

COST SHARING AND MANAGEMENT AGREEMENT

This Cost Sharing and Management Agreement (the "Agreement") is entered into as of _____, 2009, between Motorists Mutual Insurance Company, an Ohio mutual insurance company ("Motorists") and Phenix Mutual Fire Insurance Company ("Phenix") a New Hampshire mutual insurance company.

RECITALS

A. On _____, 2009, Motorists and Phenix entered into an Affiliation Agreement (the "Affiliation Agreement") pursuant to which they agreed to affiliate their businesses with each other.

B. Pursuant to the Affiliation Agreement and in accordance with the Amended and Restated Reinsurance Pooling Agreement effective January 1, 2009 (the "Pooling Agreement"), Phenix has pooled its insurance underwriting operations with Motorists and Motorists' affiliates, American Hardware Mutual Insurance Company, Wilson Mutual Insurance Company, Iowa Mutual Insurance Company, Iowa American Insurance Company and MICO Insurance Company..

C. Under the Pooling Agreement, Phenix will cede to Motorists 100% of its insurance business as defined in the Pooling Agreement and assume its allocated share of the combined insurance business of all members of the pool.

D. Motorists and Phenix deem it advisable and in the best interests of both companies, given the affiliation and the Pooling Agreement, that Motorists should manage the business operations of Phenix as described more fully below.

E. Capitalized terms used but not defined in this Agreement shall have the meaning ascribed to them in the Affiliation Agreement or the Pooling Agreement.

AGREEMENT

The parties acknowledge the accuracy of the foregoing Recitals and hereby agree as follows:

§1. **Engagement.** On the terms and subject to the conditions described in this Agreement, Phenix hereby engages Motorists, and Motorists hereby accepts such engagement, to manage the business operations of Phenix as hereinafter set forth.

§2. **Authority and Duties of Motorists.**

(a) **Appointment.** Phenix hereby engages Motorists to provide certain services identified in Section 2(b) below, subject to the terms and conditions set forth in this Agreement. The parties may at any time agree, in writing, to expand or reduce the services provided by Motorists based on a determination by the parties' boards of directors. In providing the services hereunder, Motorists will act in good faith and in a commercially reasonable

manner and in accordance with customary industry standards and applicable laws for the provision of such services.

(b) Services Provided. Motorists shall provide, either directly or through the engagement of third party professionals, services in the following areas to such an extent as to satisfactorily discharge all statutory and regulatory requirements of Phenix as are usual and customary in the insurance industry, including, but not limited to:

- (i) Reinsurance,
- (ii) Investment services
- (iii) Actuarial analysis
- (iv) Executive management
- (v) Employee benefits administration
- (vi) Corporate and tax accounting
- (vii) Information technology services
- (viii) Compliance and strategic planning, and
- (ix) Claims management and settlement

(c) Phenix Oversight. All services provided by Motorists to Phenix will be subject to oversight by Phenix's board of directors, which shall direct and control the business that is being carried out by Motorists on behalf of Phenix, including the control and direction of Motorists' employees in the performance of services on behalf of Phenix. No action taken by Motorists at the direction or approval of the Phenix Director Designees may be used by Phenix as grounds for termination under §5 or for indemnification under §6 of this Agreement.

§3. **Reimbursable Expenses.** Motorists shall not be required to expend or advance its own funds in connection with the performance of services hereunder. However, should Motorists advance any funds or incur any expenses, Phenix shall reimburse Motorists for all reasonable out-of-pocket advances, costs and expenses incurred by Motorists in carrying out its obligations under this Agreement. In addition, Phenix shall pay or reimburse Motorists for all costs and expenses incurred by Motorists for employees, equipment, facilities and other items in connection with Motorists performing services on behalf of Phenix pursuant to this Agreement. Expenses shall be apportioned in accordance with SSAP No. 70, "Allocation of Expenses." The books, accounts and records of Phenix and Motorists shall be so maintained as to clearly and accurately disclose the nature and details of the transactions including such accounting information as is necessary to support the expenses apportioned to the respective parties. All of the foregoing advances, costs and expenses to be paid or reimbursed by Phenix to Motorists pursuant to this §3 are hereinafter collectively referred to as the "Reimbursable Expenses."

All payments and/or reimbursements made by Phenix to Motorists hereunder are intended to approximate the costs and expenses incurred by Motorists in performing its services hereunder.

§4. **Payments for Services.** All Reimbursable Expenses due under this Agreement to Motorists shall be due and paid by Phenix within thirty (30) days after request for payment from Motorists, which shall normally occur on a monthly basis, but in any event not less often than quarterly.

§5. **Termination.**

- (a) This Agreement may be terminated as follows:
 - (i) By mutual agreement of the parties in writing;
 - (ii) By either party if the other party has failed to comply with any material term or provision of this Agreement and has not corrected such failure within thirty (30) days after written notice of such failure. Notwithstanding the foregoing, if a failure by its nature cannot be corrected within a thirty (30) day period, then there shall be no right to terminate this Agreement pursuant to this paragraph if the correcting party substantially begins correction within such thirty-day period and thereafter expeditiously brings it to completion.
 - (iii) By Motorists, at its option, upon at least thirty (30) days' written notice given at any time after Motorists' nominees do not hold at least six (6) of the eleven (11) seats on Phenix's board of directors;
 - (iv) By either party upon giving at least thirty (30) days' written notice to the other party if the Pooling Agreement is terminated and the parties are no longer affiliated;
 - (v) Automatically if either Motorists or Phenix applies for or consents to the appointment of a receiver, conservator, rehabilitator or liquidator, makes a general assignment for the benefit of creditors, admits in writing its inability to pay debts as they mature, files a petition or answer seeking a reorganization or arrangement with creditors under any insolvency law, files an answer admitting the material allegations in a petition filed in a conservatorship proceeding, or if a liquidation proceeding is commenced by any insurance regulatory authorities, or if a decree of any court is entered adjudging the party to be insolvent or approving a reorganization or arrangement under any insolvency law.

(b) In the event of termination of this Agreement by either party, Motorists only obligation shall be with respect to obligations arising out of the Pooling Agreement.

(c) In the event of termination of this Agreement, Motorists shall promptly arrange, at Phenix's cost, for the return or transfer to a succeeding administrator, if any, all of Phenix's books and records that were provided to Motorists or created by Motorists pursuant to Motorists' responsibilities under this Agreement. Motorists will cooperate fully with Phenix in such return or transfer.

(d) In the event of termination, Motorists shall continue to provide services pursuant to this Agreement for a period of time that is reasonably necessary to transfer such services to a new party.

(e) In the event that this Agreement is terminated by Phenix in accordance with Section 5(a) (iv) above, Phenix shall be obligated to Motorists for the actual expenses incurred by Motorists to (i) include Phenix in the Amended and Restated Pooling Agreement, and (ii) to unwind Phenix from the Amended and Restated Pooling Agreement as of the date of termination, but in no event will Phenix be obligated to Motorists for such expenses in excess of One Hundred Thousand Dollars (\$100,000).

§6. **Indemnification.** Phenix shall indemnify Motorists and its directors, officers, employees and agents against all claims, losses and reasonable costs and expenses (including, without limitation, reasonable attorneys fees and costs) arising out of any action or inaction taken or omitted to be taken by Phenix or its agents, employees or subcontractors in connection with its obligations under this Agreement, including any actions or inactions taken by Motorists at the direction or with the approval of Phenix's board of directors. Motorists shall indemnify Phenix and its directors, officers, employees and agents against all claims, losses and reasonable costs and expenses (including, without limitation, reasonable attorneys fees and costs) arising out of any action or inaction taken or omitted to be taken by Motorists or its agents, employees or subcontractors in connection with its obligations under this Agreement.

§7. **Confidentiality – Proprietary Information.**

(a) **Proprietary Information.** "Proprietary Information" includes but is not limited to the pricing, methods, processes, financial data, provider or customer lists, statistics, software, systems or equipment, programs, research, development, strategic plans, operating data, or related information of each of the parties and/or its or their policyholders, concerning past, present, or future business activities of said entities. Proprietary Information includes all such information disclosed by either party to the other prior to the execution of this Agreement. Proprietary Information includes not only written information but also information stored or transferred orally, visually, electronically, or by any other means.

(b) **Confidentiality.** Except as otherwise provided in this Agreement, the parties agree that Proprietary Information of the other party will be maintained in strict confidence; will be used only for purposes of this Agreement; and will not be disclosed by the recipient party, its agents, or employees except with the prior written consent of the other party. Each party agrees to take all reasonable precautions to prevent the disclosure of Proprietary Information.

(c) Permissive Disclosures. Nothing contained in this Agreement may be construed as prohibiting either party's disclosure of Proprietary Information (other than to known actual competitors of the other party):

- (i) to its employees or employees of its parent company and subsidiaries and affiliates on a need-to-know basis;
- (ii) employees, agents, or representatives of the other party; or
- (iii) other persons (including consultants) in need of access to such information for purposes specifically related to either party's responsibilities under this Agreement.

(d) Information Rightfully Received.

- (i) Neither party has any obligation or liability with respect to the other's information to the extent that such information:
 - (A) is already rightfully known by the receiving party at the time it is obtained by said party, free from any obligation to keep such information confidential;
 - (B) is or becomes publicly known through no wrongful act of the receiving party;
 - (C) is rightfully received by the receiving party from a third party without restriction and without breach of this Agreement; or
 - (D) must be disclosed pursuant to a court order or as required by any governmental or administrative authority or authorized regulatory agency. If this occurs the disclosing party shall notify the other party in advance of any such disclosure.

§8. **Privacy Compliance**.

(a) Nonpublic Personal Financial Information. Phenix and Motorists mutually agree to maintain the confidentiality of the other party's consumers' and customers' nonpublic personal financial information, as required by applicable federal or state law, and shall not disclose such information except as permitted by law and in accordance with the privacy notice provided to that party's customers and/or consumers.

(b) Personal Medical Information. Phenix and Motorists mutually agree to maintain the confidentiality of personal medical records in each party's own possession, and not to share personal medical records with each other or disclose personal medical records to third parties except as permitted by law and consistent with any disclosure authorization form signed by the individual or the individual's personal representative, as required by applicable federal or state law. To the extent either party obtains personal medical records from the other party pursuant to an exception in any applicable federal or state law, the recipient of the records Motorists shall not use or disclose the personal medical records in any manner or for any purpose except as the discloser of the records would be permitted by law.

§9. **Ownership of and Access to Records.** Each party shall own its general corporate books and records. Each party to this Agreement shall retain the right of continuing access to the books and records of the other party sufficient to permit the parties to fulfill all of their obligations under this Agreement, subject to the provisions of Section 7 of this Agreement. The parties agree that the appropriate departments of insurance shall have access to books and records associated with this Agreement during normal business hours and upon reasonable advance notice.

§10. **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.

§11. **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 arising 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.

§12. **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.

§13. **Non waiver.** No failure by either 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 the 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 or 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, either party's right to demand strict compliance with all provisions of this Agreement.

§14. **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 writing, signed by each party or, in the case of a waiver, by the party entitled to the benefit of the terms being waived.

§15. **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.

§16. **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.

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

§18. **Dispute Resolution.**

(a) **General.** The parties shall endeavor to resolve all disputes arising out of this Agreement in an amicable manner, in accordance with Paragraph (b) below prior to resorting to arbitration under Paragraph (c) below. All material disputes between the parties arising out of or resulting from this Agreement shall be resolved as provided in this §18.

(b) **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 twenty (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 sixty (60) days after the disputing party's notice, or if the parties fail to meet within twenty (20) days, either party may initiate arbitration under Paragraph (c) hereof. If a negotiator intends to be accompanied at a meeting by an attorney, the other negotiator shall be given at least seven (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.

(c) **Arbitration.**

(i) **Written Demand.** In the event that any dispute arising out of this Agreement is not resolved under Paragraph (b) hereof, such dispute must be submitted to binding arbitration under this Paragraph (c). Either party may institute arbitration under this Paragraph (c) by making written demand on the other party.

(ii) **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 thirty (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 thirty (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.

- (iii) 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 thirty (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 that any side may have against the others. Judgment upon the award rendered may be entered in any court having jurisdiction thereof.
- (iv) Arbitration Expenses. Each party shall pay (A) the fees and expenses of its own arbitrator, (B) one-half of the fee and expenses of the third arbitrator and (C) 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.
- (v) 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.

§19. **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 be deemed given upon actual delivery, in each case to the following addresses

If to Motorists:

Motorists Mutual Insurance Company
471 East Broad Street
Columbus, Ohio 43215
Attention: Charles R. Gaskill, CPCU
Vice President – Corporate Counsel

If to Phenix:

Phenix Mutual Fire Insurance Company
42 Pleasant Street
Concord, NH 03301
Attention: Rolf H. Gesen
President and CEO

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

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

§22. **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: John J. Bishop
Title: Chairman, President & CEO

PHENIX MUTUAL FIRE INSURANCE COMPANY

By: _____
Name: Rolf H. Gesen
Title: President and CEO