

## **AFFILIATION AGREEMENT**

This **Affiliation Agreement** (the “Agreement”) is entered into and made as of July 2, 2009 (the “Contract Date”), by and between **Motorists Mutual Insurance Company**, an Ohio mutual insurance company (“Motorists”) and Phenix Mutual Fire Insurance Company, a New Hampshire mutual insurance company (“Phenix”).

### **BACKGROUND**

A. Pursuant to negotiations, by and between Motorists and Phenix, and subject to any required regulatory approval by the State of New Hampshire Insurance Department (“Department”), Iowa Division of Insurance (“Division”), the Ohio Department of Insurance (“ODI”) and the Office of the Commissioner of Insurance of the State of Wisconsin (“OCI”), and the approval of the policyholders of Phenix, the parties desire to affiliate their respective insurance businesses according to the terms set forth in this Agreement. Unless an exemption to filing a Form A Change of Control with the Maine Bureau of Insurance (“Bureau”) is obtained, because of Phenix’s ownership interest in a Maine corporation as explained in Section 4.6, regulatory approval from the Bureau shall be obtained.

B.. In connection with this affiliation, Phenix desires to (i) become a party to the Reinsurance Pooling Agreement (“Pooling Agreement”) entered into among the members of the Motorists insurance holding company system and (ii) assume such percentage of the collective risk of such pool as is determined under the terms of the Pooling Agreement.

### **AGREEMENT**

The parties acknowledge the accuracy of the foregoing Background statements, and in consideration of the mutual promises, representations, warranties, and covenants set forth in this Agreement and in the other Transaction Documents, as that term is defined in Section 1.1, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, Phenix and Motorists agree as follows:

#### **SECTION 1 THE AFFILIATION; EFFECTIVE AND CLOSING DATES**

1.1 The Affiliation and Transaction Documents. Subject to the terms and conditions of this Agreement and the other Transaction Documents, Motorists and Phenix will affiliate their respective insurance businesses and make effective the transactions contemplated by this Agreement and the other Transaction Documents (collectively, the “Transactions”).

For purposes of this Agreement, the term “Transaction Documents” means the following:

- (a) this Agreement;
- (b) the Amended and Restated Reinsurance Pooling Agreement attached hereto as **Exhibit A**;

- (c) the Cost Sharing and Management Agreement between Phenix and Motorists (the “Management Agreement”), attached hereto as **Exhibit B**;
- (d) the Amended and Restated Bylaws of Phenix adopted by Phenix’s board of directors, attached hereto as **Exhibit C**;
- (e) the Charter of Phenix, including all amendments thereto, attached hereto as **Exhibit D**; and
- (f) the Cost Sharing Agreement between Phenix and Motorists (the “Joint Cost Agreement”), attached hereto as **Exhibit E**.

1.2 **Effective Date**. Provided that each of the Conditions to Closing, as set forth in Section 7 hereof, has been met or waived by the parties and that the Closing, as defined below, occurs on or before December 31, 2009, the Effective Date shall be

- (a) the Closing Date for all Transactions other than the Pooling Agreement, and
- (b) January 1, 2009 for the Pooling Agreement.

1.3 **The Closing and the Closing Date**. The closing of the Transactions (the “Closing”) will take place at the offices of Motorists at 471 East Broad Street, Columbus, Ohio, or at such other place as the parties may agree, on the last business day of the month following the date on which the Conditions to Closing set forth in Section 7 hereof have been satisfied or waived, or on such other date as the parties may agree (the “Closing Date”).

## **SECTION 2 REINSURANCE POOLING AGREEMENT**

2.1 (a) **Participation of Phenix in the Pooling Agreement**. Effective as of January 1, 2009, Phenix shall cede, and the reinsurance pool created by the Pooling Agreement (the “Pool”) shall reinsure, one hundred percent (100%) of Phenix’s direct and assumed insurance business net of any losses ceded to other insurers or reinsurers, pursuant to the terms of the Pooling Agreement. On or prior to the Closing Date, Phenix will have executed the Pooling Agreement and/or such other agreements or documents necessary for Phenix to (a) become a member of the Pool as of January 1, 2009; and (b) assume such percentage of the collective risks of the Pool as is determined by Motorists and Phenix from time to time based on Phenix’s financial strength relative to the other members of the Pool.

(b) Notwithstanding the foregoing, from and after the Closing Date, Motorists may terminate immediately and unilaterally the participation of Phenix in the Pool, by providing written notice to Phenix, if the Motorists Director Designees do not constitute at least six (6) of the eleven (11) members of the Phenix Board of Directors or seven (7) of the twelve (12) members of the Phenix Board of Directors if the number of directors on the Phenix board increases to twelve (12).

2.2 Administration of the Ceded Business. Pursuant to the terms of the Pooling Agreement, Motorists will serve as the administrator of the Pool.

### SECTION 3 PHENIX'S BOARD OF DIRECTORS

3.1 Phenix's Board of Directors. As provided in Phenix's Amended and Restated Bylaws, and resolutions duly adopted by the Board of Directors of Phenix, from and after the Closing Date, the maximum number of members of Phenix's Board of Directors is twelve (12). For so long as Phenix shall remain a participant in the Pool, Motorists shall have the right to (i) nominate up to seven (7) Motorists Director Designees (as hereafter defined) to stand for election under the election procedures described in Phenix's Charter and Amended and Restated Bylaws and/or under RSA 401:10 and RSA Chapter 293-A, Code of New Hampshire (2009), and (ii) designate a replacement director to fill any vacancy created by the resignation, death or disability of a Motorists Director Designee. For so long as Phenix shall remain a participant in the Pool, Phenix will have the right to (i) nominate up to five (5) Phenix Director Designees to stand for election under the election procedures described in Phenix's Charter and Amended and Restated Bylaws, and (ii) designate a replacement director to fill any vacancy created by the resignation, death or disability of a Phenix Mutual Director Designee.

3.2 Motorists' Board Representation. Phenix will use its best efforts to cause any of its current directors who will not continue as one of the five (5) Phenix Director Designees to resign from the Phenix Board of Directors ("Director Resignations"), such Director Resignations being effective on the Closing Date. The initial Motorists Director Designees and any remaining Phenix Director Designees, as listed, together with their terms, on **Exhibit F** to this Agreement, will stand for election either (a) at a special meeting of Phenix's policyholders ("Special Meeting") for the purpose of approving the Transactions and the Transaction Documents, including but not limited to the election of directors, or (b) at a special meeting of the remaining directors of Phenix scheduled to be held on or immediately prior to the Closing, pursuant to Phenix's Bylaws and RSA 401:10 and RSA Chapter 293-A, Code of New Hampshire (2009). The Special Meeting will be called by Phenix within 60 days after this Agreement and related Transactions have been approved by the Phenix Board of Directors.

3.3 Advisory Board. For a period of two (2) years from and after the Closing Date, those current Phenix Board members who are not nominated to be Phenix Director Designees under Section 3.2 above, shall be appointed as members of the Phenix Advisory Council, a non-voting advisory council to be established by resolution of the Phenix Board of Directors. The Advisory Council will meet at least annually, and each member will receive an annual compensation of \$2,200.

3.4 Definitions. In this Agreement, "Motorists Director Designees" means the up to seven (7) individuals that Motorists will nominate for election as directors at the Special Meeting under the election procedures described in Phenix's Charter and Amended and Restated Bylaws and/or under RSA 401.10 and RSA Chapter 293-A, Code of New Hampshire (2009) and any designations or nominations to replace any such individuals who retire, resign, die or become disabled, and "Phenix Director Designees" means the up to five (5) individuals that Phenix will nominate for election as directors at the Special Meeting

under the election procedures described in Phenix's Charter and Amended and Restated Bylaws and/or under RSA 401.10 and RSA Chapter 293-A, Code of New Hampshire (2009) and any designations or nominations to replace any such individuals who retire, resign, die or become disabled.

## **SECTION 4 MANAGEMENT AND OPERATIONS**

4.1 Management Agreement. From and after the Closing Date and subject to the express provisions of the Transaction Documents, Phenix will continue to operate as a separate corporate entity, domiciled in the state of New Hampshire. Motorists will provide assistance to Phenix in reducing the costs associated with Phenix's, including but not limited to, reinsurance, investment management and actuarial analysis.

4.2 Principal Offices of Phenix. The principal offices of Phenix will remain in Concord, New Hampshire ("Concord") and may not be relocated, Phenix may not be redomesticated and Phenix will continue to market itself under its current trade names, unless the Phenix Board of Directors unanimously agrees to do otherwise, subject to any necessary regulatory approvals. The provisions of this Section 4.2 shall expire on the tenth anniversary of the Closing Date.

4.3 Executive. Motorists and Phenix anticipate that Motorists will relocate to Concord an executive from Motorists to head up a commercial lines division at Phenix. This executive will report to the President of Phenix. The President of Phenix will, in turn, report to a Group Senior Officer of Motorists in Columbus for purposes of implementing and effectuating the Transaction Documents as well as the day to day ongoing business operations.

4.4 Employee Benefits. Phenix will use its best efforts to maintain employee benefits at current levels, subject to rate changes, availability and other market conditions. Motorists will evaluate these employee benefits, and Motorists and Phenix jointly will evaluate and mutually agree upon any changes that may be implemented.

4.5 Bylaws. On or immediately after the Closing Date, the Phenix Board of Directors shall adopt Amended and Restated Bylaws for Phenix which will (a) follow the content of the Bylaws of Motorists as permitted by New Hampshire law, (b) accommodate and support the affiliation contemplated by this Agreement and (c) in all cases, be acceptable in form and substance to Motorists. The Amended and Restated Bylaws of Phenix are attached hereto as **Exhibit C.**

4.6 CASCO Indemnity Company. Phenix has a forty-four point eight percent (44.8%) ownership interest in N.E. Corporation ("N.E."), which in turn owns one hundred percent (100%) of CASCO Indemnity Company ("CASCO"), a property and casualty insurance company domiciled in Maine. Upon execution of this Agreement through the Closing Date, Phenix shall not make any decisions about its ownership interest in N.E. or CASCO or enter into any agreement or transaction relative to divesting its interest in N.E. or CASCO or acquiring an additional interest in N.E. or CASCO without first discussing such

agreement or transactions with Motorists and obtaining the permission of Motorists, in writing, to enter into an oral or written agreement or transaction regarding N.E. or CASCO.

## **SECTION 5 REPRESENTATIONS AND WARRANTIES**

5.1 Representations and Warranties of Phenix For purposes of this section specifically, and throughout this document generally, the phrase “to the best knowledge of Phenix” shall include and mean to the best knowledge of Phenix’s directors, officers, employees and agents. Accordingly, Phenix represents and warrants to Motorists as of the Contract Date as follows:

(a) Corporate Existence and Power. (i) Phenix has been duly organized, is validly existing, and is in good standing under the laws of the State of New Hampshire. Phenix has all corporate powers required to carry on its business as now conducted, has all material government licenses, authorizations, permits, consents, and approvals required to carry on its business as now conducted, and is not in violation of any of the provisions of its Charter, Amended and Restated Bylaws or other organizational documents. Phenix has previously delivered to Motorists true and complete copies of each of its Charter and Bylaws as in effect on the Contract Date.

(ii) Phenix Ownership Interests and Affiliations. The corporate ownership interests and/or affiliations of Phenix are set out in Schedule 5.1(a)(ii).

(b) Corporate Authorization. The execution, delivery, and, subject to the receipt of the approvals referred to in Section 5.1(c), performance by Phenix of this Agreement and each of the other Transaction Documents is within Phenix’s power and has been, or will prior to the Closing Date, be duly authorized by all necessary corporate action. Each of the Transaction Documents constitutes a valid and legally binding agreement, enforceable against Phenix in accordance with its respective terms, subject to (i) bankruptcy, insolvency, reorganization, moratorium, and other similar laws now or hereafter in effect relating to or affecting creditors’ rights generally and (ii) general principles of equity.

(c) Governmental Authorization. The execution, delivery, and performance by Phenix of this Agreement and each of the other Transaction Documents requires no action by or in respect of, or filing with, any governmental body, agency, or official on the part of Phenix other than (i) approvals, filings, and/or notices to the Division; (ii) filings and notices not required to be made or given until after the Closing Date; (iii) filings, at any time, of tax returns, tax reports, and tax information statements; and (iv) any such action or filing as to which the failure to make or obtain would not, individually or in the aggregate, materially impair the ability of Phenix to conduct its business or consummate the Transactions.

(d) Non-Contravention. The execution, delivery, and performance by Phenix of this Agreement and each of the other Transaction Documents does not and will not (i) violate Phenix’s Charter or Bylaws; (ii) assuming compliance with the matters referred to in Section 5.1(c), violate any applicable law; or (iii) result in the loss of any material benefit under any material agreement of Phenix or result in the creation or imposition of any material lien on any material asset of Phenix.

(e) Financial Statements.

- (i) Phenix has previously made available to Motorists true and complete copies of its Annual Statements for the years ended 2007 and 2008.
- (ii) To the best knowledge of Phenix, since December 2004, Phenix has filed all financial statements required to be filed with or submitted to the appropriate regulatory authorities. Each such statement complied with all applicable laws when so filed. Each such statement was prepared in accordance with the statutory accounting principles or generally accepted accounting principles in effect when so filed and presents fairly Phenix's financial position as of the date thereof and the related summaries of operations and changes in capital and surplus and cash flows of such entity for the respective periods covered thereby.

(f) Reserves. Phenix's aggregate reserves, after taking any applicable reinsurance agreements into account and deeming them to be in effect as of the relevant dates or periods, as established or reflected in the December 31, 2008 Annual Statement (i) were computed in accordance with presently accepted actuarial standards consistently applied and are fairly stated in accordance with the Actuarial Standards of Practice as promulgated by the American Academy of Actuaries; (ii) meet all requirements of applicable law and meet or exceed the minimum aggregate amounts required by applicable New Hampshire law; and (iii) make reasonable provision for all unpaid loss and loss expense obligations under the terms of the insurance contracts issued by Phenix.

(g) Absence of Certain Changes. Except as set forth on **Schedule 5.1(g)**, Phenix's business from the date of the most recent financial statements provided under Section 5.1(e) above to the date of this Agreement has been conducted in the ordinary course consistent with past practices (including, without limitation, with regard to underwriting, pricing, actuarial, and investment policies generally) and there has not been any (i) material transaction, commitment, contract, or agreement entered into by Phenix other than in the ordinary course of business consistent with past practices, or any acquisition of assets or incurrence of liabilities that is not primarily related to the property and casualty insurance of Phenix; (ii) material change in any method of accounting or accounting practice or policy (including, without limitation, any reserving method, practice or policy), except for any such change resulting from a concurrent change in officially promulgated Actuarial Standards of Practice or Statutory Accounting Principles in the United States, as the case may be; (iii) employment, deferred compensation, severance, retirement, or other similar agreement entered into with any director, officer, or employee (or any amendment to any such existing agreement) or any grant of any severance or termination pay to any director, officer, or employee other than in the ordinary course of business or any change in compensation or other benefits payable to any director, officer, or employee other than in the ordinary course of business or loans or advances to any director, officer, or employee, except for travel, business, and relocation expenses in the ordinary course of business consistent with past

practice; (iv) material change in marketing or underwriting practices or standards; and (v) material change in the compensation structure of, or benefits available to, agents generally.

(h) No Undisclosed Material Liabilities. Except as set forth on **Schedule 5.1(h)**, other than liabilities or obligations provided for or reserved against in Phenix's December 31, 2008 Annual Statement, liabilities incurred since such date in the ordinary course of business consistent with past practice, or liabilities to which Phenix's reinsurance agreements would apply, Phenix has no liabilities or obligations that individually or in the aggregate exceed \$100,000.

(i) Material Contracts. Except as set forth on **Schedule 5.1(i)**, Phenix has furnished or made available to Motorists complete and correct copies of all material contracts, agreements, and instruments to which Phenix is a party, each as amended or modified to the date of this Agreement (collectively, the "Material Agreements") and each of the Material Agreements is in full force and effect and enforceable according to its terms, subject to (i) bankruptcy, insolvency, reorganization, moratorium, and other similar laws now or hereafter in effect relating to or affecting creditors' rights generally, and (ii) general principles of equity, and there exists no material event of default or occurrence, condition or act on the part of Phenix, or to Phenix's knowledge, on the part of the other parties to the Material Agreements, that would constitute (with notice or lapse of time or both) a material breach of or material default under any of the Material Agreements.

(j) Litigation. Except as set forth on **Schedule 5.1(j)**, there is no action, suit, investigation, or proceeding pending against, or, to the knowledge of Phenix, threatened against or affecting it and/or any of its properties or businesses before any court or arbitrator or any governmental body, agency, or official (i) in which the actual damages alleged or sought exceeds \$500,000 (except for claims under any insurance policy issued by Phenix); or (ii) that alleges a course of conduct that, in Phenix's judgment, may reasonably be expected to give rise to a class action lawsuit, or (iii) that alleges bad faith and there is, in Phenix's judgment, a reasonable possibility of ultimate liability in excess of \$500,000 over any aggregate reserves that have been established to cover such claims, nor is there any judgment, decree, injunction or order of any governmental body, agency or official outstanding against Phenix which reasonably could be expected to have a material adverse effect upon Phenix.

(k) Environmental Matters. Except as set forth on **Schedule 5.1(k)**:

- (i) (A) to the best knowledge of Phenix, it has complied with all applicable Environmental Laws;
- (B) to the best knowledge of Phenix, the properties currently owned or operated by Phenix are not contaminated with any Hazardous Substances requiring remediation;
- (C) to the best knowledge of Phenix, prior to or during the period of ownership or operation by Phenix, properties formerly owned or operated by Phenix were not contaminated with Hazardous Substances requiring remediation by Phenix;

- (D) to the best knowledge of Phenix, it is not subject to liability under any Environmental Laws; and
  - (E) Phenix has not received any written notice, demand, letter, claim or request for information from any Governmental Entity indicating that Phenix may be in violation of or liable under any Environmental Law.
- (ii) Phenix has made available to Motorists for review and copying, all environmental reports in its possession prepared for it by third party environmental consultants concerning any currently or formerly owned property.
  - (iii) No representation in this Paragraph (k) is intended to imply any representation as to any obligation or liability that Phenix has or may have in connection with, as a result of or arising out of any insurance or reinsurance or indemnity policy, surety bond or similar contract or undertaking issued or entered into by Phenix in the ordinary course of business.
  - (iv) The following definitions apply for purposes of this Paragraph (k):
    - (A) “Environmental Laws” means any and all foreign, federal, state or local statutes, laws, regulations, ordinances, rules or codes now in effect relating to the environment, to the effect of the environment on human health or safety or to the use, generation, manufacturing, treatment, disposal, storage, discharge or release of Hazardous Substances into the environment, including without limitation, ambient air, surface water, groundwater or land, or the remediation thereof.
    - (B) “Governmental Entity” means any foreign, domestic, federal, territorial, state or local U.S. or non-U.S. governmental authority, quasi-governmental authority, instrumentality, court or government, self-regulatory organization, commission, tribunal or organization or any political or other subdivision, department, branch or representative of any of the foregoing.
    - (C) “Hazardous Substances” means any toxic, radioactive, caustic or otherwise hazardous substance, including petroleum and its derivatives and by-products, or any substance having any constituent elements displaying any of the foregoing characteristics, regulated under Environmental Laws.

(l) Compliance with Laws. Except as set forth on **Schedule 5.1(1)**, there does not exist to the best knowledge of Phenix, any violation by Phenix of any applicable law, and since January 1, 2009, Phenix has not received any written notice from any governmental entity alleging the existence of any violation of any applicable law that could reasonably be expected to be material or directing Phenix to take any remedial action.

(m) Properties. Phenix has good title to, or in the case of leased property has valid leasehold interests in, all of its property and assets (whether real or personal, tangible or intangible) except for imperfections in title or invalidities in leasehold interests that do not, individually or in the aggregate, materially detract from the value reflected on its December 31, 2008 Annual Statement, and none of such property and assets is subject to any liens, other than those reflected on its December 31, 2008 Annual Statement, liens for taxes not yet due or being contested in good faith (and for which adequate accruals or reserves have been established on its December 31, 2008 Annual Statement), and liens that do not individually or in the aggregate materially detract from the value reflected on its December 31, 2008 Annual Statement or materially interfere with any present or intended use of any material property or assets.

(n) All Assets Necessary. Except as set forth on **Schedule 5.1(n)**, from and after the Closing, Phenix will own, lease, license, or will have provided to it pursuant to a Transaction Document all property and assets necessary to carry on the business and operations presently conducted.

(o) Insurance. Prior to the Closing Date, Phenix has maintained and will maintain insurance relating to its assets, properties, business and operations (including, without limitation, errors and omissions insurance with respect to its employees, officers, and directors) that is acceptable to Motorists for a company the size of Phenix that is engaged in the insurance business but in any case provides general liability coverage of no less than \$2,000,000 per occurrence and professional liability coverage, including directors and officers liability coverage of no less than \$2,000,000.

(p) Employee Matters. Except as set forth in **Schedule 5.1(p)**, to the best of Phenix's knowledge, it is in material compliance with all applicable federal, state, and local laws and regulations respecting employment and employment practices, and the terms and conditions of employment and wages and hours. Phenix is not a party to or bound by any collective bargaining agreement and has not experienced any strikes, grievances, claims of unfair labor practices, or other collective bargaining disputes within the past year, nor is there any such action currently pending or threatened against Phenix. Except as set forth in **Schedule 5.1(p)**, to the best of Phenix's knowledge, no employee of Phenix has any employment contract or other agreement or arrangement by which such employee is employed on any basis other than as an "at will" employee or by which Phenix is restricted in any manner from terminating the services of such employee at any time without penalty or payment, subject only to the provisions of any applicable employee benefit plans.

(q) Taxes. Except as set forth on **Schedule 5.1(q)**, (i) To the best of Phenix's knowledge it has duly filed all tax returns required to be filed by it on or prior to the date of this Agreement and all such tax returns are true, correct, and complete in all material respects and Phenix has duly paid in full or made provision for the payment of all taxes for

all periods or portions thereof, (ii) no federal, state, or local audits or other administrative proceedings or court proceedings are presently pending or, to the best of Phenix's knowledge, threatened with regard to any taxes or tax returns of Phenix; and (iii) Phenix has withheld and paid all federal, state, and local taxes required to have been withheld and paid in connection with amounts paid or owing to any employee, independent contractor, creditor, or other third party.

(r) Employee Benefit Plans.

- (i) For the purposes hereof, the term "Benefit Plan" includes all plans, funds, programs, policies, arrangements, practices, customs and understandings providing benefits of economic value to any employee, or present beneficiary, dependent or assignee of any such employee other than regular salary, wages or commissions paid substantially concurrently with the performance of the services for which paid. Without limitation, the term "Benefit Plan" includes all employee welfare benefit plans within the meaning of Section 3(1) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), and all employee pension benefit plans within the meaning of Section 3(2) of ERISA.
- (ii) All Benefit Plans have been maintained by Phenix in substantial compliance with applicable law, including but not limited to the relevant provisions of ERISA and the Internal Revenue Code.
- (iii) To the best of Phenix's knowledge, Phenix has not directly or indirectly acted in any manner or incurred any obligation or liability with respect to any Benefit Plan which could result in any liability or obligation to Motorists, whether arising out of the establishment, operation, administration or termination of such Benefit Plan or the transactions contemplated by this Agreement.
- (iv) Phenix will timely provide all notices and any continuation of health benefit coverage (including, without limitation, medical and dental coverage) required to be provided to employees, former employees or the beneficiaries or dependents of such employees or former employees, under Part 6 of Subtitle B of Title I of ERISA or, as applicable, Section 4980B of the Code ("COBRA") to the extent such notices and continuation of health benefit coverage are required to be provided by reason of the events occurring prior to or on the Closing Date or by reason of the transactions contemplated by this Agreement. Phenix will continue the health benefit coverage required by COBRA.

(s) Reinsurance Treaties. **Schedule 5.1(s)** sets forth a complete and accurate list of all reinsurance treaties (whether ceded or assumed) related to the insurance business of Phenix. To the best knowledge of Phenix, no party to any such treaty for reinsurance is in default in any material respect as to any provision thereof, and all such reinsurance is fully collectible in accordance with applicable contractual terms.

(t) Disputed Claims. **Schedule 5.1(t)** sets forth a complete and accurate list of all claims made pursuant to any insurance contract issued by Phenix (i) where payment is in dispute as of the date hereof or (ii) that were unpaid as of December 31, 2008, in either case where the amount claimed exceeds \$100,000, or where the aggregate amount of such payment is not determinable and there is a specific reserve established with respect to such claim and the amount of such reserve exceeds \$100,000.

(u) Condition of Tangible Assets. All tangible assets which are included in the Phenix financial statements described in Section 5.1(e) are in good operating condition and repair, subject only to normal wear and maintenance and obsolescence, are useable in the regular and ordinary course of business and, to the best of Phenix's knowledge, conform to all applicable laws, ordinances, codes, rules and regulations, and authorizations relating to their construction, use and operation. No person other than Phenix, or an Affiliate of Phenix, owns any of the tangible assets necessary to the operation of the insurance business of Phenix, except for leased items disclosed on Schedule 5.1(u).

(v) Agents and Brokers. **Schedule 5.1(v)** is comprised of a CD-ROM, which contains true, complete and accurate information, to the best of Phenix's knowledge, as of the Effective Date of this Agreement regarding the agents and brokers (including their names, addresses, telephone numbers and gross premiums written by line of business for the most recent 12-month period) which have generated business that is currently in-force with Phenix.

(w) Insurance Contracts. To the best knowledge of Phenix:

- (i) All insurance policy benefits payable under the insurance contracts issued by Phenix pursuant to claims which have been made against such insurance contracts have, in all material respects, been paid in accordance with the terms of the insurance contracts under which they arose, are being processed in the ordinary course of Phenix's business or are in dispute, except for such benefits for which Phenix believes there is a reasonable basis to contest payment.
- (ii) No outstanding insurance contract issued, reinsured or underwritten by Phenix entitles the holder thereof or any other person or entity to receive dividends, distributions or other benefits based on the revenues or earnings of Phenix or any other entity, other than those dividends and distributions which are declared by Phenix's Board of Directors.
- (iii) The underwriting standards utilized and ratings applied by Phenix conform in all material respects to industry accepted

practices and the standards and ratings required pursuant to the terms of the respective reinsurance, coinsurance or other similar contracts.

- (iv) Except only as disclosed on **Schedule 5.1(w)**, each agent, at the time such agent wrote, sold or produced the business for Phenix, was duly licensed as an insurance agent (for the type of business written, sold or produced by such agent) in the particular jurisdiction in which such agent wrote, sold or produced such business, except where the failure to have such license would not have a material adverse effect on Phenix.
- (v) To the best of Phenix's knowledge, Phenix's insurance agents have not violated (or with or without notice or lapse of time or both, would have violated) any term or provision of any law, regulation or any writ, judgment, decree, injunction or similar order applicable to the writing, sale or production of the business, except where such violation would not have a material adverse effect on the business.
- (vi) (i) All insurance contracts have been issued, to the extent required under applicable law, on forms approved by the insurance regulatory authority of the state or jurisdiction where issued or, to the extent required by applicable law, have been filed with and not objected to by such authority within the period provided for objections; and (ii) any premium rates with respect to the business required to be filed with or approved by insurance regulatory authorities have been filed or approved and premiums charged conform thereto in all material respects except for such noncompliance, violation or failure which, individually or in the aggregate could not reasonably be expected to have a material adverse effect on Phenix.

(x) **Disclosure.** This Agreement and the Schedules hereto, taken as a whole, do not contain any untrue statement of a material fact or omit to state a material fact required to be stated herein or necessary to make the statements contained herein or therein, in light of the circumstances under which they were made, not misleading.

(y) **Brokers or Finders.** (i) Except for Frances "Skip" Hagerty and Philo Smith & Co., no broker, adviser or finder has acted directly or indirectly for Phenix or Motorists in connection with this Agreement, or the transactions contemplated hereby; (ii) no person is entitled to any brokerage, advisory or finder's fee or other commission based in any way on agreements, arrangements or understandings with Phenix or Motorists relating to the affiliation of Phenix with Motorists (Phenix's Fees"); (iii) if any Phenix Fees are due, they will be the sole obligation of Phenix, and Motorists shall not have any liability therefore; and (iv) Phenix shall hold Motorists harmless from and against any claim or demand for any Phenix Fees.

5.2 Representations and Warranties of Motorists. For purposes of this section specifically, and throughout this document generally, the phrase “to the best knowledge of Motorists” shall include and mean to the best knowledge of Motorists’ directors, officers, employees and agents. Accordingly, Motorists represents and warrants to Phenix as of the Contract Date as follows:

(a) Corporate Existence and Power. Motorists has been duly organized, is validly existing, and is in good standing under the laws of the state of Ohio. Motorists has all corporate powers required to carry on its business as now conducted, has all material government licenses, authorizations, permits, consents, and approvals required to carry on its business as now conducted, and is not in violation of any of the provisions of its Articles of Incorporation, Bylaws or other organizational documents. Motorists has previously delivered to Phenix true and complete copies of each of its Articles of Incorporation and Bylaws as in effect on the date of this Agreement.

(b) Corporate Authorization. The execution, delivery, and, subject to the receipt of the approvals referred to in Section 5.2(c), performance by Motorists of this Agreement and each of the other Transaction Documents is within Motorists’ power and has been or will be prior to the Closing Date, duly authorized by all necessary corporate action. Each of the Transaction Documents constitute valid and legally binding agreements, enforceable against Motorists in accordance with their respective terms, subject to (i) bankruptcy, insolvency, reorganization, moratorium, and other similar laws now or hereafter in effect relating to or affecting creditors’ rights generally and (ii) general principles of equity.

(c) Governmental Authorization. The execution, delivery, and performance by Motorists of this Agreement and each of the other Transaction Documents requires no action by or in respect of, or filing with, any governmental body, agency, or official on the part of Motorists other than (i) approvals, filings, and/or notices to the Department, the Division, ODI and the OCI; (ii) filings and notices not required to be made or given until after the Closing Date; (iii) filings, at any time, of tax returns, tax reports, and tax information statements; and (iv) any such action or filing as to which the failure to make or obtain would not, individually or in the aggregate, materially impair the ability of Motorists to conduct its business or consummate the Transactions.

(d) Non-Contravention. The execution, delivery, and performance by Motorists of this Agreement and each of the other Transaction Documents does not and will not (i) violate the Articles of Incorporation or Bylaws of Motorists; (ii) assuming compliance with the matters referred to in Section 5.2(c), violate any applicable law; or (iii) result in the loss of any material benefit under any material agreement of Motorists or result in the creation or imposition of any material lien on any material asset of Motorists.

(e) Financial Statements. (i) Motorists has previously made available to Phenix true and complete copies of its Annual Statements for the years ended 2005, 2006, 2007 and 2008.

(ii) To the best knowledge of Motorists, since December, 2003 Motorists has filed all financial statements required to be filed with or submitted to the appropriate regulatory authorities. Each such statement complied with all applicable laws

when so filed. Each such statement was prepared in accordance with the statutory accounting principles in effect when so filed and presents fairly Motorists' financial position as of the date thereof and the related summaries of operations and changes in capital and surplus and cash flows of such entity for the respective periods covered thereby.

(f) Reserves. The aggregate reserves of Motorists, after taking any applicable pooling or reinsurance agreements into account and deeming them to be in effect as of the relevant dates or periods, as established or reflected in each of the December 31, 2008 Annual Statement (i) were computed in accordance with presently accepted actuarial standards consistently applied and are fairly stated in accordance with the Actuarial Standards of Practice as promulgated by the American Academy of Actuaries; (ii) meet all requirements of applicable law and meet or exceed the minimum aggregate amounts required by applicable Ohio law; and (iii) make reasonable provision for all unpaid loss and loss expense obligations under the terms of the insurance contracts issued by Motorists.

(g) Absence of Certain Changes. Except as set forth on Schedule 5.2(g), the business of Motorists from the date of the most recent financial statements provided under Section 5.2(e) above to the date of this Agreement has been conducted in the ordinary course consistent with past practices (including, without limitation, with regard to marketing, underwriting, pricing, actuarial, and investment policies generally) and there has not been any material change in any method of accounting or accounting practice or policy (including, without limitation, any reserving method, practice or policy), except for any such change resulting from a concurrent change in officially promulgated Standard Actuarial Principles or Statutory Accounting Principles in the United States, as the case may be.

(h) No Undisclosed Material Liabilities. Except as set forth on Schedule 5.2(h), other than liabilities or obligations provided for or reserved against in Motorists' December 31, 2008 Annual Statement, liabilities incurred since such date in the ordinary course of business consistent with past practice, or liabilities to which Motorists' reinsurance agreements would apply, Motorists has no liabilities or obligations that individually or in the aggregate exceed \$1,000,000.

(i) Litigation. Except as set forth on Schedule 5.2(i), there is no action, suit, investigation, or proceeding pending against, or, to the knowledge of Motorists, threatened against or affecting the property of Motorists before any court or arbitrator or any governmental body, agency, or official (i) in which the actual damages alleged or sought exceed \$500,000 (except for claims under any insurance policy issued by Motorists); (ii) that alleges a course of conduct that, in Motorists' judgment, may reasonably be expected to give rise to a class action lawsuit; or (iii) that alleges bad faith and there is, in Motorists' judgment, a reasonable possibility of ultimate liability in excess of \$500,000 over any aggregate reserves that have been established to cover such claims, nor is there any judgment, decree, injunction or order of any governmental body, agency or official outstanding against Motorists which reasonably could be expected to have a material adverse effect upon Motorists.

(j) Compliance with Laws. Except as set forth on Schedule 5.2(j), there does not exist to the best knowledge of Motorists, any violation by Motorists of any applicable law, and since January 1, 2009, Motorists has not received any written notice from any governmental entity alleging the existence of any violation of any applicable law that

could reasonably be expected to be material or directing Motorists to take any remedial action.

(k) Taxes. Except as set forth on **Schedule 5.(k)**, (i) to the best knowledge of Motorists it has duly filed all tax returns required to be filed by it on or prior to the date of this Agreement and all such tax returns are true, correct, and complete in all material respects, and Motorists has duly paid in full or made provision for the payment of all taxes for all periods or portions thereof, (ii) no federal, state, or local audits or other administrative proceedings or court proceedings are presently pending or, to the best of Motorists' knowledge, threatened with regard to any taxes or tax returns of Motorists; and (iii) Motorists has withheld and paid all federal, state, and local taxes required to have been withheld and paid in connection with amounts paid or owing to any employee, independent contractor, creditor, or other third party.

(l) Insurance Contracts. To the best knowledge of Motorists:

- (i) All insurance policy benefits payable under the insurance contracts issued by Motorists pursuant to claims which have been filed have, in all material respects, been paid in accordance with the terms of the insurance contracts under which they arose, are being processed in the ordinary course of Motorists' business or are in dispute, except for such benefits for which Motorists believes there is a reasonable basis to contest payment.
- (ii) No outstanding insurance contract issued, reinsured or underwritten by Motorists entitles the holder thereof or any other person or entity to receive dividends, distributions or other benefits based on the revenues or earnings of Motorists or any other entity.
- (iii) The underwriting standards utilized and ratings applied by Motorists conform in all material respects to industry accepted practices and the standards and ratings required pursuant to the terms of the respective reinsurance, coinsurance or other similar contracts.
- (iv) To the best knowledge of Motorists each agent, at the time such agent wrote, sold or produced the business for Motorists, was duly licensed as an insurance agent (for the type of business written, sold or produced by such agent) in the particular jurisdiction in which such agent wrote, sold or produced such business, except where the failure to have such license would not have a material adverse effect on Motorists.
- (v) To the best knowledge of Motorists, its insurance agents have not violated (or with or without notice or lapse of time or both, would have violated) any term or provision of any law, regulation or any writ, judgment, decree, injunction or similar order applicable to the writing, sale or production of the

business, except where such violation would not have a material adverse effect on the business.

- (vi) (i) All insurance contracts have been issued, to the extent required under applicable law, on forms approved by the insurance regulatory authority of the state or jurisdiction where issued or, to the extent required by applicable law, have been filed with and not objected to by such authority within the period provided for objections; and (ii) any premium rates with respect to the business required to be filed with or approved by insurance regulatory authorities have been filed or approved and premiums charged conform thereto in all material respects except for such noncompliance, violation or failure which, individually or in the aggregate could not reasonably be expected to have a material adverse effect on Motorists.

(m) Reinsurance Treaties. **Schedule 5.2(m)** sets forth a complete and accurate list of all reinsurance treaties (whether ceded or assumed) related to the insurance business of Motorists. To the best knowledge of Motorists, no party to any such treaty for reinsurance is in default in any material respect as to any provision thereof.

(n) Disclosure. This Agreement and the Schedules hereto, taken whole, do not contain any untrue statement of a material fact or omit to state a material fact required to be stated herein or necessary to make the statements contained herein or therein, in light of the circumstances under which they were made, not misleading.

## SECTION 6 COVENANTS

6.1 Conduct of Business Prior to the Closing Date. Motorists and Phenix each covenant and agree that, after the date of this Agreement and prior to the Closing (except as expressly contemplated by this Agreement or by the other Transaction Documents), it will promptly advise the other party in writing of any material adverse effect on their respective insurance businesses or of any litigation involving such party that could reasonably be expected to materially and adversely affect the consummation of the Transactions.

6.2 Access to Information. From the date of this Agreement until the Closing, subject to any applicable contractual restrictions and applicable legal privileges, and to the extent applicable law would not thereby be violated, Motorists and Phenix each covenant and agree to:

(a) give the other party and its authorized representatives full access (including the copying of such materials as may be reasonably requested), upon reasonable prior notice and during normal business hours, to their respective offices, properties, books and records;

(b) furnish the other party, its counsel, financial advisors, auditors, and other authorized representatives such financial and operating data and other information relating to their respective businesses as such persons may reasonably request; and

(c) instruct their respective employees, counsel, and financial advisors to cooperate with the other party in its investigations in relation to the Transactions.

6.3 Notices of Certain Events. Motorists and Phenix each covenant and agree to promptly notify the other party of any of the following:

(a) any notice or other communication received by such party from any source alleging that the consent of another person or entity is or may be required in connection with the Transactions;

(b) any notice or communication received by such party from any governmental or regulatory agency or authority relating to the Transactions;

(c) any actions, suits, claims investigations or proceedings commenced or, to such party's knowledge, threatened against, relating to or involving or otherwise affecting such party that, if the same had been pending on the date of this Agreement would have been required to have been disclosed pursuant to either Section 5.1(j) (with respect to claims against Phenix) or 5.2(i) (with respect to claims against Motorists) or that relate to the consummation of the Transactions; and

(d) any breach of a representation or warranty of the notifying party that could reasonably be expected to materially and adversely affect the consummation of the Transactions.

6.4 Proposals for Alternative Transactions. Phenix covenants and agrees that from the Contract Date until the Closing, it will not and will not permit or cause any of its officers, directors, brokers or agents to, and will direct them not to, directly or indirectly, initiate, solicit, encourage, or otherwise facilitate any inquiries or the making of any proposal or offer with respect to:

(a) a merger, reorganization, consolidation, or similar transaction involving, any purchase of 5% or more of the assets of, or demutualization or conversion of, Phenix, other than in connection with one or more of the Transactions; or

(b) a transaction involving a pooling of the business of Phenix with another entity or any similar business combination or restructuring, other than in connection with one or more of the Transactions (any of the foregoing (a) or (b), an “Alternative Transaction Proposal”).

Phenix further covenants and agrees that it will not and will not permit or cause any of its respective officers and directors to, and will direct them not to, directly or indirectly, engage in any negotiations concerning, or provide any confidential information or data to, or have any discussions with, any entity or representative of any entity relating to an Alternative Transaction Proposal, whether made before or after the date of this Agreement, or otherwise facilitate or attempt to make or implement an Alternative Transaction Proposal. Phenix will immediately cease and cause to be terminated any existing activities, discussions or negotiations with any parties conducted prior to the date of this Agreement with respect to any of the foregoing. Phenix will notify Motorists immediately if any Alternative Transaction Proposal is received by it or any discussions or negotiations are sought in connection with an Alternative Transaction Proposal and will notify Motorists of the identity of such other entity and its representatives and the material terms and conditions of any such proposals or offers.

6.5 Best Efforts. Subject to the terms and conditions of this Agreement and the other Transaction Documents, Phenix and Motorists each covenant and agree to use their respective best efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things reasonably necessary or desirable under applicable law to consummate the Transactions. Motorists and Phenix shall:

(a) promptly, and in any event within 60 days of the date of this Agreement, prepare and file all applications, notices, consents, and other documents necessary or advisable to obtain the regulatory approvals required to consummate the Transactions under the applicable law of New Hampshire, Iowa, Ohio and Wisconsin, respectively,

(b) promptly file all supplements or amendments to such applications, notices, consents or other documents, and

(c) use their best efforts to obtain any such required regulatory approvals. Motorists and Phenix will provide each other and their respective counsel the opportunity to review in advance and comment on all such filings. Phenix and Motorists will keep each other informed of the status of all matters related to such required regulatory approvals. Further, Motorists and Phenix each covenant and agree that if any required regulatory

approval to consummate one or more of the Transactions is denied or not obtained, Motorists and Phenix will use their respective best efforts to work together to restructure the Transaction or transactions to achieve or acquire all required regulatory approvals, it being agreed that in all such instances the benefits sought to be derived by both parties by the Transactions and the principal terms of the Transactions, financial or otherwise, will not change as a result of such restructuring.

6.6 Cooperation. Motorists and Phenix each covenant and agree that they will cooperate with one another:

(a) in determining whether any action by or in respect of, or filing with, any governmental body, agency, official or authority is required, or any actions, consents, approvals, or waivers are required to be obtained from parties to any contracts in connection with the consummation of the Transactions, and

(b) in taking such reasonable actions or making any such filings, furnishing information required in connection therewith, and reasonably seeking to obtain in a timely fashion any such actions, consents, approvals, or waivers. It is expressly understood by the parties that representatives of Motorists and Phenix, respectively, will have the right to attend and participate in any hearing, proceeding, meeting, or conference before or with a governmental entity relating to any of the Transactions. In furtherance of the foregoing covenant, Motorists and Phenix will provide each other reasonable advance notice of any such hearing, proceeding, meeting or conference.

6.7 Public Announcements; Confidentiality. Motorists and Phenix each covenant and agree to consult with each other before issuing any press release or making any public statement with respect to this Agreement, any other Transaction Document, or the Transactions and, except as may be required by applicable law, will not make any such public statement prior to such consultation. Except as may be required by applicable law, Motorists and Phenix shall keep this Agreement, the other Transaction Documents, and all other documents and information relating to the Transactions or furnished pursuant to or in connection with the Transaction Documents or the Transactions confidential.

6.8 Fees and Expenses.

(a) Except as otherwise provided in Paragraph (b), below, Motorists and Phenix shall each pay the costs and expenses incurred by it in negotiating and preparing this Agreement, the other Transaction Documents, and in closing and carrying out the Transactions, whether or not the Closing shall occur.

(b) In the event that the Closing does not occur as a result of one party's failure to act in good faith, the other party shall be entitled to indemnification for all actual expenses incurred by such party up to but not to exceed Fifty Thousand Dollars (\$50,000).

6.9 Amendment of Transaction Documents. From the Contract Date until the Closing, Motorists and Phenix agree not to amend or alter the terms that are in place with respect to any of the Transaction Documents in a way that would be materially adverse to either party.

6.10 Obligation to Call Policyholder Meeting. Phenix agrees that, within 60 days after this Agreement and related Transactions have been approved by the Board of Directors of Phenix, it will send a notice to its policyholders of the Special Meeting for the purpose of approving the Transactions, including but not limited to voting on the amendments to Phenix's Articles of Incorporation and the election of directors.

## **SECTION 7 CONDITIONS TO CLOSING**

7.1 Conditions to Obligations of Motorists and Phenix. The obligations of Motorists and Phenix to consummate the Closing are subject to the satisfaction of the following conditions:

(a) All permits, regulatory consents, approvals, or clearances of governmental entities, including but not limited to the Department, the Division, the ODI and the OCI, necessary for the consummation of the Closing will have been obtained, and no provision of applicable law will prohibit the consummation of the Closing.

(b) The Transactions and all Transaction Documents will have been approved by a vote of Phenix's policyholders at a duly noticed and convened Special Meeting of Phenix's policyholders.

(c) No order, injunction, or decree issued by any governmental entity or other legal restraint or prohibition preventing the consummation of any material aspect of any of the Transactions will be in effect. No proceeding initiated by any governmental entity seeking such an order, injunction, or decree against any of the Transactions will be pending.

(d) This Agreement and the other Transaction Documents will have been executed and delivered by the parties thereto and the conditions set forth in this Agreement and the other Transaction Documents will have been satisfied.

7.2 Conditions to Obligations of Motorists. The obligation of Motorists to consummate the Closing is subject to the satisfaction of the following further conditions:

(a) The representations and warranties of Phenix set forth in this Agreement will be true and correct as of the Contract Date and as of the Closing Date as though made on and as of the Closing Date.

(b) Since the date of the last quarterly financial statements provided by Phenix pursuant to this Agreement, no event, occurrence, development, circumstances, or facts have occurred which have had or would reasonably be expected to have a material adverse effect on the business or prospects of Phenix.

(c) Phenix will have performed and complied in all material respects with all agreements, covenants, obligations, and conditions required by this Agreement and by the other Transaction Documents to be performed or complied with by Phenix on or prior to the Closing Date.

(d) Phenix shall have delivered to Motorists a certificate signed on behalf of Phenix by its president to the effect set forth in Paragraphs (a) through (c) above.

(e) Phenix's Board of Directors will have adopted the Amended and Restated Bylaws of Phenix attached hereto as **Exhibit C** and such Amended and Restated Bylaws will have been filed with the Department and will have become effective as of the Closing Date.

(f) Pursuant to Section 3.2 of this Agreement, the current directors of Phenix who will not be Phenix Director Designees will have submitted their resignations to be effective on the Closing Date, and Phenix's policyholders or the Phenix Director Designees shall have elected the individuals set forth on **Exhibit F** along with the term set forth next to the name of each such individual to the Phenix Board of Directors, at a duly noticed and convened Special Meeting of Policyholders or a meeting of directors.

(g) Motorists will have received certified copies of resolutions duly adopted by the Board of Directors and the policyholders of Phenix approving this Agreement and the other Transaction Documents to which Phenix is a party.

7.3 Conditions to Obligations of Phenix. The obligation of Phenix to consummate the Closing is subject to the satisfaction of the following further conditions:

(a) The representations and warranties of Motorists set forth in this Agreement will be true and correct as of the Contract Date and as of the Closing Date as though made on and as of the Closing Date.

(b) Since the date of the last quarterly financial statements provided by Motorists pursuant to this Agreement, no event, occurrence, development, circumstances, or facts have occurred which have had or would reasonably be expected to have a material adverse effect on the business or prospects of Motorists.

(c) Motorists shall have performed and complied in all material respects with all agreements, covenants, obligations, and conditions required by this Agreement and by the other Transaction Documents to be performed or complied with by Motorists on or prior to the Closing Date.

(d) Motorists shall have delivered to Phenix a certificate signed on behalf of Motorists by its president to the effect set forth in Paragraphs (a) through (c) above.

(e) Phenix will have received certified copies of resolutions duly adopted by the Board of Directors of Motorist approving this Agreement and the other Transaction Documents to which Motorist is a party.

**SECTION 8**  
**TERM and TERMINATION**

8.1 Term. This Agreement shall have an indefinite term.

8.2 Grounds for Termination Prior to Closing. This Agreement may be terminated at any time prior to the Closing:

(a) by mutual written agreement of Motorists and Phenix; or

(b) by either Motorists or Phenix, if the Closing shall not have been consummated on or before December 31, 2009, provided, however, that no party may exercise the right to terminate this Agreement under this subsection 8.1(b) if the failure to consummate the Closing was a result of a breach by such party of any of its obligations under this Agreement or any other Transaction Document.

(c) by Motorists, if either the Phenix Board of Directors or the policyholders of Phenix, as applicable, fail to approve this Agreement, the other Transaction Documents, the Transactions, or fail to approve and adopt the Amended and Restated Bylaws of Phenix substantially in the form attached to this Agreement.

(d) by Motorists, if Phenix fails to obtain approval for the Transactions from the Department.

(e) by Phenix, if Motorist fails to obtain any required approval for the Transactions from the Division, ODI or the OCI.

(f) by either Motorists or Phenix if Phenix fails to obtain approval from Phenix's policyholders of the Transactions and Transaction Documents, or if the Motorists Director Designees are not elected as set out in Section 3 hereof.

(g) by either Motorists or Phenix, if there has been a material breach by the other party of any representation, warranty, covenant, or agreement contained in this Agreement or any other Transaction Document which would preclude the consummation of the Closing (absent a waiver by such terminating party) and such breach is not curable or, if curable, is not cured within 15 days after written notice of such breach is given by such terminating party to the other party.

(h) by either Motorists or Phenix, if any of the other Transaction Documents is terminated, other than as a result of a breach by such party.

8.3 Effect of Termination Prior to Closing. In the event of the termination of this Agreement, and except for the other provisions of this Section 8.3 and Subsection 6.8(b), this Agreement will become void and of no effect with no liability under this Agreement on the part of any party (or any of their respective directors, officers, employees, agents, legal, and financial advisors, or other representatives); provided, however, that, except as otherwise provided in this Agreement, no such termination will relieve any party of (a) any liability or damages resulting from any willful and material breach of any covenant or obligation set forth in this Agreement or (b) any liability under Subsection 6.8(b) of this Agreement.

8.4 Grounds for Termination After Closing. This Agreement shall be terminated at any time after the Closing:

- (a) by mutual written agreement of Motorists and Phenix; or
- (b) automatically upon termination of the Pooling Agreement or the participation by Phenix in the Pooling Agreement;

8.5 Effect of Termination After Closing. The parties shall use their respective best good faith efforts to amicably wind up the affiliation.

## **SECTION 9 DISPUTE RESOLUTION**

9.1 General. The parties shall endeavor to resolve all disputes arising out of this Agreement in an amicable manner, in accordance with Section 9.2 prior to resorting to arbitration under Section 9.3. All material disputes between the parties arising out of or resulting from this Agreement shall be resolved as provided in this Section 9.

9.2 Negotiations Between Executives. The parties shall attempt in good faith to resolve any dispute arising out of the making or performance of or otherwise relating to this Agreement promptly by negotiations between executives who have authority to settle the controversy. Any party may give the other party written notice of any dispute not resolved in the normal course of business. Within 20 days after delivery of said notice, executives of both parties shall meet at a mutually acceptable time and place, and thereafter as often as they reasonably deem necessary, to exchange relevant information and to attempt to resolve the dispute. If the matter has not been resolved within 60 days after the disputing party's notice, or if the parties fail to meet within 20 days, either party may initiate arbitration under Section 9.3 hereof. If a negotiator intends to be accompanied at a meeting by an attorney, the other negotiator shall be given at least 7 days' notice of such intention and may also be accompanied by an attorney. All negotiations pursuant to this clause are confidential and shall be treated as compromise and settlement negotiations for purposes of the Federal Rules of Evidence and any comparable state provision.

9.3 Arbitration.

(a) Written Demand. In the event that any dispute arising out of this Agreement is not resolved under Section 9.2 hereof, such dispute shall be submitted to binding arbitration under this Section 9.3. Either party may institute arbitration under this Section 9.3 by making written demand on the other party.

(b) Choice of Arbitrators. In the event that a demand by either party is made in writing on the other, each party shall appoint an individual as arbitrator and the two so appointed shall then appoint a third arbitrator. If either party refuses or neglects to appoint an arbitrator within 30 days of receipt of a written notice of demand for arbitration, the other party may appoint the second arbitrator. If the two arbitrators do not agree on a third arbitrator within 30 days of their appointment, each of the arbitrators shall nominate three individuals. Each arbitrator shall then decline two of the nominations presented by each of

the other arbitrators. The third arbitrator shall then be chosen from the remaining two nominations by drawing lots. The arbitrators shall be active or former officers of property and casualty insurance or reinsurance companies. The arbitrator shall not have a personal or financial interest in the result of the arbitration.

(c) Location of Arbitration. The arbitration hearings shall be held in Columbus, Ohio, or such other place as may be mutually agreed. Each side shall submit its case to the arbitrators within 30 days of the selection of the third arbitrator or within such longer period as may be agreed by the arbitrators. The arbitrators shall not be obliged to follow judicial formalities or the rules of evidence except to the extent required by governing law, that is, the state law of the situs of the arbitration as herein agreed; they shall make their decisions according to the practice of the property and casualty insurance business. The decision rendered by a majority of the arbitrators shall be final and binding on both sides. Such decision shall be a condition precedent to any right of legal action arising out of the arbitrated dispute which any side may have against the others. Judgment upon the award rendered may be entered in any court having jurisdiction thereof.

(d) Arbitration Expenses. Each party shall pay (i) the fees and expenses of its own arbitrator, (ii) one-half of the fee and expenses of the third arbitrator and (iii) one-half of the other expenses that the parties jointly incur directly related to the arbitration proceeding. Other than as set forth above, each party shall bear its own costs in connection with any such arbitration including, without limitation, (x) all legal, accounting, and other professional fees and expenses, and (y) all other costs and expenses each party incurs to prepare for such arbitration.

(e) Rules of the American Arbitration Association. Except as provided above, arbitration shall be based, insofar as applicable, upon the Commercial Arbitration Rules of the American Arbitration Association.

## **SECTION 10 MISCELLANEOUS**

10.1 Actions Subsequent to Closing. From and after the Closing, each party will, from time to time, at the reasonable request of the other party and without further consideration (but at the expense of the requesting party) do, execute, acknowledge, and deliver all such further acts, deeds, assignments, transfers, conveyances, certificates, and assurances as may be reasonably required by such other party to effect the Transactions.

10.2 Entire Agreement. This Agreement and the other Transaction Documents, including all schedules and exhibits thereto, constitute the entire agreement between the parties and there are no other agreements or understandings other than as expressed in this Agreement and the other Transaction Documents.

10.3 Binding Effect. This Agreement will apply to and inure to the benefit of and be binding upon and enforceable against each party and their respective successors and permitted assigns.

10.4 Severability. Any term or provision of this Agreement which is invalid or unenforceable in any jurisdiction will, as to that jurisdiction, be ineffective to the extent of

any such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Agreement or affecting the validity or enforceability of any of the terms or provisions of this Agreement in any other jurisdiction. If any provision of this Agreement is so broad as to be unenforceable, that provision will be interpreted to be only so broad as is enforceable.

10.5 Waivers and Amendments. The Agreement and the Exhibits attached hereto may only be amended or modified, and the terms hereof may only be waived, by a writing, signed by each party or, in the case of a waiver, by the party entitled to the benefit of the terms being waived.

10.6 Assignment. Neither this Agreement nor any rights or obligations hereunder may be assigned or otherwise transferred, in whole or in part, by any party without the prior written consent of the other party.

10.7 Governing Law. This Agreement is hereby deemed to have been made under and governed by the laws of the State of Ohio, without regard to any Ohio conflict of law principles. Should litigation be filed relative to a dispute related to from this Agreement, the parties agree that the forum for any such litigation shall be the Federal District Court for the Southern District of Ohio as the court of proper jurisdiction and venue for any actions or proceedings relating to this Agreement, hereby irrevocably consent to such designation, jurisdiction or venue with respect to any action or proceeding initiated in such court and hereby waive all defenses and objections to jurisdiction and venue.

10.8. Notices. All notices and other communications under this Agreement will be in writing and will be delivered personally or sent by confirmed facsimile transmission or nationally recognized overnight delivery service. Any such notice or other communication will deemed given upon actual delivery, in each case to the following addresses:

(a) if to Motorists:

John J. Bishop  
Chairman, President and CEO  
Motorists Mutual Insurance Company  
471 East Broad Street  
Columbus, OH 43215-3861  
Fax No. (866) 225-1889

With concurrent copies to:

Charles R. Gaskill, CPCU  
Vice President – Corporate Counsel  
Motorists Mutual Insurance Company  
471 East Broad Street  
Columbus, OH 43215-3861  
Fax No. (614) 629-3594

Alan F. Berliner  
Thompson Hine LLP.

41 South High Street  
Suite 1700  
Columbus, OH 43215-6101  
Fax No. (614) 469-3361

(b) if to Phenix:

Rolf H. Gesen  
President and CEO  
Phenix Mutual Fire Insurance Company  
42 Pleasant Street  
Concord, NH 03301  
Fax No. (603) 545-0932

With concurrent copies to:

Steven J. Lauwers, Esq.  
Rath Young Pignatelli  
One Capital Plaza  
Concord, NH 03302-1500  
Fax No. (603) 225-9774

10.9 Construction; Interpretation. All pronouns and any variations thereof refer to the masculine, feminine, or neuter, singular, or plural, as the context may require.

10.10 Counterparts. This Agreement maybe executed in two or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

10.11 Captions. The captions of the various sections of this Agreement are not part of the context of the Agreement but are only labels to assist in locating those sections and shall be ignored in construing this Agreement.

10.12 Non-Waiver. No failure by any party to insist upon strict compliance with any term of this Agreement, to exercise any option, enforce any right, or seek any remedy upon any default of any other party shall affect, or constitute a waiver of, the first party's right to insist upon such strict compliance, exercise that option, enforce that right, or seek that remedy with respect to that default of any prior, contemporaneous, or subsequent default, nor shall any custom or practice of the parties at variance with any provision of this Agreement affect, or constitute a waiver of, any party's right to demand strict compliance with all provisions of this Agreement.

10.13 No Third Party Benefit. This Agreement is intended for the exclusive benefit of the parties to this Agreement and their respective heirs, successors and assigns, and nothing contained in this Agreement shall be construed as creating any rights or benefits in or to any third party.

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

**MOTORISTS MUTUAL INSURANCE  
COMPANY**

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

Name:

Title:

**PHENIX MUTUAL FIRE INSURANCE  
COMPANY**

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

Name:

Title: