

JJ

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

M. Diane Koken,	:	
Insurance Commissioner of the	:	
Commonwealth of Pennsylvania,	:	
Plaintiff	:	
v.	:	
	:	
Reliance Insurance Company,	:	No. 269 M.D. 2001
Defendant	:	

IN RE: *Commutation, Settlement Agreement and Release between Reliance Insurance Company (In Liquidation) and Folksamerica Reinsurance Company*

Memorandum and Order

AND NOW, this \_\_\_ day of \_\_\_\_\_, 2007, upon consideration of the Liquidator's Petition for Approval of Commutation, Settlement Agreement, and Release (Commutation Agreement) between Reliance Insurance Company (Reliance or Estate) and Folksamerica Reinsurance Company (Reinsurer) submitted by the Liquidator for Reliance Insurance Company:

**The Court ACCEPTS** the Liquidator's representations that the Commutation Agreement is in the best interest of the Reliance Estate, as the Commutation Agreement allows the Liquidator to terminate and commute the Obligatory Quota Share Reinsurance Agreement As Respects Prints & Advertising Efficacy Program and the Reliance Estate will receive an economic benefit amounting to \$7,450,000;

**Further**, the Court accepts the Liquidator's representations that the economic benefit is a fair and reasonable commutation of the Reinsurer's obligations to the Reliance Estate under its Reinsurance Agreement;

**Accordingly**, the Court accepts the Liquidator's representations and based thereon approves the Commutation Agreement attached hereto and marked as Exhibit A and authorizes the Liquidator to take such actions as are necessary to consummate the Commutation Agreement as approved.

2007 JUL 30 P 2:45

Further, counsel for the Liquidator is directed to serve a copy of this order upon those listed on the Master Service List and file with the Court an affidavit that service has been effectuated.

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**JAMES GARDNER COLINS, Judge**

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

M. DIANE KOKEN  
Insurance Commissioner of the  
Commonwealth of Pennsylvania,

Plaintiff

v.

RELIANCE INSURANCE COMPANY,

Defendant

CIVIL ACTION

NO. 269 M.D. 2001

IN RE: *Commutation, Settlement Agreement and Release between  
Reliance Insurance Company (In Liquidation) and  
Folksamerica Reinsurance Company*

**LIQUIDATOR’S PETITION FOR APPROVAL OF  
COMMUTATION, SETTLEMENT AGREEMENT AND RELEASE**

Petitioner Joel S. Ario, Acting Insurance Commissioner of the Commonwealth of Pennsylvania, in his capacity as Statutory liquidator (“Liquidator”) of Reliance Insurance Company (“Reliance or Estate”), respectfully requests that this Court enter an Order approving the Commutation, Settlement Agreement and Release between Reliance and Folksamerica Reinsurance Company as successor in interest to Risk Capital Reinsurance Company (“Reinsurer”). The Commutation, Settlement Agreement and Release (“Commutation Agreement”) is attached hereto as Exhibit “A”.

In support of this petition, the Liquidator avers the following:

1. On October 3, 2001, this Court found Reliance insolvent and appointed the Commissioner as Liquidator of Reliance pursuant to Article V of the Insurance Department Act of 1921, 40 P.S. §221.1 et seq. (“Act”). The Act confers broad powers on the Liquidator to

marshal the assets of Reliance in order to maximize the value of the insolvent insurer's estate for eventual distribution to its policyholders and creditors.

2. Effective July 31, 1996 through July 31, 1998, Reliance and the Reinsurer entered into the "Prints and Advertising Efficacy Quota Share Reinsurance Agreement" ("Reinsurance Agreement"). Within the insurance and reinsurance industry, the subject matter of this Reinsurance Agreement was commonly referred to as "Film Finance" business.

3. Under the Reinsurance Agreement, Reliance ceded 41% of its losses on business covered under the agreement and the Reinsurer assumed such losses in accordance with the terms and conditions contained therein. Pursuant to the terms of the Reinsurance Agreement, the maximum amount that Reliance can recover from the Reinsurer for any single film is 41% of the \$21 million of each film limit under the agreement, which equals \$8,610,000 for each film.

4. All losses are known as of this date although resolution and payment of the claims will occur over a period of years. As part of its due diligence, Reliance actuaries and claims personnel conducted a review of the relevant claims in order to project the timing of payments for each relevant claim. With the benefit of such due diligence, Reliance was able to negotiate a settlement for the remaining limit of the Reinsurance Agreement. Specifically, the Reinsurer shall pay Reliance the sum of \$7,450,000 ("Commutation Amount") to commute the Reinsurance Agreement. Said payment shall be made no later than ten (10) calendar days following notice to the Reinsurer of the approval of the Commutation Agreement by the Commonwealth Court of Pennsylvania.

5. The Insurance Department Act authorizes the Liquidator to take such actions as deemed "necessary or expedient to . . . conserve or protect [the insolvent insurer's] assets or property[,]" including the power to "compromise" claims involving assets of the insolvent insurer in order to accomplish or aid in the achieving the purposes of liquidation. See

40 P.S. §221.23(6, 9, and 23). Because the Commutation Agreement settles with certainty the claims against the Reinsurer under the Reinsurance Agreement, and because the Commutation Agreement requires the payment to Reliance of \$7,450,000 thus increasing the assets of the Estate by that amount, the Liquidator believes that the Commutation Agreement is necessary and appropriate to conserve and maximize the invested assets of Reliance and reduce the future burden and cost of administering the business under the Reinsurance Agreement.

6. The Commutation Amount to be paid under the Commutation Agreement was negotiated with the Reinsurer, and the Liquidator has taken the necessary steps to determine that the terms of the Commutation Agreement are fair and reasonable to the Reliance Estate and in the best interests of its policyholders, claimants and the general public. See 40 P.S. §§221.1(c), 221.23(9). As established in the Confidential Affidavit (attached as “Sealed Exhibit B”) of Keith Kaplan, a career reinsurance expert, the Liquidator has identified several key advantages to the Estate arising from the consummation of the transaction memorialized in the Commutation Agreement.

7. Under the terms of the Commutation Agreement, the Commutation Amount will be released to Reliance after satisfaction of the following conditions: (1) execution of the Commutation Agreement by an authorized representative of the Liquidator; (2) execution of the Commutation Agreement by an authorized representative of the Reinsurer; (3) approval of the transaction by this Court; and (4) appropriate notice to the Reinsurer of Court approval.

8. Based on the analysis of the terms of the Commutation Agreement, and the evaluation of the transaction as a whole by the Liquidator, his staff and Reliance staff members familiar with the business dealings under the Reinsurance Agreement, the Liquidator has determined that the payment of the Commutation Amount is a fair and reasonable commutation of the Reinsurer’s obligations to Reliance under the Reinsurance Agreement.

9. The Liquidator also believes that the Commutation Agreement will further achievement of the objectives of liquidation under the Act. The commutation transaction will assist the Liquidator in marshalling and maximizing Reliance's immediately available assets while minimizing any unavoidable loss to policyholders, claimants and creditors resulting from the Reliance insolvency and hazardous financial condition. See 40 P.S. §221.1(c).

10. Lastly, no person or firm will earn any contingent fee or extra remuneration of any type as a result of this transaction.

11. WHEREFORE, the Liquidator respectfully requests that this Court enter an Order in the form attached hereto:

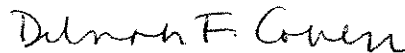
(a) Finding that the Commutation Agreement and Commutation Amount are in the best interest of the Reliance Estate;

(b) Finding that the economic benefit is a fair and reasonable commutation of the Reinsurer's obligations under the Reinsurance Agreement;

(c) Approving the terms of the Commutation Agreement attached as Exhibit A and authorizing the Liquidator to take such actions as are necessary to consummate the Commutation Agreement as approved.

Respectfully submitted,

PEPPER HAMILTON LLP



DEBORAH F. COHEN  
CHRISTOPHER J. LOWE  
3000 Two Logan Square  
18<sup>th</sup> and Arch Streets  
Philadelphia, PA 19103-2799  
(215) 981-4000

Attorneys for Joel S. Ario, Acting Insurance  
Commissioner of the Commonwealth of  
Pennsylvania, in his official capacity as Statutory  
Liquidator of Reliance Insurance Company

Dated: July 30, 2007

# **EXHIBIT A**

## COMMUTATION, SETTLEMENT AGREEMENT AND RELEASE

THIS COMMUTATION, SETTLEMENT AGREEMENT AND RELEASE ("Agreement"), made effective and entered into this 21<sup>st</sup> day of June, 2007, by and between Folksamerica Reinsurance Company, New York, New York, including its predecessor Risk Capital Reinsurance Company (hereinafter collectively known as the "Reinsurer") and Randolph L. Rohrbaugh, Acting Insurance Commissioner of the Commonwealth of Pennsylvania, in his capacity as Statutory Liquidator of Reliance Insurance Company (In Liquidation) (hereinafter known as the "Cedant"). David S. Brietling, Chief Liquidation Officer, is acting on behalf of Randolph L. Rohrbaugh, who is acting on behalf of the Cedant pursuant to the powers granted to him under Title 40, Purdon's Statutes, Section 221.20, et seq. and other applicable statutes, regulations and laws.

### RECITALS

A. The Reinsurer and the Cedant entered into a contract of reinsurance wherein the Reinsurer obligated itself to accept from the Cedant the cession of a certain percentage of liabilities with respect to risks written or assumed by the Cedant and/or agents of the Cedant, and;

B. The reinsurance agreement referred to in Recital A above is described in Exhibit A attached hereto and a true copy is annexed hereto as Exhibit B; said reinsurance agreement is hereinafter referred to as "the Contract", and;

C. Pursuant to the Contract, there are loss developments, the total amount of which are not fully known or not yet capable of determination, representing liabilities which are or may come due from the Reinsurer to the Cedant, and;

D. The parties hereto recognize and understand that, based upon current economic projections, a substantial portion of the Reinsurer's obligations to the Cedant may become payable in the future rather than at present; that the Reinsurer's future liabilities and obligations to the Cedant pursuant to the Contract have been evaluated, but cannot be determined in an amount certain at this time; and that a settlement and commutation of the Reinsurer's obligations to the Cedant based upon present calculations of outstanding losses, including incurred but not reported losses, will eliminate the uncertainty of contingent liabilities for presently unresolved or unasserted claims, and;

E. The Reinsurer and the Cedant agree that it is in each of their best interests and in the best interests of their respective policyholders and creditors to adjust and settle their differences and to enter into this Agreement.

NOW THEREFORE, in consideration of the mutual benefits to be received by the parties hereto and the mutual covenants and agreements herein contained, the parties hereto hereby agree as follows:

#### **Commutation of Reinsurance Agreement**

1. Subject to the receipt by the Cedant of the Consideration as set out in Article 4 herein, together with any collection expenses and accrued interest due as is more particularly described in Article 8 (c) and 9 below, and in further consideration of the release contained in Article 2 herein the Cedant hereby irrevocably releases the Reinsurer, its predecessors, successors, assigns, shareholders, officers, directors, agents, sub-agents, brokers and sub-brokers from One Hundred Percent (100%) of all adjustments, obligations, liabilities, offsets, actions, causes of action, proofs of claim, suits, debts, sums of money, accounts, reckonings, bonds, bills,

covenants, contracts, conversions, costs, agreements, promises, damages, expenses, judgment claims, and demands whatsoever, whether known or unknown, suspected or unsuspected, fixed or contingent, arising out of, or in connection with the Reinsurer's participation on the Contract, whether or not such contract is void or voidable.

### **Release of the Cedant**

2. In consideration of the release set out in Article 1 herein, the Reinsurer hereby irrevocably releases the Cedant, its predecessors, successors, assigns, shareholders, officers, directors, receivers, liquidators, administrators, agents, sub-agents, brokers and sub-brokers from One Hundred Percent (100%) of all adjustments, obligations, liabilities, offsets, actions, causes of action, proofs of claim, suits, debts, sums of money, accounts, reckonings, bonds, bills, covenants, contracts, conversions, costs, agreements, promises, damages, expenses, judgment claims, and demands whatsoever, whether known or unknown, suspected or unsuspected, fixed or contingent, arising out of, or in connection with the participation of the Cedant on the Contract, whether or not such contract is void or voidable.

### **Warranties**

3. To the best information and belief of each of the parties to this Agreement, the following express warranties apply:

a. There are no pending agreements, transactions, negotiations, regulatory actions or lawsuits in which any of the parties are involved nor are there any threatened regulatory actions or lawsuits of which any of the parties are aware that would render this Agreement or any part thereof void, avoidable, or unenforceable;

b. No party hereto has transferred, assigned, or contracted to transfer or assign to any person, corporation, company or entity any of its rights, title, benefit or obligations directly arising out of or in connection with the Contract, including without limitation any balances, accounts, costs, claims, counterclaims or demands which are within the contemplation of this Agreement;

c. The Reinsurer has not commuted or otherwise settled with or contracted to commute or settle with any person, corporation, company or entity any of their respective rights, title, benefit or obligations directly arising out of or in connection with the Contract, including without limitation any balances, accounts, costs, claims, counterclaims or demands which are within the contemplation of this Agreement;

#### **Consideration**

4. The Reinsurer agrees to pay the Cedant the total sum of Seven Million Four Hundred and Fifty Thousand United States Dollars (US\$7,450,000) ("the Consideration"). Said payment shall be made no later than ten (10) business days following the later of: (1) notice to the Reinsurer by facsimile of the execution of this Agreement by the Cedant or its assignee, and (2) Reinsurer's receipt of a copy of the approval of the Agreement by the Commonwealth Court of Pennsylvania in accordance with Article 15 herein ("the Completion Date"). Notwithstanding the foregoing, if the ten (10) day period expires on a weekend or a holiday, then the transfer must be completed by the end of the next business day. Reinsurer shall transfer the Consideration to the following account:

Name of Bank: Mellon Bank  
Pittsburgh, PA  
ABA Number: 043000261  
Credit: Reliance Insurance Company  
CHIPS No.: 044840  
Account Number: 079-7806  
S.W.I.F.T.: MELN US 3P  
Ref: Kathy Lee

The parties also agree that any claim recoveries including but not limited to salvage and subrogation, any escrow funds with third party claim administrators and any unremitted cash with intermediaries that relate to the Contract is the property of the Cedant.

**Successors and Assigns**

5. This Agreement shall inure to the benefit of and bind the Reinsurer and its successors and assigns and the Cedant and their respective successors and assigns.

**Independent Investigation**

6. Each of the parties acknowledges that it has entered into this Agreement in reliance upon its own independent investigation and analysis of the Contract and its respective rights and obligations thereunder, and not on the basis of any representation made or not made by the other party hereto, except for any representations or warranties expressly made in this Agreement. Each of the parties further acknowledges that it has read this Agreement, that it has had the opportunity to discuss it with legal counsel, and that it fully understands all of the terms herein.

### **Integration and Waiver**

7. This Agreement shall constitute the entire agreement between the parties pertaining to the subject matter hereof, and supersedes any and all prior or contemporaneous understandings or agreements. No supplement, modification, waiver or termination hereof shall be binding or enforceable unless executed in writing by the parties to be bound thereby. No delay, omission or forbearance on the part of any party to this Agreement in exercising or enforcing any right, power or remedy under this Agreement shall impair such right, power or remedy or operate as a waiver thereof. The single or partial exercise or enforcement of such right, power or remedy shall not preclude any other or further exercise or enforcement thereof or of any other right, power or remedy. The rights, powers and remedies provided in this Agreement are cumulative and not exclusive of any rights, powers and remedies provided by law.

### **Remedies**

8. In the event that the Reinsurer fails to pay the Consideration to the Cedant by the Completion Date, the Cedant shall have all rights and remedies available at law or in equity. In addition, the Cedant shall have the express right to:

- a. deem the entire Agreement null and void by notice in writing to the Reinsurer per Article 11 herein and to seek recovery of all sums due or to become due under the Contract, or;
- b. bring suit on the Agreement including interest on the agreed-upon but unpaid amount as set out in Article 8(c).
- c. Without prejudice to the Cedant's rights to rescind this Agreement pursuant

to Article 8(a) above, if Reinsurer does not pay all of the Consideration recited herein to the Cedant by the Completion Date, the Reinsurer shall pay interest on any unpaid sums at a rate which is equal to one percentage point (1.00%) over the Prime Rate (the base rate on corporate loans at large U.S. money center commercial banks) as published in *The Wall Street Journal*, but in no event shall said interest be calculated at less than six percent (6%) per annum.

#### **Expenses of Collection**

9. Subject to the provisions of Article 8(c) herein, if the Reinsurer fails to pay the Consideration to the Cedant by the Completion Date, Reinsurer agrees to reimburse the Cedant for all reasonable expenses including, without limitation, attorney fees which are incurred by the Cedant in the enforcement of this Agreement and collection of the consideration together with any interest accrued upon such reasonable expenses from the date of payment of such expenses at the rate set out in Article 8(c) above.

#### **Choice of Laws**

10. The performance and interpretation of this Agreement shall be governed by the laws of the Commonwealth of Pennsylvania with respect to any dispute arising under this Agreement between the Reinsurer and the Cedant;

#### **Notices**

11. All notices required under this Agreement shall be as follows:

- a. Any notice or other communication under or in connection with this Agreement shall be in writing and shall be delivered personally or sent by first class post/mail (or

by air mail if overseas) or by overnight courier service, to the addresses of the parties as set out in Exhibit C attached hereto or to such other person or address as any party may specify by notice in writing to the others.

b. In the absence of evidence of earlier receipt, any notice or other communication shall be deemed to have been duly served if (i) sent by first class post on the second business day after posting; (ii) sent by overnight courier on the next business day after mailing (iii) sent by air mail, six (6) days after posting, and; (iv) if delivered personally, when left during normal business hours at the address set out in Exhibit B or any alternative address specified by the receiving party.

#### **Interpretation**

12. The language of this Agreement is the result of negotiation between all parties hereto, and any ambiguities in said language shall not be presumptively construed against or in favor of any party or parties hereto.

#### **Execution and Approval**

13. Except as disclosed in Article 15, each party to this Agreement represents that it is authorized to enter into this Agreement and the transactions contemplated herein.

14. Except as disclosed in Article 15, each signatory to this Agreement represents that said signatory is authorized and empowered to execute this Agreement and the transactions contemplated herein and that any and all required corporate approval on behalf of the Reinsurer has been properly executed and that the Agreement is entered into voluntarily.

15. With respect to the Cedant, this Agreement is subject to final approval by the Commonwealth Court of Pennsylvania (the "Court"), which has jurisdiction over the liquidation of Cedant. Upon execution by all parties hereto, the Liquidator of Cedant shall promptly make application to the Court to secure said approval. In the event the Court does not approve this Agreement, then upon such notice of disapproval, the Liquidator of Cedant shall notify the Reinsurer and this Agreement will become null and void and have no further force or effect as between the Reinsurer and the Cedant.

16. This Agreement may be signed and exchanged in counterpart by facsimile, and this Agreement as so signed and exchanged will constitute the binding Agreement of the parties.

IN WITNESS WHEREOF, the parties have hereunto set their hands as of the dates set forth.

**RELIANCE INSURANCE COMPANY (In Liquidation)**

By: *David B. Britly*

Title: *Chief Liquidation Officer*

Date: *June 21, 2007*

**FOLKSAMERICA REINSURANCE COMPANY**

By: *John H. Haley*

Title: *JOHN H. HALEY*  
*Sr. Vice President & Associate General Counsel*

Date: *June 15, 2007*

**Exhibit A**

<b><u>RELIANCE REF.</u></b>	<b><u>FOLKSAMERICA REF.</u></b>	<b><u>CONTRACT DESCRIPTION</u></b>	<b><u>EFFECTIVE DATE</u></b>
656HAA	45784	OBLIGATORY QUOTA SHARE REINSURANCE AGREEMENT As Respects PRINTS & ADVERTISING EFFICACY PROGRAM	7/31/96

**Exhibit B**

**INTERESTS AND LIABILITIES CONTRACT**

(hereinafter referred to as the "Contract")  
to the

**OBLIGATORY QUOTA SHARE REINSURANCE AGREEMENT**

(hereinafter referred to as the "Agreement")  
between

**RELIANCE INSURANCE COMPANY**  
**Philadelphia, Pennsylvania**

(hereinafter referred to as the "Company")  
and

**RISK CAPITAL REINSURANCE COMPANY**  
**Greenwich, Connecticut**

(hereinafter referred to as the "Subscribing Reinsurer")

Under the terms of the Agreement, which is attached to this Contract, the Subscribing Reinsurer agrees to participate in a 41.00% part of 83.50% share of the interests and liabilities of the Reinsurer(s) described in the Agreement. The participation of the Subscribing Reinsurer shall be several and not joint with any other Reinsurers participating in the Agreement.

This Contract shall become effective July 31, 1996 and shall remain in force until terminated in accordance with the provisions of Article II - Commencement and Termination of the Agreement.

Signed in triplicate in Greenwich, Connecticut, this 19<sup>th</sup> day of May, 1998

**RISK CAPITAL REINSURANCE COMPANY**

By Joseph King  
Title Vice President

Signed in triplicate in <sup>New York, NY</sup> Philadelphia, Pennsylvania, this 12 day of June, 1998

**RELIANCE INSURANCE COMPANY**

By [Signature]  
Title San Vice President

**INTERESTS AND LIABILITIES CONTRACT**

(hereinafter referred to as the "Contract")  
to the

**OBLIGATORY QUOTA SHARE REINSURANCE AGREEMENT**

(hereinafter referred to as the "Agreement")  
between

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**Philadelphia, Pennsylvania**

(hereinafter referred to as the "Company")  
and

**RISK CAPITAL REINSURANCE COMPANY**  
**Greenwich, Connecticut**

(hereinafter referred to as the "Subscribing Reinsurer")

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This Contract shall become effective July 31, 1996 and shall remain in force until terminated in accordance with the provisions of Article II - Commencement and Termination of the Agreement.

Signed in triplicate in Greenwich, Connecticut, this \_\_\_\_\_ day of \_\_\_\_\_, 1998

**RISK CAPITAL REINSURANCE COMPANY**

By \_\_\_\_\_

Title \_\_\_\_\_

Signed in triplicate in <sup>New York, New York</sup> Philadelphia, Pennsylvania, this 12 day of June, 1998

**RELIANCE INSURANCE COMPANY**

By \_\_\_\_\_

Title Senior Vice President

**INTERESTS AND LIABILITIES CONTRACT**

(hereinafter referred to as the "Contract")  
to the

**OBLIGATORY QUOTA SHARE REINSURANCE AGREEMENT**

(hereinafter referred to as the "Agreement")  
between

**RELIANCE INSURANCE COMPANY**  
**Philadelphia, Pennsylvania**

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and

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**Greenwich, Connecticut**

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This Contract shall become effective July 31, 1996 and shall remain in force until terminated in accordance with the provisions of Article II - Commencement and Termination of the Agreement.

Signed in triplicate in Greenwich, Connecticut, this 19<sup>th</sup> day of May, 1998

**RISK CAPITAL REINSURANCE COMPANY**

By Joseph King  
Title Vice President

Signed in triplicate in Philadelphia, Pennsylvania, this \_\_\_\_\_ day of \_\_\_\_\_, 1998

**RELIANCE INSURANCE COMPANY**

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

Median Re, Inc.

**OBLIGATORY QUOTA SHARE  
REINSURANCE AGREEMENT**

As Respects

**PRINTS AND ADVERTISING EFFICACY  
PROGRAM**

For

**RELIANCE INSURANCE COMPANY  
Philadelphia, Pennsylvania**

**Effective Date: July 31, 1996**

RELIANCE NATIONAL  
OBLIGATORY QUOTA SHARE REINSURANCE AGREEMENT

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**OBLIGATORY QUOTA SHARE  
REINSURANCE AGREEMENT**

(hereinafter referred to as the "Agreement")

in consideration of the premium and upon the terms and conditions hereinafter set forth

**The SUBSCRIBING REINSURERS executing the  
INTERESTS AND LIABILITIES CONTRACTS  
attached to this Agreement**

(hereinafter collectively referred to as the "Reinsurer")

do hereby indemnify as herein provided and specified

**RELIANCE INSURANCE COMPANY**

**Philadelphia, Pennsylvania**

(hereinafter referred to as the "Company")

**ARTICLE I - BUSINESS COVERED**

By this Agreement the Company obligates itself to cede to the Reinsurer and the Reinsurer obligates itself to accept a 83.5% quota share reinsurance of the Company's gross liability under policies, contracts and binders of insurance or reinsurance (hereinafter called "policies") in respect of all business written during the term of this Agreement on a risk attaching basis and classified by the Company as Prints and Advertising Efficacy Coverage written in the Company's Financial and Specialty Coverage Division.

The liability of the Reinsurer with respect to each cession hereunder shall commence obligatorily and simultaneously with that of the Company, subject to the terms, conditions and limitations hereinafter set forth.

It is understood and agreed that each policy shall be presented to the Reinsurer hereon for review and negotiation of the policy's terms and conditions before cession hereunder.

For purposes of this Agreement, "risk attaching" shall mean all business ceded hereunder with an effective date during the term of this Agreement and shall include all commitments to issue policies on each future motion picture made prior to the anniversary date or termination date of this Agreement.

The term "Policy" shall be defined hereunder as a contract relating to a multi-film slate to be produced by the named producer policyholder. A "slate" refers to the number of motion pictures to be covered under one policy, with a minimum of three and a maximum of five.

**ARTICLE II - COMMENCEMENT AND TERMINATION**

This Agreement shall incept at 12:01 A.M., Local Standard Time, July 31, 1996 as respects all business written, and shall remain in force for an indefinite period, subject to ninety (90) days prior written notice of cancellation by either party at any anniversary date.

In the event of cancellation or termination of this Agreement, the Reinsurer shall remain liable for all losses, including losses with a date of loss after the termination date of this Agreement, on all policies issued as of the date and time of cancellation until expiry of such policies in force, and shall include all policies committed to by the Company and agreed by the Reinsurer up to the date of termination.

**ARTICLE III - LIMIT OF LIABILITY**

The Company shall cede the Reinsurer(s) shall accept 83.5% of: a) the ultimate net loss each risk subject to a maximum limit to the Reinsurer(s) of \$17,535,000 (being 83.5% of \$21,000,000) of Ultimate Net Loss each risk, and b) in addition to Reinsurer's limit, a pro-rata share of Loss Adjustment Expense (as defined herein).

Notwithstanding the foregoing, it is agreed that, with respect to any one risk, Declaratory Judgments, Extra Contractual Obligations and/or Excess of Original Policy Limits awards are covered hereunder in total for a maximum of each full policy limit in addition to the limits otherwise provided herein.

All salvages and recoveries received subsequent to a loss settlement under this Agreement will be applied as if received prior to the said loss settlement and all necessary adjustments will be made between the Company and the Reinsurer.

Nothing in this Article will be construed to mean that losses hereunder are not recoverable until the Company's final ultimate net loss has been ascertained.

The term "Risk" shall be defined as any single motion picture covered under a policy reinsured hereunder.

"Policy" shall be defined hereunder as a contract relating to a multi-film slate to be produced by the named producer policyholder. A "slate" refers to the number of motion pictures to be covered under one policy, with a minimum of three and a maximum of five.

"Ultimate Net Loss" as used in this Agreement will include all loss indemnity payments after deducting all recoveries, all salvages and all amounts due under any other reinsurances whether collected or not.

All salvages and recoveries received subsequent to a loss settlement under this Agreement will be applied as if received prior to the said loss settlement and all necessary adjustments will be made between the Company and the Reinsurer.

Nothing in this Article will be construed to mean that losses hereunder are not recoverable until the Company's final ultimate net loss has been ascertained.

The term "Declaratory Judgment Expenses" shall mean all legal expenses incurred in the representation of the Company in litigation brought to determine the Company's defense and/or indemnification obligations, that are allocable to any specific claim or loss covered by Policies reinsured under this Agreement. In addition, the Company shall promptly notify the Reinsurer of any Declaratory Judgment Expenses subject to this Agreement.

The Company is permitted to purchase proportional facultative reinsurance as it deems necessary. The Company's net retained share of original policies after proportional facultative reinsurance shall not be less than 16.5% of original policies.

**ARTICLE IV - GENERAL INFORMATION**

Subject to the terms and conditions of this agreement, it is agreed that the following qualifications will apply to motion pictures the subject of policies to be reinsured under this Agreement:

1. Multi-film slates only: minimum of three and a maximum of five.
2. Minimum number of screens: 1250.
3. Negative costs: \$12 million, \$30 million maximum, or as agreed by special acceptance.
4. Minimum media spend: \$8 million.
5. Genre restrictions: NC-17, horror, foreign language, documentaries, Non-Disney animation.
6. Acceptable distributors: 20th Century Fox, MGM, Walt Disney including Miramax, New Line Cinema, Paramount, Columbia/Tri-Star, Universal, Warner Brothers.

Any deviations from the aforementioned qualifications shall be subject to approval of Reinsurers.

**ARTICLE V - TERRITORY**

The territorial limits of this Agreement shall be identical with those of the Company's policies.

**ARTICLE VI - ORIGINAL CONDITIONS**

Except as expressly modified by this Agreement, the obligation to indemnify or reimburse the Company under the reinsurance provided hereunder will be subject to the same terms, limits, conditions, and endorsements of the Company's original policies and to all interpretations, modifications, waivers and alterations thereon.

**ARTICLE VII - EXCLUSIONS**

The Agreement DOES NOT COVER:

- A. All Business not specifically listed in Article I - Business Covered.
- B. Loss or damage caused directly or indirectly by: (a) enemy attack by armed forces including action taken by military, naval or air forces in resisting an actual or an immediately impending enemy attack; (b) invasion; (c) insurrection; (d) rebellion; (e) revolution; (f) intervention; (g) civil war; and (h) usurped power.
- C. Business derived from any Pool, Association, including Joint Underwriting Association, Syndicated Exchange, Plan, Fund or other facility directly as a member, subscriber or participant, or indirectly by way of reinsurance or assessments; provided this exclusion shall not apply to Automobile or Workers Compensation assigned risks which may be currently or subsequently covered hereunder.

- D. Pollution Liability as per the attached Pollution Liability Exclusion Clause - Reinsurance.
- E. Insolvency Funds as per the attached Insolvency Funds Exclusions Clause.
- F. Nuclear Incident Exclusion Clause Which are attached and made part of the Agreement:
  - 1. Nuclear Incident Exclusion Clause - Liability - Reinsurance - U.S.A.
  - 2. Nuclear Incident Exclusion Clause - Liability - Reinsurance - Canada
  - 3. Nuclear Incident Exclusion Clause - Liability - Reinsurance - No. 4

**ARTICLE VIII - EXTRA CONTRACTUAL OBLIGATIONS**

"Extra Contractual Obligations" means any punitive, exemplary, compensatory, or consequential damages, other than loss in excess of policy limits paid by the Company as a result of a claim against it by its insured, its insured's assignee, or a third party claimant, which claim alleges negligence or bad faith on the part of the Company in the handling of a claim under the policy insured. An Extra Contractual Obligation will be deemed to have occurred on the same date as the loss covered or alleged to be covered under the policy that gave rise to the Extra Contractual Obligation.

This Agreement will not apply to any Extra Contractual Obligation incurred by the Company as the result of any fraudulent or criminal act directed against the Company by any officer or director of the Company acting individually or collectively or in collusion with any other organization or party involved in the presentation, defense, or settlement of any claim under this Agreement. Any Extra Contractual Obligation coverage will be in excess of any errors or omissions insurance purchased by the Company that provides coverage for that loss.

**ARTICLE IX - LOSS IN EXCESS OF POLICY LIMITS**

"Loss in excess of policy limits" means any amount of loss paid by the Company in excess of its policy limits, but otherwise within the coverage terms of the policy, as a result of a claim against it by its insured or its insured's assignee to recover damages the insured is legally obligated to pay to a third party claimant because of the Company's alleged or actual negligence or bad faith in rejecting a settlement within the policy limits, or in discharging its duty to defend or prepare the defense in the trial of an action against its insured, or in discharging its duty to prepare or prosecute an appeal consequent upon such an action.

**ARTICLE X - REINSURANCE PREMIUM**

The Company shall pay the Reinsurer 83.50% of the Gross Net Written Premium on the business reinsured hereunder.

"Gross Net Written Premium" is defined as gross original premium (collected by the Company) written on its original policies, plus additional premiums, if any, less refunds and return premiums thereon, and less premiums paid or payable for facultative reinsurance.

**ARTICLE XI - CEDING COMMISSION**

The Reinsurer shall allow the Company a commission of 18.00% on all premiums ceded to the Reinsurer hereunder. The Company shall allow the Reinsurer return commission on return premium at the same rate.

It is expressly agreed that the ceding commission allowed the Company includes provision for all dividends, commissions, taxes, assessments, and all expenses of whatsoever nature, except loss and loss adjustment expense.

**ARTICLE XII - ACCOUNTS, REPORTS AND REMITTANCES**

- A. Within sixty (60) days after the close of each month, the Company will furnish the Reinsurer with an account/report listing all motion pictures for which policies have been committed to by the Company, reflecting the original issue dates and limits of said policies, balances outstanding as of the date of the report, insurance premiums charged for such policies and payments remitted.
- B. Within sixty (60) days after the close of each month, the Company will furnish the Reinsurer with an account current summarizing the gross net written premium ceded less return premium and commission, losses paid and loss adjustment expense paid, the total reserves for outstanding losses including loss adjustment expense, monies recovered, and net balance due either party.
- C. At least annually, the Company will furnish the Reinsurer such additional information as may be required by the Reinsurer for completion of its NAIC annual statements. Such information shall include outstanding loss and loss adjustment expenses and unearned premiums.
- D. Amounts due either party will be remitted within sixty (60) days after the close of each quarter. Should payment due from the Reinsurer exceed \$1,000,000 as respects any one loss, the Company may give the Reinsurer notice of payment made or its intention to make payment on a certain date. If the Company has paid the loss, payment will be made by the Reinsurer immediately. If the Company intends to pay the loss by a certain date

and has submitted a satisfactory proof of loss or similar document, payment will be due from the Reinsurer twenty-four (24) hours prior to that date, provided the Reinsurer has a period of five (5) working days after receipt of said notice to dispatch the payment. Cash loss amounts specifically remitted by the Reinsurer as set forth herein will be credited in its next monthly account.

**ARTICLE XIII - SECURITY AND UNAUTHORIZED REINSURANCE**

If any Reinsurer is unauthorized or otherwise unqualified in any state or other United States jurisdiction, and, if, without such security, a financial penalty to the Company would result on any statement or report it is required to make or file with insurance regulatory authorities or a court of law in the event of insolvency, for reasons of the Company's financial security and condition, that Reinsurer will secure, within thirty (30) days after the end of each calendar quarter (but no later than December 31st of each year as respects the fourth quarter), its share of "obligations" under this Agreement in a manner, form and amount acceptable to the Company and to all applicable insurance regulatory authorities by either:

- A. Clean, irrevocable, and unconditional evergreen letter(s) of credit issued and confirmed, if confirmation is required by the applicable insurance regulatory authorities, by a qualified United States financial institution as defined under Pennsylvania Insurance Law and acceptable to the Company and to insurance regulatory authorities;
- B. A trust account meeting at least the standards of New York's Insurance Regulation 114; or
- C. Cash advances or funds withheld or a combination of both, which will be under the exclusive control of the Company ("deposit of funds").

The "obligations" referred to herein will mean the then current (as of the end of each calendar quarter) sum of-

- A. The amount of ceded unearned premium for which the Reinsurer is responsible;
- B. The amount of paid losses and loss expenses paid by the Company for which the Reinsurer is responsible but has not yet paid;
- C. The amount of ceded reserves for losses reported and outstanding, as well as for reserves for loss expenses, for which the Reinsurer is responsible;
- D. The amount of ceded reserves for the development of losses reported and outstanding, as well as for the development of loss expenses, for which the Reinsurer is responsible;
- E. The amount of ceded reserves for incurred but not reported losses for which the Reinsurer is responsible; and

- F. The amount of return and refund premiums paid by the Company for which the Reinsurer is responsible but has not yet paid.

The Company, or its successors in interest, may draw, at any time and from time to time, upon the:

- A. Established letter of credit (or subsequent cash deposit);
- B. Established trust account (or subsequent cash deposit) or "Deposit of funds"; without diminution or restriction because of the insolvency of either the Company or the Reinsurer for one or more of the following purposes:
- 1) To make payment to and reimburse the Company for the Reinsurer's share of loss and loss expense paid by the Company under its policies and for which the Reinsurer is responsible under this Agreement that is due to the Company but unpaid by the Reinsurer;
  - 2) To make payment to the Reinsurer of any amounts held thereby that exceed the amount required to fund the Reinsurer's "obligations" under this Agreement provided that if a trust account is applicable, only the excess of 102% of the amount required to fund the Reinsurer's "obligations" may be released;
  - 3) To make payment to and reimburse the Company for any other amounts the Company claims are due under this Agreement from the Reinsurer including but not limited to the Reinsurer's share of premium refunds and returns; and
  - 4) To obtain a cash deposit of the entire amount of the remaining balance under the established letter of credit or established trust account in the event that the Company:
    - a) has received notice of non-renewal or expiration of the letter of credit or trust account;
    - b) has not received assurances satisfactory to the Company of any required increase in the amount of the trust account or letter of credit, or its replacement or other continuation of the trust account or letter of credit at least thirty (30) days before its stated expiration date;
    - c) has been made aware that others may attempt to attach or otherwise place in jeopardy the security represented by the letter of credit or trust account; or
    - d) has concluded that the trustee or issuing (or confirming) bank's financial condition is such that the security represented by the trust account or letter of credit may be in jeopardy; and under any of those circumstances where the Reinsurer's entire "obligations", or part thereof, under this Agreement remain unliquidated and undischarged at least thirty (30) days prior to the stated expiration date or at the time the Company learns of the possible jeopardy to the security represented by the letter of credit or trust account.

If the Company draws on the letter of credit or trust account to obtain a cash deposit, the Company will hold the amount of the cash deposit so obtained in the name of the Company in any qualified United States financial institution as defined under Pennsylvania Insurance Law in trust solely to secure the "obligations" referred to above and for the use and purposes enumerated above and to return any balance thereof to the Reinsurer:

- A. Upon the complete and final liquidation and discharge of all of the Reinsurer's "obligations" to the Company under this Agreement; or
- B. In the event the Reinsurer subsequently provides alternate or replacement security consistent with the terms hereof and acceptable to the Company.

The Company will prepare and forward at least quarterly to the Reinsurer a statement for the purposes of this Article, showing the Reinsurer's share of "obligations" as set forth above. If the Reinsurer's share thereof exceeds the then existing balance of the security provided, the Reinsurer will, within fifteen (15) days of receipt of the Company's statement, but never later than December 31 of any year, increase the amount of the "deposit of funds", trust account, or letter of credit (or subsequent cash deposit) to the required amount of the Reinsurer's share of obligations" set forth in the Company's statement. Subject to the 102% restraints with respect to trust accounts, if the Reinsurer's share thereof is less than the then existing balance of the "deposit of funds", trust account, or letter of credit (or subsequent cash deposit), the Company will release the excess thereof to the Reinsurer upon the Reinsurer's written request. The Reinsurer will not attempt to prevent the Company from holding the "deposit of funds", drawing on the letter of credit or trust account, or holding the cash deposit so long as the Company as acting in accordance with this Article.

The assets deposited in the trust account will be valued according to their current fair market value and will consist only of cash (U.S. legal tender), certificates of deposit issued by a qualified United States financial institution as defined under Pennsylvania Insurance Law and payable in cash, and investments of the types specified in Section 1404 of the New York Insurance Law, and which are admitted assets under the law of the domiciliary jurisdiction of the Company.

Investments issued by the parent, subsidiary, or affiliate of either the Company or the Reinsurer will not be eligible investments. All assets so deposited will be accompanied by all necessary assignments, endorsements in blank, or transfer of legal title to the trustee in order that the Company may negotiate any such assets without the requirement of consent or signature from the Reinsurer or any other entity.

All settlements of account between the Company and the Reinsurer will be made in cash or its equivalent.

All income earned and received by the amount held in a trust account will be added to the principal.

The Company's "successors in interest" will include those by operation of law, including without limitation, any liquidate, rehabilitator, receiver, or conservator.

The Reinsurer will take any other reasonable steps that may be required for the Company to take full credit on its statutory financial statements for the reinsurance provided by this Agreement.

#### ARTICLE XIV - SALVAGE AND SUBROGATION

The Reinsurer will be subrogated, as respects any loss for which the Reinsurer will actually pay or become liable, but only to the extent of the amount of payment by or the amount of liability to the Reinsurer, to all the rights of the Company against any person or other entity who may be legally responsible in damages for said loss. The Company hereby agrees to reasonably enforce such rights, but in case the Company will unreasonably refuse or neglect to do so, the Reinsurer is hereby authorized and empowered to bring any appropriate action in the name of the Company or its policyholders, or otherwise to enforce such right.

Any recoveries, salvages or reimbursements applying to risks covered under this Agreement will always be used to reimburse the excess carriers (from the last to the first, beginning with the carrier of the last excess), according to their participation, before being used in any way to reimburse the Company for its primary loss.

Where subject original policies written by the Company cover expenses in addition to the limit of liability, in the event there are any salvages, recoveries or reimbursements recovered subsequent to a loss settlement, it is agreed that if the loss expense incurred in obtaining salvage or other recoveries is less than the amount recovered, such expense will be borne by each party in the proportion that each party benefits from the recoveries. Otherwise, the amount recovered will first be applied to the reimbursement of the expense of recovery and the remaining expense will be borne by the Company and the Reinsurer in proportion to the liability of each party for the loss before such recovery had been obtained.

Where subject original policies written by the Company include expenses as part of the limit of liability, all salvages, recoveries or reimbursements, after deduction of loss expense applicable thereto, recovered or received subsequent to all loss settlement under this Agreement will be applied as if recovered or received prior to the aforesaid settlement, and all necessary adjustments will be made by the parties hereto, provided always, that nothing in this Article will be construed to mean that losses under this Agreement are not recoverable until the Company's Ultimate Net Loss has been ascertained.

#### ARTICLE XV - LOSS SETTLEMENTS

Reinsurance provided under this Agreement will be subject to the terms, limits, and conditions of the original policies and to all interpretations, modifications, waivers, and alterations thereon, subject to the terms and conditions of this agreement.

All loss settlements made by the Company, whether under the policy terms and conditions or by way of compromise will be unconditionally binding upon the Reinsurer, and the Reinsurer will allow or pay, as the case may be, its proportion of each such settlement in accordance with the terms of this Agreement.

**ARTICLE XVI - OFFSET**

Unless otherwise required by applicable law, all amounts due either the Company or the Reinsurer, whether by reason of premium, commission, loss, ultimate net loss, or loss expense, or otherwise, under this Agreement or any other Agreement previously, now, or later in force between the Reinsurer and the Company, whether as ceding company, Reinsurer, or otherwise, will be subject to the right of recoupment and offset and upon the exercise of the same, only the net balance will be due. All claims for amounts of premium, commission, loss, ultimate net loss, or loss expense, whether or not fixed in amount at the time of the insolvency of any party to this Agreement, arising from coverage placed in effect under this Agreement prior to the insolvency of any party to this Agreement will be deemed pre-liquidation debts and subject to this Article. In the event of insolvency of the Company, offset will be in accord with applicable law.

**ARTICLE XVII - ERRORS AND OMISSIONS**

Acts of errors and omissions on the part of the Company shall not invalidate the reinsurance under this Agreement, provided such acts, errors or omissions are corrected promptly upon discovery thereof, but the liability of the Reinsurer(s) under this Agreement or any exhibits or endorsements attached hereto shall in no event exceed the limits specified herein, nor be extended to cover any risks, perils or classes of insurance or reinsurance generally or specifically excluded herein.

**ARTICLE XVIII - ACCESS TO RECORDS**

The Company shall place at the disposal of the Reinsurer at all reasonable times, and the Reinsurer shall have the right to inspect through its designated representatives, during the term of this Agreement and thereafter, all books, records and papers of the Company in connection with any reinsurance hereunder, or the subject matter hereof.

**ARTICLE XIX - OTHER TERMS AND CONDITIONS**

- A. Waiver: The failure of the Company or the Reinsurer to insist on strict compliance with this Agreement, or to exercise any right or remedy hereunder, will not constitute a waiver of any rights contained herein, nor stop the parties from thereafter demanding full and complete compliance, nor prevent the parties from exercising such remedy in the future.

- B. Severability: If any provisions of this Agreement should be invalid under applicable law, the latter will control, but only to the extent of the conflict, without affecting the remaining provisions of this Agreement.
- C. Headings: The headings preceding the text of the Articles and paragraphs of this Agreement are intended and inserted solely for the convenience of references and will not affect the meaning, interpretation, construction, or effect of this Agreement.
- D. Assignment: This Agreement will be binding upon, and inure to the benefit of, the Company and the Reinsurer and their respective successors and assigns provided, however, that this Agreement may not be assigned by either the Company or the Reinsurer without the prior written consent of the other.
- E. Governing Law: This Agreement will be governed as to performance, administration, and interpretation by the laws of the Commonwealth of Pennsylvania, exclusive of its rules with respect to conflicts of law, except as to rules with respect to credit for reinsurance, in which case the rules of all applicable states will apply.
- F. Negotiated Agreement: This Agreement has been negotiated by the parties, and the fact that the initial and final draft will have been prepared by an Intermediary will not give rise to any presumptions for or against any party to this Agreement, or be used in any form in the construction or interpretation of this Agreement or any of its provisions.
- G. Notices: Wherever written notice is required under this Agreement, it will be in writing and either delivered personally or sent by certified mail, return receipt requested to the Intermediary.
- H. Entire Agreement: This Agreement supersedes and merges with any and all previous agreements, whether written or oral, between the Company and the Reinsurer, or their predecessors with respect to the reinsurance of the Company by the Reinsurer commencing July 31, 1996 and constitutes the full and complete Agreement between the parties with respect to this reinsurance. No amendment to this Agreement will be valid unless in writing and signed by both parties.
- I. Third Party Beneficiary: Except as expressly provided for in the Insolvency Article, the provisions of this Agreement are intended solely for the benefit of the Company and the Reinsurer. Nothing in this Agreement will in any manner create or be construed to create any obligations to or establish any rights against any party to this Agreement in favor of any other persons not party to this Agreement.

#### ARTICLE XX - LOSS ADJUSTMENT EXPENSE

Loss Adjustment Expense means any and all paid or payable costs and expenses allocable to a specific claim that are incurred by the Company in the investigation, appraisal, adjustment, settlement, litigation, defense, or appeal of a specific claim, including court costs and costs of

supersedes and appeal bonds expense, including a pro rata share of salaries and expenses of Company employees and expenses of Company officers who have been temporarily diverted from their normal and customary duties and assigned to the field adjustment of losses covered by this Agreement, interest accrued after award or judgment and pre-judgment interest awarded, legal expenses and costs incurred by the Company in connection with coverage questions and legal actions connected therewith, monitoring counsel expenses, Declaratory Judgement Expenses and legal costs and expenses associated with extra contractual obligations and loss in excess of policy limits.

"Monitoring Counsel Expenses" as used in this agreement shall mean all loss expenses incurred by the company as a result of activities of an authorized monitoring counsel related to one specific loss and one specific policy that can not be charged against the original policy to erode it's limit of liability.

"Declaratory Judgment Expenses" as used in this agreement shall mean; all legal expenses incurred in the representation of the Company in litigation brought to determine the Company's defense and /or indemnification obligations, that are allocable to any specific claim or loss covered by Policies reinsured under this Agreement. In addition, the Company shall promptly notify the Reinsurer of any Declaratory Judgment Expenses subject to this Agreement.

#### ARTICLE XXI - POOLING ARRANGEMENT

Reliance Insurance Company of Illinois assumes 100% of the liability of Reliance Lloyd's after deduction for facultative reinsurance. Effective December 31, 1995, Reliance Insurance Company assumed 100% of the responsibility (as either a direct responsibility by assumption reinsurance or by way of indemnity reinsurance) for all of the business previously or currently written by Reliance National Insurance Company of New York and United Pacific Company of New York, Reliance Insurance Company assumes 100% of the liability to United Pacific Insurance Company, Reliance National Indemnity Company, Reliance National Insurance Company, Reliance Insurance Company of Illinois, and Reliance Insurance Company of California, after deduction for facultative reinsurance and ceded captive reinsurance programs. Notwithstanding any other provisions of this Agreement, this Agreement protects such assumed reinsurance liability as if it were written directly by Reliance Insurance Company and attaches prior to redistribution to those companies under the terms of the Company's inter-company reinsurance pool, which redistribution will be disregarded for all purposes hereunder.

**ARTICLE XXII - FEDERAL EXCISE TAX**

(This Article applies to Reinsurers domiciled outside the United States of America, excepting Lloyd's London Underwriters and other Reinsurers exempt from Federal Excise Tax.)

The Reinsurer has agreed to allow for the purpose of paying the Federal Excise Tax, the applicable percentage of the premium payable hereon to the extent such premium is subject to Federal Excise Tax.

In the event of any return of premium becoming due hereunder the Reinsurer will deduct the applicable percentage from the amount of the return, and the Company or its agent should take steps to recover the tax from the U. S. Government.

**ARTICLE XXIII - SERVICE OF SUIT**

(This Article applies to unlicensed Reinsurers only.)

In the event of a dispute arising out of or in connection with this Agreement, or the Reinsurer fails to pay any amount claimed to be due under this Agreement, at the request of the Company, the Reinsurer will submit to the jurisdiction of a Court of competent jurisdiction within the Commonwealth of Pennsylvania, comply with all requirements necessary to that Court's jurisdiction, and all matters arising under this Agreement will be determined in accordance with the law and practice of that court and jurisdiction. Nothing in this Article constitutes a waiver of the Company's or the Reinsurer's rights to commence an action in any Court of competent jurisdiction in the United States District Court, or to seek a transfer of a case to another court as permitted by the laws of the United States or of any state in the United States.

The Reinsurer hereby appoints Kroll & Tract, 520 Madison Avenue, New York, N.Y. 10022-4235, ("the Firm") as the party upon which service of process in such suit may be made, and in any suit instituted, the Reinsurer will abide by the final decision of such court or of any appellate court in the event of an appeal.

The Firm is hereby expressly authorized and directed by the Reinsurer as its true and lawful attorney to accept service of process of suit on behalf of the Reinsurer in any suit by the Company and, upon the request of the Company, to give a written undertaking to the Company to enter a general appearance upon behalf of the Reinsurer in the event a suit will be instituted.

Further, pursuant to any statute of any state, territory or district of the United States which makes provisions therefor, the Reinsurer hereon hereby designates the Superintendent, Commissioner, Director of Insurance, or other officer specified for that purpose in the statute, or his successor or successors in office, as its true and lawful attorney upon whom may be served any lawful process in any action, suit or proceeding instituted by or on behalf of the Company or any beneficiary hereunder arising out of this agreement of reinsurance, and hereby designates the above-named as the person to whom the said officer is authorized to mail such process or a true copy thereof.

ARTICLE XXIV - INSOLVENCY

In the event of the declared insolvency of one (or more) of the Companies reinsured under this Agreement and the appointment of a liquidator, receiver, conservator, or statutory successor for that Company, this reinsurance will be payable directly to the Company or to its liquidator, receiver, conservator, or statutory successor on the basis of the liability of that insolvent Company as a result of claims allowed against that Company by any court of competent jurisdiction or any liquidator, receiver, conservator, or statutory successor having authority to allow such claims without diminution because of the insolvency of the Company or because the liquidator, receiver, conservator, or statutory successor of the Company has failed to pay all or a portion of any claim.

Every liquidator, receiver, conservator, statutory successor of the Company, or guaranty fund or association will give written notice to the Reinsurer of the pendency of a claim involving the Company indicating the subject policy, which claim would involve a possible liability on the part of the Reinsurer to the Company or to its liquidator, receiver, conservator, or statutory successor, within a reasonable amount of time after the claim is filed in the conservation, liquidation, receivership, or other proceeding. During the pendency of any claim, the Reinsurer may investigate the same and interpose, at its own expense, in the proceeding where that claim is to be adjudicated, any defense or defenses that it may deem available to the Company, or to its liquidator, receiver, conservator, statutory successor, or guaranty fund or association. The expense thus incurred by the Reinsurer will be chargeable, subject to the approval of the Court, against the Company as part of the expense of conservation or liquidation to the extent of a pro rata share of the benefit that may accrue to the Company as a result of the defense undertaken by the Reinsurer.

Where two or more reinsurers are involved in the same claim and a majority in interest elect to interpose defense to the claim, the expense will be apportioned in accordance with the terms of this Agreement as though such expense had been incurred by the Company.

The reinsurance will be payable by the Reinsurer to the Company, or to its liquidator, receiver, conservator, or statutory successor (except as provided by Section 4118(a) of the New York Insurance Law) or (a) where the Agreement specifically provides another payee of such reinsurance in the event of the insolvency of the Company and (b) where 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 substitution for the obligations of the Company to such payees. Prior to implementation of a novation, any certificate of assumption on New York risks must be approved by the Superintendent of Insurance for the State of New York.

**ARTICLE XXV - ARBITRATION**

Any and all disputes between the Company and the Reinsurer arising out of, relating to, or concerning this Agreement, whether sounding in contract or tort and whether arising during or after termination of this Agreement, will be submitted to the decision of a board of arbitration composed of two arbitrators and an umpire ("Board") meeting at a site in Philadelphia, Pennsylvania. The arbitration will be conducted under the Federal Arbitration Act and will proceed as follows:

- A. Submission to Arbitration. A notice requesting arbitration, or any other notice made in connection therewith, will be in writing and will be sent certified mail, return receipt requested, to the affected parties. The notice requesting arbitration will state in particulars all issues to be resolved in the view of the claimant, will appoint the arbitrator selected by the claimant, and will set a tentative date for the hearing, which date will be no sooner than ninety (90) days and no later than one hundred fifty (150) days from the date that the notice requesting arbitration is mailed. Within thirty (30) days of receipt of the claimant's notice, the respondent will notify the claimant of any additional issues to be resolved in the arbitration and of the name of its appointed arbitrator.
- B. Arbitration Board Membership. Unless otherwise mutually agreed, the members of the Board will be impartial and disinterested and will be (i) current or former officers of property-casualty insurance companies or reinsurance companies, (ii) active or retired lawyers who are practicing or who have practiced in the reinsurance field and who are not then actively and regularly representing insurers or reinsurers as an attorney-at-law, or (iii) Underwriters at Lloyd's, London.

As time is of the essence, if the respondent fails to appoint its arbitrator within thirty (30) days after having received the claimant's written request for arbitration, the claimant is authorized to and will appoint the second arbitrator. The two appointed arbitrators will choose an umpire before instituting the hearing. If the two arbitrators fail to agree upon the appointment of an umpire within thirty (30) days after notification of the appointment of the second arbitrator, the two arbitrators will promptly request the Insurance Arbitration Forum ("IAF") or American Arbitration Association ("AAA") to appoint an umpire for the arbitration with the qualifications set forth above in this Article. If the IAF or AAA fails to name an umpire within thirty (30) days of the arbitrators' request, either party may apply to the court named below to appoint an umpire with the above required qualifications.

The umpire will promptly notify in writing all parties to the arbitration of his selection and thereupon the Board will notify all parties of the scheduled date for the hearing. Upon resignation or death of any member of the Board, a replacement will be appointed in the same fashion as the resigning or deceased member was appointed.

- C. Submission of Briefs. Once fully appointed, the Board will determine all requisite timing of the arbitration in the interest of fairness and an expeditious hearing and decision. The claimant and the respondent will each submit initial briefs to the Board outlining the issues in dispute and the basis, authority, and reasons for their respective positions. The claimant and the respondent may submit reply briefs to the Board after filing of the initial briefs). Initial and reply briefs may be amended by the submitting party at any time prior to the date of commencement of the arbitration hearing. Reasonable responses will be allowed at the arbitration hearing to new material contained in any amendments filed to the briefs but not previously responded to.
- D. Arbitration Award. The Board will make a decision and award with regard to the terms expressed in this Agreement, the original intentions of the parties to the extent reasonably ascertainable, and the custom and usage of the property and casualty insurance and reinsurance business which decision and award will be in writing and will state the basis for the decision and award.

The decision and award will be based upon a hearing in which evidence will be allowed and which the formal rules of evidence will not strictly apply but in which cross-examination and rebuttal will be allowed. At its own election or at the request of the Board, either party may submit a post-hearing brief for consideration of the Board after the closing of the hearing. The Board will make its decision and award following the close of the hearing or the submission of post-hearing briefs, whichever is later. Every decision by the Board will be by a majority of the members of the Board and each decision and award by the majority of the members of the Board will be final and binding upon all parties to the proceeding. Either party may apply to a court of competent jurisdiction within the Commonwealth of Pennsylvania for an order confirming any decision and the award; a judgment of that court will thereupon be entered on any decision or award. If such an order is issued the attorneys' fees of the party so applying and court costs will be paid by the party against whom confirmation is sought. The Board may award interest at a rate of up to one hundred (100) basis points above the prime rate as published in the Wall Street Journal (Eastern Edition) on the date of the award calculated from the date the Board determines that any amounts due the prevailing party should have been paid to the prevailing party but may not award punitive, exemplary, or treble damages.

- E. Arbitration Expense. Except in the event of a consolidated arbitration, each party will bear the expense of the one arbitrator appointed by it and will jointly and equally bear with the other party the expense of any stenographer requested, and of the umpire. The remaining costs of the arbitration proceedings will be finally allocated by the Board.

- F. Evidence. Subject to customary and recognized legal rules of privilege, each party participating in the arbitration will have the obligation to produce those documents and as witnesses to the arbitration those of its employees, those of its affiliates, and those of any intermediary or underwriting manager as any other participating party reasonably requests providing always that the same witnesses and documents be obtainable and relevant to the issues before the arbitration and not be unduly burdensome or excessive. The parties may mutually agree as to pre-hearing discovery prior to the arbitration hearing and in the absence of agreement, upon the request of any party, pre-hearing discovery may be conducted as the Board will determine in its discretion to be in the interest of fairness, full disclosure, and a prompt hearing, decision, and award by the Board. The Board will be the final judge of the procedures of the Board, the conduct of the arbitration, the rules of evidence, the rules of privilege and production, and of excessiveness and relevancy of any witnesses and documents upon the petition of any participating party. To the extent permitted by law, the Board will have the authority to issue subpoenas and other orders to enforce its decisions. The Board will have the authority to issue interim decisions or awards in the interest of fairness, full disclosure, and a prompt and orderly hearing, decision, and award by the Board.
- G. Equitable Relief. Nothing herein will be construed to prevent any participating party from applying to a federal district court or other court of competent jurisdiction to issue a restraining order or other equitable relief to maintain the "status quo" of the parties participating in the arbitration pending the decision and award by the Board or to prevent any party from incurring irreparable harm or damage at any time prior to the decision and award of the Board.
- H. Consolidated Hearing. Upon request of the Company made within thirty (30) days of the umpire's appointment, the Board may order a consolidated hearing between the Company and all affected Reinsurers to this Agreement if the Board is satisfied in its discretion that the issues in dispute affect more than one Reinsurer and a consolidated hearing would be in the interest of fairness and a prompt resolution of the issues in dispute. If the Board orders a consolidated hearing, all other affected participating Reinsurers in dispute with the Company will join and participate in the arbitration at the Company's request under time frames established by the Board and will be bound by the Board's decision and award unless excused by the Board in its discretion. Any Reinsurer may decline to actively participate in a consolidated arbitration if in advance of the hearing, that Reinsurer will file with the Board a written agreement satisfactory to the Board to be bound by the decision and award of the Board in the same fashion and to the same degree as if it actively participated in the arbitration. Nothing in this Article will be construed to preclude a Reinsurer from requesting the Board to excuse that Reinsurer from participation in the consolidated hearing on the basis that fairness would be served by exempting such Reinsurer or that as to that Reinsurer, the issues in dispute do not affect that Reinsurer.

In the event of an order of consolidation by the Board, the arbitrator appointed by the original Reinsurer will be subject to being, and may be, replaced within thirty (30) days of the Board's order of consolidation by an arbitrator named by the Reinsurer with the largest participation in this Agreement affected by the dispute and participating in the arbitration. In the event two or more Reinsurers affected by the dispute each have the same largest participation, they will agree among themselves as to the replacement arbitrator, if any, to be appointed. The umpire will be the final determiner in the event of any dispute over replacement of that arbitrator. All other aspects of the arbitration will be conducted as provided for in this Article provided that (1) each party actively participating in the consolidated arbitration will have the right to its own attorney, position, and related claims and defenses; (2) each party will not, in presenting its position, be prevented from presenting its position by the position set forth by any other party; and (3) the cost and expense of the arbitration, exclusive of attorney's fees (which will be borne exclusively by the respective retaining party) but including the expense of any stenographer requested and the fees of the umpire and arbitrators will be borne pro rata by each party actively participating in the consolidated arbitration or as the Board will determine to be fair and appropriate under the circumstances.

**ARTICLE XXVI - INTERMEDIARY CLAUSE**

Median Re, Inc. is hereby recognized as the intermediary negotiating this Agreement for all business hereunder. All communications (including but not limited to notices, statements, premium, return premium, commissions taxes, losses, loss adjustment expense, salvages, and loss settlements) relating thereto shall be transmitted to the Company or the Reinsurer through , 98 Cuttermill Road, Suite 346S, Great Neck, New York 11021. Payments by the Company to the intermediary shall be deemed to constitute payment to the Reinsurer. Payments by the Reinsurer to the intermediary shall be deemed to constitute payment to the Company only to the extent that such payments are actually received by the Company.

TREATY ENDORSEMENT "D"

Pollution Liability Exclusion Clause – Reinsurance

This reinsurance excludes:

1. Any loss occurrence arising out of the actual, alleged or threatened discharge, dispersal, release or escape of pollutants:
  - a) At or from premises owned, rented or occupied by an original assured; or
  - b) At or from any site or location used for the handling, storage, disposal, processing or treatment of waste; or
  - c) Which are at any time transported, handled stored, treated, disposed of, of processed as waste; or
  - d) At or from any site or location on which any original assured is performing operations:
    - (i) If the pollutants are brought on or to the site or location in connection with such operations; or
    - (ii) If the operations are to test for, monitor, clean-up, remove, contain, treat, detoxify or neutralize the pollutants.
2. Any liability, loss, cost or expense arising out of any governmental direction or request to test for, monitor, clean-up, remove, contain, treat, detoxify or neutralize pollutants.

"Pollutants" means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

Subparagraphs (a) and (d) (i) of paragraph (1) of this exclusion do not apply to loss occurrences caused by heat, smoke or fumes from a hostile fire. As used herein, "hostile fire" means one which becomes uncontrollable or breaks out from where it was intended to be.

"Original assured" as used herein means all insureds as defined in the policy issued by the Company.

**TREATY ENDORSEMENT "E"**

**Insolvency Funds Exclusion Clause**

This Agreement excludes all liability of the company arising by contract, operation of law, or otherwise from its participation or membership, whether voluntary or involuntary, in any insolvency fund or from reimbursement of any person for any such liability. "Insolvency fund" includes any guaranty fund, insolvency fund, plan, pool, association, fund or other arrangement, howsoever denominated, established or governed, which provides for any assessment of or payment or assumption by any person of part or all of any claim, debt, charge, fee, or other obligation of an insurer, or its successors or assigns, which has been declared by any competent authority to be insolvent or which is otherwise deemed unable to meet any claim, debt, charge, fee or other obligation in whole or in part.

TREATY ENDORSEMENT "F.1"

Nuclear Incident Exclusion Clause – Liability – Reinsurance – U.S.A.

1. This reinsurance does not cover any loss or liability accruing to the Reassured as a member of, or subscriber to, any association of insurers of reinsurers formed for the purpose of covering nuclear energy risks or as a direct or indirect reinsurer of any such member, subscriber or association.
2. Without in any way restricting the operation of paragraph 1. of this clause it is understood and agreed that for all purposes of this reinsurance all the original policies of the Reassured (new, renewal and replacement) of the classes specified in Clause II. In this paragraph 2, from the time specified in Clause III. In this paragraph 2. Shall be deemed to include the following provision (specified as the Limited Exclusion Provision):

Limited Exclusion Provision

- I. It is agreed that the policy does not apply under any liability coverage, to injury, sickness, disease, death or destruction, bodily injury or property damage with respect to which an insured under the policy is also an insured under a nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters or Nuclear Insurance Association of Canada, or would be an insured under any such policy but for its termination upon exhaustion of its limit of liability.
- II. Family Automobile Policies (liability only), Special Automobile Policies (private passenger automobiles, liability only), Farmers Comprehensive Personal Liabilities Policies (liability only), Comprehensive Personal Liability Policies (liability only) or policies of a similar nature; and the liability portion of combination forms related to the four classes of policies stated above, such as the Comprehensive Dwelling Policy and the applicable types of Homeowners Policies.
- III. The inception dates and thereafter of all original policies as described in II. Above, whether new, renewal, or replacement, being policies which either.
  - a) become effective on or after 1<sup>st</sup> May, 1960, or
  - b) become effective before that date and contain the Limited Exclusion Provision set out above; provided this paragraph 2. shall not be applicable to Family Automobile Policies, Special Automobile Policies, or policies or combination policies of a similar nature, issued by the Reassured on New York risks, until 90 days following approval of the Limited Exclusion Provision by the Governmental Authority having jurisdiction thereof.

3. Except for those classes of policies specified in Clause II. of paragraph 2. And without in any way restricting the operation of paragraph 1. Of this Clause, it is understood and agreed that for all purposes of this reinsurance the original liability policies of the Reassured (new, renewal and replacement) affording the following coverage's:

Owners, Landlords and Tenants Liability, Contractual Liability, Elevator Liability, Owners or Contractors (including railroad) Protective Liability, Manufacturers and Contractors Liability, Product Liability, Professional and Malpractice Liability, Storekeepers Liability, Garage Liability, Automobile Liability (including Massachusetts Motor Vehicle or Garage Liability) shall be deemed to include with respect to such coverage's, from the time specified in Clause V, of this paragraph 3., the following provision (specified as the Broad Exclusion Provision):

Broad Exclusion Provision

It is agreed that the policy does not apply:

- I. Under any Liability Coverage to injury, sickness, disease, death or destruction, bodily injury or property damage.
  - a) With respect to which an insured under the policy is also an insured under nuclear energy liability policy issued by Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters or Nuclear Insurance Association of Canada, or would be an insured under any such policy but for its termination upon exhaustion of its limit of liability; or
  - b) Resulting from the hazardous properties of nuclear material and with respect to which (1) any person or organization is required to maintain financial protection pursuant to the Atomic Energy Act of 1954, or any law amendatory thereof, or (2) the insured is, or had this policy not been issued would be, entitled to indemnity from the United States of America, or any agency thereof, under any agreement entered into by the United States of America, or any agency thereof, with any person or organization.
- II. Under any Medical Payments Coverage, or under any Supplementary Payments Provision relating to medical or surgical relief, first aid, to expenses incurred with respect to bodily injury, sickness, disease or death, nuclear material and arising out of the operation of a nuclear facility by any person or organization.

- III. Under any Liability Coverage, to injury, sickness, disease, death or destruction, bodily injury or property damage resulting from the hazardous properties of nuclear material; if
- a) the nuclear material (1) is at any nuclear facility owned by, or operated by or on behalf of, an insured or (2) has been discharged or dispersed therefrom;
  - b) the nuclear material is contained in spent fuel or waste at any time possessed, handled, used, processed, stored, transported or disposed of by or on behalf of an insured); or
  - c) the injury, sickness, disease, death or destruction, bodily injury or property damage arises out of the furnishing by an insured of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any nuclear facility, but if such facility is located within the United States of America, its territories, or possessions or Canada, this exclusion (c) applied only to injury to or destruction of property damage to such nuclear facility and any property thereat.

IV. As used in this endorsement:

"hazardous properties" include radioactive, toxic or explosive properties, "nuclear material" means source material, special nuclear material or by-product material; "source material", "special nuclear material", and "by-product material" have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof; "spent fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a nuclear reactor) "waste" means any waste material (1) containing by-product material other than the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed for its source material content and (2) resulting from the operation by any person or organization of any nuclear facility included within the definition of nuclear facility under paragraph (a) or (b) thereof; "nuclear facility" means:

- a) any nuclear reactor;
- b) any equipment or device designed or used for (1) separating the isotopes or uranium or plutonium, (2) processing or utilizing spent fuel, or (3) handling, processing or packaging waste;

- c) any equipment or device used for the processing, fabricating or alloying of special nuclear material if at any time the total amount of such material in the custody of the insured at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235;
- d) any structure, basin, excavation, premises or place prepared or used for the storage or disposal of waste

and includes the site on which any of the foregoing is located, all operations conducted on such site and all premises used for such operations; "nuclear reactor" means any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of fissionable material; with respect to injury to or destruction of property, the word "injury" or "destruction" includes all forms of radioactive contamination of property; "property damage" includes all forms of radioactive contamination of property.

V. The inception dates and thereafter of all original policies affording coverage's specified in this paragraph 3., whether new, renewal or replacement, being policies which become effective on or after 1<sup>st</sup> May, 1960, provided this paragraph 3. shall not be applicable to:

- (i) Garage and Automobile Policies issued by the Reassured on New York risks; or
- (ii) Statutory liability insurance required under Chapter 90, General Laws of Massachusetts.

until 90 days following approval of the Broad Exclusion Provision by the Governmental Authority having jurisdiction thereof.

4. Without in any way restricting the operations of paragraph 1. of this Clause, it is understood and agreed that paragraphs 2. and 3. above are not applicable to original liability policies of the Reassured in Canada, and that with respect to such policies, this Clause shall be deemed to include the Nuclear Energy Liability Exclusion Provisions adopted by the Canadian Underwriters' Association or the Independent Insurance Conference of Canada.

**TREATY ENDORSEMENT "F.2"**

**Nuclear Incident Exclusion Clause – Liability – Reinsurance – Canada**

1. This Agreement does not cover any loss or liability accruing to the Company as a member of, or subscriber to, any association of insurers or reinsurers formed for the purpose of covering nuclear energy risks or as a direct or indirect reinsurer of any such member, subscriber or association.
2. Without in any way restricting the operation of Paragraph 1. of this Clause, it is agreed that for all purposes of this Agreement all the original liability contracts of the Company, whether new, renewal or replacement, of the following classes, namely:

Personal Liability  
Farmers Liability  
Storekeepers' Liability

which become effective on or after 31<sup>st</sup> December 1984, shall be deemed to include, from their inception dates and thereafter, the following provision:

**Limited Exclusion Provision**

This Policy does not apply to bodily injury or property damage with respect to which the Insured is also insured under a contract of nuclear energy liability insurance (whether the Insured is unnamed in such contract and whether or not it is legally enforceable by the Insured) issued by the Nuclear Insurance Association of Canada or any other group or pool of insurers or would be an Insured under any such policy but for its termination upon exhaustion of its limits of liability.

With respect to property, loss of use of such property shall be deemed to be property damage.

3. Without in any way restricting the operation of Paragraph 1. of this Clause, it is agreed that for all purposes of this Agreement all the original liability contracts of the Company, whether new, renewal or replacement, of any class whatsoever (other than Personal Liability, Farmers' Liability, Storekeepers' Liability or Automobile Liability contracts), which become effective on or after 31<sup>st</sup> December 1994, shall be deemed to include, from their inception dates and thereafter, the following provision:

**Broad Exclusion Provision**

It is agreed that this Policy does not apply:

- (a) to liability imposed by or arising under the Nuclear Liability Act; nor

- (b) to bodily injury or property damage with respect to which an insured under this Policy is also insured under a contract of nuclear energy liability insurance (whether or not it is legally enforceable by the insured) issued by the Nuclear Association of Canada or any other insurer or group or pool of insurers or would be an insured under any such policy but for its termination upon exhaustion of its limit of liability; nor
- (c) to bodily injury or property damage resulting directly or indirectly from the nuclear energy hazard arising from:
  - (i) the ownership, maintenance, operation or use of a nuclear facility by or on behalf of an insured;
  - (ii) the furnishing of an insured of services, materials, parts or equipment in connection with the planning, construction, maintenance, operation or use of any nuclear facility; and
  - (iii) the possession, consumption, use, handling, disposal or transportation of fissionable substances, or of other radioactive material (except radioactive isotopes, away from a nuclear facility, which have reached the final stage of fabrication so as to be usable for any scientific, medical, agricultural, commercial or industrial purpose) used, distributed, handled or sold by an insured.

As used in this Policy:

- (1) The term "nuclear energy hazard" means the radioactive, toxic, explosive, or other hazardous properties of radioactive material;
- (2) The term "radioactive material" means uranium, thorium, plutonium, neptunium, their respective derivatives and compounds, radioactive isotopes of other elements and any other substances that the Atomic Energy control Board may, by regulation, designate as being prescribed substances capable of releasing atomic energy, or as being requisite for the production, use or application of atomic energy;
- (3) The term "nuclear facility" means:
  - (a) any apparatus designed or used to sustain nuclear fission in a self-supporting chain reaction or to contain a critical mass of plutonium, thorium and uranium or any one or more of them;
  - (b) any equipment or device designed or used for (i) separating the isotopes of plutonium, thorium and uranium or any one or more of them, (ii) processing or utilizing spent fuel, or (iii) handling, processing or packaging waste;

- (c) any equipment or device used for the processing, fabricating or alloying of plutonium, thorium or uranium enriched in the isotope uranium 233 or in the isotope uranium 235, or any one or more of them if at any time the total amount of such material in the custody of the insured as the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235;
- (d) any structure, basin, excavation, premises or place prepared or used for the storage or disposal of waste radioactive material;

and includes the site on which any of the foregoing is located, together with all operations conducted thereon and all premises used for such operations.

- (4) The term "fissionable substance" means any prescribed substance that is, or from which can be obtained, a substance capable of releasing atomic energy by nuclear fission.
- (5) With respect to property, loss of use of such property shall be deemed to be property damage.

TREATY ENDORSEMENT "F.3"

Nuclear Incident Exclusion Clause – Reinsurance – No. 4

1. This Reinsurance does not cover any loss or liability accruing to the Reassured as a member of, or subscriber to, any association of insurers or reinsurers formed for the purpose of covering nuclear energy risks or as a direct or indirect reinsurer of any such member, subscriber or association.
2. Without in any way restricting the operations of Nuclear Incident Exclusion Clauses, - Liability, - Physical Damage, - Boiler and Machinery and Paragraph 1. of this Clause, it is understood and agreed that for all purposes of the reinsurance assumed by the Reinsurer from the Reinsured, all original insurance policies or contracts of the Reinsured (new, renewal and replacement) shall be deemed to include the applicable existing Nuclear clause and/or Nuclear Exclusion Clause's in effect at the time and any subsequent revisions thereto as agreed upon and approved by the Insurance Industry and/or a qualified Advisory or Rating Bureau.

**Exhibit C**

**For Reliance/The Liquidator**

Keith Kaplan  
Reliance Insurance Company (In Liquidation)  
75 Broad Street  
New York, NY 10004  
Tel. 212-858-5087  
Fax 212-858-5050

**For Folksamerica/Reinsurer**

Folksamerica Reinsurance Company  
One Liberty Plaza, 19<sup>th</sup> Floor  
New York, NY 10006  
Attn: Legal Department  
Tel: 212-312-0232  
Fax: 212-732-5614

**CERTIFICATE OF SERVICE**

I hereby certify that on July 30, 2007, true and correct copies of the Liquidator's Petition for Approval of Commutation, Settlement Agreement and Release were served upon the following:

**Via Notice of Filing**

Members of Reliance Master Service List



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CHRISTOPHER J. LOWE