing conditions in California, our largest market, adversely affected our year-over-year net earned premiums.

*Losses and Loss Adjustment Expenses.* Our losses and loss adjustment expense ratio increased to 85% for the first six months of 2010 from 79% for the first six months of 2009. This increase was due to a higher current accident year loss ratio, which resulted from decreased net earned premiums, the impact of lower ceding commission income on our loss adjustment expenses, and an increase in our claims severity trends on primary insurance policies underwritten in California. We recognized favorable development on prior accident years during the second quarter of 2010, which was offset by the unfavorable loss reserve development on prior accident years recognized in the first quarter of 2010.

*Factors Influencing Our Future Performance.* Our 2010 operating results and financial conditions could be affected by many factors including:

- Effective July 1, 2010, we non-renewed our external quota share reinsurance program, which had included two reinsurance agreements, a 43% ceded quota share agreement, of which 80% was placed with participating reinsurers, and a 15% ceded quota share agreement. The agreements expired June 30, 2010, and based on our operating results for the first half of 2010 and current capital position, we determined that we no longer needed quota share reinsurance with respect to our maintenance of an A.M. Best financial strength rating of "B++" or better. Based on the non-renewal, we expect an increase in the operating results of our insurance subsidiaries, resulting primarily from the reduction in ceded premiums to third-party reinsurers.
- The downgrade of Majestic's A.M. Best financial strength rating to "B++" from "A-" in December 2009 may continue to negatively affect the volume of our premiums. Based on the downgrade, we are unable to compete for and retain rating sensitive business. A.M. Best's rating actions reflected its concern over the potential impact on Majestic from the regulatory and litigation issues we face, the sizeable deterioration in our overall earnings, and the increased level of dependence on Majestic to support holding company operations. Our financial strength rating will remain under review until these items can be evaluated further.
- Based on the downgrade in our A.M. Best rating, we entered into a strategic alliance through a quota share reinsurance agreement with AmTrust, effective April 1, 2010, which we expect to help us retain and compete for rating sensitive business. For further information on our agreement with AmTrust, see above under the heading

“Item 1. Financial Statements – Note 8. Insurance Activity.” In addition to AmTrust, we may seek to partner with other insurance carriers with which we can align to provide our customers an A.M. Best “A-” or better rating.

- We are subject to an investigation and potential litigation by the NY Attorney General in connection with CRM's self-insured group administration practices and our initial public offering in December 2005. In addition, several lawsuits have been brought against us in connection with our discontinued New York fee-based management services business.
- Lingering effects of soft insurance market pricing could continue to affect growth rates and earned premium levels through the remainder of 2010, and perhaps later, depending on when insurance market conditions improve. These conditions continue to weaken loss ratios and hamper near-term profitability. Economic factors, including inflation, may increase our claims and settlement expenses related to medical care.
- The weak economy may continue to affect policyholders by deflating insured payrolls, and until the economy significantly strengthens, we may not see significant premium growth.
- Our premium growth also may lag as we seek to increase premium rates and take corrective underwriting actions in certain areas of our business.
- The California insurance marketplace could remain competitive, which could cause carriers to continue pursuing market share through price.

*Strategic Alternatives.* We have formed a Special Committee of the Board of Directors and retained Macquarie Capital to explore strategic alternatives to strengthen our capital position. Alternatives could include, but may not be limited to, a sale, merger or other business combination, a sale of shares or other recapitalization, a joint venture arrangement, the sale or spin off of assets, or the continued execution of our business plan. There can be no assurance that the exploration of strategic alternatives will result in any transaction, or that, if completed, any transaction will be on attractive terms.

#### **Workers' Compensation Insurance Market Conditions**

Our business is affected by the trends of the workers' compensation insurance market. The workers' compensation insurance market has historically fluctuated with periods of low premium rates and excess underwriting capacity resulting from increased competition, followed by periods of high premium rates and shortages of underwriting capacity resulting from decreased competition. Our revenues have historically been generated primarily in California and New York.

*Our Insureds' Payroll Levels.* Our primary insurance premiums are ultimately determined by the policyholder's aggregate payroll. Based on the U.S. recession, we have seen protracted levels of unemployment, and as a result, we continue to experience lower payroll levels for our insureds and a resulting reduction in net earned premiums. Until economic conditions improve, this trend may likely continue.

*California's Premium Rates.* In California, the state in which the largest amount of our workers' compensation premiums are earned, the Workers' Compensation Insurance Rating Bureau of California (WCIRB), an industry-backed private organization that provides statistical analysis, recommends claims cost benchmarks to be used by companies in determining their premium rates. The WCIRB's recommendations are reviewed by the California Department of Insurance, which then publishes the approved claims cost benchmarks. The benchmark rates cover expected loss costs, but do not contain an element to cover operating expenses or profit.

Between 2004 and 2007, California benchmark rates experienced a significant downward trend, which resulted in soft market conditions. The reduction in rates was based on legislative reforms adopted by California in 2003 and 2004, which had the goal of reducing the medical and indemnity expenses incurred by insurance companies under workers' compensation policies. The benchmark rates in California fell 63% percent since their high in 2003. Beginning in 2008, market conditions indicated a stabilizing to California's benchmark rates. However, the pricing in the California market has remained soft. The significant benchmark rating actions since 2008 have included:

- In January 2008, the Commissioner recommended no change in workers' compensation insurance benchmark rates based upon his review of the data provided by the WCIRB at that time.
- In May 2008, the Commissioner, citing forecasted marketplace stability, did not issue an interim pure premium rate advisory - the first time in six years an interim pure premium rate advisory was not issued by a California insurance commissioner.
- In October 2008, the Commissioner rejected WCIRB's recommendation of a 16% increase to the workers' compensation benchmark rates and instead recommended a 5% increase. The WCIRB's recommended increase was based primarily on rising medical costs and loss adjustment expenses.
- In July 2009, the Commissioner declined WCIRB's application to increase the workers' compensation benchmark rates by 23.7%. The Commissioner recommended no change, citing evidence that self-insured employers were able to reduce overall workers' compensation costs. The WCIRB's recommendation was based on an evaluation of the industry loss and loss adjustment expense experience as of December 31, 2008 and on expected cost increases arising from two significant Workers' Compensation Board of Appeals decisions that affected the 2004 legislative reforms.
- In November 2009, the Commissioner declined WCIRB's recommendation of a 22.8% increase to the workers' compensation benchmark rates. The Commissioner recommended no change, citing evidence that insurers were not realizing efficiencies to bring down the costs in the system, including failing to achieve a balance between cost and benefit with medical provider networks and utilization review, and are not communicating effectively with medical providers. The WCIRB's recommendation was based on an analysis of insurer experience as of June 30, 2009, and an analysis of anticipated cost increases stemming from two significant Workers' Compensation Board of Appeals decisions affecting the 2004 legislation.
- In April 2010, the WCIRB decided to not recommend an increase to the workers' compensation benchmark rates effective July 1, 2010. However, the WCIRB noted that, based on analysis of December 31, 2009 data, the claims cost benchmark in California showed an overall claims cost increase of 21.1%.

The California Insurance Commissioner's decisions are advisory only and insurance companies may choose whether to adopt the new rates. We set our own California premium rates based upon actuarial analysis of current and anticipated cost trends including any modifications to the workers' compensation system, while maintaining our goal of achieving underwriting profits.

*New York's Premium Rates.* Workers' compensation rates in New York have experienced significant pricing pressure since the legislative reforms adopted in March 2007. Following almost two years of relatively stable rates, in July 2007, the New York State Superintendent of Insurance ordered that overall policyholders' costs for workers' compensation be reduced by an average of 20.5% effective October 1, 2007. This 20.5% reduction included both changes in the workers' compensation rates set by the New York State Workers' Compensation Board as well as a change to the New York State assessment. The rate reduction was based upon an analysis of the impact of the reforms and market trends associated with New York's 2007 Workers' Compensation Reform Act signed into law in March 2007, which was intended to create a significantly less expensive system of workers' compensation in New York while increasing the weekly benefits paid to injured workers. In addition, in February 2008, New York State enacted related legislation that requires workers' compensation insurers to establish premiums based on loss cost multipliers filed with the state instead of a mandated rate, effective October 2008. The initial loss costs effective October 2008 represented a 6.4% decrease from the loss costs underlying the previous mandated full rates. Subsequently, an increase of 4.5% was implemented October 2009, and most recently, a 7.7% increase will take effect October 2010.

## Principal Revenue and Expense Items

Our revenues consist primarily of the following:

*Net Premiums Earned.* Direct premiums written include all direct premiums billed during a specified policy period. Assumed premiums written are premiums from third party companies or authorized state mandated pools. Net premiums written is the difference between direct and assumed premiums written and premiums ceded or paid to affiliate or third party reinsurers.

Net premiums earned are the elapsed portion of our net premiums written. At the end of each accounting period, (a) the portion of direct and assumed premiums that are not yet earned is included in unearned premiums and is realized in subsequent periods over the remaining terms of the policies; and (b) the portion of ceded premiums that are not earned is included in prepaid reinsurance premiums and is realized in subsequent periods over the remaining terms of the policies.

Ceded premiums earned also include reinstatement premiums. Reinstatement premiums represent additional premiums payable to reinsurers to maintain coverage purchased under excess of loss reinsurance contracts. These contracts generally contain provisions requiring payment of additional premiums based on a percentage of ceded losses in the event that losses of a defined magnitude are ceded under such contracts. Reserves are established for potential reinstatement premiums and are recorded once estimated actuarial loss reserves exceed the defined limits.

A portion of Majestic's premiums are written on an adjustable basis, and premiums from those policies can be adjusted retrospectively in accordance with the actual loss experience of the policyholders' claims arising during the policy term. These retrospective premium adjustments are periodically made to the net premiums earned to reflect the changes in the estimation of the policyholders' ultimate losses as more information becomes available over time.

Earned but unbilled premiums include estimated future audit premiums and are subject to changes in payrolls due to growth, economic conditions and seasonality. The estimates are continually reviewed and adjusted as experience develops or new information becomes known. Any such adjustments are included in current operations. At the end of the policy terms, payroll-based premium audits are performed to determine earned premiums for that policy year and the premiums are adjusted and billed accordingly.

*Fee-Based Income.* Our fee-based income include management fees received from self-insured groups for management services. Our fees are based on a percentage of premiums paid by members to the self-insured groups.

*Investment Income.* Our investment income is dependent upon the average invested assets in our portfolio and the yield that we earn on those invested assets. Our investment yield depends on market interest rates and the credit quality and maturity period of our invested assets. In addition, we realize capital gains or losses on sales of investments and realize losses on impairment of investments as a result of changing market conditions, including changes in market interest rates and changes in the credit quality of our invested assets. Investment income is recorded net of investment expenses.

Our expenses consist primarily of the following:

*Losses and Loss Adjustment Expenses.* Losses and loss adjustment expenses reflect our best estimate, using various actuarial analyses, of ultimate losses and loss adjustment expenses, net of any reinsurance recoverables, we expect to incur on each primary insurance and reinsurance contract written. Actual losses and loss adjustment expenses will depend on actual costs to settle our claims and the actual expenses incurred in settling the claims. Our loss adjustment expenses include amounts for allocated loss adjustment expenses (ALAE) and unallocated loss adjustment expenses (ULAE).

*Underwriting and Acquisition Expenses.* Underwriting and acquisition expenses consist of personnel expenses of our insurance operations, general and administrative expenses, commissions, premium taxes and other policy issuance costs of our insurance subsidiaries.



*General and Administrative Expenses.* General and administrative expenses consist primarily of personnel expenses, fees paid to general agents and brokers for binding the coverage of members in the self-insured groups we manage, professional fees and other public company operating costs.

### **Change in Reportable Segments**

We previously reported our results in four operating segments: primary insurance (Majestic), reinsurance (Twin Bridges), fee-based management services (CRM CA), and corporate and other (Majestic Capital, Majestic USA and Embarcadero). Effective January 1, 2010, we have reflected changes in segment reporting and no longer report multiple segments. The change from reporting four reportable segments to a single segment reflects our current business activities and organizational changes. The prior periods have been restated to conform to the current period presentation.

The changes in segment reporting include our primary insurance and reinsurance segments, Majestic and Twin Bridges, being aggregated into a single "risk-bearing" segment in accordance with the framework established by segment reporting guidance. Twin Bridges is reinsuring only risk underwritten at Majestic, both use independent agents/brokers to produce business, and both Majestic and Twin Bridges, as insurance companies, are subject to insurance regulatory environments. Further, the operations of our fee-based segment, CRM CA, have continued to decline. Through June 30, 2010, CRM CA was actively managing one self-insured group and providing administrative services to one inactive self-insured group. Accordingly, the revenue, results of operations and total assets of CRM CA fall below the quantitative threshold required for it to be a reportable segment. Lastly, Majestic Capital, Majestic USA and Embarcadero have no revenues and are not viewed as a discrete operation for decision-making purposes. Therefore, we have determined that the corporate segment is not a reportable segment.

### **Critical Accounting Policies and Estimates**

We have prepared a current assessment of our critical accounting policies and estimates in connection with preparing our interim unaudited consolidated financial statements as of and for the three and six months ended June 30, 2010 and 2009. We believe that the accounting policies set forth in the Notes to our Consolidated Financial Statements and "Critical Accounting Policies and Estimates" in the Management's Discussion and Analysis of Consolidated Financial Condition and Results of Operations in our Annual Report on Form 10-K for the year ended December 31, 2009 continue to describe the significant judgments and estimates used in the preparation of our consolidated financial statements.

### **Going Concern**

The financial statements presented in Item 1 have been prepared assuming that we will continue as a going concern, which contemplates the realization of assets and the satisfaction of liabilities in the normal course of business. These consolidated financial statements do not include any adjustments relating to the recoverability and classification of recorded assets nor relating to the amounts and classification of liabilities that may be necessary should we be unable to continue as a going concern.

At and for the six months ended June 30, 2010, we had a consolidated retained deficit of \$23.2 million and a loss from continuing operations before taxes of \$11.6 million. As a result, management continues to evaluate whether we have the ability to continue as a going concern. In its analysis, management analyzes each subsidiary company to determine whether it has sufficient assets to meet its obligations as they become due in the foreseeable future.

Our insurance subsidiary, Majestic, experienced an operating loss before income taxes of \$9.9 million for the six months ended June 30, 2010, has \$250.1 million in cash and invested assets, \$22.1 million in retained earnings, and total shareholders' equity of \$78.3 million. Our reinsurance subsidiary, Twin Bridges, had operating income of \$0.8 million for the six months ended June 30, 2010, cash and invested assets of \$15.8 million, \$18.5 million in additional paid in capital, and total shareholders' equity of \$17.7 million. Consequently, management concluded that both Majestic and Twin Bridges had sufficient liquid assets to meet their obligations as they become due in the foreseeable future.



Majestic Capital, Majestic USA and Embarcadero (the "Holding Companies") generate no revenues and are obligated to pay expenses related to debt service, public company and other general corporate overhead expenses. The Holding Companies rely upon dividends and/or distributions of capital from their subsidiaries to meet these obligations. However, as regulated insurance companies, Majestic and Twin Bridges, are subject to significant regulatory restrictions limiting their ability to declare and pay dividends and/or distribute capital as described in Note 21 of the notes to our consolidated financial statements included in Item 8 of our Annual Report on Form 10-K for the fiscal year ended December 31, 2009.

In addition, our fee-based subsidiary CRM CA has had declining cash flows due to the closure of and decline in premiums under management of the self-insured groups it manages. CRM NY and Eimar have no operating cash inflows or outflow as they are classified as discontinued operations, but continue to have legal defense and contractual obligation payments.

To conserve cash in order meet the obligations of the Holding Companies, CRM CA and discontinued operations, management has established a plan, which includes the following aspects:

- Management has the right to suspend payments of interest on Majestic USA debt obligations for twenty consecutive quarters and elected to do so in the fourth quarter of 2009 and will continue to defer these payments for the foreseeable future.
- Management obtained approval from the Bermuda Monetary Authority for its Twin Bridges subsidiary to pay a substantial distribution of surplus to the parent company in 2010.
- Management will continue its past approved practice under its Form D filing with the California Department of Insurance of allocating expenses from the domestic Holding Companies to the insurance entity, Majestic.
- Management continues to implement cost-cutting measures at the Holding Companies which include pay cuts for executive management and the Board of Directors, which were effective January 1, 2010, and the reduction in work force described in "Item 1 – Financial Statements – Note 3. Employee Severance." Further cost cutting measures at the Holding Companies and operating companies are also occurring.

Based on this plan, management has concluded that the Holding Companies as well as the operating companies and discontinued operations will have sufficient cash to meet their obligations as they become due in the foreseeable future.

It is possible, however, that the actual results of one or more of management's plans could be materially worse than anticipated, or that one or more of management's significant judgments or estimates concerning the risks and uncertainties affecting us could prove to be materially incorrect. As a result of any of the foregoing, there could be substantial doubt about our ability to continue as a going concern, unless we are able to obtain sufficient financing, as to which there can be no assurances. If we fail to execute our plan or otherwise resolve the matter, we would not be able to continue as a going concern and could potentially be forced to seek relief through a filing under the U.S. Bankruptcy Code or Bermuda Companies Act.

# **EXHIBIT**

# **2**

# **Exhibit 2**

**MAJESTIC INSURANCE COMPANY  
REHABILITATION AGREEMENT**

**BY AND AMONG**

**DAVE JONES,  
INSURANCE COMMISSIONER, STATE OF CALIFORNIA,  
IN HIS CAPACITY AS CONSERVATOR  
AND NOT IN HIS INDIVIDUAL CAPACITY,  
MAJESTIC INSURANCE COMPANY**

**AND**

**AMTRUST NORTH AMERICA, INC.**

**AND**

**SECURITY NATIONAL INSURANCE COMPANY**

**DATED AS OF APRIL 21, 2011**

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**MAJESTIC INSURANCE COMPANY  
REHABILITATION AGREEMENT**

This Rehabilitation Agreement, dated as of April 21, 2011 (the "Agreement"), is made and entered into by and among Dave Jones, Insurance Commissioner of the State of California, acting solely in his capacity as the statutory conservator (the "Conservator") of Majestic Insurance Company, a California domiciled insurance company in statutory conservation ("Majestic"), AmTrust North America, Inc. ("AmTrust"), a Delaware corporation, and either Security National Insurance Company, a Texas domiciled insurance company ("Security National" and "Reinsurer") or, pursuant to designation by AmTrust and assignment from Security National, Technology Insurance Company, Inc., a New Hampshire domiciled insurance company ("Technology," and upon designation, the "Reinsurer").

RECITALS

A. On April 21, 2011, Majestic was placed into conservation proceedings by the Superior Court of San Francisco County, California in the action entitled *Insurance Commissioner v. Majestic Insurance Company* (Case No. CPF-11-511261) at the request of the California Insurance Commissioner ("the Commissioner"), who was appointed as the statutory conservator ("Conservator") of Majestic pursuant to Insurance Code section 1011. The above-identified court proceeding concerning the conservation shall be referred to herein as the "Conservation Proceeding" and such Department of the San Francisco Superior Court assigned to preside over the Conservation Proceeding shall be referred to as the "Conservation Court."

B. The Commissioner, having determined it to be in the best interests of the policyholders, creditors and the shareholder of Majestic to identify a purchaser for the assets and business of Majestic in order to structure a plan for the rehabilitation for Majestic, has considered and evaluated the fairness of a proposal submitted by AmTrust, and based on that proposal is

now entering into this Agreement to set forth all material terms and provisions for a comprehensive and integrated plan of rehabilitation for Majestic ("Plan"). The effectiveness and enforceability of this Agreement and the implementation of the Plan is expressly made subject to approval by the Conservation Court pursuant to a motion for Conservation Court approval of this Agreement.

C. Pursuant to this Agreement and the Rehabilitation Transaction Agreements described herein and attached hereto, at the Closing AmTrust will (1) purchase or cause to be purchased certain of the operating assets of Majestic, on the terms and subject to the conditions set forth in the Renewal Rights Agreement; (2) designate either Security National or Technology Insurance Company, Inc. as the Reinsurer, and will cause the Reinsurer to enter into the Reinsurance Agreement; (3) enter into the Administrative Services Agreement; and (4) enter into or cause its Affiliate to enter into each of the Ancillary Agreements.

D. Following the Closing, the Conservator will continue to administer the residual assets and resolve the non-policyholder liabilities of Majestic, pursuant to Insurance Code section 1010 – 1062.

F. The Conservator has determined that the Plan, including the transactions contemplated by this Agreement and the Rehabilitation Transaction Agreements are fair and equitable to, and in the best interests of, the policyholders, creditors and the shareholder of Majestic, and to the insurance-buying public of the states in which Majestic operates.

Now, therefore, in consideration of the premises, covenants and conditions contained herein, the parties hereto, intending to be legally bound, hereby agree as follows:

## ARTICLE 1

### DEFINITIONS

In this Agreement, unless otherwise specifically provided or the context so requires, the terms listed below shall have the following definitions and shall include the plural as well as the singular:

“Administrative Services Agreement” means the Reinsurance Administrative Services Agreement to be entered into among the Conservator, on behalf of Majestic, and AmTrust or its designee on the Closing Date, substantially in the form of Exhibit C attached hereto, as such form may be modified by agreement among the Conservator and AmTrust.

“Affiliate” means, with respect to a Person, any other Person directly or indirectly controlling, controlled by or under common control with such Person.

“Agreement” has the meaning set forth in the first paragraph of this Agreement.

“AmTrust” has the meaning set forth in the first paragraph of this Agreement.

“Ancillary Agreements” has the meaning set forth in the Renewal Rights Agreement.

“Assumed Contracts” shall have the meaning set forth in Section 6.2.

“Benefit Plan” means each and every employee benefit plan, contract or arrangement, including, without limitation, any employee benefit plan within the meaning of Section 3(3) of ERISA and any payroll practice, as to which Majestic has any direct or indirect, actual or contingent liability.

“Business” shall be defined as Majestic’s business and operations consisting of the issuance and administration of any insurance policy that may give rise to claims payable under or within Insurance Code section 1033(a)(2), and specifically including all contracts, policies, certificates, binders, slips, covers or other agreements of Workers Compensation insurance as

defined in the Rehabilitation Transaction Agreements, including all supplements, riders and endorsements issued or written in connection therewith.

"Business Day" means any day other than a Saturday, a Sunday or a day on which banking institutions in the State of California are authorized or obligated by law or executive order to be closed.

"Claims Bar Date" has the meaning set forth in Section 3.2.

"Closing" means the closing of the transactions contemplated by this Agreement.

"Closing Date" means 10:00 a.m., local time, on the date of Closing, as described in Article 11 of this Agreement.

"Code" means the Internal Revenue Code of 1986, as amended, including the regulations promulgated thereunder in effect from time to time.

"Commissioner" has the meaning set forth in Recital A.

"Conservation Court" has the meaning set forth in Recital A.

"Conservation Proceedings" has the meaning set forth in Recital A.

"Conservator" has the meaning set forth in the first paragraph of this Agreement.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended, including the regulations promulgated thereunder from time to time.

"Excluded Liability" has the meaning set forth in Section 7.1.

"Final Rehabilitation Order" means the Rehabilitation Order as it may be entered by the Conservation Court in the Conservation Proceeding.

"Fronted Policy" shall have the meaning ascribed to it in the Renewal Rights Agreement.

"Hart-Scott-Rodino Act" means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, including the regulations promulgated thereunder from time to time.

"Inuring Reinsurance Contract" shall have the meaning ascribed to it in the Reinsurance Agreement.

"Insurance Code" means the California Insurance Code, including the regulations thereunder, in effect from time to time.

"IT Assets" means computers, firmware, middleware, servers, workstations, routers, firewalls, hubs, data communication lines, all other information technology equipment and all associated documentation.

"Lien" means any mortgage, pledge, hypothecation, assignment, lien (statutory or otherwise), preference, priority, charge or other encumbrance, charge, adverse claim (whether pending or, to the knowledge of the Person against whom the adverse claim is being asserted, threatened) or restriction of any kind affecting title or resulting in an encumbrance against property, real or personal, tangible or intangible, or a security interest of any kind, including, without limitation, any conditional sale or other title retention agreement, any right of first refusal on real property, and any filing of or agreement to give any financing statement under the Uniform Commercial Code (or equivalent statute) of any jurisdiction (other than a financing statement which is filed or given solely to protect the interest of a lessor).

"Litigation" means any action, cause of action (whether at law or in equity), arbitration, hearing, inquiry, proceeding claim or complaint by any Person alleging potential liability, wrongdoing or misdeed of another Person, or any administrative or other similar proceeding, criminal prosecution or investigation by any governmental authority or arbitration panel alleging potential liability, wrongdoing or misdeed of another Person.

"Majestic" has the meaning set forth in the first paragraph of this Agreement, or a successor in interest (other than Reinsurer, AmTrust or any of their Affiliates).

“Material Agreement” has the meaning set forth in Section 2.2.6.

“Notification Package” has the meaning set forth in Section 4.1.

“Office Leases” means the leases for the offices of Majestic in San Francisco, Irvine and San Diego, California, as more specifically described the Renewal Rights Agreement.

“Permits” means all licenses, franchises, permits, orders, approvals, consents, authorizations, qualifications and filings with and under all Federal, state or local laws and of all governmental or regulatory bodies, including, without limitation, state insurance regulatory authorities.

“Person” means any individual, corporation, partnership, firm, joint venture, association, joint-stock company, trust, unincorporated organization, public, governmental, judicial or regulatory authority or body or other entity.

“Policyholder Claims” has the meaning set forth in Section 3.1.

“Profit Share Commission” has the meaning set forth in Section 3.1.

“Rehabilitation Order” means the order of the Conservation Court approving this Agreement and the Rehabilitation Transaction Agreements (including all transactions contemplated hereby and thereby), without modification, unless such modification has been approved by the Conservator and AmTrust. The Rehabilitation Order shall also include approval of the Rehabilitation Plan.

“Rehabilitation Plan” or “Plan” means that certain plan of rehabilitation for Majestic contemplated by this Agreement, the Rehabilitation Transaction Agreements, the Rehabilitation Motion, any other motions and supporting documents filed by the Conservator with the Conservation Court and the Rehabilitation Order.

"Rehabilitation Transaction Agreements" means the Administrative Services Agreement, the Reinsurance Agreement, the Renewal Rights Agreement, and the Ancillary Agreements, and all exhibits thereto.

"Reinsurance Agreement" means the Loss Portfolio Transfer and Quota Share Reinsurance Agreement to be entered into among the Conservator, on behalf of Majestic, and Reinsurer on the Closing Date, substantially in the form of Exhibit B attached hereto, as such form may be modified by agreement between the Conservator and Reinsurer.

"Renewal Rights Agreement" means the Renewal Rights and Asset Purchase Agreement to be entered into among the Conservator, on behalf of Majestic, and AmTrust on the Closing Date, substantially in the form of Exhibit A attached hereto, as such form may be modified by agreement between the Conservator and AmTrust.

"Reinsurer" means either Security National or Technology, as may be designed by AmTrust and approved by the Commissioner prior to the Closing Date pursuant to Section 3.1.

"Statutory Workers Compensation Deposits" shall have the meaning ascribed to it in Section 2.2.2.

"Subsidiary" means any corporation or other entity of which a majority of the voting power of the voting securities or equity interest is owned directly or indirectly by any Person.

"Taxes" means all taxes, charges, fees, levies or other assessments, including, without limitation, income, alternative minimum, gross receipts, excise, property, consumption, premium, sales, withholding, social security, occupation, use, service, service use, license, payroll, franchise, transfer and recording taxes, fees and charges, imposed by the United States, or by any state, territory, local or foreign government or subdivision or agency thereof, whether computed on a separate, consolidated, unitary, combined or any other basis; and such term shall

include any interest, fines, penalties or additional amounts attributable or imposed or with respect to any such taxes, charges, fees, levies or other assessments. The term "Tax" shall mean any one of the Taxes.

"Tax Return" means any return, report or other document or information required to be supplied to a taxing authority in connection with Taxes.

"Transferred Assets" shall have the meaning set forth in Section 6.1.

"Welfare Plan" means any Benefit Plan which is a welfare plan within the meaning of Section 3(1) of ERISA and provides benefits with respect to Majestic employees or former Majestic employees.

In the event of a conflict between the defined terms in this Agreement and the defined terms in the Rehabilitation Transaction Agreements, the definition in the latter shall control. Any defined term used herein that is not expressly defined in this Agreement shall have the meaning set forth in the applicable Rehabilitation Transaction Agreements.

## ARTICLE 2

### REPRESENTATIONS AND WARRANTIES

Section 2.1 Representations and Warranties of the Conservator. The Conservator represents and warrants to AmTrust as follows:

Section 2.1.1 Valid Appointment. The Conservator has, as of the effective date of this Agreement, been duly and validly appointed to be the Conservator of Majestic as that term is used in Section 1011 of the Insurance Code.

Section 2.1.2 Authorization; Enforceable Obligations. The Conservator has all requisite power, authority and legal right necessary to execute and deliver this Agreement and the Rehabilitation Transaction Agreements, and subject to the entry of a Final Rehabilitation

Order and approval of the Conservation Court, to perform and carry out the transactions contemplated by this Agreement and the Rehabilitation Transaction Agreements upon the terms and subject to the conditions of this Agreement and the Rehabilitation Transaction Agreements.

Section 2.2 Representations and Warranties of Majestic. The Conservator on behalf of Majestic represents and warrants to AmTrust as set forth below. AmTrust and the Reinsurer expressly acknowledge that all representations and warranties of the Conservator herein are made in reliance on the information provided to the Conservator by pre-Conservation management of Majestic and the findings and orders of the Conservation Court, and that the Conservator has undertaken no independent investigation or analysis of facts in connection with this Agreement, the Transferred Assets, or other provisions of the Rehabilitation Transaction Agreements.

Section 2.2.1 Authority. Majestic, by and through the Conservator, has all requisite power and authority to execute and deliver this Agreement and the Rehabilitation Transaction Agreements, to perform its obligations under this Agreement and the Rehabilitation Transaction Agreements and to consummate the transactions contemplated by this Agreement and the Rehabilitation Transaction Agreements, subject to the entry of a Final Rehabilitation Order. This Agreement has been duly executed and delivered by the Conservator, on behalf of Majestic, and upon entry of the Final Rehabilitation Order, will constitute the legal, valid and binding obligation of Majestic, enforceable against Majestic in accordance with its terms. Upon execution and delivery thereof by the Conservator, on behalf of Majestic, and the other parties thereto, and upon entry of the Final Rehabilitation Order, the Rehabilitation Transaction Agreements shall constitute legal, valid and binding obligations of Majestic, enforceable against Majestic in accordance with their terms.

Section 2.2.2 Assignment of Statutory Workers Compensation Deposits.

Majestic, by and through the Conservator, and pursuant to the authorization and orders in the Rehabilitation Order, has all requisite power and authority to assign any of its statutory Workers Compensation insurance reserve deposits posted with insurance regulators in the states in which Majestic is authorized to conduct Workers Compensation insurance business ("Statutory Workers Compensation Deposits").

Section 2.2.3 Title to Transferred Assets and Statutory Workers Compensation Deposits. Majestic has good and valid title to (a) all the Transferred Assets free and clear of all Liens and (b) Statutory Workers Compensation Deposits free and clear of all Liens, except to the extent that such Statutory Workers Compensation Deposits may be applied as provided by statute.

Section 2.3 Representations and Warranties of AmTrust and the Reinsurer. AmTrust and the Reinsurer represent and warrant to Majestic and the Conservator as follows:

Section 2.3.1 Organization and Standing. AmTrust is a corporation duly organized and in good standing under the laws of the State of Delaware, and Reinsurer is a corporation duly organized and in good standing under the laws of the state in which Reinsurer is domiciled.

Section 2.3.2 Authority. AmTrust and Reinsurer have all requisite power and authority to execute and deliver this Agreement and the Rehabilitation Transaction Agreements, to perform their obligations under this Agreement and the Rehabilitation Transaction Agreements and to consummate the transactions contemplated by this Agreement and the Rehabilitation Transaction Agreements. This Agreement has been duly executed and delivered

by AmTrust and Reinsurer and constitutes the legal, valid and binding obligation of AmTrust and Reinsurer, enforceable against them in accordance with its terms.

Section 2.3.3 No Breach. Subject to the approval of the Commissioner and the Commissioner's certification at Closing that the claims reinsured under the Reinsurance Agreement and to be administered by AmTrust under the Administrative Services Agreement shall be treated as the claims of an AmTrust Affiliate, and subject to the requirements, if any, under the Hart-Scott-Rodino Act, the execution, delivery and performance of this Agreement by AmTrust will not violate any laws or statutes to which AmTrust is subject, or its corporate charter, bylaws, or any material indenture, contract, agreement or instrument to which AmTrust is a party; nor will such execution, delivery and performance materially conflict with, or result in a material violation of, or constitute a material default under, any term or provision of applicable law, or any judgment, writ, injunction, decree or order of any court, governmental authority or arbitrator relating to AmTrust.

Section 2.3.4 Litigation. There is no Litigation pending, or threatened, against AmTrust or the Reinsurer, or any of their assets, properties or Affiliates, at law or in equity, that individually or in the aggregate have or may reasonably be expected to have a material adverse effect on the validity or enforceability of this Agreement or on the ability of AmTrust and the Reinsurer to perform their obligations under this Agreement and the Rehabilitation Transaction Agreements.

Section 2.4 Survival of Representations and Warranties. All representations, warranties, covenants and agreements made by the parties to this Agreement, as well as in any certificate, exhibit, schedule, statement, document or instrument furnished hereunder or in connection with the negotiation, execution and performance of this Agreement, shall survive the Closing.

### ARTICLE 3

#### REHABILITATION PLAN AND REHABILITATION TRANSACTION AGREEMENTS

Section 3.1 Rehabilitation Transaction Agreements. At Closing, AmTrust, the Reinsurer and the Conservator, on behalf of Majestic, shall enter into the Rehabilitation Transaction Agreements. At any time prior to Closing, AmTrust may in its sole discretion designate Security National or Technology as the Reinsurer under the Reinsurance Agreement, provided that as of the Closing Date, Technology shall have been issued a certificate of authority by the Commissioner authorizing it to insure and reinsure Workers Compensation insurance in California, and that Technology is otherwise in good standing. The parties acknowledge that the primary purpose and intent of the Rehabilitation Transaction Agreements is to provide, subject to the terms and limitations set forth in the Rehabilitation Transaction Agreements, for the timely administration, adjustment and payment of all claims and liabilities of Majestic that fall within the policyholder claim priority class set forth under Insurance Code section 1033(a)(2) ("Policyholder Claims"). The provisions for the transfer and assumption of Majestic's Policyholder Claims to Reinsurer, and the integrated consideration to be exchanged between AmTrust and Reinsurer, on the one hand, and the Conservator, on behalf of Majestic, on the other hand, are set forth in the Rehabilitation Transaction Agreements.

Section 3.2 Administration of Non-Policyholder Claims. As specified in Article 8, in the Rehabilitation Motion or at any other time the Conservator deems appropriate and consistent with this Agreement, the Conservator may request that the Conservation Court establish a claims bar date for the filing with the Conservator of all proofs of claim against Majestic other than Policyholder Claims ("Claims Bar Date"). The Reinsurer and AmTrust acknowledge that all Policyholder Claims shall be submitted to AmTrust (as Administrator under the Administrative

Services Agreement) or to Reinsurer pursuant to the terms of the Policies, subject to Applicable Law. From and after the Claims Bar Date, the Conservator shall administer, investigate, adjust and determine all proofs of claim in a manner consistent with Insurance Code sections 1010 through 1062, subject specifically to Conservation Court review of the Conservator's claim determinations as specified under Insurance Code section 1032. The filing of a proof of claim shall be the sole and exclusive remedy of any claimant against Majestic, other than claimants under Policyholder Claims.

Section 3.3 Preservation of Accrued Net Operating Losses (NOLs) for the Benefit of Majestic. It is the intent of the parties that none of the transactions contemplated by this Agreement or the Plan shall be or are structured so as to effect a change in control of Majestic for purposes of Section 382 of the Internal Revenue Code. While no change in control is planned or intended, the parties acknowledge that the Conservator has structured the Plan with the intent of satisfying the requirements of Section 382(1)(5) and other applicable tax law, in order to protect the value of Majestic's NOLs to offset future taxable operating income, and that such NOLs shall remain the property of Majestic. The parties hereto shall make such commercially reasonable modifications to the Rehabilitation Transaction Agreements as are or may become necessary to preserve Majestic's NOLs for such use, so long as they do not negatively impact the value of the Renewal Rights and Transferred Assets to AmTrust or its Affiliates.

#### ARTICLE 4

##### NOTIFICATION PACKAGE

Section 4.1 Delivery of Notification Package. As promptly as practicable after a hearing date is set in the Conservation Court on the Conservator's Motion for a Rehabilitation Order, the

Conservator shall mail to each policyholder with an in-force policy or an open claim, at the last known address of such policyholder as shown on Majestic's records, the shareholder and directors of Majestic, the directors of Majestic's ultimate parent company, the indenture trustee for holders of trust preferred securities issued by Majestic's Affiliates, known creditors, reinsurers and other interested parties: (a) a notice regarding the conservation of Majestic, the Rehabilitation Plan, and the date, time and location of the hearing on the Conservator's motion to approve the Plan, in a form acceptable to AmTrust, the Conservator and the Conservation Court, (b) a request that upon approval of the Plan each policyholder consent to novate its policy by agreeing to accept, in substitution of its Majestic policy, a policy issued by Reinsurer with the same terms and provisions, and (c) any other material reasonably deemed necessary or advisable by the Conservation Court, the Conservator or AmTrust, to assist policyholders and other notice recipients in understanding the transactions contemplated by this Agreement and the Rehabilitation Transaction Agreements (such information and material hereinafter referred to collectively as "Notification Package"). The Conservator and AmTrust shall use their respective best efforts to make such mailing as soon as practicable after such hearing date is set, and shall cooperate with each other in preparing the Notification Package. In lieu of incurring the expense of mailing copies or detailed summaries of the Rehabilitation Transaction Agreements, the Conservator may provide notice of a website at which policyholders and other interested parties may obtain complete copies of all pleadings and documents filed in the Conservation Proceeding.

## ARTICLE 5

### EMPLOYEES OF MAJESTIC

#### Section 5.1 Employees of Majestic.

(a) Effective as of the Closing, AmTrust will offer to employ certain employees of Majestic pursuant to the specific terms and provisions of the Renewal Rights Agreement. Majestic and the Conservator shall grant AmTrust reasonable opportunities to communicate with such employees of Majestic prior to the Closing, for purposes of allowing AmTrust to convey offers of employment, for confirming the terms of such employment and for purposes related thereto. AmTrust's human resources department will work closely with the existing Majestic human resources department to accomplish this transition. AmTrust agrees to maintain the employment of former Majestic employees hired by AmTrust at a level consistent with the business needs of AmTrust, subject to AmTrust's normal performance evaluations.

(b) All communications by AmTrust to Majestic's employees prior to the Closing shall be subject to the reasonable approval of the Conservator. Each employee who accepts an offer for employment from AmTrust, which shall be subject to the Closing of the Renewal Rights Agreement, shall be deemed to have resigned as an employee of Majestic upon the commencement of employment with AmTrust following the Closing. Majestic shall be responsible for compliance with the provisions of any Federal, state or local laws applicable to retention or termination of its employees. During the first 3 years following the Closing Date, neither Majestic nor its Affiliates shall hire or solicit for employment any of the employees of the Business hired by AmTrust, subject to customary exceptions authorized or required under Applicable Law.

(c) As to the employees of Majestic who become employees of AmTrust by reason of the transactions contemplated by this Agreement, AmTrust shall be responsible for and shall pay all costs attributable to such employees from the date of employment by AmTrust, which shall include, in the case of welfare plan benefits for such employees, only claims incurred after the date of employment. Such employees shall be eligible to participate in all health, welfare and employee benefit plans available to AmTrust's similarly situated employees upon substantially similar terms and conditions. AmTrust shall provide all such employees with service credit for their employment at Majestic for purposes of eligibility, participation, vesting and benefits accrual under AmTrust's employee benefit and compensation plans. AmTrust shall cause its 401(k) or similar retirement benefit plans to accept direct rollovers from the Majestic 401(k) Plan in accordance with its normal procedure for accepting direct rollovers.

(d) Except as expressly agreed under the Renewal Rights Agreement, neither AmTrust nor Reinsurer shall be responsible for any (i) wages, (ii) salary, (iii) fringe benefits (including accrued vacation or sick pay or personal days) and severance payments (if any) earned or accrued by any Majestic employee prior to the Closing, or (iv) any other liabilities, compensation or amounts owed to employees by Majestic. Neither AmTrust, Reinsurer nor any Affiliates AmTrust shall have any responsibility for any claim, obligation or liability relating to any Benefit Plan or Welfare Plan.

## ARTICLE 6

### TRANSFERRED ASSETS AND ASSUMED CONTRACTS

Section 6.1 Transfer of Assets by Conservator on Behalf of Majestic. Subject to the terms and conditions contained herein, at the Closing and after giving effect to the payment of premiums and other transactions as contemplated by the Rehabilitation Transaction Agreements,

the Conservator shall cause Majestic to, and Majestic shall, convey to AmTrust all of the Conservator's and Majestic's right, title and interest to the assets of Majestic described below ("Transferred Assets"), free and clear of all Liens existing as at the Closing Date, as follows:

(a) The books and records of Majestic's Business (excluding corporate and tax records of Majestic unrelated to the direct administration of the Business), subject to the rights of Majestic and the Conservator under any provisions of the Rehabilitation Transaction Agreements pertaining to records retention, access and copying;

(b) The furniture and fixtures, equipment and other tangible personal property to the extent owned by Majestic and used in the Business, as set forth in a schedule to the Renewal Rights Agreement;

(c) The intellectual property owned by Majestic or its affiliates, including the "Majestic Insurance Company" name, that is principally used in the Business, as set forth in a schedule to the Renewal Rights Agreement (the "Transferred IP"), provided that transfer of the Transferred IP shall not limit the Conservator's authority to use of the "Majestic Insurance Company" name in connection with administration of the conservation, rehabilitation or liquidation of Majestic; and

(d) Those IT Assets set forth in a schedule to the Renewal Rights Agreement that are principally used in Majestic's Business (the "Transferred IT"). AmTrust shall pay any transfer fees payable under software license agreements in connection with the Transferred IT. Although they will not be assumed by AmTrust or Reinsurer, Majestic will be required to keep in force certain designated IT contracts after the Closing Date, with AmTrust to reimburse Majestic for any post-Closing costs association with those IT contracts.

Section 6.2 AmTrust's Assumption of Contracts and Office Leases. Subject to the terms and conditions contained herein and in the Renewal Rights Agreement, at the Closing and after giving effect to the payment of premiums and other transactions as contemplated by the Rehabilitation Transaction Agreements, the Conservator shall cause Majestic to, and Majestic shall, assign, and AmTrust shall assume, all of the rights and obligations under: (a) the Office Leases; and (b) those material contracts used in the Business that are identified in the Renewal Rights Agreement as the "Assumed Contracts" (the "Assumed Contracts"). The Conservator shall use commercially reasonable efforts to obtain the consent, if required, of any other party to the Assumed Contracts, or provide another means for AmTrust to obtain the benefits of such contracts.

Section 6.3 Execution of Documents Evidencing Transfers and Assignments. At the Closing, the Conservator shall deliver to AmTrust and the Reinsurer, as appropriate for the Transferred Assets and Assumed Contracts and Office Leases, such warranty deeds in form for recording or deeds in such other form as is reasonably acceptable to AmTrust and the Reinsurer, bills of sale, assignments, stock powers, bond powers, evidences of consent and such other transfer instruments or documents, all in form and substance satisfactory to AmTrust and the Reinsurer as may be reasonably necessary or desirable to evidence or perfect the sale, conveyance, transfer, assignment and delivery of, title to and right to use the Transferred Assets to Reinsurer, and Reinsurer shall deliver the Rehabilitation Transaction Consideration as described in this Agreement.

Section 6.4 Access to Books and Records. The Conservator and Majestic shall retain such rights to the corporate books and records of Majestic, as are provided under the terms of the Rehabilitation Transaction Agreements pertaining to records retention, access and copying.

## ARTICLE 7

### EXCLUDED LIABILITIES AND ASSUMED CONTRACTS

Section 7.1 Excluded Liabilities. Except as provided in the Rehabilitation Transaction Agreements and Sections 3.1 and 7.2 hereof, neither AmTrust, Reinsurer nor any Affiliate of any of them, will, directly or indirectly, assume any liability of Majestic or its Affiliates of any kind, character or description, whether or not attributable to the conduct of Majestic's Business or the ownership or use of the Transferred Assets, regardless of when discovered or reported, including, but not limited to, the following liabilities (collectively "Excluded Liabilities") which will remain liabilities of Majestic:

- (a) any liability arising from any failure or alleged failure to comply with, or any violation or alleged violation of, any Applicable Law by Majestic or any of its Affiliates;
- (b) any liability relating to any breach of any contract or the commission of any tort;
- (c) any liability relating to claims against Majestic other than pursuant to insurance contracts issued by Majestic (and, for purposes of further clarification, any claim against Majestic made by or on behalf of a group self-insurer or group self-insured trust or related to the administration of a group self-insurer or group self-insured trust arising from the issuance by Majestic of an excess insurance contract to such group self-insurer or group self-insured trust (other than for payment in accordance with its terms and conditions), regardless of the theory of liability or the damages sought);
- (d) except as set forth in the Reinsurance Agreement, any liability for Taxes imposed on Majestic or any Affiliate thereof;

(e) any liability arising under any Office Lease prior to or as a result of any action or omission to act prior to the Closing Date; and

(f) any commissions or any other compensation or remuneration due to insurance producers arising from Majestic's operation of the Business, other than pursuant to the terms of the Rehabilitation Transaction Agreements.

For purposes of this Section 7.1, Affiliates shall mean all of Majestic's current or past Affiliates.

Section 7.2 Assumption of Contractual Obligations. AmTrust, and Reinsurer shall have the contractual liabilities assumed under the Rehabilitation Transaction Agreements.

## ARTICLE 8

### REHABILITATION OR LIQUIDATION OF MAJESTIC

Section 8.1 Orders of Rehabilitation or Liquidation. Consistent with Article 3 hereof, the parties agree that the Conservator may, at such time as he deems appropriate and in his sole discretion, apply to the Conservation Court for orders relating to or in furtherance of the rehabilitation of Majestic, or for an order to liquidate Majestic, provided, however, that prior to any termination of this Agreement or the withdrawal of the Rehabilitation Motion, the Conservator agrees not to seek an order to liquidate Majestic. The Conservator shall provide prior written notice to AmTrust of the filing of an application to the Conservation Court for an order to liquidate Majestic.

Section 8.2 Resolution and Disposition of Non-Policyholder Liabilities of Majestic. The Conservator may, as he deems appropriate in his sole discretion, include in the form of Rehabilitation Order submitted to the Conservation Court, provisions relating to the orderly resolution and disposition of claims and liabilities of Majestic falling into priority classes 3 through 9 under Insurance Code section 1033(a)(3)-(9), including (i) the setting of a Claims Bar

Date by which claimants must have filed proof of any such claim with the Conservator;  
(ii) continuing injunctions as authorized under Insurance Code section 1020 prohibiting the filing or continued prosecution of lawsuits or other legal actions outside the Conservation Proceeding based on such liabilities; (iii) provisions and procedures for the resolution of disputes over such claims through summary order to show cause proceedings in the Conservation Proceeding, as authorized under Insurance Code section 1032; and (iv) such other provisions as the Conservator deems necessary to the orderly rehabilitation of Majestic.

Section 8.3 Liquidating Trust for Majestic. Nothing in this Agreement or the Plan will prohibit or otherwise limit the authority of the Conservator to, at such time as he deems appropriate and in his sole discretion, apply to the Conservation Court for an order authorizing the creation of a liquidating or conservation trust for Majestic's residual assets and liabilities, provided, however, that prior to any termination of this Agreement or the withdrawal of the Rehabilitation Motion, the Conservator agrees not to seek such an order without first consulting with AmTrust.

Section 8.4 Non-Assertion of Claims Under Inuring Reinsurance Contracts. The Conservator agrees that:

(a) in the event Majestic is placed into liquidation before the implementation of the proposed Plan, the Conservator will not assert claims under any Inuring Reinsurance Contract (as such term is defined in the Reinsurance Agreement) that would have the effect of depriving any insurance company Affiliate of AmTrust of complete indemnity with respect to any claims paid under the Fronted Policies; and

(b) in the event Majestic is placed into liquidation after the implementation of the proposed Plan and the closing of the transactions contemplated under the Rehabilitation

Transaction Agreements, the Conservator will not assert claims under any Inuring Reinsurance Contract (as such term is defined in the Reinsurance Agreement) that would have the effect of depriving any insurance company Affiliate of AmTrust of complete indemnity with respect to any claims paid under the Fronted Policies or under the Reinsurance Agreement.

Section 8.5 Release of Majestic From Conservation. Nothing in this Agreement or any of the Rehabilitation Transaction Agreements shall be construed to preclude the Conservator from, following the disposition of or provision for all timely filed proofs of claim, moving the Conservation Court for an order discharging the Conservation Order and releasing Majestic from conservation, subject to any limitations and restrictions under the Rehabilitation Transaction Agreements.

## ARTICLE 9

### CONDITIONS PRECEDENT TO CLOSING; TERMINATION

Section 9.1 Mutual Conditions Precedent to Closing. Except as otherwise expressly provided herein, the obligations of each of the Conservator, Majestic, AmTrust and Reinsurer to proceed with the Closing are subject to the fulfillment, satisfaction or written waiver, prior to or at the Closing, of each of the following conditions precedent:

Section 9.1.1 Final Rehabilitation Order. The Final Rehabilitation Order shall have been entered.

Section 9.1.2 Terms of the Final Rehabilitation Order. The Final Rehabilitation Order shall confirm to the satisfaction of the Conservator and AmTrust: (i) the enforceability of the terms and conditions of this Agreement and the Rehabilitation Transaction Agreements, and the transactions contemplated hereby and thereby, including but not limited to the fairness and reasonableness of the consideration received, (ii) that this Agreement, the Rehabilitation

Transaction Agreements and the Rehabilitation Plan are fair, just and reasonable to policyholders, creditors and the shareholder of Majestic, (iii) that all executory portions of the Rehabilitation Transaction Agreements are approved and made valid, binding and enforceable in the event of a future insolvency of Majestic, (iv) that reinsurers of Majestic and other counterparties under the Assumed Contracts are not prejudiced by and thus have no lawful basis to avoid or terminate their contractual obligations as a result of the transactions contemplated herein or in the Rehabilitation Transaction Agreements, (v) that there is adequate protection against the assertion of claims against AmTrust or any of its Affiliates based on Excluded Liabilities, (vi) that any interested party is enjoined from pursuing, without prior Conservation Court approval, any claim or action against AmTrust or the Reinsurer arising out of the Plan, this Rehabilitation Agreement or the Rehabilitation Transaction Agreements, and (vi) such other matters relating to the Plan, this Agreement, the Rehabilitation Transaction Agreements and the transactions contemplated hereby and thereby as the Conservator or AmTrust shall deem necessary or desirable.

Section 9.1.3 Orders. Each of the Conservator, Majestic, AmTrust and Reinsurer shall have obtained from the Conservation Court those orders as are necessary or appropriate to the implementation of this Agreement, the Rehabilitation Transaction Agreements, the Rehabilitation Plan and the transactions contemplated hereby and thereby.

Section 9.1.4 Consents. Each of the Conservator, Majestic, AmTrust and Reinsurer shall have received all consents, approvals and certifications (including, without limitation, estoppel certificates), in form and substance reasonably satisfactory to each of them, of third parties or government entities whose consent, approval or certification is required for the

consummation of the transactions contemplated by this Agreement and the Rehabilitation Transaction Agreements.

Section 9.1.5 Notification Package. The Notification Package shall have been sent to each policyholder and other recipient in accordance with Section 4.1.

Section 9.1.6 Governmental Approvals. All Permits, if any, which are reasonably necessary to consummate the transactions contemplated by this Agreement and the Rehabilitation Transaction Agreements shall have been obtained on terms satisfactory to each party in its sole discretion. The waiting period required under the Hart-Scott-Rodino Act, if applicable, shall have terminated for all purposes and no objection shall have been raised under such act by any government agency.

Section 9.1.7 No Prohibition. There shall not have been any action taken, or any statute, regulation, judgment, or order enacted, entered or issued which, directly or indirectly (i) prohibits or makes illegal the consummation of the transactions contemplated by this Agreement or the Rehabilitation Transaction Agreements, (ii) imposes any material conditions or limitations on the ability of AmTrust, Reinsurer, Majestic or the Conservator to exercise full rights under this Agreement or the Rehabilitation Transaction Agreements, or (iii) imposes any material conditions or limitations on AmTrust or Reinsurer or their respective ownership or operation of all or a material portion of their respective businesses or assets to be owned by them after the consummation of the transactions contemplated by this Agreement or the Rehabilitation Transaction Agreements.

Section 9.2 Conditions Precedent to AmTrust's and Reinsurer's Obligation to Close. The obligation of AmTrust and Reinsurer to proceed with the Closing is subject to the

fulfillment, satisfaction or written waiver, prior to or at the Closing, of each of the following conditions precedent (in addition to those described in Section 9.1 hereof):

Section 9.2.1 Performance by the Conservator and Majestic. The Conservator and Majestic shall have performed and complied with, in all material respects, all provisions of the agreements and covenants required by this Agreement and the Rehabilitation Transaction Agreements to be performed or complied with by each of them prior to or at the Closing, and there shall have been no adverse event or occurrence which materially impairs or interferes with the ability of the Conservator or Majestic to consummate the transactions contemplated by this Agreement or the Rehabilitation Transaction Agreements and to perform each of their obligations under this Agreement and the Rehabilitation Transaction Agreements.

Section 9.2.2 Representations and Warranties. The representations and warranties of Majestic and the Conservator contained in this Agreement and the Rehabilitation Transaction Agreements shall be true and correct as of the Closing Date.

Section 9.2.3 Force Majeure. There shall not have occurred (i) any general suspension of, or limitation on prices for, or trading in, securities on the New York Stock Exchange, the NASDAQ Stock Market or the over-the-counter market, (ii) a declaration of a banking moratorium or any suspension of payments in respect of banks in the United States, (iii) a commencement of a war, armed hostilities or other international or national calamity or significant police activity directly involving the United States, (iv) any limitation (whether or not mandatory) by any governmental authority, or any other event which affects the extension of credit by banks or other financial institutions or (v) in the case of any of the foregoing existing at the time of the execution of this Agreement, a material acceleration or worsening thereof.

Section 9.2.4 Corporate Matters. The Conservator and Majestic shall have delivered to AmTrust and Reinsurer such other documents, instruments, certifications and further assurances reasonable and necessary to effect the transactions contemplated by this Agreement and the Rehabilitation Transaction Agreements.

Section 9.2.5 Interim Operations. The Conservator shall have operated Majestic's business in the ordinary course, subject to the Conservation Proceedings (which Conservation Proceedings shall be conducted by the Conservator in a manner substantially consistent with Majestic's operations prior to the entry of the Conservation Order), in a manner consistent in all material respects with the terms and conditions of this Agreement and the Rehabilitation Transaction Agreements from the date of this Agreement through the Closing Date, and Majestic shall not have entered into any agreement or arrangement inconsistent with such operation, and the Annualized Premium Volume (as such term is defined in the Renewal Rights Agreement) from Majestic's Business shall not have fallen below \$35 million as of the Closing Date.

Section 9.2.6 Rehabilitation Transaction Agreements. On or prior to the Closing Date, the Conservator and Majestic shall have executed and delivered to AmTrust and the Reinsurer the Rehabilitation Transaction Agreements, and all of the conditions precedent stated in the Rehabilitation Transaction Agreements shall have been satisfied.

Section 9.3 Conditions Precedent to Conservator's and Majestic's Obligations to Close. The obligation of each of the Conservator and Majestic to proceed with the Closing shall be subject to the fulfillment, satisfaction or written waiver, prior to or at the Closing, of each of the following conditions precedent (in addition to those described in Section 9.1 hereof):

Section 9.3.1 Performance by AmTrust. AmTrust shall have performed and complied with, in all material respects, all provisions of the covenants and agreements required by this Agreement to be performed or complied with by it prior to or at Closing, and there shall have been no adverse event which materially impairs or interferes with the ability of AmTrust, or Reinsurer to consummate the transactions contemplated by this Agreement and the Rehabilitation Transaction Agreements and to perform their respective obligations under this Agreement and the Rehabilitation Transaction Agreements.

Section 9.3.2 Representations and Warranties. All representations and warranties of AmTrust contained herein shall be true and correct on the Closing Date with the same force and effect as though made on and as of the Closing Date.

Section 9.3.3 Rehabilitation Transaction Agreements. On or prior to the Closing Date, AmTrust and Reinsurer shall have executed and delivered the Rehabilitation Transaction Agreements.

Section 9.4 Termination. Agreement may be terminated prior to Closing only as follows:

- (a) By written mutual consent of the Conservator and AmTrust; or
  - (b) By the Conservator or AmTrust if any governmental authority that must grant a requisite regulatory approval has denied approval of the transaction or if any governmental entity has issued an injunction prohibiting the transaction that has become final and nonappealable, provided that the right to terminate is not available to any party whose failure to perform or observe its covenants or agreements has been a cause of or resulted in such action;
- or

(c) By a party that is not in material breach of the Agreement if the other party has breached the Agreement in a manner that would result in the failure of a condition precedent to the obligations to close and the breach cannot be cured within thirty (30) days after receipt of notice of such breach;

(d) By the Conservator, upon his determination, as specified in Section 9.7 of the Renewal Rights Agreement, that the financial condition of Majestic has materially deteriorated to the point that the Conservator will be unable to pay the Reinsurer all amounts to become due under the Reinsurance Agreement, and thereafter retain adequate free assets and sufficient cash flow to fund the anticipated costs of administering the Conservation Proceeding, provided, however, that the Conservator shall confer with AmTrust prior to making such a determination to assess whether changes or amendments may be made to the Rehabilitation Transaction Agreements to avoid termination under this provision; or

(e) By either party if the Conservation Proceedings and the Conservator's motion to approve the Rehabilitation Plan and Rehabilitation Transaction Agreements have not been filed on or before April 30, 2011.

In the event of the termination of this Agreement, this Agreement shall thereafter become void and have no effect, and no party to this Agreement shall have any liability or obligation to any other party to this Agreement with respect to this Agreement, except for the provisions of Article 12, and Sections 13.1, 13.3 (regarding survival of confidentiality agreement dated January 5, 2010, and the Quota Share Reinsurance Agreement dated April 1, 2010 between Majestic as ceding insurer and Security National Insurance Company and Wesco Insurance Company as reinsurers (the "Fronting Agreement")) and 13.6; provided, however, that if this

Agreement is terminated as a result of the breach of this Agreement by one of the parties hereto, such party shall not be relieved of its liability for such breach.

## ARTICLE 10

### ADDITIONAL COVENANTS OF THE PARTIES

#### Section 10.1 Covenants of the Conservator.

Section 10.1.1 Final Rehabilitation Order. The Conservator shall take all reasonable actions to make the Final Rehabilitation Order binding on all interested parties and subject to full faith and credit in all state and Federal courts.

Section 10.1.2 Conservator to File Motion for a Final Order. The Conservator shall file a motion in the Conservation Court for a Final Rehabilitation Order with respect to this Agreement, the Rehabilitation Plan and the Rehabilitation Transaction Agreements as promptly as possible and shall provide AmTrust and Reinsurer with a copy of the Proposed Rehabilitation Order and an opportunity to comment upon it prior to its submission to the Conservation Court.

Section 10.1.3 Cooperation to Obtain Orders. Upon Conservation Court approval of the Rehabilitation Plan, the Conservator shall cooperate with and assist AmTrust and Reinsurer in securing such orders from the Conservation Court as AmTrust and Reinsurer reasonably deem necessary or desirable in order to carry out the provisions of this Agreement and the Rehabilitation Transaction Agreements.

Section 10.1.4 Delivery of Motion, Notice, etc. Copies of any motion or notice filed with the Conservation Court or with any other Person by the Conservator as contemplated by this Agreement and of any order issued by the Conservation Court to the Conservator shall be provided to AmTrust and its counsel by the Conservator.

Section 10.1.5 Access to Books and Records. The Conservator shall, and shall cause Majestic to, afford to AmTrust and Reinsurer and their agents, attorneys, accountants and other authorized representatives full and reasonable access during normal business hours to all employees and books and records of Majestic for the purpose of investigating and evaluating all aspects of the business of Majestic, and shall permit such Persons, at AmTrust's or Reinsurer's expense, to make copies of such books and records. AmTrust and Reinsurer will treat, and shall cause all of its agents, attorneys, accountants and other authorized representatives to treat, all information obtained pursuant to this Section 10.1.5 as confidential and in accordance with any confidentiality agreement between the parties, except as may otherwise be required by law. The Conservator shall not be required to provide access to attorney work product or attorney-client privileged materials.

Section 10.1.6 Operation of Majestic in the Ordinary Course. The Conservator shall operate Majestic's business consistent with prudent business standards and consistent with the terms and conditions of this Agreement and the Rehabilitation Transaction Agreements from the date of this Agreement through the Closing Date. The parties acknowledge that the Conservation Proceedings may impose restrictions on the operation of the business of Majestic. The Conservator shall use commercially reasonable efforts to operate Majestic's business under conservation in a manner that seeks to preserve to every possible extent the Business and assets to be acquired by AmTrust under the Rehabilitation Transaction Agreements, including taking commercially reasonable steps to retain the Majestic employees identified by AmTrust as being important to the preservation of the Business. In furtherance of the foregoing, the Conservator agrees to consult with AmTrust prior to taking any actions relating to staff reductions or other material changes in the operations of Majestic.

Section 10.1.7 Orderly Transition. Prior to Closing, the Conservator shall permit AmTrust, Reinsurer and their employees to assist the Conservator in the management and operation of Majestic in order to facilitate an effective and orderly transition of the Business.

Section 10.2 Further Covenants.

Section 10.2.1 Further Assurances. Each of the parties to this Agreement covenants to take the following actions: (i) act in mutual cooperation and provide to each other all reasonable assistance in furtherance of the implementation and effectuation of this Agreement and the Rehabilitation Transaction Agreements following Conservation Court Approval, it being understood by all parties that, prior to Conservation Court approval of the Rehabilitation Agreement, the Conservator must remain free to evaluate any competing proposals for the rehabilitation of Majestic and thereafter to take such actions as he determines, in his discretion, to be in the best interest of Majestic's policyholders and other interested persons and entities; (ii) present a motion for approval of this Agreement and the Rehabilitation Transaction Agreements; and (iii) execute, acknowledge, deliver, file and record such further certificates, amendments, instruments, agreements and documents (including the filing of any notices with any regulatory agencies or other governmental entities), and do all other actions and things as may be required by law or as may be necessary or reasonably advisable to carry out the intent of this Agreement and the Rehabilitation Transaction Agreements following Conservation Court approval.

ARTICLE 11

CLOSING

Section 11.1 Closing. The Closing shall take place on the first Business Day following the satisfaction or waiver of all of the conditions set forth in Article 9 (other than conditions

which contemplate or require only delivery or filing of one or more documents immediately prior to or contemporaneously with the Closing) on the Closing Date at the principal offices of Majestic, commencing at 10:00 a.m., local time, or at such other place and time as the parties hereto shall mutually agree.

Section 11.2 Items to be Delivered at Closing by the Conservator and Majestic. At the Closing, upon the terms and subject to the conditions contained in this Agreement, the Conservator and Majestic will deliver or cause to be delivered to AmTrust the following:

(a) A certificate of the Conservator, dated the Closing Date, certifying that the representations and warranties of Majestic are true and correct as of the Closing Date as if made on and as of the Closing Date and that Majestic has performed and complied in all material respects with all agreements and conditions required by this Agreement to be performed and complied with by Majestic at the Closing;

(b) A certificate of the Conservator, dated the Closing Date, certifying that the representations and warranties of the Conservator are true and correct as of the Closing Date as if made on and as of the Closing Date and that the Commissioner, in his capacity as such or as the Conservator has performed and complied in all material respects with all agreements and conditions required by this Agreement to be performed and complied with by him at the Closing;

(c) Such orders of the Conservation Court confirming the terms of this Agreement and the Rehabilitation Transaction Agreements and the transactions contemplated hereby and thereby relative to the respective transactions and interests under this Agreement;

(d) Such documents as are necessary to transfer the Transferred Assets;

(e) Such documents as are necessary to transfer the Assumed Contracts; and

(f) Such other certificates and closing documents as may be necessary for the consummation of the transactions contemplated by this Agreement and the Rehabilitation Transaction Agreements.

Section 11.3 Items to be Delivered at Closing by AmTrust and Reinsurer. At the Closing, upon the terms and subject to the conditions contained in this Agreement, AmTrust will deliver, or cause to be delivered by Reinsurer, as appropriate, to the Conservator and Majestic the following:

(a) A certificate of a duly authorized and elected officer of AmTrust and Reinsurer, dated the Closing Date, certifying (i) that the representations and warranties of AmTrust and Reinsurer are true and correct as of the Closing Date as if made on and as of the Closing Date; (ii) that AmTrust and Reinsurer have performed and complied in all material respects with all agreements and conditions required by this Agreement to be performed and complied with by AmTrust and Reinsurer at the Closing; (iii) that AmTrust and Reinsurer have all requisite power and authority to execute and deliver the Reinsurance Agreement and any other documents required for the Closing to which it is a party and to consummate the transactions contemplated hereby and thereby; (iv) that the execution, delivery and performance by Reinsurer of the Reinsurance Agreement will not violate any laws or statutes to which Reinsurer is subject, or its corporate charter or bylaws or any material indenture, contract or agreement to which Reinsurer is a party or by which it is bound, and (v) that the Reinsurance Agreement has been duly executed and delivered by Reinsurer and constitute the legal, valid and binding obligations of Reinsurer, enforceable against Reinsurer in accordance with its terms;

(b) An incumbency certificate for each of AmTrust and Reinsurer dated the Closing Date, including specimen signatures;

(c) A copy of all resolutions adopted by the Board of Directors of AmTrust, and by the Board of Directors of Reinsurer, in each case relating to the transactions contemplated by this Agreement and the Rehabilitation Transaction Agreements, certified on the Closing Date to be correct and remaining in effect by the Secretary or Assistant Secretary of each of AmTrust and Reinsurer, as the case may be;

(d) The statutory financial statement of the Reinsurer as of the end of the most recent calendar quarter prior to the Closing Date; and

(e) Such other certificates and closing documents as may be necessary for the consummation of the transactions contemplated by this Agreement and the Rehabilitation Transaction Agreements.

Section 11.4 Further Assurances After the Closing. Each of the Conservator, Majestic, AmTrust, and Reinsurer will, from time to time after the Closing, take such other proper actions and execute and deliver such other documents, instruments, certifications and further assurances as may reasonably be requested by another party as required or necessary to effectuate the intent and purpose of this Agreement and the Rehabilitation Transaction Agreements.

## ARTICLE 12

### INDEMNIFICATION

Section 12.1 No Indemnification From Majestic. AmTrust and Reinsurer acknowledge and agree that in lieu of indemnification by Majestic, the Conservator shall use his best efforts to ensure that the Rehabilitation Order includes appropriate provisions and injunctions to protect AmTrust and Reinsurer against any and all Excluded Liabilities under this Agreement.

Section 12.2 Indemnification From AmTrust with Respect to Third-Party Claims. AmTrust shall hold Majestic and the Conservator harmless against, and pay, any and all claims

made by third parties, as such claims are suffered, sustained, incurred or required to be paid by Majestic or the Conservator because of the breach of any representation, warranty, covenant or agreement of AmTrust or Reinsurer contained in or made pursuant to this Agreement, provided, however, that the aggregate amount payable by AmTrust and the Reinsurer with respect to any and all indemnification claims tendered by Majestic and/or the Conservator, including expenses associated therewith, shall not exceed \$50,000.

Section 12.3 Procedures. If a claim is brought against an indemnified party, the indemnifying party will be entitled to participate in the defense of such claim unless (i) the indemnifying party is also a party to such claim and the indemnified party determines in good faith that joint representation would be inappropriate or (ii) the indemnifying party fails to provide reasonable assurance to the indemnified party of its financial capacity to defend such claim and provide indemnification with respect to such claim and, to the extent that the indemnifying party elects to assume the defense of such claim with counsel satisfactory to the indemnified party and provides notice to the indemnified party of its election to assume the defense of such claim, the indemnifying party shall not, as long as it legitimately conducts such defense, be liable to the indemnified party under this Article 12 for any fees of other counsel or any other expenses with respect to the defense of such claim, in each case subsequently incurred by the indemnified party in connection with the defense of such claim, other than reasonable costs of investigation.

If the indemnifying party assumes the defense of a claim, (i) it shall be conclusively established for purposes of this Agreement that the claims made in such claim are within the scope of and subject to indemnification; and (ii) no compromise, discharge or settlement of, or admission of liability in connection with, such claims may be effected by the indemnifying party

without the indemnified party's written consent (which consent shall not be unreasonably withheld or delayed).

Notwithstanding anything to the contrary contained herein, the parties agree that no indemnification shall be payable by AmTrust or Reinsurer with respect to any third-party claim (including any associated defense costs) unless it is conclusively determined by the court presiding over the resolution of the claim that AmTrust or Reinsurer in fact committed a breach of a representation, warranty, covenant or agreement contained in or made pursuant to this Agreement that gave rise to the claim.

It is further agreed that any and all claims asserted by any of the parties hereto against any of the other parties hereto arising out of or related to this Agreement or to any of the Rehabilitation Transaction Agreements shall be heard and determined by the Conservation Court, which shall have exclusive jurisdiction over any such disputes and shall have sole authority to determine the scope and nature of any remedies to be granted in connection with such claims.

## ARTICLE 13

### GENERAL PROVISIONS

Section 13.1 Press Releases and Interviews. The parties shall cooperate in the preparation of any and all press releases, pre-arranged press interviews or other public statements, written or oral, regarding this Agreement, any of the Rehabilitation Transaction Agreements and/or the transactions contemplated hereby or thereby. Prior to any such press release, pre-arranged press interview or other public statement, the party desiring to make such a disclosure shall provide the other parties with copies of such press release or related materials.

Section 13.2 Expenses. Each party shall pay its own expenses in connection with the authorization, negotiation, preparation, execution and performance of this Agreement and the Rehabilitation Transaction Agreements, including, without limitation, all fees and expenses of agents, representatives, attorneys, accountants and consultants, provided, however, that such fees and expenses incurred by the Conservator and Majestic shall be paid by Majestic.

Section 13.3 Entire Agreement. This Agreement and the Rehabilitation Transaction Agreements (including the exhibits and schedules attached hereto and thereto) constitute the entire agreement among the parties with respect to the subject matter hereof and supersede all prior agreements, understandings, negotiations and discussions, whether oral or written, of the parties; provided, however, that the Confidentiality Agreement between AmTrust and Majestic and its Affiliates dated January 5, 2011, and the Fronting Agreement, shall remain in full force and effect, except to the extent that the occurrence of the Closing renders any provision thereof inconsistent with any term or condition of this Agreement or any of the Rehabilitation Transaction Agreements. There are no representations, promises, warranties, covenants or undertakings, other than those expressly set forth or referred to in this Agreement, the Rehabilitation Transaction Agreements or such Confidentiality Agreement.

Section 13.4 Amendment. This Agreement may be amended only in writing executed by all of the parties hereto.

Section 13.5 No Assignment. None of the rights or obligations of any party to this Agreement may be assigned or transferred to or assumed by any other person, except as expressly provided herein.

Section 13.6 Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of California, including the Insurance Code, applicable to

agreements made and to be performed entirely within the State of California, without giving effect to the principles of conflicts of law thereof, and jurisdiction and venue for any action arising under this Agreement shall be in the Conservation Court.

Section 13.7 Headings: Gender and Person. All section headings contained in this Agreement are for convenience of reference only, do not form a part of this Agreement and shall not affect in any way the meaning or interpretation of this Agreement. Words used herein, regardless of the number and gender specifically used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine or neuter, as the context requires.

Section 13.8 No Benefit to Others. The representations, warranties, covenants and agreements contained in this Agreement are for the sole benefit of the Conservator, Majestic, AmTrust and Reinsurer, and their permitted successors and assigns, and they shall not be construed as conferring any rights on any other Person.

Section 13.9 Notices. Any notice, request, demand, waiver, consent, approval or other communication required or permitted to be made hereunder shall be in writing and shall be deemed given only if delivered by hand, or mailed by certified or registered mail with postage prepaid and return receipt requested, or sent by facsimile transmission, as follows:

- (a) If to the Commissioner, the Conservator or Majestic, to:

Majestic Insurance Company in Conservation  
c/o Conservation & Liquidation Office  
425 Market Street, 23<sup>rd</sup> Floor  
San Francisco, CA 94105  
Attention: David E. Wilson, CEO and SDIC

with concurrent copies to:

Majestic Insurance Company  
101 California Street, Suite 1000

San Francisco, CA 94105  
Attention: James Scardino, CEO

and to:

California Department of Insurance  
45 Fremont Street, 23<sup>rd</sup> Floor  
San Francisco, CA 94105  
Attention: Laszlo Komjathy, Jr., Esq.

and to:

Orrick, Herrington & Sutcliffe LLP  
400 Capitol Mall, Suite 300  
Sacramento, CA 95814-4407  
Attention: Thomas J. Welsh, Esq.

(b) If to AmTrust, to:

AmTrust North America, Inc.  
AmTrust Financial Services, Inc.  
59 Maiden Lane, 6th Floor  
New York, NY 10038  
Attention: Stephen Ungar, Esq.

with concurrent copies to:

Locke Lord Bissell & Liddell LLP  
300 S. Grand Avenue, Suite 2600  
Los Angeles, California 90071  
Attention: Carey S. Barney, Esq.

(c) If to Reinsurer, to:

Security National Insurance Company  
c/o AmTrust Financial Services, Inc.  
59 Maiden Lane, 6th Floor  
New York, NY 10038  
Attention: Stephen Ungar, Esq.

with concurrent copies to:

Locke Lord Bissell & Liddell LLP  
300 S. Grand Avenue, Suite 2600  
Los Angeles, California 90071  
Attention: Carey S. Barney, Esq.

or to such other address as may be designated by a party by written notice to the other parties hereto. Such notice, request, demand, waiver, consent, approval or other communication will be deemed to have been given as of the date so delivered, sent by facsimile (with confirmation of receipt) or mailed.

Section 13.10 Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, illegal or unenforceable, the remainder of the provisions of this Agreement shall remain in full force and effect. The parties shall endeavor in good faith negotiations to replace any invalid, illegal or unenforceable provision with a valid, legal and enforceable provision, the economic effect of which comes as close as possible to that of the invalid, illegal or unenforceable provision.

Section 13.11 Counterparts. This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall be deemed to be an original and all of which counterparts taken together shall constitute but one and the same instrument. It shall not be necessary that any one counterpart be signed by all of the parties hereto as long as each of the parties hereto has signed at least one counterpart.

Section 13.12 Liability of the Conservator. The Conservator is a party to this Agreement and the Rehabilitation Transaction Agreements only in his representative capacity as Conservator of Majestic and as the Commissioner, and not individually, and the parties hereto agree and acknowledge that the Conservator shall not have any personal liability in any capacity for any matters or obligations hereunder, and further that the State of California is not a party and shall have no liability with respect hereto.

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

CONSERVATOR, Dave Jones, Insurance  
Commissioner, State of California, in his capacity  
as Conservator and not in his individual capacity

By: David E. Wilson  
David E. Wilson  
Special Deputy Insurance Commissioner

MAJESTIC INSURANCE COMPANY, by Dave  
Jones, in his capacity as Conservator and not in his  
individual capacity

By: David E. Wilson  
David E. Wilson  
Deputy Conservator

AMTRUST NORTH AMERICA, INC.

By: Stephen Unger for Barry D. Zyskind  
Stephen Unger  
Secretary and  
General Counsel  
Barry D. Zyskind  
Chief Executive Officer,  
President and Director  
Chairman

SECURITY NATIONAL INSURANCE  
COMPANY

By: Stephen Unger  
Barry D. Zyskind  
Chief Executive Officer,  
President and Director  
Stephen Unger  
Secretary and  
General Counsel

# **Exhibit A**

**RENEWAL RIGHTS AND ASSET PURCHASE AGREEMENT**

*By and Among*

**AmTrust North America, Inc.**

*and*

**Majestic Insurance Company in Conservation,  
acting by and through California Insurance Commissioner  
Dave Jones as Statutory Conservator**

*Dated as of \_\_\_\_\_, 2011*

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## **RENEWAL RIGHTS AND ASSET PURCHASE AGREEMENT**

This **RENEWAL RIGHTS AND ASSET PURCHASE AGREEMENT** (this "Agreement"), dated as of \_\_\_\_\_, 2011, is entered into by and among Majestic Insurance Company in Conservation, a California-domiciled insurance company in conservation in the State of California (the "Seller"), acting by and through California Insurance Commissioner Dave Jones (the "Commissioner") as statutory conservator ("Conservator"), and AmTrust North America, Inc., a Delaware corporation (the "Purchaser") (each individually a "Party" and, collectively, the "Parties").

### **RECITALS:**

**WHEREAS**, the Commissioner was appointed Conservator of the Company pursuant to an order of the Superior Court for the City and County of San Francisco ("Conservation Court") entered on April \_\_, 2011 ("Conservation Order"); and

**WHEREAS**, the Conservator has, in consultation with the Purchaser, promulgated a comprehensive and integrated plan of rehabilitation for the Company (the "Plan"), as described in that certain Majestic Insurance Company Rehabilitation Agreement, by and among the Conservator, on behalf of Company, Purchaser and [Security National Insurance Company] (the "Rehabilitation Agreement"), which Plan and Rehabilitation Agreement have been approved and authorized by the Conservation Court in its Order Approving Rehabilitation Plan entered on May \_\_, 2011 ("Rehabilitation Order"); and

**WHEREAS**, Seller is engaged in the business of issuing and administering Workers Compensation Insurance contracts, policies, certificates, binders, slips, and covers, including all supplements, riders and endorsements issued or written in connection therewith (the "Business"); and

**WHEREAS**, the Seller and the Purchaser, in consultation with the Conservator and pursuant to the Plan, have agreed to effect a transaction whereby the Seller will transfer, and the Purchaser will acquire, certain assets and liabilities associated with the Business; and

**WHEREAS**, in order to effectuate the foregoing, it is contemplated that, upon the terms and subject to the conditions of the Plan, the Rehabilitation Order and this Agreement:

1. The Seller shall sell, assign and transfer to the Purchaser all of its right, title and interest in, the assets described herein and the Purchaser shall assume the liabilities described herein;

2. Seller and [Security National Insurance Company], an Affiliate of Purchaser (the "Reinsurer"), will enter into (i) a Loss Portfolio Transfer and Quota Share Reinsurance Agreement, substantially in the form of Exhibit B to the Rehabilitation Agreement (the "Reinsurance Agreement") providing for, among other things, the reinsurance of insurance contracts issued by Seller, and (ii) a Reinsurance Administrative

Services Agreement, substantially in the form of Exhibit C to the Rehabilitation Agreement (the "Administration Agreement"), providing for, among other things, the provision by Purchaser of administrative services with respect to the insurance contracts reinsured pursuant to the Reinsurance Agreement;

3. Purchaser will offer employment opportunities to the Employee Group (as defined below), subject to the terms and conditions set forth herein; and

4. Seller and Purchaser will enter into other agreements, instruments and documents as described herein.

**NOW, THEREFORE**, in consideration of the mutual and several promises and undertakings herein contained, and in reliance on the representations and disclosures made by the Parties herein and in the Rehabilitation Agreement, the terms of the Plan and the Rehabilitation Order, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

## **ARTICLE I. DEFINITIONS**

### **1.1. Definitions.**

The following terms, when used in this Agreement, have the meanings set forth in this Section 1.1.

"Administration Agreement" has the meaning set forth in the Recitals.

"Affiliate" (and, with a correlative meaning, "Affiliated") means, with respect to any Person, any other Person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such first Person. As used in this definition, "control" (including, with correlative meanings, "controlled by" and "under common control with") shall mean possession, directly or indirectly, of power to direct or cause the direction of management or policies (whether through ownership of securities or partnership or other ownership interests, by contract, as trustee or executor, or otherwise).

"Agreement" has the meaning set forth in the first paragraph.

"Allocated Loss Adjustment Expenses" has the meaning ascribed to it in Section 5.5.

"Ancillary Agreements" means (i) the Bill of Sale and General Assignment Agreement, (ii) the Reinsurance Agreement, (iii) the Administration Agreement, (iv) the Intellectual Property Assignment, (v) the Transition Services Agreement, (vi) the Records Retention and Access Agreement, (vii) the Lease Assumption Agreements, and (viii) such other agreements as the Parties determine are reasonable and necessary to effect the transactions contemplated under this Agreement and the Plan.

“Applicable Law” means any applicable order, law, statute, regulation, rule, pronouncement, ordinance, bulletin, writ, injunction, directive, judgment, decree, principle of common law, constitution or treaty enacted, promulgated, issued, enforced or entered by any Governmental Authority applicable to the parties hereto, or any of their respective businesses, properties or assets.

“Assumed Contracts” has the meaning ascribed to it in Section 2.6(a).

“Base Compensation” means a Transferred Employee’s annual salary.

“Bill of Sale and General Assignment Agreement” means the Bill of Sale and General Assignment Agreement between the Purchaser and the Seller attached hereto as **Exhibit**

“Books and Records” has the meaning ascribed thereto in Section 2.5.

“Burdensome Condition” has the meaning ascribed thereto in Section 6.3.

“Business” has the meaning set forth in the Recitals.

“Business Day” means any day other than Saturday, Sunday or a day on which banking institutions in the State of California are permitted or obligated by Applicable Law to be closed.

“Business Personal Property” has the meaning ascribed to it in Section 2.4.

“Ceded Reinsurance Premium” has the meaning ascribed to it in Section 5.5.

“Closing” and “Closing Date” have the respective meanings set forth in Section 2.7.

“Code” means the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder.

“Commissioner” has the meaning set forth in the Recitals.

“Competing Business” has the meaning set forth in Section 6.7(b).

“Computer Programs” means current and prior versions of existing and retired (a) computer programs, including all object code and all source code, all executables, run books and all source code, (b) descriptions, specifications, flow-charts and other work product used to design, plan, organize and develop any of the foregoing, and (c) documentation, including design and development artifacts, test data and scripts, user manuals, system documentation, operations manuals/instructions and training materials, relating to any of the foregoing.

“Conservation Court” has the meaning set forth in the Recitals.

“Conservation Order” has the meaning set forth in the Recitals.

“Conservator” has the meaning set forth in the Recitals.

“Contract” means any legally binding written or oral agreement, contract, subcontract, lease, indenture, note, instrument, bond, option, license, sublicense, insurance policy, commitment, obligation or undertaking of any nature.

“Covered Policies” has the meaning ascribed to it in Section 2.2.

“Dispute Notice” has the meaning ascribed to it in Section 5.3.

“Earned Premium” has the meaning ascribed to it in Section 5.5.

“Employee Group” has the meaning ascribed to it in Section 7.1(a).

“Environment” has the meaning ascribed to it in Section 3.12.

“Environmental Laws” has the meaning ascribed to it in Section 3.12.

“Fronted Policy” has the meaning ascribed to it in Section 2.2.

“Governmental Authority” means any foreign, domestic, federal, territorial, state or local U.S. or non-U.S. governmental authority, quasi-governmental authority, instrumentality, court or government, self-regulatory organization, commission, tribunal or organization or any political or other subdivision, department, branch or representative of any of the foregoing.

“Hazardous Materials” has the meaning ascribed to it in Section 3.12

“Insurance Regulator” means the Governmental Authority charged with supervision of insurance companies.

“Insurer Affiliate” as to the Seller or the Purchaser, means an Affiliate of such Person that is a duly licensed, eligible or otherwise authorized insurance company.

“Intellectual Property” means all intellectual property rights arising from or associated with the following, whether protected, created or arising under Applicable Law: (a) trademarks, trade names, service marks, brand names, certification marks (registered and unregistered), domain names, trade dress and other indications of origin, the goodwill associated with the foregoing and registrations in any jurisdiction of, and applications (including intent to use applications) in any jurisdiction to register, the foregoing, including any extension, modification or renewal of any such registration or application; (b) patents, patent applications, inventions, discoveries and ideas, whether patentable or not, in any jurisdiction, and all continuations, continuations in part, divisionals, re-examinations, re-issues and similar rights relating thereto; (c) know-how, trade secrets, improvements, concepts, methods, processes, designs, plans, schematics, drawings, formulae, technical data, specifications, technology and product roadmaps, and data bases and confidential information and rights in any jurisdiction to limit the use or disclosure thereof by any Person; (d) copyrights, copyrightable works, writings and other works,

whether registered or not, in any jurisdiction, registrations or applications for registration of copyrights in any jurisdiction, and any renewals or extensions thereof; iii) domain names and any registrations therefor; (e) Computer Programs; (e) all other intellectual property or proprietary rights in any country or jurisdiction, including the right to register, patent or apply for other legal protection of same and the right to sue at law or in equity for any infringement or violation of the foregoing prior to the Closing Date, and to collect all proceeds and damages with respect thereto.

"Intellectual Property Assignment" means the Assignment of Intellectual Property and License Agreement in the form attached hereto as Exhibit \_\_\_\_.

"IT Assets" means computers, firmware, middleware, servers, workstations, routers, firewalls, hubs, data communication lines, all other information technology equipment and all associated documentation.

"Lease Assumption Agreement" means the Assignment and Assumption Agreement between the Seller and the Purchaser pursuant to which the Office Leases are assigned to and assumed by the Purchaser in the form attached hereto as Exhibit \_\_\_\_.

"Liability" or "Liabilities" means a liability, obligation, commitment, expense, claim or cause of action (of any kind or nature whatsoever, whether absolute, accrued, contingent or other, and whether known or unknown).

"Lien" shall mean any mortgage, pledge, hypothecation, assignment, lien (statutory or otherwise), preference, priority, charge or other encumbrance, charge, adverse claim (whether pending or, to the knowledge of the Person against whom the adverse claim is being asserted, threatened) or restriction of any kind affecting title or resulting in an encumbrance against property, real or personal, tangible or intangible, or a security interest of any kind, including, without limitation, any conditional sale or other title retention agreement, any right of first refusal on real property, and any filing of or agreement to give any financing statement under the Uniform Commercial Code (or equivalent statute) of any jurisdiction (other than a financing statement which is filed or given solely to protect the interest of a lessor).

"Litigation" means any action, cause of action (whether at law or in equity), arbitration, hearing, inquiry, proceeding claim or complaint by any Person alleging potential liability, wrongdoing or misdeed of another Person, or any administrative or other similar proceeding, criminal prosecution or investigation by any Governmental Authority or arbitration panel alleging potential liability, wrongdoing or misdeed of another Person.

"Majestic" has the meaning set forth in the Recitals.

"Material Adverse Effect" means a material adverse effect on (a) the assets, liabilities, operations, business, results of operations or financial condition of a Party taken as a whole or (b) the ability of a Party to timely consummate the transactions contemplated hereby.

"Net Earned Premium" has the meaning ascribed to it in Section 5.5.

"Net Loss Ratio" has the meaning ascribed to it in Section 5.5.

"Non-Assumed Liabilities" has the meaning ascribed to it in Section 2.9.

"Non-Compete Term" has the meaning ascribed to it in Section 6.7(a).

"Non-Transferred Employees" has the meaning ascribed to it in Section 8.1(b).

"Offer of Employment" has the meaning ascribed to it in Section 7.1(a).

"Office Leases" has the meaning set forth in Section 2.6(b).

"Organizational Documents" means, with respect to any entity, the certificate or articles of incorporation and by-laws of such entity, or any similar organizational documents of such entity.

"Parties" or "Party" has the meaning set forth in the first paragraph.

"Permitted Liens" mean (i) Liens securing the payment of Taxes, either not yet due and payable or the validity of which is being contested in good faith by appropriate proceedings; (ii) reservations, exceptions, encroachments, easements, rights-of-way, covenants, conditions, restrictions, leases and other title exceptions and encumbrances affecting real property which do not materially affect the property, or the intended use of the property, secured thereby; (iii) Liens of carriers, warehousemen, mechanics, materialmen, and landlords incurred in the ordinary course of business for sums not overdue or being contested in good faith by appropriate proceedings, or (iv) immaterial Liens that would not otherwise have a Material Adverse Effect.

"Person" means an individual, corporation, partnership, association, joint stock company, limited liability company, Governmental Authority, trust joint venture, labor union, estate, unincorporated organization or other entity.

"Plan" has the meaning set forth in the Recitals.

"Policy" or "Policies" means all insurance contracts, policies, certificates, binders, slips, covers or other agreements of insurance or reinsurance, including all supplements, riders and endorsements issued or written in connection therewith and extensions thereto, issued, renewed, or underwritten by or on behalf of the Seller.

"Policyholder" or "Policyholders" means the named insured(s) under the Policies.

"Producers" has the meaning set forth in Section 3.8(c).

"Profit Share Commission" has the meaning ascribed to it in Section 5.2.

"Profit Share Computation Period" has the meaning ascribed to it in Section 5.2.

"Profit Share Policies" has the meaning ascribed to it in Section 5.1.

"Purchaser" has the meaning set forth in the first paragraph.

"Rehabilitation Agreement" has the meaning set forth in the Recitals.

"Rehabilitation Order" has the meaning set forth in the Recitals.

"Reinsurance Agreement" has the meaning set forth in the Recitals.

"Reinsurer" has the meaning set forth in the Recitals.

"Release" has the meaning ascribed to it in Section 3.12

"Renewal Rights" means those rights being transferred by Seller to Purchaser pursuant to the provisions of Section 2.2.

"Representative" means, with respect to any Person, such Person's officers, directors, employees, Affiliates, agents and representatives (including any investment banker, financial advisor, accountant, actuary, appraiser, analyst, consultant, legal counsel, agent, representative or expert retained by or acting on behalf of such Person or its subsidiaries).

"Required Renewal" has the meaning ascribed to it in Section 2.2(a).

"Requisite Insurance Regulatory Approvals" has the meaning ascribed to it in Section 6.3.

"Restricted Area" has the meaning set forth in Section 6.7(b).

"Retained IT Contracts" has the meaning ascribed to it in Section 2.3(b).

"Reviewing Accountants" has the meaning ascribed to it in Section 5.3.

"SAP" means the statutory accounting practices prescribed or permitted by the California Department of Insurance.

"Seller" has the meaning set forth in the first paragraph.

"Seller Actuarial Analyses" has the meaning ascribed to it in Section 3.8(b).

"Seller Annual Statement" has the meaning ascribed to it in Section 3.8(a).

"Seller Material IP" has the meaning ascribed to it in Section 2.3(a).

"Seller Material IT Assets" has the meaning ascribed to it in Section 2.3(a).

"Seller Quarterly Statement" has the meaning ascribed to it in Section 3.8(a).

"Tax Return" means any declaration, report, estimate, extension request, information statement, withholding statement return or other filing or documents relating to, or

required to be filed in connection with, any Tax, including any schedule or attachment thereto, and including any amendment thereof.

"Taxes" means all taxes, charges, duties, fees, levies, or other similar assessments or liabilities, including all net and gross income, gross receipts, ad valorem, premium, excise, real property, personal property, windfall profit, sales, use, transfer, license, withholding, employment, payroll, profit, estimated, severance, stamp, occupation, value added, registration, environmental, workers' compensation, social security and franchise taxes imposed by the United States Internal Revenue Service or any taxing authority (whether domestic or foreign including, any state, county, local or foreign government or any subdivision or taxing agency thereof (including a United States possession)); and such term shall include any interest, fines, penalties, assessments, or additions to tax relating to, resulting from, attributable to, or incurred in connection with any such tax or any contest or dispute thereof.

"Termination Date" means July 31, 2011.

"Transfer Date" means in respect of a Transferred Employee, the date a Transferred Employee becomes an employee of the Purchaser or any of its Affiliates.

"Transferred Assets" means the Seller Material IP, the Seller Material IT, the Business Personal Property and the Books and Records.

"Transferred Employees" has the meaning ascribed to it in Section 7.1(a).

"Transfer Taxes" has the meaning ascribed to it in Section 11.2.

"U.S. GAAP" means generally accepted accounting principles in the United States.

"WARN" has the meaning ascribed to it in Section 7.6

"Workers Compensation Insurance" means primary and excess (including special excess) workers compensation and employers liability insurance providing coverage to an employer for Losses arising from injuries and occupational diseases of employees, whether arising under common law, state workers compensation and occupational disease laws or the federal Longshore and Harbor Workers' Compensation Act (33 USC Sections 901-950), including any amendments thereto.

#### 1.2. Interpretation.

(a) The parties hereto have participated jointly in the negotiation and drafting of this Agreement. Consequently, in the event that an ambiguity or question of intent or interpretation arises, this Agreement will be construed as if drafted jointly by the parties hereto, and no presumption or burden of proof will arise favoring or disfavoring any party by virtue of the authorship of any provision of this Agreement.

(b) When a reference is made in this Agreement to a section or article, such reference will be to a section or article of this Agreement unless otherwise clearly indicated to the contrary. Whenever the words “include”, “includes” or “including” are used in this Agreement they will be deemed to be followed by the words “without limitation.” The words “hereof,” “herein” and “herewith” and words of similar import will, unless otherwise stated, be construed to refer to this Agreement (including the schedules and exhibits) as a whole and not to any particular provision of this Agreement. The meaning assigned to each term used in this Agreement will be equally applicable to both the singular and the plural forms of such term, and words denoting any gender will include all genders. Where a word or phrase is defined herein, each of its other grammatical forms will have a corresponding meaning.

(c) The schedules and exhibits attached hereto are incorporated into this Agreement and will be deemed a part hereof as if set forth herein in full. In the event of any conflict between the provisions of this Agreement and any schedule or exhibit, the provisions of this Agreement will control. Capitalized terms used in the schedules have the meanings assigned to them in this Agreement. The listing of an item in one section of the schedules shall be deemed a listing in each section of the schedules, notwithstanding the lack of a specific cross-reference, and to apply to each other representation and warranty to which its relevance is reasonably apparent on its face. The section references referred to in the schedules are to sections of this Agreement, unless otherwise expressly indicated.

(d) The term “commercially reasonable efforts,” as used herein, in the Rehabilitation Agreement and in the Ancillary Agreements, is intended to take into consideration the financial condition of the Company, the finite and limited resources of the Conservator, and the nature and pricing of the transactions contemplated under the Plan, and accordingly shall not be construed to require either Party to expend additional sums of money or incur additional expenses that are either not provided for under such agreements, or that would alter the economic arrangements contemplated under and incorporated into the Plan.

## **ARTICLE II.**

### **TRANSFER OF ASSETS AND ASSUMPTION OF LIABILITIES**

#### **2.1. Consideration.**

On the Closing Date the Renewal Rights and the Transferred Assets shall be transferred to the Purchaser in consideration of the Purchaser’s assumption of the liabilities under the Reinsurance Agreement, the Assumed Contracts and the Office Leases; the employment of the Transferred Employees; the Purchaser’s agreement to share a portion of the profits associated with the Renewal Rights; the Purchaser’s agreement to provide certain administrative services under and pursuant to the Administration Agreement and the Transition Services Agreement; and the other

covenants and agreements of the Purchaser and its Affiliates pursuant to the Ancillary Agreements, all as set forth in more detail herein and in the Rehabilitation Agreement.

## 2.2. Renewal Rights.

From and after the Closing Date, the Purchaser, through any of its Insurer Affiliates, shall be entitled to and may (directly or indirectly) solicit, quote, bind, write and/or issue, or cause to be solicited, quoted, bound, written and/or issued, policies or other evidences of insurance coverage for any type or class of insurance coverage on the Purchaser's Insurer Affiliates' forms and at their respective rates: (i) to any Policyholder upon the expiration, mid-term cancellation or anniversary of such Policyholder's Policy; and (ii) any Person insured under an insurance contract that was issued by Security National Insurance Company and reinsured with Majestic pursuant to the Quota Share Reinsurance Agreement, dated April 1, 2010, between Majestic as ceding insurer and Security National Insurance Company and Wesco Insurance Company, as Reinsurers ("Fronted Policy"); and (iii) any Person represented by a Producer, or any Person represented by an agent, broker or other producer that was appointed, or otherwise retained or engaged, by the Seller or any of its Affiliates as an agent, broker or producer on or before the Closing Date (collectively, the "Covered Policies").

## 2.3. Transfer of Intellectual Property and IT Assets.

(a) On the Closing Date the Seller shall transfer or assign to the Purchaser, subject to any contractually required consents of third parties, all of the material Intellectual Property and the material IT Assets used in or necessary for the conduct of the Business on the date hereof (respectively, the "Seller Material IP" and the "Seller Material IT Assets"), all as set forth in Schedule 2.3(a) to this Agreement. The Parties shall use commercially reasonable efforts to secure any required consents, or to pursue mutually acceptable alternative arrangements in the event such consents cannot be obtained. Purchaser shall pay any transfer fees payable under software license agreements in connection with the Transferred IT, together with any other applicable fees as described in Section 11.2 hereof.

(b) Although they will not be assumed by Purchaser, Seller shall keep in force after the Closing, in accordance with the Transition Services Agreement, those IT contracts set forth in Schedule 2.3(b) (the "Retained IT Contracts") until such time as they expire or terminate pursuant to their terms or by order of the Conservation Court, or are no longer required by Purchaser, with Purchaser to reimburse Seller for any post-Closing costs associated with the Retained IT Contracts.

## 2.4. Transfer of Furniture, Fixtures, and Equipment.

On the Closing Date the Seller shall transfer or assign to the Purchaser, subject to any contractually required consents of third parties, the furniture, fixtures, equipment and other tangible personal property used in the Business that is set forth in Schedule 2.4 (the "Business Personal Property"). The Parties shall use commercially reasonable efforts to

secure any required consents, or to pursue mutually acceptable alternative arrangements in the event such consents cannot be obtained. Purchaser shall pay any transfer or assignment fees payable under any lease or other agreements concerning the Business Personal Property, together with any other applicable fees as described in Section 11.2 hereof.

2.5. Transfer of Books and Records.

On the Closing Date the Seller shall transfer to the Purchaser all of the books and records relating to the Business ("Books and Records"), subject to Seller's and the Conservator's access rights to such Books and Records pursuant to the Records Retention and Access Agreement.

2.6. Purchaser's Assumption of Contracts and Office Leases.

(a) As of the Closing Date the Seller shall assign, and the Purchaser shall assume, all of the rights and obligations under those Contracts used in the Business that are set forth in Schedule 2.5(a) (the "Assumed Contracts"); and

(b) As of the Closing Date the Seller shall assign, and the Purchaser shall assume, all of the rights and obligations under (i) that certain [describe lease] dated as of [ ] between [ ] and [ ], with respect to office of the Seller located at [insert address] and (ii) that certain [describe lease] dated as of [ ] between [ ] and [ ], with respect to office of the Seller located at [insert addresses] (the "Office Leases"). The Parties shall exercise commercially reasonable efforts to secure the consents of the landlords under the Offices Leases to such assignments. Purchaser shall pay any assignment fees payable under the Office Leases and agreements related thereto, together with any other applicable fees as described in Section 11.2 hereof.

2.7. The Closing.

The closing of the transactions contemplated by this Agreement (the "Closing") will take place at the offices of [ ], on the first Business Day following the satisfaction or waiver of all conditions to closing described in Article VIII and Article IX or at such other time and place as the parties mutually agree (the "Closing Date"), but in no event later than the Termination Date. The transactions contemplated by this Agreement shall be deemed to be effective as of 12:01 a.m. on the date thereof.

2.8. The Closing Transactions.

Upon the terms, conditions, and limitations of this Agreement, and for the consideration stated herein, on the Closing Date (i) the Seller will sell, assign and transfer to the Purchaser, and the Purchaser will accept and acquire, all of the Seller's rights, title and interest in the Renewal Rights and the Transferred Assets, and (ii) each of the Seller, the Purchaser or their applicable Affiliate will execute, as applicable, and deliver the Lease Assumption Agreements, the Reinsurance Agreement, the Administration Agreement and the other Ancillary Agreements, to which it is a party. All sales,

assignments and transfers of the Transferred Assets to the Purchaser hereunder will be evidenced by the Bill of Sale and General Assignment Agreement which will be executed and delivered on the Closing Date by the Seller.

2.9. Non-Assumption of Liabilities.

Other than the assumption of the Assumed Contracts pursuant to assumption agreements in form and substance reasonably satisfactory to the parties hereto, the assumption of the Offices Leases pursuant to the Lease Assumption Agreements and the assumption of certain Liabilities of the Seller pursuant to the Reinsurance Agreement, neither the Purchaser nor any of its Affiliates will, directly or indirectly, assume any Liability of the Seller or its Affiliates of any kind, character or description attributable to the conduct of the Business or the ownership or use of the Transferred Assets, regardless of when discovered or reported (collectively, the "Non-Assumed Liabilities"), including, but not limited to, the following Liabilities which shall remain Liabilities of the Seller and/or its Affiliates:

(a) any Liability relating to any failure or alleged failure to comply with, or any violation or alleged violation of, any Applicable Law by Seller or any of its Affiliates;

(b) any Liability relating to any breach of any contract or the commission of any tort;

(c) any Liability relating to claims against Seller other than pursuant to the Policies (and, for purposes of further clarification, any claim against Majestic made by or on behalf of a group self-insurer or group self-insured trust or related to the administration of a group self-insurer or group self-insured trust arising from the issuance by Majestic of an excess insurance contract to such group self-insurer or group self-insured trust (other than for payment in accordance with its terms and conditions), regardless of the theory of liability or the damages sought);

(d) any Liability for Taxes imposed on Seller or any Affiliate thereof, other than pursuant to the terms of the Reinsurance Agreement;

(e) any Liability arising under any Office Lease prior to or as a result of any action or omission to act prior to the Closing Date, except as set forth in the applicable Lease Assumption Agreement; and

(f) any commissions or any other compensation or remuneration due to Producers arising from Seller's operation of the Business, other than pursuant to the terms of the Reinsurance Agreement.

2.10. Closing Deliveries.

(a) On or before the Closing, the Purchaser will deliver to the Seller the following:

- (i) The Lease Assumption Agreements duly executed by the Purchaser;
  - (ii) The Reinsurance Agreement, duly executed by the Reinsurer;
  - (iii) The other Ancillary Agreements, duly executed by the Purchaser and/or each of its Affiliates parties thereto; and
  - (iv) Any deliveries contemplated by Article IX or the other provisions hereof.
- (b) At the Closing, the Seller will deliver to the Purchaser the following:
- (i) The Bill of Sale and General Assignment Agreement;
  - (ii) The Lease Assumption Agreement duly executed by the Seller and the respective landlords under the Office Leases;
  - (iii) The Reinsurance Agreement, duly executed by the Seller;
  - (iv) The other Ancillary Agreements, duly executed by the Seller and/or each of its Affiliates parties thereto;
  - (v) Any other deliveries contemplated by Article VIII or the other provisions hereof.

2.11. Tax Allocation of Consideration.

To the extent permitted or required by Applicable Law, the consideration for the Renewal Rights and the Transferred Assets will be allocated among the Renewal Rights and the Transferred Assets in accordance with Section 1060 of the Code and Treasury Regulation Section 1.1060-1T, which allocation will be prepared by the Purchaser and delivered to the Seller within ninety (90) calendar days after the Closing. The Seller and the Purchaser shall mutually agree (such agreement not to be unreasonably withheld) as to the allocation of such consideration among the Transferred Assets in accordance with Section 1060 of the Code and Temp. Treas. Reg. Section 1.1060-1 (and any successors thereto). The Seller and the Purchaser shall cooperate in the timely preparation of all the Seller's and the Purchaser's Forms 8594, Asset Acquisition Statement, under Section 1060 of the Code, reflecting the Purchaser's acquisition of the Transferred Assets. If the Seller disputes the allocation, the Purchaser and the Seller will cooperate in good faith to resolve any such dispute. Should the parties fail to reach agreement within a reasonable time after the Purchaser's delivery of such allocation to the Seller, the determination of the allocation will be made by a mutually agreeable nationally recognized accounting firm, whose decision will be in writing and will have the same binding effect upon the parties for all purposes as if such determination had been embodied in a final judgment, no longer subject to appeal, entered by a court of competent jurisdiction, and either party may petition the Conservation Court to reduce

such determination to final judgment. Should the parties fail to mutually agree upon such an accounting firm within such thirty (30) day period, the parties within fifteen (15) days after the end of such period shall each designate a nationally recognized accounting firm by written notice to the other, and those firms will appoint a nationally recognized accounting firm to determine such allocation as described above. If within such fifteen (15) day period one of the parties fails to designate an accounting firm, then the accounting firm designated by the other party shall determine such allocation as described above. The Purchaser and the Seller will each prepare and file, with respect to the transactions contemplated by this Agreement, all necessary forms or reports required or permitted to be filed under federal, state or local Tax law in accordance with such allocation. The Seller and the Purchaser each agree (i) to reflect the Transferred Assets on their respective books for Tax reporting purposes in accordance with the allocation, (ii) to prepare the Seller's pro forma Tax returns in accordance with and based upon the allocation, and (iii) not to take any position inconsistent with such allocation in any audit or judicial or administrative proceeding or otherwise, in each case unless otherwise provided by Applicable Law; provided, however, that the amount allocated by the Seller may differ due to capitalization of costs incurred in connection with the transactions contemplated by this Agreement and the Ancillary Agreements.

### **ARTICLE III.**

#### **REPRESENTATIONS AND WARRANTIES OF SELLER**

The Seller (relying solely on information provided to Seller by pre-conservation management of Majestic, and findings of fact included in the Conservation Court order approving the Plan and authorizing Seller to enter into the Agreement and the Ancillary Agreements) represents and warrants to the Purchaser that as of the date hereof, in each case except as set forth on the schedules:

##### **3.1. Non-Contravention.**

The execution and delivery of, and performance by the Seller of its obligations under this Agreement and the Ancillary Agreements shall not:

- (a) result in a breach of any order, judgment or decree of any Governmental Authority to which the Seller is a party or by which the Seller is bound; or
- (b) result in a breach of any provision of any material contract, agreement or instrument relating to the Business whether or not included in the Assumed Contracts.

##### **3.2. Compliance with Laws.**

Except as set forth on Schedule 3.2, the Business has been conducted in all material respects in accordance with Applicable Law (including Applicable Law respecting rate and form filings) and there is no investigation, inquiry, order, decree or judgment of any Governmental Authority outstanding or threatened in writing against the Seller, which could reasonably be expected to have a Material Adverse Effect.

3.3. Liens and Encumbrances on Transferred Assets.

The Seller has good and marketable title to the Transferred Assets, free and clear of all Liens other than Permitted Liens, and at the Closing the Purchaser will acquire good title thereto, free and clear of all Liens other than Permitted Liens.

3.4. Litigation.

(a) Except as listed on Schedule 3.4 or Litigation arising out of the Business in the ordinary course of business or as described in subsection (b) below, there are no Litigation proceedings pending or threatened in writing against the Seller with respect to the Business.

(b) Except as set forth in Schedule 3.4, there is no Litigation pending or threatened against the Seller by any Producers and no disputes that could reasonably be expected to result in such Litigation.

3.5. Consents and Approvals.

Except as set forth in Schedule 3.5, and except for the Rehabilitation Order, the execution, delivery and performance by the Seller of this Agreement and the Ancillary Agreements and the consummation of the transactions contemplated hereby and thereby in accordance with their terms do not require the Seller to obtain any permit or any consent, approval or action of, make any filing with, or give any notice to, any Governmental Authority or any other Person.

3.6. Tax Matters.

(a) Tax Returns and Payment of Taxes. All Tax returns required to be filed with respect to the Business or the Transferred Assets have been timely filed. Except as set forth in Schedule 3.6, all federal, state, local, foreign, estimated and other Taxes owed by the Seller with respect to the Business or the Transferred Assets have been timely paid to the proper Government Authorities. The Seller has timely collected or withheld (or there has been collected or withheld on its behalf) all Taxes required to have been collected or withheld by the Seller with respect to the Business or Transferred Assets and such collected and withheld Taxes have been timely paid to the proper Government Authorities or properly set aside in accounts for such purpose. There are no outstanding Liens for Taxes (other than Liens for Taxes which are not yet due and payable) upon the Transferred Assets.

(b) Other Tax Matters.

(i) Except as set forth in Schedule 3.6, there is no unresolved audit or other examination by any Governmental Authority of any Taxes with respect to the Business (and no such audit is pending or likely to be commenced).

(ii) Except as set forth in Schedule 3.6, there is no open claim or issue asserted or raised in writing by any Governmental Authority concerning any liability for Taxes with respect to the Business.

(c) Except as set forth in Schedule 3.6, Seller is not currently contesting the liability for such Taxes before any court, tribunal or agency, or has applied for and/or received a ruling or determination from a Tax authority regarding a past or prospective transaction relating to the Business.

3.7. Absence of Changes. Except as contemplated by this Agreement, since December 31, 2010 and through the Closing Date, Seller has not:

(a) except (i) for normal increases in compensation of employees of the Seller consistent with past practice, (ii) to satisfy contractual obligations existing on or before December 31, 2010, (iii) for employment arrangements for newly hired employees (other than officers or directors), who are at will employees and may be terminated by the Seller without payment of any severance or similar benefit, (iv) any conservation employee retention bonus program implemented by the Conservator and approved the Conservation Court, or (v) as required under any retention or employment agreement, plan or arrangement disclosed in the Schedules to Article III, (A) increased or committed to increase the compensation payable or accrued or that would become payable by the Seller or accrue with respect to any member of the Employee Group, or (B) entered into any employment contract with any member of the Employee Group;

(b) assigned, transferred, sold, licensed, leased (as lessor), or otherwise disposed of, or pledged, mortgaged, encumbered or otherwise subjected to any Lien (other than Permitted Liens), any Transferred Asset or any Renewal Right;

(c) except as may be required as a result of a change in U.S. GAAP or SAP, changed any accounting principles or practices used by it;

(d) except as may be required by applicable Law, U.S. GAAP or SAP, or in the ordinary course of business, changed any reserving principles or practices used by it; or

(e) except as required by applicable Law, any Insurance Regulator, U.S. GAAP or SAP, (A) entered into any new line of business (whether or not part of the insurance or reinsurance business), changed any policy forms, changed the pricing formula for insurance policies, changed its claims handling policies or guidelines or changed its loss reserve methodology, in each case, in any material respect; (B) paid any claim or made any individual settlement under any Covered Policy involving extra-contractual liability or ex-gratia payments; (iii) made or accepted any commutation, termination, cancellation or other conclusion of any ceded or assumed insurance or reinsurance liability that either exceeds \$50,000 or that generates a loss in excess of the reserve held against that liability or (iv) made

any material changes to its guidelines and practices in respect of the settlement of insurance or reinsurance liabilities.

3.8. Insurance Matters.

(a) Except for the specific line items identified on Schedule 3.8, each annual statutory financial statement filed by Seller with the California Department of Insurance for the years ended December 31, 2008, 2009 and 2010 (each a "Seller Annual Statement"), together with all exhibits and schedules thereto, and any actuarial opinion, affirmation or certification filed in connection therewith, and each quarterly statutory financial statement so filed for the quarterly periods ended after January 1, 2011 (each a "Seller Quarterly Statement") was prepared in conformity in all material respects with SAP applied on a consistent basis, and presents fairly, in all material respects, to the extent required by and in conformity with SAP, the statutory financial condition of the Seller at the date thereof and the results of operations, changes in capital and surplus and cash flow of the Seller for each of the periods then ended.

(b) Prior to the date hereof, the Seller has delivered or made available to the Purchaser a true and complete copy of any actuarial reports prepared for the Seller by independent actuaries for the years ended December 31, 2008, December 31, 2009, and December 31, 2010, and all attachments, addenda, supplements and modifications thereto (the "Seller Actuarial Analyses"). The information and data furnished by the Seller to its independent actuaries in connection with the preparation of the Seller Actuarial Analyses were, at the time furnished, accurate and complete in all material respects.

(c) To the knowledge of Seller's management, each of the agents, brokers, managing general agents, third party administrators, managing agents, managing general underwriters or intermediaries, whether or not appointed by the Seller, through whom or which any Policyholder has or may have secured any Covered Policy from the Seller and which are identified on Schedule 3.8(c) ("Producers"), is duly licensed or approved for the type of activity and business conducted or written, sold, produced, underwritten or administered by such Producer for the Seller. As of the date of this Agreement, no Producer has violated or is currently in violation, in each case in any material respect, of any Applicable Law applicable to the writing, sale, production, underwriting or administration of business for the Seller. Each appointed Producer was appointed by the Seller in compliance in all material respects with Applicable Law administered by any Insurance Regulator and all processes and procedures used in making inquiries with respect of such Producer were undertaken in compliance in all material respects with Applicable Law administered by any Insurance Regulator. Other than as required by Applicable Law, and other than in connection with Seller's non-renewal plan with respect to the issuance of workers compensation insurance policies in New Jersey and New York, the Seller has not terminated any of its Producers who produced insurance premiums during the year ending December 31, 2010 of U.S. \$200,000 or more or modified the terms

of any relationship, contract or agreement with any such Producer nor has any such Producer terminated, nonrenewed or modified or indicated its intention to terminate, nonrenew or materially modify its relationship, contract or agreement with the Seller.

3.9. Intellectual Property.

(a) The Seller owns, or is licensed to use (in each case, free and clear of any Liens, other than Permitted Liens) and has taken all reasonable actions to protect, all Seller Material IP, including commercially reasonable steps to maintain the confidentiality of all information related to the Seller Material IP that derives economic value from not being generally known to other Persons who can obtain economic value from its disclosure or use.

(b) The use of any Seller Material IP by the Seller and its Affiliates does not infringe on, misappropriate or otherwise violate the rights of any Person and is in accordance with any applicable license pursuant to which the Seller or any of its subsidiaries acquired the right to use such Seller Material IP.

(c) No Person is challenging or infringing on or otherwise violating any right of the Seller or any of its Affiliates with respect to any Seller Material IP.

(d) Neither the Seller nor any of its Affiliates has transferred ownership of, or granted any exclusive license with respect to any Seller Material IP that is or was at the time of transfer or license material to the Business.

(e) Except as set forth on Schedule 3.9, neither the Seller nor any Affiliate of the Seller has received any written notice of any pending or threatened claim with respect to the Seller Material IP.

3.10. Employees, Labor Matters, etc.

(a) In respect of the Employee Group, the Seller has complied in all material respects with all applicable provisions of Applicable Law pertaining to the employment or termination of employment of any Person engaged in the Business, including all such Applicable Laws relating to labor relations, equal employment, fair employment practices, entitlements, prohibited discrimination, immigration status, Tax information reporting, employment and withholding Taxes or other similar employment practices or acts; and

(b) Except as set forth on Schedule 3.10, in respect of the Employee Group, the Seller has not received any notice in writing regarding a current claim against it for (1) overtime pay, wages, salary or bonus, excluding current payroll periods, or (2) vacation time, excluding time earned in current payroll periods.

3.11. Assumed Contracts.

Except as set forth on Schedule 3.11, each Assumed Contract by which the Seller or its assets, business or operations is bound is valid and binding upon the Seller and is in full force and effect, and neither the Seller is, nor has the Seller received any written notice that any other party thereto is, in default in any material respect under any Assumed Contract.

3.12. Environmental Matters

(a) (i) The Seller is in compliance in all material respects with all Environmental Laws applicable to the real property that is subject to the Office Leases, except where the failure to be in such compliance has not had or would not reasonably be expected to have a Material Adverse Effect;

(ii) the Seller does not generate, transport, treat, store, or dispose of any Hazardous Material, except in material compliance with all applicable Environmental Laws, and there has been no material Release of any Hazardous Material by the Seller at or on any real property that is subject to the Office Leases that requires remediation by the Seller pursuant to any applicable Environmental Law; and

(iii) there are no underground storage tanks, landfills, current or former waste disposal areas, or polychlorinated biphenyls at or on any real property that is the subject of the Office Leases that require reporting, investigation, cleanup, abatement, remediation or any other type of response action by the Seller pursuant to any Environmental Law.

(b) For the purposes of this Section 3.12:

(i) "Environment" means soil, surface waters, groundwater, land, stream sediments, surface or subsurface strata and ambient air, and biota living in or on such media.

(ii) "Environmental Laws" means all Applicable Law relating to protection of the Environment, including the federal Comprehensive Environmental Response, Compensation and Liability Act, the Resource Conservation and Recovery Act, the Clean Air Act, the Clean Water Act, the Toxic Substances Control Act, the Endangered Species Act and similar federal, state and local laws as in effect on the Closing Date.

(iii) "Hazardous Material" means any pollutant, toxic substance, hazardous waste, hazardous materials or hazardous substances, as defined in, or listed under, any Environmental Law, including petroleum, petroleum-containing products, and urea.

(iv) "Release" means any disposing, discharging, injecting, spilling, leaking, pumping, pouring, dumping, emitting, escaping or emptying of a Hazardous Material into the Environment.

3.13. Policies.

(a) Schedule 3.13 sets forth a complete and correct list of the Covered Policies written or reinsured by the Seller in connection with the Business that are in force as of the Closing Date.

(b) No Person other than the Seller, Wesco Insurance Company or Security National Insurance Company has issued any insurance contracts, policies, certificates, binders, slips, covers or other agreements of insurance in connection with the Business that are in force as of the date hereof.

**ARTICLE IV.**  
**REPRESENTATIONS AND WARRANTIES OF PURCHASER**

The Purchaser represents and warrants to the Seller that as of the date hereof:

4.1. Corporate Existence and Power.

The Purchaser (i) has been duly organized, is validly existing and is in good standing under the laws of its state of incorporation or domicile, (ii) has all corporate powers required to carry on its business as now conducted, (iii) has all governmental licenses, authorizations, permits, consents and approvals required to carry on its business as now conducted, and (iv) is duly qualified to do business as a foreign corporation and is in good standing in each jurisdiction where such qualification is necessary, or is duly licensed to do business and is in good standing in each jurisdiction where such licensing is necessary to conduct its business as now conducted, except, in the case of each of clauses (ii) through (iv), as would not have a material adverse effect on the ability of the Purchaser to perform any of its obligations under this Agreement or any Ancillary Agreement.

4.2. Corporate Authority.

The execution, delivery and performance by the Purchaser of this Agreement and the Ancillary Agreements are within its powers and have been duly authorized by all necessary corporate action on the part of the Purchaser. This Agreement constitutes, and when executed and delivered the Ancillary Agreements will constitute, valid and legally binding agreements, enforceable against each party thereto in accordance with its terms.

4.3. Non-Contravention.

The execution and delivery of, and performance by the Purchaser of its obligations under this Agreement and the Ancillary Agreements, shall not:

(a) result in a breach of any provision of the Organizational Documents of the Purchaser; or

(b) result in a breach of any order, judgment or decree of any Governmental Authority to which the Purchaser is a party or by which the Purchaser is bound.

4.4. Consents and Approvals.

Except as set forth on Schedule 4.4, the execution, delivery and performance by the Purchaser of this Agreement and the Ancillary Agreements and the consummation of the transactions contemplated hereby and thereby in accordance with their terms do not require the Purchaser to obtain any permit or any consent, approval or action of, make any filing with, or give any notice to, any Governmental Authority or any other Person.

4.5. No Litigation.

There is no Litigation pending, or threatened in writing, against the Purchaser, or any of its assets, properties or affiliates, at law or in equity, that individually or in the aggregate have or may reasonably be expected to have a material adverse effect on the validity or enforceability of this Agreement or on the ability of the Purchaser to perform its obligations under this Agreement.

**ARTICLE V.**  
**PROFIT SHARE**

5.1. Profit Sharing Arrangement.

As a component of the consideration being conveyed by Purchaser to Seller for the Renewal Rights, Purchaser agrees to pay Seller a profit sharing commission with respect to those Covered Policies that are renewed on or after the Closing Date by an Affiliate of Purchaser ("Profit Share Policies") under the following terms:

5.2. Profit Share Formula.

If the cumulative Net Loss Ratio developed on all Profit Share Policies during the period beginning on the first day of the calendar month following the Closing Date and ending three years thereafter (the "Profit Share Computation Period") is less than or equal to 65%, Purchaser will pay to Seller a profit commission ("Profit Share Commission") according to the following schedule:

|               |                          |
|---------------|--------------------------|
| 64.01% - 65%: | 1% of Net Earned Premium |
| 63.01% - 64%: | 2% of Net Earned Premium |
| 63% or Less:  | 3% of Net Earned Premium |

5.3. Calculation of Profit Share Commission; Dispute Resolution.

Within sixty (60) days following the Profit Share Computation Period, the Purchaser shall prepare and deliver to the Seller in reasonable detail its calculation of the Net Loss Ratio for the Profit Share Computation Period attributable to the Profit Share Policies and the resulting Profit Share Commission, along with such backup and supporting materials as the Seller shall reasonably request. The calculations delivered by the Purchaser to the Seller shall be final and binding upon the Parties unless the Seller provides the Company with a written notice of dispute (a "Dispute Notice") with respect to the calculation not later than thirty (30) days after receipt by the Seller of such calculation and such backup and supporting materials, which notice sets forth in reasonable detail the Seller's grounds for disagreement. During the fifteen (15) day period following the receipt of a Dispute Notice, the Purchaser and the Seller shall cooperate in good faith to resolve any such dispute in order to determine the applicable Net Loss Ratio and resulting Profit Share Commission. If the Purchaser and the Seller are unable to resolve the dispute within such fifteen (15) day period, then the parties shall submit the dispute to [DZH Phillips LLP], or, if unwilling to act, a mutually acceptable independent accounting firm in San Francisco, California (the "Reviewing Accountants") for arbitration. The parties shall use commercially reasonable efforts to cause the Reviewing Accountants to resolve any such dispute within thirty (30) days of submission. The Reviewing Accountants shall determine the amounts in dispute with respect to the calculation of the Net Loss Ratio and the Profit Share Commission. The Reviewing Accountants' determination with respect to the calculation of the Net Loss Ratio and Profit Share Commission shall be final and binding on the Parties. The fees and expenses of such Reviewing Accountants shall be borne equally by the Parties.

5.4. Profit Share Commission Payment.

Within five (5) days after the final determination of the Profit Share Commission, if any, the Purchaser shall pay to the Seller or its designee by wire transfer to an account designated by the Seller in immediately available funds the amount of the final and binding Profit Share Commission.

5.5. Definitions.

The following terms when used in this Article have the following meanings:

(a) "Ceded Reinsurance Premium" means premiums attributable to all reinsurance agreements, treaties and contracts, including any renewals or extensions thereof, that provide reinsurance coverage with respect to the Profit Share Policies.

(b) "Earned Premium" means, the premium attributable to the Profit Share Policies earned during the Profit Share Computation Period, calculated in accordance with SAP.

(c) “Net Earned Premium” means Earned Premium less Ceded Reinsurance Premium earned attributable to the Profit Share Policies during the Profit Share Computation Period, calculated in accordance with SAP.

(d) “Allocated Loss Adjustment Expenses” means defense and cost containment expenses allocable to specific claims in accordance with SAP.

(e) “Net Loss Ratio” is calculated by taking the ratio of (x) over (y) where:

(x) is the numerator which shall equal, for the Profit Share Computation Period, gross losses paid less any applicable reinsurance recoveries net of reinstatement premiums plus Allocated Loss Adjustment Expenses paid plus changes in reserves for losses, Allocated Loss Adjustment Expenses and incurred but not reported losses allocated to the Profit Share Policies, calculated in accordance with SAP; and

(y) is the denominator which shall equal Net Earned Premium.

## **ARTICLE VI.**

### **COVENANTS OF PURCHASER AND SELLER**

#### **6.1. Access to Books and Records.**

The Purchaser agrees to provide the Seller and the Conservator access to the Books and Records in accordance with the terms of the Records Retention and Access Agreement.

#### **6.2. Cooperation to Effect Transfer of the Renewal Rights.**

From and after the date of entry of the Order, the Seller shall in all cases, subject to Applicable Law, make reasonably available during business hours and upon reasonable notice employees in the Employee Group reasonably requested by the Purchaser, to assist the Purchaser in retaining the Business including scheduling meetings and conference calls among the Seller, the Purchaser and Producers and sending communications (the content of which shall subject to Seller prior review and approval) to Producers, the actual out-of-pocket allocable costs of which will be borne by the Purchaser, for the purpose of encouraging Producers to enter into contractual arrangements with the Purchaser and/or the Purchaser’s Insurer Affiliates from and after the Closing Date, as reasonably requested by the Purchaser:

#### **6.3. Governmental Authority Approvals.**

From and after the date of the entry of the Order, the Seller and the Purchaser will cooperate and use commercially reasonable efforts to promptly give and make all notices and filings with and obtain all consents, approvals or waivers required to be obtained from, any Governmental Authorities, or any other Person, required in connection with the consummation of the transactions contemplated by this Agreement and the Ancillary

Agreements, including those set forth in Schedule 3.5 or Schedule 4.4. The Seller and the Purchaser will each furnish to the other such necessary information and reasonable assistance as the other may request in connection with the preparation of such filings or submissions to any Governmental Authority. The Seller and the Purchaser will each keep the other reasonably apprised of the status of matters relating to the completion of the transactions contemplated by this Agreement and the Ancillary Agreements, including promptly furnishing the other with copies of notices or other communications received by the Seller, on the one hand, and the Purchaser, on the other, as applicable, from any Governmental Authority with respect to the approval or consent required in connection with the consummation of the transactions contemplated by this Agreement and the Ancillary Agreements, or other regulatory approvals referred to herein. Notwithstanding anything to the contrary contained in this Agreement, in the case of any consent, approval or waiver of any Insurance Regulator described on Schedule 3.5 or Schedule 4.4 (the "Requisite Insurance Regulatory Approvals"), (x) the substance of any such filings and requests for consent, approval or waiver must be acceptable to the Purchaser in its sole discretion, and (y) in no event shall Purchaser or any of its Affiliates be required to agree to (1) make any debt or equity investment in or contribute additional capital to the Purchaser or any of its Affiliates, (2) make any modification of the existing capital structure of the Purchaser or any of its Affiliates, (3) abide by any restriction, term, condition or requirement that negatively impacts the ability of the Purchaser or any of its Affiliates to transact business in the ordinary course as presently conducted, (4) effect the sale, disposition, or separate holding, through the establishment of a trust, statutory deposit, or otherwise, by the Purchaser or any of its Affiliates of all or any material portion of their respective businesses, properties or assets (except to the extent that Seller's assets are already subject to such requirements as of the Closing Date), or (5) any other matter reasonably likely to materially and adversely impact the economic, tax or business benefits, taken as a whole, to the Purchaser and its Affiliates of the transactions contemplated hereby (each foregoing being herein referred to as a "Burdensome Condition").

#### 6.4. Compliance With Law.

Following the Closing, the Seller, the Purchaser and their respective Affiliates will each comply in all material respects with all Applicable Laws relating to their conduct in performing their respective obligations under this Agreement and the Ancillary Agreements.

#### 6.5. Expenses.

Except as otherwise specifically provided in this Agreement or any Ancillary Agreement, the parties to this Agreement will bear their respective expenses incurred in connection with the preparation, execution and performance of this Agreement and any Ancillary Agreement and the consummation of the transactions contemplated hereby and thereby.

6.6. Uses of Names or Marks.

Except as contemplated by this Agreement or any of the Ancillary Agreements, neither party to this Agreement shall have any right to use, nor shall any such party use, any corporate name or acronym or mark of the other party hereto or any of its Affiliates in any jurisdiction, or any other name, term or identification that suggests, simulates or is otherwise confusing due to its similarity to the foregoing.

6.7. Non-Competition; Non-Solicitation.

(a) In consideration of the benefits of this Agreement and the Ancillary Agreements to Seller and in order to induce Purchaser to enter into this Agreement, and in addition to the obligations contained in any Ancillary Agreement, Seller hereby covenants and agrees, that for a period of three (3) years after the Closing Date (the "Non-Compete Term"), Seller shall not permit Majestic or any successor in interest to Seller or Majestic, without the prior written consent of Purchaser, to engage in a Competing Business (as defined below), and shall not write or renew any of the policies of the Business for its own account (except as directed by Purchaser) in the Restricted Area (as defined below) (including by operating or managing any Competing Business) in the Restricted Area.

(b) For purposes of this Agreement, the term "Competing Business" means the marketing, issuing, administering and/or acting as an insurance producer with respect to Workers Compensation Insurance coverage utilizing any of the proprietary data respecting the Business, the Policies, the Transferred Assets, the Transferred Employees or former employees of Majestic, or in any other manner utilizing any other asset or information being conveyed or assigned to Purchaser hereunder or under the Plan. The covenants contained in Section 6.7(a) shall be construed as a series of separate covenants, one for each county or state of the United States of America (including its territories and possessions) (together, the "Restricted Area").

(c) Seller covenants and agrees that, during the first two (2) years following the Closing Date, neither it nor any successor in interest to Seller, shall, directly or indirectly, (i) solicit for employment any Transferred Employee or (ii) hire any Transferred Employee. Notwithstanding the foregoing, (A) general solicitations, including through media advertisements, job boards or employment search firms in the ordinary course of business that are not targeted at the Transferred Employees shall not violate this Section 6.7(c); and (B) it shall not be a violation of this Section 6.8(c) to (1) solicit any Transferred Employee who has not been employed by Purchaser or its Affiliates during the six (6) months prior to the solicitation not otherwise permitted hereunder or (2) hire any Transferred Employee whose employment has been terminated by Purchaser or its Affiliates.

(d) Each of the Parties specifically agrees that the covenants contained in this Section 6.7 are an integral part of the inducement of the respective parties

to enter into this Agreement and that each Party (or its successors or assigns) shall be entitled to injunctive relief in addition to all other legal and equitable rights and remedies available to it in connection with any breach by the other Party or any of its Affiliates of any provision of this Section 6.7 and that, notwithstanding the foregoing, no right, power or remedy conferred upon or reserved or exercised by a party in this Section 6.7 is intended to be exclusive of any other right, power or remedy, each and every one of which (now or hereafter existing at law, in equity, by statute or otherwise) shall be cumulative and concurrent.

(e) Notwithstanding the foregoing, Purchaser acknowledges that notwithstanding the Conservation Order and the approval and implementation of the Plan, Majestic remains a duly organized and existing state law insurance corporation, wholly owned by its shareholder, and nothing in this Section 6.7 shall be construed to prohibit the Conservator from causing Majestic to be released from conservation pursuant to Insurance Code section 1012. In the event of such a termination or discharge of the Conservation Order, the Conservator shall impose such conditions and restrictions on Majestic as may be reasonably necessary to ensure (i) that Majestic remains subject to all restrictive covenants and obligations in this Agreement and the Plan; and (ii) that neither Majestic nor its affiliates will be in possession of any proprietary information (except such information as may be necessary for Majestic to comply with tax law or other Applicable Law), or assets being transferred to Purchaser under this Agreement or the Plan.

#### 6.8. Public Announcements and Disclosure.

The Parties acknowledge that the conservation of Majestic is a public proceeding pending in the Conservation Court, and the Plan and the Conservator's motion for approval thereof requires the open disclosure of forms of this Agreement, the Rehabilitation Agreement and certain of the Ancillary Agreements. Notwithstanding the foregoing, the Conservator shall exercise commercially reasonable efforts to ensure that all proprietary information and property of Majestic that is the subject of this Agreement and the Plan will be protected from public disclosure in the Conservation Court or otherwise.

#### 6.9. Confidentiality.

Each party hereto will hold, and will use commercially reasonable efforts to cause its Affiliates, and their respective Representatives to hold, in strict confidence from any Person (other than any such Affiliates or Representatives), except with the prior written consent of the other party or unless (i) compelled to disclose by judicial or administrative process (including in connection with obtaining the necessary approvals of this Agreement and the Ancillary Agreements and the transactions contemplated hereby or thereby of Governmental Authorities) or by other requirements of Applicable Law or stock exchange regulation, or (ii) disclosed in an action or proceeding brought by a party hereto in pursuit of its rights or in the exercise of its remedies hereunder, all documents and information concerning the other party or any of its Affiliates furnished to it by the

other party or such other party's Representatives in connection with this Agreement or Ancillary Agreements or the transactions contemplated hereby or thereby, except to the extent that such documents or information can be shown to have been (a) previously known or available to (on a non-confidential basis) the party receiving such documents or information, (b) in the public domain (either prior to or after the furnishing of such documents or information hereunder) through no violation of this provision by the receiving party or (c) later acquired by the receiving party from another source if the receiving party is not aware that such source is under an obligation or duty to the party seeking to keep such documents and information confidential; provided that following the Closing the foregoing restrictions will not apply to the Purchaser's use of documents and information relating exclusively to the Renewal Rights or Transferred Assets furnished by the Seller hereunder. Purchaser agrees to assume or join in the obligations of Seller under an existing confidentiality or non-disclosure agreement applicable to the Transferred Assets or any books and records relating thereto.

6.10. Further Assurances.

The Seller and the Purchaser shall use commercially reasonable efforts to take, or cause to be taken, all actions or do, or cause to be done, all things or execute any documents necessary, proper or advisable to consummate and make effective the transactions contemplated by this Agreement and the Ancillary Agreements, subject to their respective terms; provided, however, that any such additional documents must be reasonably satisfactory to each of the parties and not impose upon either party any material liability, risk or obligation not contemplated by this Agreement and the Ancillary Agreements.

6.11. Assignment of Assumed Contracts.

From and after the date hereof, the parties shall use commercially reasonable efforts to obtain all necessary consents from third parties to effect the assumption by the Purchaser of the Assumed Contracts and the Office Leases effective as of the Closing Date. The Purchaser shall cooperate with the Seller in order to obtain any third party's consent needed to effect the assumption of the Assumed Contracts and the Office Leases. Nothing contained in this Agreement will be construed as an attempt to agree to assign any Assumed Contract or the Office Lease, which by Applicable Law or by its terms is non-assignable without the consent of any other party thereto, unless such consent shall have been given. In the event that any contract would be an Assumed Contract but for the failure to obtain the required consent of a third party, the Seller and Purchaser shall cooperate in a commercially reasonable manner which does not violate Applicable Law or the relevant contract in order to provide the benefits and burdens of such contract to Purchaser.

**ARTICLE VII.**  
**EMPLOYEE MATTERS**

7.1. Offers of Employment.

(a) On the Closing Date, the Purchaser shall extend an offer of employment (an "Offer of Employment") to those employees of the Seller involved in or supporting the Business, who are identified in Schedule 7.1 (collectively, the "Employee Group"). Each Offer of Employment by the Purchaser will be at a Base Compensation of no less than the Base Compensation such employee receives, as of the Closing Date from the Seller; provided, however, that employee titles and duties may be subject to change once such employees become employees of the Purchaser. Those members of the Employee Group who accept Offers of Employment within five (5) days of the Closing Date are referred to, as of the date of such acceptance, as "Transferred Employees." Employment of Transferred Employees with the Purchaser or an Affiliate of the Purchaser will be effective as of the Closing Date.

(b) Those employees of Seller in connection with the Business who are not Transferred Employees will be referred to as "Non-Transferred Employees."

7.2. Employee Benefits.

Effective as of the Closing Date, with respect to the periods commencing on or after the Closing Date, the Transferred Employees will be eligible to participate in all health, welfare and employee benefit plans available to Purchaser's or its Affiliates' similarly situated employees upon substantially similar terms and conditions. Purchaser shall also, for purposes of eligibility, participation, vesting and benefit accruals under Purchaser's health, welfare and employee benefit plans, provide all Transferred Employees with service credit based upon such Transferred Employees' service with Seller. No assets of any employee benefit plan maintained by the Seller will be transferred to the Purchaser or any Affiliate of the Purchaser, and any liabilities related to or arising out of such plans will remain with the Seller.

7.3. Obligations for Employees.

Except as otherwise provided in this Article VII, (a) the Seller will retain and be responsible for any compensation, benefit, bonus (including, without limitation, any retention bonus approved by the Conservation Court), incentive, severance and other employment-related obligations and liabilities relating to each Non-Transferred Employee, and (b) the Seller will retain and be responsible for any compensation, benefit, severance, bonus (including, without limitation, any retention bonus approved by the Conservation Court), incentive and other employment-related obligations and liabilities relating to each Transferred Employee in respect of any period prior to such Transferred Employee's Transfer Date. The Purchaser or an Affiliate of the Purchaser will be solely liable for all compensation and other employment-related obligations and liabilities

relating to the employment of each Transferred Employee by the Purchaser or such Affiliate arising after the Closing Date, or otherwise expressly assumed herein.

7.4. Employee Group.

In furtherance of the provisions set forth in this Article VII, the Seller will, subject to all Applicable Laws and after obtaining any express employee consents as the Conservator determines to be required or prudent to protect privacy interests, afford Purchaser the opportunity to review the most recent performance evaluation for each member of the Employee Group.

7.5. Vacation/Paid Time Off.

With respect to each member of the Employee Group who accepts an offer to become a Transferred Employee, the Parties will negotiate in good faith commercially reasonable terms for the satisfaction of any amounts of accrued but unused vacation and/or paid time off benefits (collectively, "PTO") for periods prior to the Closing Date, and will coordinate the resolution of any PTO liability in a manner consistent with this Article VII. Consistent with Section 7.3 hereof, PTO liability to any Non-Transferred Employee will remain with and be the sole liability of Seller.

7.6. WARN.

Seller shall satisfy its and its Affiliates' obligations under the Worker Adjustment and Retraining Notification Act and any comparable state law ("WARN") with respect to a layoff or plant closing relating to the Business occurring prior to the Closing Date. Purchaser shall satisfy its and its Affiliates' obligations under WARN with respect to a layoff or plant closing relating to the Business that occurs on or after the Closing Date.

7.7. Cooperation.

From time to time after the Closing, both Seller and Purchaser will provide reasonable assistance to the other, including making personnel reasonably available, at the requesting party's expense, to assist in preparing and making required filings (such as reporting packages for annual filings required that relate to the Business written in prior periods).

**ARTICLE VIII.**  
**CONDITIONS PRECEDENT TO THE OBLIGATION OF**  
**PURCHASER TO CLOSE**

The obligations of the Purchaser under this Agreement are subject to the satisfaction on or prior to the Closing Date of the following conditions, any one or more of which may be waived by the Purchaser in writing:

8.1. Representations, Warranties and Covenants.

(a) The representations and warranties of the Seller contained in this Agreement (as supplemented by the schedules hereto) shall be true and correct as of the Closing Date (except for representations and warranties expressly made as of a specified date, which need be true and correct only as of the specified date), except to the extent that the failure of such representations and warranties to be true and correct on the Closing Date has not had nor would reasonably be expected to have a Material Adverse Effect.

(b) The Seller shall have performed or complied in all material respects with all covenants and agreements contained herein required to be performed or complied with by it prior to or at the time of the Closing.

8.2. Approvals.

(a) All filings and consents with Governmental Authorities and other Persons designated on Schedules 3.5 or 4.4 as required to consummate the transactions contemplated in this Agreement and the Ancillary Agreements shall have been made and all Requisite Insurance Regulatory Approvals shall have been obtained and shall be in full force and effect and without conditions or limitations that are unacceptable to the Purchaser in the Purchaser's reasonable judgment

(b) The Conservation Court shall have entered an order approving the Plan and authorizing the performance of the transactions contemplated by this Agreement and the Ancillary Agreement and finding that such transactions are fair and reasonable to all interested parties, including policyholders and creditors of Seller. The form of the Conservation Court order shall be in a form reasonably acceptable to the Purchaser, and shall include provisions reasonably satisfactory to Purchaser giving Purchaser (i) good title to the Transferred Assets, free and clear of liens and encumbrances; (ii) adequate assurance that reinsurers of Seller and other counterparties under the Assumed Contracts will be prevented from avoiding or terminating their contractual obligations as a result of the transactions contemplated herein or in the Ancillary Agreements, and (iii) adequate protection against the assertion of claims against Purchaser or any of its Affiliates based on Non-Assumed Liabilities.

8.3. Closing Deliveries.

All of the closing deliveries of the Seller under Section 2.9(b) shall have been delivered to the Purchaser.

8.4. No Injunction.

There shall be no effective injunction, writ, preliminary restraining order or any other order of any nature issued by a Governmental Authority that prohibits or any

pending litigation that seeks to prohibit or enjoins, the consummation of the transactions contemplated in this Agreement and the Ancillary Agreements.

8.5. Material Reduction in Business.

The annualized premium volume associated with the Business shall be no lower than \$35 million as of the Closing Date. The Parties will negotiate in good faith a commercially reasonable methodology to calculate annualized premium volume, taking into account Purchaser's interest in the value inherent in the continuity of the Business.

8.6. Closing Certificates.

The Seller shall have delivered to Purchaser a certificate, dated the date of the Closing, signed on its behalf by the Conservator, certifying as to the fulfillment of the conditions specified in Section 8.1.

8.7. No Burdensome Conditions.

No Insurance Regulator, in connection with providing a Requisite Insurance Regulatory Approval, shall have imposed any Burdensome Condition.

8.8. Other Documents.

The Seller shall have delivered to the Purchaser such other documents, certificates or records as the Purchaser or its counsel may reasonably request.

8.9. Seller's Delivery of Transferred Assets.

The Seller shall have secured any and all consents and Governmental Approval necessary to deliver the Transferred Assets and all the consideration to be delivered, transferred or assigned by Seller to the Reinsurer under the Reinsurance Agreement, free and clear of any Lien or other material encumbrance.

**ARTICLE IX.**  
**CONDITIONS PRECEDENT TO THE OBLIGATION OF**  
**SELLER TO CLOSE**

The obligations of the Seller under this Agreement are subject to the satisfaction on or prior to the Closing Date of the following conditions, any one or more of which may be waived by the Seller in writing:

9.1. Representations, Warranties and Covenants.

(a) The representations and warranties of the Purchaser contained in this Agreement (as supplemented by the schedules hereto) shall be true and correct as of the Closing Date (except for representations and warranties expressly made as of a specified date, which need be true and correct only as of the specified date), except to the extent that the failure of such representations and warranties to be true and correct on the

Closing Date has not had nor would reasonably be expected to have a Material Adverse Effect.

(b) The Purchaser shall have performed or complied in all material respects with all covenants and agreements contained herein required to be performed or complied with by it prior to or at the time of the Closing.

9.2. Approvals.

(a) All filings and consents with Governmental Authorities and other Persons designated on Schedules 3.5 or 4.4 as required to consummate the transactions contemplated in this Agreement and the Ancillary Agreements shall have been made and all Requisite Insurance Regulatory Approvals shall have been obtained and shall be in full force and effect and without conditions or limitations that are unacceptable to the Seller in the Seller's reasonable judgment.

(b) The Conservation Court shall have entered an order approving the Plan and authorizing the performance of the transactions contemplated by this Agreement and the Ancillary Agreement and finding that such transactions are fair and reasonable to all interested parties, including policyholders and creditors of Seller. The form of the Conservation Court order shall be in a form reasonably acceptable to the Seller.

9.3. Closing Deliveries.

All of the closing deliveries of the Purchaser under Section 2.9(a) shall have been delivered to the Seller.

9.4. No Injunction.

There shall be no effective injunction, writ, preliminary restraining order or any other order of any nature issued by a Governmental Authority that prohibits or enjoins, the consummation of the transactions contemplated in this Agreement or the Related Agreements.

9.5. Closing Certificates.

The Purchaser shall have delivered to Seller a certificate, dated the date of the Closing, signed on its behalf by an executive officer of the Purchaser, certifying as to the fulfillment of the conditions specified in Section 9.1.

9.6. Other Documents.

The Purchaser shall have delivered to the Seller: (a) a copy of the resolution duly adopted by the board of directors of the Purchaser authorizing the execution, delivery and performance of this Agreement and the Ancillary Agreements by the Purchaser, certified by the Secretary or an Assistant Secretary of the Purchaser; (b) certificates (in form and substance reasonably satisfactory to the Seller) of the Secretary or an Assistant Secretary

of the Purchaser as to the incumbency and signatures of the officers of the Purchaser executing this Agreement and the Ancillary Agreements, and (c) such other documents, certificates or records as the Seller or their counsel may reasonably request.

9.7. Economic Viability of Rehabilitation Plan.

Following the Closing Date and the implementation of the transactions contemplated under this Agreement and the Plan (1) Majestic's remaining assets are materially less than the anticipated post-closing assets reflected in the pro forma balance sheet agreed to by the parties on March 29, 2011; and (2) the Conservator reasonably concludes that such assets will not be sufficient to meet the Conservator's obligation to pay the reasonably anticipated costs of administering the Plan in accordance with the Rehabilitation Agreement and the Rehabilitation Order, as set forth in Section 1033(a)(1) of the Insurance Code. In connection with such determination, the Conservator shall consult with Purchaser to determine whether the Parties can agree to amendments of this Agreement or the Plan that will make the Plan economically viable.

**ARTICLE X.**  
**TERMINATION PRIOR TO CLOSING**

10.1. Termination of Agreement.

This Agreement may be terminated at any time prior to the Closing as follows:

(a) by the Seller or the Purchaser, by written notice to the other party, if (i) any Governmental Authority that must grant a Requisite Insurance Regulatory Approval has denied approval of the transactions contemplated hereby; or (ii) there shall be any order, writ, injunction or decree of any Governmental Authority binding on the Seller or the Purchaser which prohibits or restrains the Seller or the Purchaser from consummating the transactions contemplated in this Agreement or the Ancillary Agreements; provided, however, that the Seller and the Purchaser, as the case may be, shall have used commercially reasonable efforts to have any such actions reversed or lifted and such actions shall not have been reversed or lifted by the Termination Date; provided further, however, that the right to terminate this Agreement under this Section 10.1(a) shall not be available to any Party whose material breach under this Agreement has been the cause of, or resulted in, such actions;

(b) by the Seller or the Purchaser, by written notice to the other party, if the Closing has not been consummated on or prior to the Termination Date; provided that the right to terminate this Agreement under this Section 10.1(b) shall not be available to any party whose material breach under this Agreement has been the cause of, or resulted in, the failure of the Closing to occur on or before the Termination Date as it may be extended;

(c) by the Purchaser, by written notice to the Seller, if a breach of any representation, warranty, covenant or agreement on the part of the Seller set forth in this Agreement shall have occurred which would cause any of the conditions

set forth in Article X not to be satisfied, and such breach is incapable of being cured or, if capable of being cured, shall not have been cured within thirty (30) calendar days following receipt by the Seller of notice of such breach from the Purchaser;

(d) by the Seller, by written notice to the Purchaser, if a breach of any representation, warranty, covenant or agreement on the part of the Purchaser set forth in this Agreement shall have occurred which would cause any of the conditions set forth in Article XI not to be satisfied, and such breach is incapable of being cured or, if capable of being cured, shall not have been cured within thirty (30) calendar days following receipt by the Purchaser of notice of such breach from the Seller;

(e) at any time prior to the Closing by mutual written consent of the Seller and the Purchaser;

(f) by the Conservator upon making a determination that deterioration in the financial condition of Majestic has rendered the Plan economically unviable under Section 9.7; or

(g) by either Party if the Closing shall not have occurred by the Termination Date.

#### 10.2. Survival Upon Termination.

If this Agreement is terminated pursuant to Section 10.1, such termination shall be without liability of any party, or any Affiliate of such party, to the other party to this Agreement, except for the liabilities, if any, of any Party with respect to the payment of expenses pursuant to Section 6.6 (Expenses), 6.9 (Public Announcements and Disclosure) and Section 6.10 (Confidentiality).

### **ARTICLE XI.** **TAX MATTERS**

#### 11.1. Cooperation.

The Seller and the Purchaser shall cooperate fully, to the extent reasonably necessary and requested by any party, in connection with the filing of Tax Returns, any Tax Claim, or any other Tax-related item contemplated by this Agreement. Such cooperation shall include the execution of any document that may be necessary or reasonably helpful, the provision of records and information that are reasonably relevant, and making employees available on a mutually convenient basis to provide additional information and explanation of any material provided hereunder.

#### 11.2. Certain Taxes and Fees.

All transfer, documentary, sales, use, stamp, registration and other such Taxes ("Transfer Taxes"), and any conveyance fees or recording charges incurred in connection

with the contemplated transactions, will be paid by the Purchaser when due. The Purchaser will, at its own expense, file all necessary Tax Returns and other documentation with respect to all such Taxes, fees and charges.

## **ARTICLE XII.**

### **MISCELLANEOUS PROVISIONS**

#### **12.1. Entire Agreement.**

This Agreement, including all Schedules and Exhibits attached hereto, constitutes the entire contract between the parties and there are no understandings other than as expressed in this Agreement, the Rehabilitation Agreement or the Ancillary Agreements. All Schedules and Exhibits attached hereto are expressly incorporated into and made a part of this Agreement as fully as though completely set forth herein in full. In the event of any conflict between the provisions of this Agreement and any Schedule or Exhibit, the provisions of this Agreement will control. Capitalized terms used in the Schedules and Exhibits shall have the meanings assigned to them in this Agreement. The section references referred to in the Schedules are to sections of this Agreement, unless otherwise expressly indicated. Any amendment or modification hereto shall be null and void unless made by amendment to this Agreement, and signed by the Parties.

#### **12.2. Assignment; Binding Effect.**

No party hereto shall transfer, delegate, subcontract, or assign any of its rights or obligations under this Agreement without first obtaining the written consent of the other parties; provided, however, that the Purchaser may assign its rights to offer, quote, solicit, issue, write and/or bind insurance coverage with respect to the Covered Policies to its Insurer Affiliates, as expressly provided herein; provided, however, that no such assignment shall relieve, in whole or in part, the Purchaser from any liabilities or obligations that it has assumed hereunder or under any of the Ancillary Agreements.

#### **12.3. No Third-Party Beneficiaries.**

Nothing in this Agreement or in any of the Ancillary Agreements is intended or shall be construed to give any Person, other than the signatory parties hereto, any legal or equitable right, remedy or claim under or in respect of this Agreement, the Ancillary Agreements or any provision contained herein.

#### **12.4. Invalidity.**

Unless the invalidity or unenforceability of any provision or portion thereof frustrates the intent of the parties or the purpose of this Agreement or the Ancillary Agreements, such invalidity or unenforceability shall not affect the validity or enforceability of the other provisions or portions thereof and where possible, the provisions of this Agreement shall be interpreted so as to sustain their legality and enforceability and for that purpose the provisions of this Agreement shall be read as if they cover only the specific situation to which they are being applied. The invalidity or unenforceability of any provision of this Agreement in a specific situation shall not affect

the validity or enforceability of that provision in other situations or of other provisions of this Agreement. In the event that such provision shall be declared unenforceable by a court of competent jurisdiction, such provision or portion thereof, to the extent declared unenforceable, shall be stricken. However, in the event any such provision or portion thereof shall be declared unenforceable due to its scope, breadth or duration, then it shall be modified to the scope, breadth or duration permitted by Applicable Law and shall continue to be fully enforceable as so modified.

12.5. Governing Law.

This Agreement shall be deemed to have been made under and governed by the laws of the State of California, without regard to conflicts or choice of law rules.

12.6. Jurisdiction.

Each of the Parties hereto irrevocably and unconditionally submits to the exclusive jurisdiction of the Conservation Court for purposes of enforcing this Agreement, the Rehabilitation Agreement and the Ancillary Agreements and resolving any dispute as to their interpretation. In any such action, suit or other proceeding, each of the parties hereto irrevocably and unconditionally waives and agrees not to assert by way of motion, as a defense or otherwise any claims that it is not subject to the jurisdiction of the above court, that such action or suit is brought in an inconvenient forum or that the venue of such action, suit or other proceeding is improper.

12.7. Counterparts.

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Agreement shall become effective when one or more counterparts have been signed by each party hereto and delivered to the other parties hereto.

12.8. Headings.

The headings in this Agreement are for the convenience of reference only and shall not affect its interpretations.

12.9. Notices.

All notices, requests, demands and other communications hereunder shall be given in writing and shall be: (a) personally delivered; (b) sent by telecopier, facsimile transmission or other electronic means of transmitting written documents; or (c) sent to the Parties at their respective addresses indicated herein by registered or certified U.S. mail, return receipt requested and postage prepaid, or by private overnight mail courier service. The respective addresses to be used for all such notices, demands or requests are as follows

(i) If to the Purchaser:

AmTrust North America, Inc.  
AmTrust Financial Services, Inc.  
59 Maiden Lane, 6th Floor  
New York, NY 10038  
Attention: Stephen Ungar, Esq.

With concurrent copies, which shall not constitute notice, to:

Locke Lord Bissell & Liddell LLP  
300 S. Grand Avenue, Suite 2600  
Los Angeles, California 90071  
Attention: Carey S. Barney, Esq.

(ii) If to the Seller:

Majestic Insurance Company in Conservation  
c/o Conservation & Liquidation Office  
425 Market Street, 23<sup>rd</sup> Floor  
San Francisco, CA 94105  
Attention: David E. Wilson, CEO and SDIC

With concurrent copies, which shall not constitute notice, to:

California Department of Insurance  
45 Fremont Street, 23<sup>rd</sup> Floor  
San Francisco, CA 94105  
Attention: Laszlo Komjathy, Jr., Esq.

and to:

Orrick, Herrington & Sutcliffe LLP  
400 Capitol Mall, Suite 300  
Sacramento, CA 95814-4407  
Attention: Thomas J. Welsh, Esq.

12.10. Waiver of Compliance.

Any waiver of any failure to comply with any obligation, covenant, agreement or condition under this Agreement must be in writing and signed by the parties, provided that the Closing of the transaction shall be conclusive evidence of the satisfaction of all conditions to Closing and the complete and satisfactory performance of all covenants the performance of which was to be delivered at or prior to the Closing. Any waiver or failure to insist upon strict compliance with any obligation, covenant, agreement or

condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.

IN WITNESS WHEREOF, this Agreement has been duly executed and delivered by the duly authorized officers of the Purchaser and the Seller as of the date first above written.

**Purchaser**

AMTRUST NORTH AMERICA, INC.

By: \_\_\_\_\_

Name: Barry D. Zyskind

Title: Chief Executive Officer,  
President and Director

**Seller**

MAJESTIC INSURANCE COMPANY IN  
CONSERVATION, acting by and through  
California Insurance Commissioner Dave  
Jones, as Statutory Conservator

By: \_\_\_\_\_

Name: David E. Wilson

Title: Special Deputy Insurance  
Commissioner, Deputy Conservator

# **Exhibit B**

**EXHIBIT B**

**LOSS PORTFOLIO TRANSFER AND  
QUOTA SHARE REINSURANCE AGREEMENT**

**BY AND BETWEEN**

**MAJESTIC INSURANCE COMPANY IN CONSERVATION  
ACTING BY AND THROUGH CALIFORNIA INSURANCE COMMISSIONER  
DAVE JONES AS STATUTORY CONSERVATOR**

**AND**

**SECURITY NATIONAL INSURANCE COMPANY**

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**LOSS PORTFOLIO TRANSFER AND  
QUOTA SHARE REINSURANCE AGREEMENT**

**THIS LOSS PORTFOLIO TRANSFER AND QUOTA SHARE REINSURANCE AGREEMENT** (this "Agreement") is entered into as of May, \_\_, 2011, by and between Majestic Insurance Company in Conservation, a California-domiciled insurance company currently in conservation in the State of California (the "Company"), acting by and through California Insurance Commissioner Dave Jones (the "Commissioner") as statutory conservator ("Conservator"), and Security National Insurance Company, a Texas-domiciled insurance company (the "Reinsurer") (each individually a "Party" and, collectively, the "Parties").<sup>1</sup>

**RECITALS:**

**WHEREAS**, the Commissioner was appointed Conservator the Company, pursuant to an order of the Superior Court for the City and County of San Francisco ("Conservation Court") entered on April \_\_, 2011 ("Conservation Order"); and

**WHEREAS**, the Conservator has, in consultation with AmTrust North America, Inc., an affiliate of the Reinsurer (the "Purchaser"), promulgated a comprehensive and integrated plan of rehabilitation for the Company (the "Plan"), as described in that certain Majestic Insurance Company Rehabilitation Agreement (the "Rehabilitation Agreement"), by and among the Conservator, on behalf of Company, the Purchaser and the Reinsurer, which Plan and Rehabilitation Agreement have been approved and authorized by the Conservation Court in its Order Approving Rehabilitation Plan entered on May \_\_, 2011 ("Rehabilitation Order"); and

**WHEREAS**, the Company and the Purchaser, in consultation with the Conservator, have entered into a Renewal Rights and Asset Purchase Agreement, of even date herewith (the "Renewal Rights Agreement") pursuant to which the Company has agreed to transfer, and the Purchaser has agreed to acquire, certain assets and liabilities associated with the Business (as defined below); and

**WHEREAS**, as contemplated by the Renewal Rights Agreement and subject to the terms and limitations more particularly set forth herein, the Company wishes to cede to the Reinsurer, and the Reinsurer wishes to reinsure, on a one-hundred percent (100%) quota share basis, all unpaid Losses arising from or relating to the Policies (as defined herein) in accordance with the terms and conditions of this Agreement; and

**WHEREAS**, the Reinsurer, in reliance on the representations made and disclosures given by the Company, the terms of the Plan and the order of the Conservation Court approving the Plan, agrees to reinsure the Company under the terms and conditions set forth in this Agreement;

**NOW, THEREFORE**, in consideration of the mutual and several promises and undertakings herein contained, and for other good and valuable consideration, the receipt and

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<sup>1</sup> May substitute Technology Insurance Company for Security National Insurance Company if TIC obtains its CA Certificate of Authority before closing.

adequacy of which are hereby acknowledged, the Parties agree as follows:

## ARTICLE 1

### DEFINITIONS

#### **Section 1.1      Defined Terms.**

The following terms shall have the respective meanings specified below throughout this Agreement.

"Administration Agreement" has the meaning set forth in Article 5.

"Affiliate" (and, with a correlative meaning, "Affiliated") means, with respect to any Person, any other Person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such first Person. As used in this definition, "control" (including, with correlative meanings, "controlled by" and "under common control with") shall mean possession, directly or indirectly, of power to direct or cause the direction of management or policies (whether through ownership of securities or partnership or other ownership interests, by contract, as trustee or executor, or otherwise).

"Agreement" has the meaning set forth in the first paragraph.

"Applicable Law" means any applicable order, law, statute, regulation, rule, pronouncement, ordinance, bulletin, writ, injunction, directive, judgment, decree, principle of common law, constitution or treaty enacted, promulgated, issued, enforced or entered by any Governmental Authority applicable to the parties hereto, or any of their respective businesses, properties or assets.

"Assumption Certificate" means the certificate evidencing the Reinsurer's assumption (as its direct obligation) of the liabilities under a Policy, in substantially the same form as set forth in Schedule 1.1 to this Agreement or such other form as shall be required by any Governmental Authority.

"Assumption Effective Date" means, with respect to each of the Novated Policies, the date that Reinsurer's assumption (as its direct obligation) of the obligations under the Novated Policy has received any and all approvals and actual or deemed consents required under Applicable Law from: (i) Governmental Authorities with jurisdiction over the Novated Policy; and (ii) the Policyholder.

"Business" shall be defined as the Company's business and operations consisting of the issuance and administration of Workers Compensation Insurance contracts, policies, certificates, binders, slips, and covers, including all supplements, riders and endorsements issued or written in connection therewith.

"Business Day" means any day other than Saturday, Sunday or a day on which banking institutions in the State of California are permitted or obligated by Applicable Law to be closed.

“Claim” and “Claims” means any and all claims, requests, demands or notices made by or on behalf of Policyholders, beneficiaries or third party claimants for the payment of Losses and any other amounts due or alleged to be due under or in connection with the Policies.

“Closing Date” means the first Business Day following the satisfaction or waiver of the latest to occur of the conditions to Closing set forth in the Renewal Rights Agreement, unless extended by mutual agreement of the Parties.

“Commissioner” has the meaning set forth in the Recitals.

“Company” has the meaning set forth in the first paragraph.

“Conservation Court” has the meaning set forth in the Recitals.

“Conservation Order” has the meaning set forth in the Recitals.

“Conservator” has the meaning set forth in the Recitals.

“Cut-Through Endorsement” means an endorsement to an In-Force Policy that gives claimants a direct claim against the Reinsurer for benefits under such In-Force Policy.

“Effective Date” means the first day of the calendar month immediately preceding the Closing Date.

“Estimated Net Portfolio Reserves” has the meaning set forth in Section 3.1(a).

“Estimated Net Unearned Premium Reserves” has the meaning set forth in Section 3.1(a).

“Estimated Other Liabilities” has the meaning set forth in Section 3.1(a).

“Extra Contractual Obligation” means any punitive, exemplary, compensatory or consequential damages, other than Loss in Excess of Policy Limits, paid or payable by the Company as a result of an action by an insured, an insured’s assignee or a third-party claimant, by reason of alleged or actual negligence, fraud or bad faith on the part of the Company in handling a Claim.

“Final Report” has the meaning set forth in Section 3.1(b).

“Governmental Authority” means any foreign, domestic, federal, territorial, state or local U.S. or non-U.S. governmental authority, quasi-governmental authority, instrumentality, court or government, self-regulatory organization, commission, tribunal or organization or any political or other subdivision, department, branch or representative of any of the foregoing.

“IBNR” has the meaning set forth in the definition of “Net Portfolio Reserves”.

“In-Force Policies” means all Policies that are in force as of the Effective Date.

“Inuring Reinsurance Contracts” means all reinsurance agreements, treaties and contracts, including any renewals or extensions thereof, including those agreements listed in

Schedule 3.3, to the extent such reinsurance agreements, treaties and contracts provide reinsurance coverage for the business reinsured hereunder.

“Lien” shall mean any mortgage, pledge, hypothecation, assignment, lien (statutory or otherwise), preference, priority, charge or other encumbrance, charge, adverse claim (whether pending or, to the knowledge of the Person against whom the adverse claim is being asserted, threatened) or restriction of any kind affecting title or resulting in an encumbrance against property, real or personal, tangible or intangible, or a security interest of any kind, including, without limitation, any conditional sale or other title retention agreement, any right of first refusal on real property, and any filing of or agreement to give any financing statement under the Uniform Commercial Code (or equivalent statute) of any jurisdiction (other than a financing statement which is filed or given solely to protect the interest of a lessor).

“Loss” or “Losses” shall mean liabilities and obligations (whether known or unknown) to make payments to Policyholders, beneficiaries and/or other third-party claimants under the Policies (including, without limitation, liabilities or assessments arising from the Company’s participation, if any, in any voluntary or involuntary pools, guaranty funds, or other types of government-sponsored or government-organized insurance funds) and all loss adjustment expenses and defense costs, including, without limitation, (i) all expenses incurred by or on behalf of the Company related to the investigation, appraisal, adjustment, litigation, defense or appeal of claims under or covered by the Policies and/or coverage actions under or covered by the Policies, (ii) Extra Contractual Obligations or Loss in Excess of Policy Limits, and (iii) court costs accrued prior to final judgment, prejudgment interest or delayed damages and interest accrued after final judgment. Notwithstanding the foregoing, “Losses” shall not include any liabilities or obligations incurred by or on behalf of the Company based on or as a result of: (x) any fraudulent and/or criminal act by the Company or any of its Affiliates or any of their respective officers or directors; (y) any instrument other than the Policies; or (z) any claim made against Majestic other than claims by or on behalf of Policyholders, insureds, beneficiaries or third-party claimants pursuant to the terms of a Policy (or Extra Contractual Obligations or Loss in Excess of Policy Limits). For the avoidance of doubt, any claim against Majestic made by or on behalf of a group self-insurer or group self-insured trust or related to the administration of a group self-insurer or group self-insured trust arising from the issuance by Majestic of an excess insurance contract to such group self-insurer or group self-insured trust (other than for payment in accordance with its terms and conditions), regardless of the theory of liability or the damages sought, including return of premium, shall not constitute a “Loss”.

“Loss in Excess of Policy Limits” means an amount that the Company would have been contractually liable to pay had it not been for the limit of the original Policy as a result of an action against it by an insured, an insured’s assignee or a third-party claimant. Such loss in excess of the limit shall have been incurred because of the failure by the Company to settle within the Policy limit, or by reason of alleged or actual negligence, fraud or bad faith in rejecting an offer of settlement or in the preparation of the defense or in trial of any action against its insured or in the preparation or prosecution of an appeal consequent upon such action.

“Majestic” has the meaning set forth in the Recitals.

“Material Adverse Effect” means a material adverse effect on (a) the assets, liabilities,

operations, business, results of operations or financial condition of a Party taken as a whole or (b) the ability of a Party to timely consummate the transactions contemplated hereby.

"Monthly Report" has the meaning set forth in Section 3.5(a).

"Net Portfolio Reserves" means an amount equal to 100 percent (100%) of the Company's actual or potential obligations for incurred but unpaid Losses as of the Effective Date, including, without limitation, billed but unpaid Losses, case and other loss reserves, reserves for Losses incurred but not yet reported, including future development on known claims ("IBNR"), and reserves for loss adjustment expenses (whether allocated or unallocated), reopened claims reserves and claims in transit, all calculated in accordance with the reserve requirements, statutory accounting rules and actuarial principles applicable to the Company, applied on a basis consistent with the Company's calculation methodology for such amounts as of December 31, 2010, but in each case net of ceded loss reserves under the Inuring Reinsurance Contracts.

"Net Unearned Premium Reserves" means the gross liability of the Company as of the Effective Date for the amount of Premium corresponding to the unexpired portion of all In-Force Policies, adjusted to exclude any amount(s) of Premiums ceded to third party reinsurers pursuant to the Inuring Reinsurance Contracts to the extent that such amount(s) has been paid directly by the Company to the third party reinsurer under the Inuring Reinsurance Contracts.

"Non-Consenting Policyholder" means any Policyholder: (i) who fails to give affirmative consent in any jurisdiction in which affirmative consent or non-objection is required for assumption reinsurance to be effective; (ii) who objects to the assumption by Reinsurer as its direct obligation of the Policy liabilities under Section 2.2 hereof; or (iii) who resides in a jurisdiction in which a Governmental Authority having jurisdiction over an Assumption Certificate and/or this Agreement fails to approve the Assumption Certificate and/or this Agreement, if required by Applicable Law.

"Novated Policy" means an In-Force Policy or a Policy that has expired but has one or more open claims, and that has been assumed by the Reinsurer as its direct obligation pursuant to the provisions of Section 2.2 hereof.

"Order" has the meaning set forth in the Recitals.

"Other Liabilities" means those statutory liabilities of the Company related to the Business that are to be assumed by the Reinsurer in addition to the Unearned Premium Reserves and Portfolio Reserves, as more specifically identified in the Preliminary Report.

"Party" or "Parties" has the meaning set forth in the first paragraph.

"Person" means an individual, corporation, partnership, association, joint stock company, limited liability company, Governmental Authority, trust joint venture, labor union, estate, unincorporated organization or other entity.

"Plan" has the meaning set forth in the Recitals.

“Policy” or “Policies” means all insurance contracts, policies, certificates, binders, slips, covers or other agreements of insurance or reinsurance, including all supplements, riders and endorsements issued or written in connection therewith and extensions thereto, issued, renewed, or underwritten by or on behalf of the Company, whether or not in force as of the Effective Date, excluding those contracts that are set forth in Exhibit A.

“Policyholder” means, with respect to each Policy, the Person identified as the named insured.

“Preliminary Report” has the meaning set forth in Section 3.1(a).

“Premium(s)” means all gross written premium(s), considerations, deposits, premium adjustments, fees and similar amounts related to the Policies, less cancellation and return premiums.

“Purchaser” has the meaning set forth in the Recitals.

“Rehabilitation Order” has the meaning set forth in the Recitals.

“Reinsurer” has the meaning set forth in the first paragraph.

“Renewal Rights Agreement” has the meaning set forth in the Recitals.

“Reviewing Actuaries” has the meaning set forth in Section 3.1(b).

“SAP” means, with respect to a Party, statutory accounting practices as prescribed or permitted by the applicable Governmental Authorities having jurisdiction over such Party.

“True-up Report” has the meaning set forth in Section 3.1(b).

“Workers Compensation Insurance” means primary and excess (including special excess) workers compensation and employers liability insurance providing coverage to an employer for Losses arising from injuries and occupational diseases of employees, whether arising under common law, state workers compensation and occupational disease laws or the federal Longshore and Harbor Workers’ Compensation Act (33 USC Sections 901-950), including any amendments thereto.

## ARTICLE 2

### BASIS OF REINSURANCE

#### **Section 2.1      Quota Share Indemnity Reinsurance of Policy Liabilities.**

(a) Subject to the limitations expressly set forth in this Agreement, from and after the Effective Date, the Company hereby cedes, and the Reinsurer hereby assumes on an indemnity reinsurance basis, one hundred percent (100%) of all unpaid Losses incurred under the Policies.

(b) For the avoidance of doubt, the intention of the parties in entering into this Agreement is to cause the reinsurance of all liabilities of the Company that fall within the provisions of California Insurance Code section 1033(a)(2), subject to the limitations expressly set forth in this Agreement.

(c) In the event the Reinsurer makes an indemnity payment on behalf of the Company directly to any policyholder, insured or third party pursuant to any Policy, such payment satisfies and extinguishes any and all obligation of the Reinsurer hereunder to indemnify the Company for such Loss, cost or expense to the extent of such payment.

**Section 2.2      Assumption and Novation of Policy Liabilities.**

(a) Subject to the terms and conditions of this Agreement, as of the Assumption Effective Date, Company hereby cedes, assigns, transfers and sells to Reinsurer, by way of assumption reinsurance, all unpaid Losses under the Novated Policies and all related rights and benefits, and Reinsurer hereby accepts and assumes, by way of assumption reinsurance, all unpaid Losses under the Novated Policies and all related rights and benefits.

(b) The reinsurance effected under this Section 2.2 shall have the effect of creating a novation with respect to the Novated Policies, and Reinsurer shall succeed to and assume all of Company's rights, privileges, title and interest in and to any defenses, offsets, counterclaims and cross-claims relating to the Novated Policy to which Company would otherwise be entitled had it continued to act as the insurer thereunder as if such Novated Policies were direct obligations of Reinsurer. It is expressly understood and agreed by the parties to this Agreement that no such rights, privileges, defenses, offsets, cross-actions or counterclaims are waived by the execution of this Agreement or the consummation of the transactions contemplated herein, and that Reinsurer shall be fully subrogated to all such rights, privileges, defenses, offsets, cross-actions and counterclaims.

(c) The Reinsurer shall bear and shall have sole and full responsibility for payment of all Losses under the Novated Policies that are due and payable on and after the Assumption Effective Date, including, but not limited to, responsibility for all administrative costs relating thereto, and shall be substituted in the place and stead of Company with respect to such Novated Policies, and each insured and claimant under a Novated Policy may disregard Company as a party thereto and treat Reinsurer as if it had been originally obligated with respect thereto, except as otherwise provided herein.

(d) Notwithstanding the foregoing, if the Reinsurer's proposed assumption of liabilities under any Policy on a novation basis would prejudice the Company's or the Reinsurers' rights under any Inuring Reinsurance Contract, that Policy will not be deemed to have been novated and will continue to be subject to the indemnity reinsurance provisions set forth in Section 2.1.

### ARTICLE 3

#### CONSIDERATION; REPORTS AND REMITTANCES

##### **Section 3.1      Transfer of Net Portfolio Reserves and Net Unearned Premium Reserves.**

(a) No later than ten (10) Business Days prior to the Closing Date, Company shall deliver to Reinsurer an accounting, the format of which was agreed in principle by the Parties on March 29, 2011 and is set forth in Exhibit \_\_\_\_ to this Agreement (the "Preliminary Report"), as of the Effective Date, of the amount of the Net Unearned Premium Reserves (the "Estimated Net Unearned Premium Reserves"), the Net Portfolio Reserves (the "Estimated Net Portfolio Reserves") and Other Liabilities ("Estimated Other Liabilities"). The Preliminary Report shall be accompanied by an attestation by or on behalf of the Company that each item appearing on the Preliminary Report was (i) based on the books and records of the Company with respect to the Policies, and (ii) prepared in good faith using the same accounting and actuarial policies, practices and methodologies used in connection with the preparation of Majestic's December 31, 2010 statutory financial statements. On the Closing Date, the Company shall transfer or assign to the Reinsurer cash and assets, unencumbered by any Lien, having a fair market value equal to (i) the Estimated Net Unearned Premium Reserves, plus (ii) the Estimated Net Portfolio Reserves, together with all accrued or realized investment income thereon from the Effective Date to the Closing Date; plus (iii) the Estimated Other Liabilities; plus (iv) Twenty-Six Million Dollars (\$26,000,000). The assets to be transferred or assigned by the Company to the Reinsurer are set forth in Schedule 3.1.

(b) Within thirty (30) days following the Closing Date, the Reinsurer shall review the Preliminary Report and deliver to the Seller a report setting forth any variances, adjustments or exceptions thereto ("True-up Report"). The True-up Report shall be prepared in accordance with the same accounting and actuarial policies, practices and methodologies used by the Company in preparing the Preliminary Report. During the fifteen (15) day period following the receipt by the Company of a True-up Report, the Company and the Reinsurer shall cooperate in good faith to resolve any dispute concerning the actual Net Unearned Premium Reserves, Net Portfolio Reserves and Other Liabilities as of the Effective Date. The Preliminary Report as adjusted or otherwise agreed upon by the Parties or as determined by the Reviewing Actuaries (as described below) shall be referred to hereinafter as the "Final Report". If the Company and the Reinsurer are unable to resolve the dispute within such fifteen (15) day period, then the parties shall submit the dispute to Milliman, or another mutually acceptable independent actuarial firm (the "Reviewing Actuaries"), for arbitration. The parties shall use commercially reasonable efforts to cause the Reviewing Actuaries to resolve any such dispute within thirty (30) days of submission. The Reviewing Actuaries shall determine the amounts in dispute (and only such amounts) with respect to the Final Report and shall determine the final Net Unearned Premium Reserves, Net Portfolio Reserves and Other Liabilities. The Reviewing Actuaries' determinations shall be final and binding on the parties. The fees and expenses of such Reviewing Actuaries shall be allocated equitably by the Reviewing Actuaries between Company and Reinsurer in accordance with the Reviewing Actuaries' judgment.

(c) If, based on the Final Report, the Company or the Reinsurer is required to make a payment to the other Party reflecting any differences between the estimated amounts set forth in the Preliminary Report and the amounts set forth in the Final Report, such payment shall be made with five (5) Business Days of the delivery of the Final Report. In the event that each of the Company and the Reinsurer is required to make a payment to the other under this Section 3.1(c), then the Party owing the larger amount shall make payment of the net amount to the Party owing the smaller amount. All payments shall bear interest from the Closing Date to the date of payment at the portfolio interest rate actually earned on the respective Party's invested assets.

**Section 3.2      Collection of Unpaid Premiums and other Amounts.**

(a) As further consideration for the liabilities assumed by the Reinsurer pursuant to this Agreement, the Reinsurer is authorized to collect all unpaid Premiums for the Policies from policyholders of the Company and producers and to retain them, except for policyholder surcharges which represent recoupment of assessments paid by the Company to Governmental Authorities prior to the Closing Date. To the extent any Premiums are collected directly by the Company, the Company shall so advise the Reinsurer and shall promptly remit them to the Reinsurer, except for such policyholder surcharges paid by the Company.

(b) The Reinsurer shall: (i) timely pay any return premium coming due under the Policies payable on or after the Effective Date; or (ii) promptly reimburse the Company for any of the foregoing amounts that are instead paid by the Company.

(c) Except as expressly set forth elsewhere in this Agreement, to the extent that the Company receives or recovers after the Closing Date any amount from any other Person (other than the Reinsurer or its Affiliates), Governmental Authority or from any insurance guaranty, insolvency, residual market plan or other similar fund maintained by any jurisdiction attributable to the Policies (including but not limited to premiums in arrears on any Policies, litigation or arbitration recoveries, salvage, subrogation, return of unearned premiums or reinsurance recoverables under any Inuring Reinsurance Contract, or recovery of any assessment, except for assessments paid by the Company prior to the Closing Date), the Company shall promptly remit such amounts to the Reinsurer and, to the extent reasonably practicable and permitted by Applicable Law and provide the Reinsurer with any pertinent information related thereto that the Company may have in its possession.

**Section 3.3      Inuring Reinsurance.**

(a) As additional consideration for the liabilities assumed by the Reinsurer pursuant to this Agreement, the parties hereby agree that all Inuring Reinsurance Contracts shall inure to the benefit of the Reinsurer and, accordingly, any recovery of funds under the Inuring Reinsurance Contracts shall be paid promptly to the Reinsurer.

(b) The Company shall not amend or change any term of any Inuring Reinsurance Contract or terminate any Inuring Reinsurance Contract without the prior written consent of the Reinsurer, which consent will not be unreasonably withheld.

(c) The Company represents and warrants to the Purchaser (relying solely on information provided to Seller by pre-conservation management of Majestic, and findings of fact

included in the Conservation Court order approving the Plan and authorizing Seller to enter into the Agreement and the Ancillary Agreements) as follows:

(i) All of the Inuring Reinsurance Contracts, under which the Company has any existing rights, duties, obligations or liabilities with respect to claims incurred during the year ended December 31, 2005 or any time thereafter are listed in Schedule 3.3;

(ii) Each Inuring Reinsurance Contract to which the Company is a party, or under which the Company has any existing rights, duties, obligations or liabilities is valid in accordance with its terms and is in full force and effect;

(iii) The Company is entitled to take full credit in its financial statements for all amounts recoverable (net of any reserve for collectability under such treaty or agreement), and the Company has no material unrecoverable reinsurance balances, other than as reserved on the Company's statutory financial statements;

(iv) Except as set forth in Schedule 3.3, none of the Inuring Reinsurance Contracts is with a reinsurer that, as of the date of this Agreement, has become insolvent or bankrupt or that has entered into any composition agreement with its creditors or any statutory or judicial proceeding of compromise with its creditors or any similar procedure, and the Company has not received any written notice to the effect that any such reinsurer under an Inuring Reinsurance Contract is impaired with the result that a material default under such Inuring Reinsurance Contract or other failure to materially comply with the terms thereof by such reinsurer would reasonably be anticipated, whether or not such material default or material non-compliance may be cured by the operation of any offset clause in such agreement; and

(v) Except as set forth in Schedule 3.3, the Company has not received any written notice from any reinsurer under an Inuring Reinsurance Contract that the reinsurer intends to exercise any right to terminate, commute or disclaim liability under such Inuring Reinsurance Contract ("Inuring Reinsurance Adverse Action Notice"), whether as a result of any of the transactions contemplated in this Agreement or any of the Ancillary Agreements, or for any other reason.

(d) The Company shall promptly advise the Reinsurer of any Inuring Reinsurance Adverse Action Notice it receives and shall allow the Reinsurer the opportunity to communicate directly with the involved reinsurer regarding the matter.

(e) So long as the Reinsurer shall advance the costs and expenses thereof, the Company shall use commercially reasonable efforts to maintain in force, and will not materially modify, any Inuring Reinsurance Contract to the extent such Inuring Reinsurance Contract was in-force as of the Effective Date so as to continue to provide reinsurance coverage for the Policies covered thereunder through scheduled date of expiration or termination of such Inuring Reinsurance.

(f) If the Reinsurer is unable to collect under any Inuring Reinsurance Contract due to any intentionally wrongful, fraudulent or criminal act or omission to the extent attributable to the Company or any of its Affiliates or any of their respective officers, directors, employees or agents acting in such respective capacities, the Reinsurer's obligations hereunder

to make a payment with respect to a Loss shall be reduced by the portion of any such Loss that would otherwise be covered by Inuring Reinsurance but for such act or omission by the Company, it being acknowledged by the Company and the Reinsurer that the Reinsurer shall be solely responsible for collecting amounts due under such Inuring Reinsurance. The Company shall, at the Reinsurer's expense, take commercially reasonable measures to act or not act and enforce its rights at the sole direction and discretion of the Reinsurer with respect to the Inuring Reinsurance Contracts

(g) Notwithstanding anything to the contrary contained herein, to the extent that any liabilities reinsured hereunder arise from an "Insured Loss" covered by the Terrorism Risk Insurance Act of 2002, as extended and amended (hereinafter referred to as "TRIA"), and the Company receives any reimbursement or other financial assistance under TRIA for such loss, then such reimbursement or other financial assistance shall inure to the benefit of the reinsurance hereunder as if it were Inuring Reinsurance, and Company shall pay over such amounts to the Reinsurer. As used in this paragraph, "Insured Loss" has the meaning given to it under TRIA.

#### **Section 3.4      Other Consideration.**

As additional consideration for the liabilities assumed by the Reinsurer pursuant to this Agreement, the Company shall transfer and assign to the Reinsurer as of the Effective Date:

(a) All collateral (including but not limited to funds withheld, letters of credit and trustee assets) held by, or pledged for the benefit of, the Company by any reinsurer under any Inuring Reinsurance Contract that is not authorized or accredited as a reinsurer in the State of California; and

(b) Any and all rights of the Company to salvage and subrogation; and

(c) All balances reflected as assets in the Preliminary Report (subject to any further adjustments reflected in the Final Report) that relate to the Business and are designated in the Preliminary Report as being transferable to the Reinsurer, including but not limited to agents balances, premiums receivable, and reinsurance receivable.

#### **Section 3.5      Ongoing Reports and Remittances.**

(a) Following the Closing Date, with respect to the business reinsured hereunder, within thirty (30) days after the close of each calendar month, the Reinsurer shall furnish the Company with a report substantially in the form attached as Exhibit C (the "Monthly Report"); provided that the first Monthly Report will include all transactions and cash flows with respect to the Policies occurring from the Effective Date through the end of the first calendar month ending after the Closing Date. Each such Monthly Report shall include reasonable detail supporting the amounts reflected therein

(b) In addition to the rights and obligations of the Parties under the Ancillary Agreements, including the Records Retention and Access Agreement, the Company and the Reinsurer shall furnish each other with such records, reports and information with respect to the Losses, Claims, Inuring Reinsurance, Unearned Premium Reserve, and the reinsurance contemplated hereby as may be reasonably required by the other Party to comply with any

internal reporting requirements or reporting requirements of any governmental authority or to prepare and complete such Party's statutory financial statements.

(c) From and after the Effective Date, the Reinsurer shall maintain as a liability on its statutory financial statements adequate reserves for all liabilities ceded under this Agreement. The Reinsurer shall provide the Company with its periodic reports filed with its insurance regulators and a copy of its audited financial statements along with the audit report thereon within fifteen (15) days of the Reinsurer's filing of such statements and reports with the insurance regulator of its jurisdiction of domicile.

## **ARTICLE 4**

### **OTHER COVENANTS AND UNDERTAKINGS**

#### **Section 4.1      Assumption Reinsurance and Assumption Certificates.**

(a) Following the Closing Date, Reinsurer shall, at its sole cost and expense, use its commercially reasonable efforts to obtain all required approvals from and make all required filings with any Governmental Authority and Policyholders in connection with the assumption reinsurance transactions contemplated by this Agreement with respect to In-Force Policies and Policies which have expired but have or give rise to one or more open claims. Company shall use its commercially reasonable efforts to provide Reinsurer with such assistance and information as may reasonably be required in connection with securing such approvals and consents.

(b) Subject to receipt of any form filing or other approval required by any Governmental Authority having jurisdiction over each Assumption Certificate and/or the assumption reinsurance transaction contemplated by this Agreement, Reinsurer shall, at its sole cost and expense, provide each Novated Policy Policyholder with an Assumption Certificate and other assumption-related information required by Applicable Law or as may reasonably be required by either party hereto as soon as reasonably possible after the Closing Date. Such Assumption Certificates and other-assumption-related information shall be sent by the Reinsurer by first class mail and at its own expense.

(c) The liabilities under a Policy of a Non-Consenting Policyholder or a Policy that for whatever other reason has not been assumed by Reinsurer as its direct obligation in accordance with Section 2.2 shall continue to be reinsured as indemnity reinsurance in accordance with the terms of Section 2.1 until all liabilities arising under such Policy shall have been finally and fully extinguished.

#### **Section 4.2      Reinsurer Contract Approvals; Replacement of In-Force Policies.**

As soon as practicable after Closing Date, Reinsurer shall use its commercially reasonable efforts to:

(a) obtain any approvals from Governmental Authorities necessary for Reinsurer to directly issue insurance contracts substantially similar to the In-Force Policies, and to enable the Company to issue Cut-Through Endorsements with respect to all In-Force Policies; and

(b) provide Cut-Through Endorsements for the Company to issue with respect to all In-Force Policies.

Company shall fully cooperate with such efforts by the Reinsurer, at Reinsurer's cost and expense.

**Section 4.3      Communications with Policyholders, Claimants and Governmental Authorities.**

All communications with Policyholders, claimants or Governmental Authorities by either Company or Reinsurer regarding the reinsurance transactions contemplated by this Agreement shall be in such form as shall be mutually agreed upon by the parties, except for communications: (i) with Policyholders or claimants required to service the Policies in the ordinary course of business; (ii) with Governmental Authorities, where the party obligated to make such communication reasonably concludes that Applicable Law requires such communication to be made in a particular form; or (iii) indirectly to Policyholders or claimants through press releases or other public notices that may be issued from time to time by the Commissioner regarding Company or the Rehabilitation Plan. Company and Reinsurer agree to cooperate fully and promptly regarding the form of communications with Policyholders, claimants or Governmental Authorities by either Company or Reinsurer regarding the reinsurance transactions contemplated by this Agreement.

**Section 4.4      Salvage and Subrogation.**

The Company empowers and authorizes the Reinsurer to enforce its right to salvage and/or subrogation and other rights to indemnity, contribution or other recovery rights with respect to Losses reinsured under this Agreement, and to retain all amounts so recovered. The Company shall cooperate with the Reinsurer in this regard and shall provide any written documentation if reasonably necessary to any third party to support the Reinsurer's authority to pursue any recovery.

**ARTICLE 5**

**CLAIMS AND OTHER ADMINISTRATION**

The Reinsurer shall administer all matters related to the Policies pursuant to the terms and conditions of a Reinsurance Administrative Services Agreement between the Parties as of even date herewith (the "Administration Agreement"). Regardless of whether the Reinsurer has issued a Cut-Through Endorsement with respect to a Policy or has effected a novation of a Policy, at all times other than upon or after the entry of a judicial finding of insolvency of the Reinsurer, the Parties hereto agree and acknowledge that all claim payments to be made by the Reinsurer with respect to Losses covered hereunder shall be made directly to the claimant and shall not be payable to the Company or its liquidator, receiver, conservator or statutory

successor. Notwithstanding any other provision to the contrary, Reinsurer acknowledges that (i) in no event shall the Company have any liability to the Reinsurer hereunder for any default of its obligations under this Agreement caused by the failure of the Reinsurer to perform its obligations under the Administration Agreement; and (ii) in no event shall the failure of the Reinsurer or its Affiliates to perform its or their obligations under the Administration Agreement give the Reinsurer any grounds for not performing its obligations under this Agreement.

## **ARTICLE 6**

### **LIMITATION OF LIABILITY FOR NON-WORKERS COMPENSATION LOSSES**

Notwithstanding anything to the contrary contained herein, the aggregate limit of the Reinsurer's liability for any and all Losses arising from all Policies other than Workers Compensation Insurance contracts is One Million Dollars (\$1,000,000).

## **ARTICLE 7**

### **DUTY OF COOPERATION; OFFSET**

#### **Section 7.1      Cooperation.**

Each Party hereto shall cooperate fully with the other in all reasonable respects in order to accomplish the objectives of this Agreement.

#### **Section 7.2      Offset**

Notwithstanding anything contained herein to the contrary, the Reinsurer and the Company agree that any amounts payable hereunder by the Reinsurer to the Company, whether or not delinquent, may be offset to the extent permitted by law against any amounts payable by the Company to the Reinsurer, whether or not delinquent.

## **ARTICLE 8**

### **DISPUTE RESOLUTION**

Any dispute arising out of this Agreement shall be subject to the continuing jurisdiction of the Conservation Court, which shall be the exclusive forum in which all such disputes shall be resolved.

## **ARTICLE 9**

### **INSOLVENCY**

In the event of the insolvency of the Company, this reinsurance shall be payable directly to the Company or its liquidator, receiver, conservator or statutory successor on the basis of the amount of the claims allowed in the insolvency proceeding without diminution because of the insolvency of the Company or because the liquidator, receiver, conservator or statutory successor of the Company has failed or is unable to pay all or a portion of a claim, except where (a) this

Agreement specifically provides another payee of such reinsurance in the event of the Company's insolvency, provided that this exception shall only apply to the extent that the reinsurance proceeds due such payee are actually paid by the Reinsurer, or (b) the Reinsurer, with the consent of the direct insured or insureds, has assumed such policy obligations of the Company as direct obligations of the Reinsurer to the payees under such policies and in full and complete substitution for the obligations of the Company to such payees. It is agreed, however, that the liquidator, receiver, conservator or statutory successor shall give written notice to the Reinsurer of the pendency of a claim against the Company indicating the Policy which involves a possible liability on the part of the Reinsurer within reasonable time after such claim is filed in the conservation or liquidation proceeding or in the receivership and that, during the pendency of such claim, the Reinsurer shall undertake the claim as a direct liability, shall investigate such claim and interpose, at its own expense, in the proceeding where such claim is to be adjudicated, any defense or defenses that it may deem available to the Company or its liquidator, receiver, conservator or statutory successor.

## **ARTICLE 10**

### **REGULATORY APPROVALS**

The Company and the Reinsurer shall submit all necessary registrations, filings and notices with, and obtain all necessary consents, approvals, qualifications and waivers from the any Governmental Authority and other parties which may be required under Applicable Law as a result of the transactions contemplated by this Agreement.

## **ARTICLE 11**

### **DURATION**

This Agreement shall not be subject to termination by any Party except (i) by written agreement between Reinsurer and the Company on the date indicated by such agreement, after receipt of any required approval from the Conservation Court, the California Department of Insurance or other Governmental Authorities, (ii) upon the expiration of all liability under the Policies and the complete performance by Reinsurer and the Company of all obligations and duties arising under this Agreement; or (iii) by order of the Conservation Court following the entry of an order by a court of competent jurisdiction declaring and finding Reinsurer to be insolvent, which order has the legal effect of precluding any claimant from obtaining coverage from an insurance guaranty association, in which event this Agreement shall be deemed to be terminated as to any such claimant. For the avoidance of doubt, provision (iii) above is intended to ensure that no claimant protected under a Policy reinsured hereunder is denied the protection of insurance guaranty fund coverage by virtue of the fact that Company's claim liabilities have been reinsured pursuant to the Plan.

## **ARTICLE 12**

### **FOLLOW THE FORTUNES**

The Reinsurer's liability shall attach simultaneously with that of the Company and shall be subject in all respects to the same risks, original terms and conditions, interpretations, waivers to which the Company is subject under the Policies, the true intent of this Agreement being that the Reinsurer shall, in every case to which this Agreement applies, follow the fortunes and follow the settlements of the Company. However, in no event shall the Reinsurer be liable for any claim asserted against the Company based on any instrument other than the Policies, or on any theory of liability other than contractual liability arising directly under the terms of the Policies (including, without limitation, any claim related to the propriety of the issuance of excess insurance contracts to self-insured groups administered by Affiliates of the Company).

## **ARTICLE 13**

### **ERRORS AND OMISSIONS; COOPERATION; REGULATORY MATTERS**

#### **Section 13.1 Errors and Omissions.**

Inadvertent delays, errors or omissions made in connection with this Agreement or any transaction hereunder will not relieve either Party from any liability that would have attached had such delay, error or omission not occurred, provided that such delay, error or omission is rectified as soon as possible after discovery.

#### **Section 13.2 Cooperation.**

Each Party shall cooperate fully with the other in all reasonable respects in order to accomplish the objectives of this Agreement.

#### **Section 13.3 Regulatory Matters.**

If a Party receives notice of, or otherwise becomes aware of, any regulatory inquiry, investigation or proceeding relating to the Policies, to the extent permitted by Applicable Law, such Party shall promptly notify the other Party thereof, whereupon the Parties shall cooperate in good faith and use their respective commercially reasonable efforts to resolve such matter.

## ARTICLE 14

### MISCELLANEOUS

**Section 14.1 Notices.** All notices, requests, demands and other communications hereunder shall be given in writing and shall be: (a) personally delivered; (b) sent by telecopier, facsimile transmission or other electronic means of transmitting written documents; or (c) sent to the Parties at their respective addresses indicated herein by registered or certified U.S. mail, return receipt requested and postage prepaid, or by private overnight mail courier service. The respective addresses to be used for all such notices, demands or requests are as follows:

(a) If to the Company, to:

Majestic Insurance Company in Conservation  
c/o Conservation & Liquidation Office  
425 Market Street, 23<sup>rd</sup> Floor  
San Francisco, CA 94105  
Attention: David E. Wilson, CEO and SDIC

with a copy to:

California Department of Insurance  
45 Fremont Street, 23<sup>rd</sup> Floor  
San Francisco, CA 94105  
Attention: Laszlo Komjathy, Jr., Esq.

and to:

Orrick, Herrington & Sutcliffe LLP  
400 Capitol Mall, Suite 300  
Sacramento, CA 95814-4407  
Attention: Thomas J. Welsh, Esq.

or to such other person or address as the Company shall furnish to the Reinsurer in writing.

(b) If to the Reinsurer, to:

Security National Insurance Company  
59 Maiden Lane, 6th Floor  
New York, NY 10038  
Attention: Stephen Ungar, Esq.

with a copy to:

Locke Lord Bissell & Liddell LLP  
300 S. Grand Avenue, Suite 2600  
Los Angeles, California 90071  
Attention: Carey S. Barney, Esq.

or to such other person or address as the Reinsurer shall furnish to the Company in writing.

If personally delivered, such communication shall be deemed delivered upon actual receipt; if electronically transmitted pursuant to this paragraph, such communication shall be deemed delivered the next business day after transmission (and sender shall bear the burden of proof of delivery); if sent by overnight courier pursuant to this paragraph, such communication shall be deemed delivered upon receipt; and if sent by U.S. mail pursuant to this paragraph, such communication shall be deemed delivered as of the date of delivery indicated on the receipt issued by the relevant postal service, or, if the addressee fails or refuses to accept delivery, as of the date of such failure or refusal. Any Party to this Agreement may change its address for the purposes of this Agreement by giving notice thereof in accordance with this Section.

**Section 14.2 Assignment; Parties in Interest.**

(a) Assignment. Except as expressly provided herein, the rights and obligations of a Party hereunder may not be assigned, transferred or encumbered without the prior written consent of the other Party.

(b) Parties in Interest. This Agreement shall be binding upon, inure to the benefit of, and be enforceable by the Parties and their respective successors and permitted assigns. Nothing contained herein shall be deemed to confer upon any other Person any right or remedy under or by reason of this Agreement.

**Section 14.3 Waivers and Amendments; Preservation of Remedies.** This Agreement may be amended, superseded, canceled, renewed or extended, and the terms hereof may be waived, only by a written instrument signed by each of the Parties or, in the case of a waiver, by the Party waiving compliance. No delay on the part of any Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any waiver on the part of any Party of any right, power, remedy or privilege, nor any single or partial exercise of any such right, power, remedy or privilege, preclude any further exercise thereof or the exercise of any other such right, remedy, power or privilege. The rights and remedies herein provided are cumulative and are not exclusive of any rights or remedies that any Party may otherwise have under Applicable Law or in equity.

**Section 14.4 Governing Law**

This Agreement shall be construed and interpreted according to the internal laws of the

State of California excluding any choice of law rules that may direct the application of the laws of another jurisdiction.

**Section 14.5 Confidential Information.**

The provisions of Section 8 (Confidential Information) of the Administration Agreement are incorporated by reference herein *mutatis mutandis*.

**Section 14.6 Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

**Section 14.7 Entire Agreement; Merger.** This Agreement and any exhibits, schedules and appendices attached hereto and thereto together constitute the final written integrated expression of all of the agreements among the Parties with respect to the subject matter hereof and is a complete and exclusive statement of those terms, and supersede all prior or contemporaneous, written or oral, memoranda, arrangements, contracts and understandings between the Parties relating to the subject matter hereof. Any representations, promises, warranties or statements made by any Party which differ in any way from the terms of this Agreement or any applicable provisions contained in the Rehabilitation Agreement, the Renewal Rights Agreement or the Administration Agreement shall be given no force or effect. The Parties specifically represent, each to the other, that there are no additional or supplemental agreements or contracts between or among them related in any way to the matters herein contained unless specifically included or referred to in this Agreement. No addition to or modification of any provision of this Agreement shall be binding upon either Party unless embodied in a dated written instrument signed by both Parties.

**Section 14.8 Exhibits and Schedules.** All exhibits, schedules and appendices are hereby incorporated by reference into this Agreement as if they were set forth at length in the text of this Agreement.

**Section 14.9 Headings.** The headings in this Agreement are inserted for convenience only and shall not constitute a part hereof.

**Section 14.10 Severability.** Any term or provision of this Agreement which is invalid or unenforceable in any jurisdiction shall, as to that jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Agreement or affecting the validity or enforceability of any of the terms or provisions of this Agreement in any other jurisdiction; provided that the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to either Party; provided further that if the economic or legal substance is so affected, the Parties shall negotiate in good faith in an effort to agree upon a suitable and equitable substitute provision to effect the original intent of the Parties. If any provision of this Agreement is so broad as to be unenforceable, that provision will be interpreted to be only so broad as is enforceable.

**Section 14.11 Expenses.** Regardless of whether or not the transactions contemplated in this Agreement are consummated, each of the Parties shall bear its own expenses and the expenses of its counsel and other agents in connection with the transactions contemplated hereby.

**Section 14.12 Currency.** The currency of this Agreement and all transactions under this Agreement shall be in United States Dollars.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the day and year first written above to be effective as of the Effective Date.

MAJESTIC INSURANCE COMPANY IN  
CONSERVATION, acting by and through  
California Insurance Commissioner Dave  
Jones, as Statutory Conservator

By \_\_\_\_\_  
David E. Wilson  
Title Special Deputy Insurance Commissioner

SECURITY NATIONAL INSURANCE  
COMPANY

By \_\_\_\_\_  
Title \_\_\_\_\_

# Exhibit C

**EXHIBIT C**

**REINSURANCE ADMINISTRATIVE SERVICES AGREEMENT**

**BY AND AMONG**

**MAJESTIC INSURANCE COMPANY IN CONSERVATION,**

**and**

**AMTRUST NORTH AMERICA, INC.**

**DATED AS OF \_\_\_\_\_, 2011**

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## REINSURANCE ADMINISTRATIVE SERVICES AGREEMENT

This **REINSURANCE ADMINISTRATIVE SERVICES AGREEMENT** (this "Agreement"), dated as of \_\_\_\_\_, 2011, is entered into by and among Majestic Insurance Company in Conservation, a California-domiciled insurance company currently in conservation in the State of California (the "Company"), acting by and through California Insurance Commissioner Dave Jones (the "Commissioner") as conservator ("Conservator"), and AmTrust North America, Inc., a Delaware corporation (the "Administrator") (each individually a "Party" and, collectively, the "Parties").

### RECITALS:

**WHEREAS**, the Commissioner was appointed Conservator of the Company pursuant to an order of the Superior Court for the City and County of San Francisco ("Conservation Court"), entered on April \_\_, 2011 ("Conservation Order"); and

**WHEREAS**, Company is engaged in the business of the issuing and administering primary and excess workers compensation insurance contracts, policies, certificates, binders, slips, and covers, including all supplements, riders and endorsements issued or written in connection therewith (the "Business"); and

**WHEREAS**, the Conservator has, in consultation with the Administrator, promulgated a comprehensive and integrated plan of rehabilitation for the Company (the "Plan"), as described in that certain Majestic Insurance Company Rehabilitation Agreement, by and among the Conservator, on behalf of Company, and Administrator (the "Rehabilitation Agreement"), which Plan and Rehabilitation Agreement have been approved and authorized by the Conservation Court in its Order Approving Rehabilitation Plan entered on May \_\_, 2011 ("Rehabilitation Order"); and

**WHEREAS**, Company and Administrator, in consultation with the Conservator, have entered into that certain Renewal Rights and Asset Purchase Agreement, of even date with this Agreement (the "Renewal Rights Agreement") pursuant to which the Company has agreed to transfer, and the Purchaser has agreed to acquire, certain assets and liabilities associated with the Business, and Purchaser has agreed to hire certain employees of the Company involved in administering the Business; and

**WHEREAS**, as contemplated by the Plan, Technology Insurance Company, an Affiliate of the Administrator (the "Reinsurer"), are contemporaneously entering into a Loss Portfolio Transfer and Quota Share Reinsurance Agreement (the "Reinsurance Agreement"), under which Company, as the ceding company, has ceded and transferred to the Reinsurer liabilities and obligations arising under the Policies; and

**WHEREAS**, Company desires to retain Administrator to provide certain administrative services relating to the Policies and to make any payments due to the insureds or claimants under the Policies;

**NOW, THEREFORE**, in consideration of the provisions and representations made herein, and other good and valuable consideration, the receipt and adequacy of which is acknowledged, the Parties agree as follows:

**Section 1. Definitions.**

For purposes of this Agreement, all capitalized terms not otherwise defined herein have the meanings ascribed to them in the Reinsurance Agreement. The following terms have the meanings specified or referred to in this Section 1:

“Administrator” has the meaning given in the first paragraph.

“Agreement” has the meaning given in the first paragraph.

“Company” has the meaning given in the first paragraph.

“Books and Records” means all records and all other data and other information (in whatever form maintained) in the possession or control of, and available to, either Party and its Affiliates (including computer generated, recorded or stored records) relating primarily to the Policies, including customer lists, policy information, insurance policy forms, rate filing information, rating plans, claim records, sales records, other files and records relating to regulatory matters, reinsurance records, underwriting records, records related to producers, financial and accounting records (but excluding any Tax returns, Tax records and all other work papers, data and information with respect to Taxes).

“Company” has the meaning given in the first paragraph.

“Confidential Information” has the meaning given in Section 8(b).

“Force Majeure Event” has the meaning given in Section 9(a).

“License” means any license, permit, order, approval, registration, membership, authorization or qualification under any Applicable Law or with any Governmental Authority or under any industry or non-governmental self-regulatory organization but the term “License,” for purposes of this Agreement, does not include licenses of Intellectual Property Rights or Software.

“Party” or “Parties” has the meaning set forth in the first paragraph.

“Plan” has the meaning set forth in the Recitals.

“Policy” or “Policies” means all insurance contracts, policies, certificates, binders, slips, covers or other agreements of insurance or reinsurance, including all supplements, riders and endorsements issued or written in connection therewith and extensions thereto, issued, renewed, or underwritten by or on behalf of the Company, provided, however, that it shall not include any Novated Policies.

“Policyholder” means, with respect to each Policy, the Person identified as the named insured.

“Rehabilitation Agreement” has the meaning given in the Recitals.

“Reinsurance Agreement” has the meaning given in the Recitals.

“Related Agreement” means the Renewal Rights Agreement and each of the agreements the forms of which are attached as Exhibits \_\_\_ through \_\_\_ of the Renewal Rights Agreement.

“Services” has the meaning given in Section 3(a).

“Software” means any applications, operating systems, tools, utility programs, communications software, computer software languages, interfaces and any other computer programs (i.e., any set of statements or instructions, whether or not in a machine readable medium, to be used directly or indirectly in a computer in order to bring about a certain task or result), and documentation and supporting materials relating thereto, in whatever form or media, together with all corrections, improvements, modifications, updates, updates and new releases thereof.

“Term” has the meaning given in Section 10.

**Section 2. Appointment; Designation of Agreement Managers.**

- (a) **Appointment and Acceptance.** For the Term of this Agreement, the Company appoints the Administrator as its administrator to perform (or cause to be performed) in accordance with the terms hereof for and on behalf of Company, the Services. Administrator hereby accepts such appointment and shall perform such Services in accordance with the terms set forth herein. The Administrator shall use its commercially reasonable efforts to provide the Services in a manner that minimizes the involvement of personnel of Company with respect to the administration of the Policies.
- (b) **Independent Contractor.** Administrator shall perform its obligations under this Agreement as an independent contractor of Company. Nothing herein will be deemed to constitute Administrator and Company as partners, joint venturers, or principal and agent. Administrator has no authority to represent Company as to any matters, except as expressly authorized in this Agreement or in any of the Related Agreements. Company shall have no liability for the acts or omissions of Administrator personnel or permitted subcontractors.

**Section 3. Services.**

- (a) **Services.** During the Term (as defined in Section 10) of this Agreement, Administrator shall provide or cause the provision of the Services. “Services” means: (i) all services currently performed by Company and its Affiliates with respect to the administration of the Policies and all services required to be provided currently or in the future under Applicable Law or the Policies,

including the services set forth on Exhibit A attached hereto; and (ii) all services, functions and responsibilities not specifically described in subsection (i) but which are inherent in or required for the proper performance and provision of the services described in subsection (i). The Administrator shall not be liable for any failure to provide any Service due to the Company's failure to (i) deliver any Books and Records, or other books and records related to the Services, to the Administrator within a reasonable period of time after the Administrator's request for such Books and Records or other books and records when such Books and Records are required to provide such Service, (ii) provide the Administrator access to its systems to the extent reasonably necessary for the Administrator to perform its responsibilities under this Agreement (and on a jointly established schedule) or (iii) perform its obligations under the Reinsurance Agreement or this Agreement where such failure to perform makes the provision of such Service impracticable.

- (b) **Resources.** Except as otherwise expressly provided in this Agreement, Administrator shall provide all of the facilities, personnel, equipment, Software, services and other resources necessary to provide the Services.
- (c) **Subcontracting.** Administrator may delegate or subcontract any of its obligations under this Agreement to any third party so long as Administrator provides notice of such delegation or subcontract to Company prior to commencement of performance by such third party; provided that Administrator shall use the same degree of care in selecting any such subcontractor as it would if such subcontractor was being retained to provide similar services directly to the Administrator. Administrator shall remain fully responsible for the performance of Services by each subcontractor, for each subcontractor's compliance with the terms of this Agreement, and for the acts and omissions of such subcontractor and subcontractor's employees or agents. Administrator shall be responsible for all payments to its subcontractor.
- (d) **Authorization.** The Company hereby authorizes the Administrator on its behalf to (i) endorse for payment all checks, drafts and money orders payable to the Company as payment of premiums or other amounts payable to or chargeable by the Company with respect to the Policies and (ii) to draft or debit accounts of any insured under a Policy (who or which has given the Company such right and privilege) for premiums or other amounts payable with respect to the Policies and to remit each of such amounts in (i) and (ii) to the Administrator for deposit into an account in Company's name. The Company hereby delegates to the Administrator all of its rights and privileges to draft or debit the accounts of any Policyholders for premiums or other amounts due under the Policies pursuant to existing pre-authorized bank draft or electronic fund transfer arrangements between the Company and such Policyholders.
- (e) In order to assist and to more fully evidence the authority granted pursuant to Section 2(a), subject to the limits and restrictions set forth in other provisions of this Agreement, the Company hereby nominates, constitutes and appoints the

Administrator as its attorney-in-fact with a limited power of attorney to act in the Company's name with respect to the following matters: (i) to do any and all lawful acts with respect to the Policies or Inuring Reinsurance Contracts that the Company could do under the Policies or Inuring Reinsurance Contracts; and (ii) to proceed by all lawful means (A) to perform any and all obligations of the Company under the Policies or the Inuring Reinsurance Contracts, (B) to enforce any right, defend against any liability and pay any amounts arising under the Policies or the Inuring Reinsurance Contracts, (C) to sue or defend (in the name of the Company, when necessary) any action arising under the Policies or Inuring Reinsurance Contracts, (D) to collect any and all sums due or payable to the Company under the Inuring Reinsurance Contracts or Policies, including through any automatic charge authorizations of persons who own or hold Policies, and (E) to sign (in the name of the Company, when necessary) vouchers, receipts, releases and other papers in connection with any of the foregoing matters. All Services shall be performed by the Administrator in the name of and on behalf of the Company. Any and all correspondence with Policyholders or other documents signed by the Administrator on behalf of the Company shall disclose that the Administrator is acting as administrative agent of the Company. The Company shall promptly following the Closing Date terminate any power of attorney provided to any other Persons or their designees relating to the Policies.

**Section 4. Service Standards.** Administrator shall perform the Services in a diligent, professional and workmanlike manner using an appropriate number of properly trained and qualified individuals and in conformance with applicable industry standards. The nature, quality, standard of care and the service levels at which the Services are performed shall be materially consistent with the nature, quality, standard of care and service levels at which the functioning equivalent services were performed by or on behalf of the Company and its Affiliates during the one (1)-year period ending immediately prior to the date hereof. Administrator shall correct any errors in the Services caused by it within a reasonable time (not to exceed thirty (30) days) after receiving written notice thereof from the Company or otherwise.

**Section 5. Compliance With Applicable Laws and Policies; Cooperation.**

- (a) Administrator, and all subcontractors to whom Administrator has delegated any of its duties hereunder, shall perform all Services hereunder in compliance with all Applicable Law and with the Policies and shall maintain all Licenses required for the performance of the Services.
- (b) Each Party shall cooperate fully with the other in all reasonable respects in order to accomplish the objectives of this Agreement.
- (c) If a Party receives notice of, or otherwise becomes aware of, any regulatory inquiry, investigation or proceeding relating to the Policies, to the extent permitted by Applicable Law, such Party shall promptly notify the other Party thereof, whereupon the Parties shall cooperate in good faith and use their respective commercially reasonable efforts to resolve such matter, and the Administrator shall have the right to direct the handling of such inquiry,

investigation or proceeding and the Company shall cooperate in resolving the manner as directed by the Administrator. The Administrator shall prepare and send responses to any regulatory inquiry to the applicable Governmental Authority, with a copy to the Company, in the name of the Company and at the Administrator's sole cost and expense within the earlier of (i) the Governmental Authority's requested time frame for response or (ii) the time frame as permitted by Applicable Law; provided, however, that the Administrator shall provide all proposed responses to the Company as soon as reasonably practicable prior to submission of any such response and provide the Company with sufficient opportunity to comment on the proposed response. The Administrator shall act reasonably in incorporating any comments to the response provided by the Company.

- (d) Each of the Parties shall promptly notify the other Party regarding any inquiries or complaints from customers with respect to the administration of the Policies and cooperate in good faith and use its commercially reasonable efforts to resolve such complaint; provided, however, that the Administrator shall in the first instance have the right to direct the handling of such complaint and the Company shall cooperate in resolving the complaint as directed by the Administrator.
- (e) During the Term of this Agreement, Company shall (i) not terminate, without the prior written consent of the Administrator (which consent shall not be unreasonably withheld, conditioned or delayed), any agent general agent or broker that has produced the Policies, and (ii) at the Administrator's request and expense, cooperate with the Administrator in identifying and making available to the Administrator the form-filing and rate-filing files and related regulatory approvals of the Company with respect to the Policies and all other information with respect to the Policies in the possession of the Company that may be reasonably required for the Administrator to prepare and file all necessary form, rate, other regulatory and any other similar filings with any applicable Governmental Authority with respect to the Policies.

**Section 6. Administrative Fees.**

- (a) **Services Fee.** Administrator (or its Affiliate, with regard to Administrator's obligations under Section 5) shall perform the Services at no charge to Company and with no reimbursement for expenses incurred, as further consideration for the rights and obligations transferred to Administrator and its Affiliates pursuant to the Renewal Rights Agreement and the Related Agreements.
- (b) **Taxes Generally.** Administrator shall solely be responsible for, and in no event will Company pay or be responsible for, any Taxes: (i) imposed on or with respect to Administrator's net or gross income, capital or franchise; (ii) in the nature of employee withholding taxes, FICA, Medicare taxes, unemployment insurance or other Taxes relating to Administrator personnel performing Services hereunder; (iii) imposed on, with respect to, or in connection with Administrator's purchase of any supplies, materials, equipment, Software or services for use in

providing the Services; (iv) in the nature of Licenses required of Administrator to provide the Services; (v) imposed by any federal, state, provincial or local taxing authority as withholding taxes, or taxes in the nature of withholding taxes, on or with respect to any amounts paid or accrued with respect to the Services; and (vi) collected by Administrator from Company which Administrator fails to remit to the applicable Governmental Authority responsible for Tax collections.

**Section 7. Access to Books and Records.** In addition to the Parties' respective obligations under any ancillary agreements regarding access to and retention of books and records of Company entered into pursuant to the Plan, Administrator shall cooperate with any review required by Applicable Law or otherwise mandated or ordered by a Government Authority, stock exchange, accreditation body or court order or otherwise required by Company to meet duly authorized regulatory, discovery or other requirements of Applicable Law. Administrator shall provide reasonable cooperation to such Governmental Authorities, advisors and representatives.

- (b) If and to the extent reasonably required to perform the Services, Company shall afford Administrator and its representatives and advisors access to Company's Books and Records, at reasonable times during the business hours of Company and at Administrator's expense, upon ten (10) days advance notice.
- (c) For the avoidance of doubt, except as otherwise expressly agreed, Company shall own and have custody of its Books and Records, and Administrator shall own and have custody of its Books and Records.

**Section 8. Confidential Information Regarding the Business.**

- (a) **Confidentiality.** As between the Parties, it is agreed that all Confidential Information relating in any way to the Business shall be deemed to be owned exclusively by the Administrator. As such, during the Term and for three (3) years thereafter, no Confidential Information relating to the Business shall be used by the Company except in connection with the activities contemplated by this Agreement, shall be maintained in confidence by the Company under reasonable measures no less protective than those measures used by the Company to protect its own Confidential Information, and shall not otherwise be disclosed by the Company or its Affiliates, or their respective officers, employees, agents or subcontractors to any other person.
- (b) **Definition.** As used herein, "Confidential Information" means any and all confidential or proprietary information and documentation relating to the Business that is identified as confidential or would reasonably be deemed by the nature of the material or the manner in which it is disclosed to be confidential, including trade secrets, know-how, Software, customer information and the terms and conditions of this Agreement.

- (c) **Violations.** The Company shall promptly advise the Administrator if it learns or has reason to believe that any person or entity that has had access to Confidential Information relating to the Business has violated or intends to violate any of the confidentiality provisions of this Agreement.
- (d) **Injunctive Relief.** The Company hereby acknowledges that it will be impossible to measure the damages that would be suffered by the Administrator if the Company failed to comply with this Section 8 and that in the event of any such failure, there may not be an adequate remedy at Applicable Law for the Administrator. Therefore, the Administrator will be entitled, in addition to any other rights and remedies it may have, to seek immediate injunctive relief.

**Section 9. Force Majeure.**

- (a) **Definition.** Neither Party is liable for any failure or delay in the performance of its obligations under this Agreement: (i) to the extent such failure or delay is caused, without fault of the non-performing Party, by fire, flood, earthquake, elements of nature or acts of God, acts of war, riots, civil disorders, rebellions or revolutions; or quarantines, embargoes and other similar governmental action; and (ii) cannot reasonably be circumvented by the non-performing Party by enacting of the Disaster Recovery Plan (an event meeting the criteria of both items (i) and (ii) is a "Force Majeure Event").
- (b) **Excused Performance.** Upon the occurrence of a Force Majeure Event, the non-performing Party will be excused from its non-performance or observance of the affected obligation(s) for as long as such circumstances prevail and such Party continues to attempt to recommence performance whenever and to whatever extent possible without delay. Any Party so delayed in its performance will immediately notify the other by telephone or by the most timely means otherwise available (to be confirmed in writing within two (2) Business Days or upon resumption of commercially accepted forms of written communication, whichever occurs later) and describe in reasonable detail the circumstances causing such delay. Notwithstanding anything to the contrary herein, the occurrence of a Force Majeure Event will not relieve Administrator of its obligation to perform Disaster Recovery Services.

**Section 10. Term.**

The term of this Agreement begins as of the Closing Date and ends on the earlier of (i) the last day of the calendar quarter during all liabilities under the Policies have expired or been extinguished, (ii) any time upon the mutual consent of the Parties, or (iii) the date upon which the Reinsurance Agreement is terminated (the "Term").

**Section 11. Dispute Resolution.**

- (a) **General.** Any dispute arising out of this Agreement shall be subject to the continuing jurisdiction of the Conservation Court, which shall be the exclusive forum in which all such disputes shall be resolved.

(b) **Continuity of Services.** Administrator acknowledges that the performance of its obligations, including the Services, pursuant to this Agreement is critical to the business and operations of Company. Accordingly, in the event of a dispute between Company and Administrator, Administrator shall continue to perform the Services in good faith during the resolution of such dispute unless and until this Agreement is terminated in accordance with the provisions hereof.

**Section 12. Miscellaneous.**

(a) **Notices.** All notices, requests, demands and other communications hereunder shall be given in writing and shall be: (a) personally delivered; (b) sent by telecopier, facsimile transmission or other electronic means of transmitting written documents; or (c) sent to the Parties at their respective addresses indicated herein by registered or certified U.S. mail, return receipt requested and postage prepaid, or by private overnight mail courier service. The respective addresses to be used for all such notices, demands or requests are as follows:

(a) If to the Commissioner, the Conservator or the Company, to:

Majestic Insurance Company in Conservation  
c/o Conservation & Liquidation Office  
425 Market Street, 23<sup>rd</sup> Floor  
San Francisco, CA 94105  
Attention: David E. Wilson, CEO and SDIC

with concurrent copies to:

California Department of Insurance  
Legal Division  
45 Fremont Street, 23<sup>rd</sup> Floor  
San Francisco, CA 94105  
Attention: Laszlo Komjathy, Jr., Esq.

and to:

Orrick, Herrington & Sutcliffe LLP  
400 Capitol Mall, Suite 300  
Sacramento, CA 95814-4407  
Attention: Thomas J. Welsh, Esq.

or to such other person or address as the Company shall furnish to the Reinsurer in writing.

(b) If to the Administrator, to:

AmTrust North America, Inc.

AmTrust Financial Services, Inc.  
59 Maiden Lane, 6th Floor  
New York, NY 10038  
Attention: Stephen Ungar, Esq.

with concurrent copies to:

Locke Lord Bissell & Liddell LLP  
300 S. Grand Avenue, Suite 2600  
Los Angeles, California 90071  
Attention: Carey S. Barney, Esq.

or to such other person or address as the Reinsurer shall furnish to the Company in writing.

If personally delivered, such communication shall be deemed delivered upon actual receipt; if electronically transmitted pursuant to this paragraph, such communication shall be deemed delivered the next business day after transmission (and sender shall bear the burden of proof of delivery); if sent by overnight courier pursuant to this paragraph, such communication shall be deemed delivered upon receipt; and if sent by U.S. mail pursuant to this paragraph, such communication shall be deemed delivered as of the date of delivery indicated on the receipt issued by the relevant postal service, or, if the addressee fails or refuses to accept delivery, as of the date of such failure or refusal. Any Party to this Agreement may change its address for the purposes of this Agreement by giving notice thereof in accordance with this Section.

- (b) **Sole Agreement.** This Agreement, together with the Related Agreements, constitutes the final agreement between the Parties and are the complete and exclusive expression of the Parties' agreement on the matters contained in this Agreement. All prior and contemporaneous negotiations and agreements between the parties on the matters contained in this Agreement, together with the Related Agreements, are expressly merged into and superseded by this Agreement and the Related Agreements.
- (c) **Successors and Assigns.** No Party may assign any of its rights or delegate its obligations under this Agreement without the prior written consent of the other Party, except that the Company will not unreasonably withhold its consent to an assignment by Administrator of its rights hereunder to one or more of Administrator's Affiliates. Any purported assignment or delegation in violation of this provision is void and invalid ab initio. The terms of this Agreement will be binding upon and inure to the benefit of and be enforceable by and against the successors and permitted assigns of the Parties.
- (d) **Governing Law and Jurisdiction.** The Applicable Laws of the State of California (without giving effect to its conflict of law principles) govern all matters arising out of or relating to this Agreement, including its validity,

interpretation, construction, performance and enforcement. Each of the Parties hereto irrevocably and unconditionally submits to the exclusive jurisdiction of the Conservation Court for purposes of enforcing this Agreement and the Related Agreements and resolving any dispute as to their interpretation. In any such action, suit or other proceeding, each of the Parties hereto irrevocably and unconditionally waives and agrees not to assert by way of motion, as a defense or otherwise any claims that it is not subject to the jurisdiction of the above court, that such action or suit is brought in an inconvenient forum or that the venue of such action, suit or other proceeding is improper.

- (e) **No Third-Party Beneficiaries.** Nothing in this Agreement is intended to be or will be construed to give any person or entity, other than the Parties hereto, any legal or equitable right, remedy or claim under or in respect of this Agreement or any provision contained herein.
- (f) **Counterparts.** This Agreement may be executed in any number of counterparts, each of which are deemed an original, and all of which collectively constitute one and the same instrument. Counterparts may be executed and delivered in original, faxed or emailed in PDF form.
- (g) **Severability.** Any term or provision of this Agreement which is invalid or unenforceable in any jurisdiction shall, as to that jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Agreement or affecting the validity or enforceability of any of the terms or provisions of this Agreement in any other jurisdiction; provided that the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to either party; provided further that if the economic or legal substance is so affected, the parties shall negotiate in good faith in an effort to agree upon a suitable and equitable substitute provision to effect the original intent of the parties. If any provision of this Agreement is so broad as to be unenforceable, that provision will be interpreted to be only so broad as is enforceable.
- (h) **Specific Performance.** The parties hereby acknowledge and agree that the failure of any party to perform its agreements and covenants hereunder, will cause irreparable injury to the other party, for which damages, even if available, will not be an adequate remedy. Accordingly, each party hereby consents to the issuance of temporary, preliminary and permanent injunctive relief to compel performance of such party's obligations, or to prevent breaches or threatened breaches of this Agreement, and to the granting of the remedy of specific performance of its obligations hereunder, without, in any such case, the requirement to post any bond or other undertaking, in addition to any other rights or remedies available hereunder or at law or in equity.
- (i) **Survival.** Sections 7, 8, 11, and 12 hereof survive expiration or termination of this Agreement.

- (j) **Exhibits; Schedules.** The Exhibits and Schedules referred to herein constitute a part of this Agreement as if set forth herein in full.
- (k) **Amendments.** This Agreement may be amended, supplemented or modified, and any provision hereof may be waived, only pursuant to a written instrument making specific reference to this Agreement signed by each of the Parties.
- (l) **Miscellaneous.** Unless the context requires otherwise, all words used in this Agreement in the singular number extend to and include the plural, all words in the plural number extend to and include the singular, and all words in any gender shall extend to and include all genders. The words “include”, “includes” and “including” are deemed to be followed by the phrase “without limitation” whether or not they are in fact followed by such words or words of like import. When a reference is made in this Agreement to an Article, Section, Annex, Exhibit or Schedule, such reference is to an Article of, a Section of, or an Exhibit or Schedule to, this Agreement unless otherwise indicated. The table of contents and headings contained in this Agreement are for reference purposes only and do not modify, expand, define, or otherwise affect in any way the meaning, construction or interpretation of this Agreement. References to “\$” and “dollars” mean United States dollars. The words “hereof,” “herein,” “hereby” and other words of similar import refer to this Agreement as a whole unless otherwise indicated. Whenever the last day for the exercise of any right or the discharge of any duty under this Agreement falls on other than a Business Day, the Party having such right or duty will have until the next Business Day to exercise such right or discharge such duty. Unless otherwise indicated, the word “day” shall be interpreted as a calendar day. The Parties acknowledge that each Party and its counsel have reviewed and revised this Agreement and further agrees that no rule of construction to the effect that any ambiguities are to be resolved against the drafting Party may be employed in the interpretation of this Agreement or any amendment hereto.

[Signatures are on the following page]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed by their duly authorized officers effective as of the date first set forth above.

**Majestic Insurance Company  
in Conservation, acting by and through  
California Insurance Commissioner Dave  
Jones, as Statutory Conservator**

**AmTrust North America, Inc.**

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: David E. Wilson

Name:

Title: Special Deputy Insurance Commissioner

Title:

**EXHIBIT A**

**SERVICES**

1. Policy Administration/Changes/Endorsements
2. Premium Billing and Collections/Retro Premium Calculations/Collateral Management
3. Policyholder Inquiries
4. Actuarial
5. Producer Relations/Appointments/Commission Payments
6. Regulatory Inquiries/Consumer Complaints
7. Claims Management/Adjusting/Litigation/Coverage
8. Inuring Reinsurance Contract Administration/Billing/Collections/Regulatory Compliance