

STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL



BILL SCHUETTE
ATTORNEY GENERAL

P.O. Box 30755
LANSING, MICHIGAN 48909

March 9, 2012

Clerk of the Court
Ingham County Circuit Court
Mason Courthouse
341 S. Jefferson
Mason, MI 48854

Via Hand Delivery

**Re: *Ken Ross, Commissioner of the Office of Financial and Insurance Regulation v
American Community Mutual Insurance Company***
Case No. 10-397-CR

Dear Clerk of the Court:

Enclosed for filing in the above-referenced case are the **Petition for Court
Determination Regarding Proper Payee of Agent Commissions, together with Exhibits A-H
and Proof of Service**. This filing is being submitted via hand delivery directly to the Court.

Sincerely,

A handwritten signature in black ink, appearing to read "Christopher L. Kerr".

Christopher L. Kerr (P57131)
Assistant Attorney General
Corporate Oversight Division
(517) 373-1160

Enc

c Brokers Insurance Corp. c/o Magdalene Zybko, President
Midland States Bank c/o Loren Ettinger, its Attorney

STATE OF MICHIGAN
CIRCUIT COURT FOR THE 30TH JUDICIAL CIRCUIT
INGHAM COUNTY

KEN ROSS, COMMISSIONER OF THE OFFICE
OF FINANCIAL AND INSURANCE
REGULATION,

Petitioner,

No. 10-397-CR

v

HON. WILLIAM E. COLLETTE

AMERICAN COMMUNITY MUTUAL
INSURANCE COMPANY,

Respondent.

Christopher L. Kerr (P57131)
Jason R. Evans (P61567)
Assistant Attorneys General
Attorneys for Petitioner
Corporate Oversight Division
P. O. Box 30755
Lansing, MI 48909
(517) 373-1160

**PETITION FOR COURT DETERMINATION REGARDING
PROPER PAYEE OF AGENT COMMISSIONS**

R. Kevin Clinton, Commissioner of the Michigan Office of Financial and Insurance Regulation, as Rehabilitator of American Community Mutual Insurance Company (the “Rehabilitator”), by and through his attorneys, Bill Schuette, Attorney General, and Christopher L. Kerr and Jason R. Evans, Assistant Attorneys General, petitions this Court to resolve a dispute between an insurance agency and a bank holding a security interest in certain assets of the insurance agency regarding which entity is the proper, legal payee of \$9,155.78 in agent

commissions held by the Rehabilitator and approved for payment by the Court. In support of this Petition, the Rehabilitator states as follows:

1. On April 8, 2010, this Court entered a Stipulated Order Placing American Community into Rehabilitation, Approving Appointment and Compensation of Special Deputy Rehabilitators, and Providing Injunctive Relief (the "Rehabilitation Order"). Pursuant to MCL 500.8113(1), the Rehabilitation Order appointed the Commissioner as the Rehabilitator of American Community.

2. As required by MCL 500.8113(1), the Rehabilitation Order directed the Rehabilitator to "take immediate possession of all the assets of American Community and administer those assets under the Court's general supervision." Rehabilitation Order, p 4, ¶ 3.

3. In December 2011, after marshaling all the assets of American Community and reviewing the company's books and records, the Rehabilitator determined that there were sufficient assets available to pay the outstanding, accrued claims of certain identified Creditors of American Community. The Rehabilitator sought the Court's approval to pay these claims. Specifically, the Rehabilitator sought approval to pay: (a) the unpaid claims of fifteen non-provider, general Creditor vendors that accrued prior to entry of the Rehabilitation Order; (b) unpaid agent commissions that accrued either prior to entry of the Rehabilitation Order or during the Rehabilitation after the Rehabilitator suspended further payment of agent commissions on September 16, 2010; and (c) settlement amounts resolving the claims of six former American Community executives that accrued prior to entry of the Rehabilitation Order for the unpaid balances under their respective supplemental retirement, benefits equalization, or severance agreements.

4. The Rehabilitator filed a petition for approval to pay these claims on December 14, 2011, which this Court approved after hearing by Order dated January 4, 2012.

5. With respect to the unpaid agent commissions, among the commissions that the Court approved for payment were \$9,155.78 in agent commissions earned by Brokers Insurance Corp. (“Brokers”), an insurance agency located in St. Louis, Missouri.

6. On October 19, 2011, however, Midland States Bank (“Midland”), through its attorneys, sent American Community a letter indicating that the bank was a secured creditor of Brokers by way of a commercial loan that was currently in default. *See* October 19, 2011 Letter, attached as Exhibit A. The letter further indicated that the loan was secured by Brokers’ collateral that included, among other assets, all insurance commissions of Brokers. *Id.*

7. After this Court approved the payment of agent commissions on January 4, 2012, and in light of Midland’s claim against the commissions earned by Brokers, on January 23, 2012 Deputy Rehabilitator James Gerber sent Brokers a letter attaching the Midland letter and requesting Brokers to provide written consent to release to Midland the \$9,155.78 in agent commissions earned by Brokers. *See* January 23, 2012 Letter, attached as Exhibit B. A copy of Mr. Gerber’s letter was provided to Mr. Loren Ettinger, attorney for Midland. *Id.*

8. On February 1, 2012, Brokers sent Mr. Gerber a response unequivocally stating that it was not consenting to release to Midland the \$9,155.78 in agent commissions earned by Brokers. *See* February 1, 2012 Letter, attached as Exhibit C. Brokers’ response further indicated that these commissions are due to down-line agents and not to Brokers. *Id.* Brokers also suggested that if the commissions were not paid to the individual agents to whom they are owed, both Brokers and Midland would be subject to potential legal action. *Id.* Brokers offered to provide

an affidavit stating that the entirety of the \$9,155.78 in agent commissions were due to third-party agents and Brokers would disburse the funds to these agents upon receipt. *Id.*

9. On February 9, 2012, Mr. Ettinger on behalf of Midland sent Mr. Gerber an e-mail relative to this commission payment dispute. *See* February 9, 2012 E-mail, attached as Exhibit D. Mr. Ettinger's e-mail again reiterated that the underlying Brokers loan secured by the assignment of these commissions is in default. *Id.* Further, Mr. Ettinger stated that pursuant to the loan documents and filed UCC Financing Statement, Midland held a secured interest in the commissions earned by Brokers and was entitled to payment of these commissions regardless of Brokers giving its consent. *Id.* In support of this position, Mr. Ettinger provided Mr. Gerber: (a) a November 1, 2011 letter declaring the Brokers loan in default, together with a December 5, 2011 printout of the balance due on the loan (attached as Exhibit E); (b) a Commercial Security Agreement between Brokers, as Grantor, and WestBridge Bank & Trust, as Lender (attached as Exhibit F); and (c) a UCC Financing Statement filed by WestBridge Bank & Trust, as Secured Party, against Brokers, as Debtor, reflecting a security interest in Brokers' collateral including "[a]ll direct assignments of insurance commissions, General Agent commissions and overrides or other commissions and overrides" (attached as Exhibit G).

10. Based on the foregoing, a good faith dispute exists between Brokers and Midland regarding which entity is legally entitled to payment of the \$9,155.78 in agent commissions. To resolve this dispute, and more importantly, to avoid the risk to the rehabilitation estate of multiple liability and/or payments arising from the same commissions (e.g., to Brokers, Midland, and/or the individual agents), the Rehabilitator and Deputy Rehabilitator request this Court to determine which entity is the proper, legal payee of the disputed commissions.

11. Although the Court may obviously handle this dispute in the manner of its choosing, because both Brokers and Midland are located out-of-state and the dollar amount at issue is relatively small, the Rehabilitator recommends that the Court set a briefing schedule by order and decide the matter based solely on the briefs submitted by the parties. A proposed order accomplishing this is attached as Exhibit H.

12. As the attached Proof of Service reflects, a copy of this Petition has been served via regular mail on Brokers c/o its President, Magdalene Zybko, and on Midland c/o its attorney, Loren Ettinger. As the primary claimants to the \$9,155.78 in agent commissions, these parties have the strongest potential interest in this dispute.

13. Beyond Brokers and Midland, providing personalized notice of this Petition and any resulting Order to all other parties that have a general interest in American Community's rehabilitation is impractical at this time because there has been no claims submission or other process to identify such interested parties. Moreover, attempting to identify and personally notify every party having a general interest would be time-intensive and costly to American Community's rehabilitation estate. For these reasons, the Rehabilitator requests that the Court authorize and ratify service of this Petition and any resulting Order on any potentially interested parties (other than Brokers and Midland) by posting electronic copies on the OFIR website, www.michigan.gov/ofir, under the section "Who We Regulate," and the subsection "American Community." Service in this manner is reasonably calculated to give these other potentially interested parties actual notice of these proceedings and is otherwise reasonable under the circumstances.

WHEREFORE, the Commissioner, as Rehabilitator of American Community, respectfully requests this Court to determine whether Brokers Insurance Corp. or Midland States

Bank is the proper, legal payee of the \$9,155.78 in agent commissions held by the Rehabilitator and approved for payment by the Court. Further, the Rehabilitator requests this Court to authorize and ratify service of this Petition, together with the attached Exhibits and any resulting Order: (a) via regular mail on Brokers c/o its President, Magdalene Zybko, and on Midland c/o its attorney, Loren Ettinger; and (b) on other potentially interested parties by posting electronic copies on the "American Community" section of OFIR's website.

Respectfully submitted

Bill Schuette
Attorney General

A handwritten signature in black ink, appearing to read "Christopher L. Kerr", written over a horizontal line.

Christopher L. Kerr (P57131)
Jason R. Evans (P61567)
Assistant Attorneys General
Michigan Department of Attorney General
Corporate Oversight Division
Attorneys for Petitioner
P.O. Box 30755
Lansing, Michigan 48909
(517) 373-1160

Dated: March 9, 2012

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KODNER | WATKINS | KLOECKER, LC

Attorneys and Counselors at Law

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(314) 727-9111 / (314) 727-9110 Fax / www.kwklaw.net / E-mail: contact@kwklaw.net

LOREN I. ETTINGER, ESQ., CPA
Licensed In Missouri

Direct Extension: 205
E-Mail: lettinger@kwklaw.net

October 19, 2011

VIA U.S. MAIL

VIA CERTIFIED U.S. MAIL – RETURN RECEIPT REQUESTED

American Community Mutual Insurance Company
Attn: Compliance Officer
39201 Seven Mile Rd
Livonia, MI 48152

Re: Midland States Bank v. Brokers Insurance Corporation
Our File: 11-599

Dear Sir or Madam:

Our firm has been engaged by Midland States Bank ("Bank") as its legal counsel for all items that pertain to, arise out of, or touch upon the above referenced matter. This correspondence is issued to you as a representative of American Community Mutual Insurance Company regarding insurance commissions payable to Brokers Insurance Corporation ("Brokers Insurance").

Bank is a secured creditor of Brokers Insurance by way of a commercial loan ("Loan") by and between Brokers Insurance and Bank, which is in default. The Loan was originated by WestBridge Bank & Trust Company. The Federal Deposit Insurance Corporation, Receiver of WestBridge Bank & Trust Company, sold, assigned, transferred, and conveyed to Bank all right, title and interest in and to all of the assets (including this Loan) by virtue of an agreement dated on or about October 15, 2010. As a result thereof, Bank is the holder and owner of the indebtedness.

The Loan is evidenced by various loan documents entered into by and between Brokers Insurance and Bank, including but not limited to, a Promissory Note, multiple Business Loan Agreements, a Commercial Security Agreement, and a UCC Financing Statement (collectively, "Loan Documents"). The Loan is secured by collateral which includes, among other items, all insurance commissions of Brokers Insurance (the "Collateral").

Bank perfected its security interest in the Collateral by filing with the Missouri Secretary of State a UCC Financing Statement dated July 6, 2007, as File No. 20070077490H covering the Collateral as more fully described below:

American Community Mutual Insurance Company

Attn: Compliance Officer

October 19, 2011

Page 2

“... insurance commissions, General Agent commissions and overrides or other commissions and overrides, inventory, ... , accounts (including but not limited to all health-care-insurance receivables), ... other rights to payment and performance ... money, other rights to payment and performance ... and all products and proceeds (including but not limited to all insurance payments) of or relating to the foregoing property.”

Owing to the default by Brokers Insurance under the Loan and the Loan Documents, and pursuant to the terms thereof, Bank is hereby exercising its rights, **EFFECTIVE IMMEDIATELY**, (i) to collect, receive and be assigned the Collateral, including but not limited to, all insurance proceeds, accounts, receivables, overrides, inventory, or other amounts due, payable or accruing to Brokers Insurance, (ii) to require Brokers Insurance and its debtors, obligors, remitters, and payors to pay, transfer, assign, convey and remit any and all Collateral to Bank, including but not limited to, all insurance proceeds, accounts, receivables, overrides, inventory, or other amounts due, payable or accruing to Brokers Insurance, (iii) to receive from Brokers Insurance a schedule and detail of the Collateral, accounts, debtors, obligors, remitters, and payors, and the business operations of Brokers Insurance, in a form and substance satisfactory to Bank in its sole discretion, and (iv) to notify Brokers Insurance and its debtors, obligors, remitters, and payors to direct all Collateral to Bank and to change the mailing address of Brokers Insurance for said Collateral to that of Bank as provided below. **Only such Collateral directed to and paid to Bank shall be considered as paid to Brokers Insurance and Bank.**

All insurance commissions and other Collateral shall be hereafter remitted and payable directly to Midland States Bank, without setoff or demand, to its address of 17107 Chesterfield Airport Road, Suite 160, Chesterfield, MO 63005, Attn: Mr. Austin Simpson.

Pursuant to the terms of the Loan Documents, written notice regarding the above has been provided to Brokers Insurance by Bank and the consent of Brokers Insurance was previously procured Brokers Insurance by the agreement of Brokers Insurance to the same in the Loan Documents. No further acknowledgement or consent of Brokers Insurance is required.

Bank reserves its rights, pursuant to the Note, Business Loan Agreements, Commercial Security Agreement, UCC Financing Statement, the Loan and the associated Loan Documents, as well as in law and in equity, to pursue any remedies directly against you and Brokers Insurance for the Collateral.

American Community Mutual Insurance Company
Attn: Compliance Officer
October 19, 2011
Page 3

BANK HEREBY EXPRESSLY RESERVES ANY RIGHTS AND REMEDIES WHICH IT NOW HAS OR MAY HEREAFTER ACQUIRE AGAINST BROKERS INSURANCE OR ANY GUARANTOR OR OTHER OBLIGORS OR PLEDGOR, OR ITS DEBTORS, OBLIGORS, REMITTERS, AND PAYORS, AND ANY LIEN OR SECURITY INTEREST IN PROPERTY OF THE SAME PARTIES INCLUDING BUT NOT LIMITED TO THE COLLATERAL THAT IS THE SUBJECT TO THIS MATTER.

You are advised that this matter has been turned over to Bank's attorneys for collection. You are further advised that this communication is an effort to collect a debt and any information obtained from you will be used by this firm and Bank in the enforcement of the rights of Bank and the collection of all indebtedness owing under the Promissory Note and associated Loan Documents, including but not limited to the Collateral and secured property referenced above.

Please direct all questions regarding this letter to me at the contact information displayed at the top of this correspondence.

Very truly yours,

A handwritten signature in black ink, consisting of a large, stylized initial 'L' followed by a long horizontal line extending to the right.

Loren I. Ettinger, Esq.

Cc: Mr. Austin Simpson
Midland States Bank

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RICK SNYDER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
OFFICE OF FINANCIAL AND INSURANCE REGULATION
R. KEVIN CLINTON
COMMISSIONER

STEVEN H. HILFINGER
DIRECTOR

January 23, 2012

Brokers Insurance Corporation
Att. Mr. Robert J. Meyer
President
9201 Watson Road
St. Louis, MI 63126

Re: Midland States Bank/American Community Mutual Commissions

Dear Mr. Meyer:

On January 4, 2012, the Rehabilitation Court approved payment of withheld and suspended commissions to American Community Mutual agents. Our records indicate that Brokers Insurance Corporation has \$9,155.78 in due commissions.

On October 19, 2011 we received the attached letter from Midland States Bank claiming a security interest in any commissions owed Broker Insurance Corporation by American Community Mutual.

Please provide us with your written consent to release the \$9,155.78 to Midland States Bank.

Please contact me at (734)-591-8103 if you have any questions regarding this matter.

Thank you.

Yours truly,

James Gerber
Deputy Rehabilitator
American Community Mutual

Copy: Mr. Christopher Kerr, Assistant Attorney General, State of Michigan
Mr. Loren Ettinger, Attorney, Kodner, Watkins and Kloecker LC

Attachment

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Jim - Zybko

SUPERVISORY AFFAIRS &
INSURANCE MONITORING



Brokers Insurance Corp.

FEB 13 2012

RECEIVED
LANSING, MICHIGAN

February 1, 2012

RECEIVED
FEB - 7 2012
DEPT. OF CTS

Mr. James Gerber
Deputy Rehabilitator
American Community Mutual
611 W. Ottawa Street
Lansing, MI 48909

Re: Brokers Insurance Corp. vs. Midland States Bank

Dear Mr. Gerber:

Brokers Insurance Corporation is in receipt of your letter requesting consent to release \$9,155.78 in American Community commissions to Midland States Bank. We are not consenting to this release. These commissions are due to agents under our general agency agreement with American Community Mutual. Our general agency contract was terminated when the state of Michigan placed American Community Mutual in receivership. Therefore the company could no longer earn commission on policies sold by its down line agents. The commissions that are being held are due to those down line agents and not to Brokers Insurance Corporation.

If we consented to releasing commissions due to third parties, we would subject ourselves and Midland States Bank to potential legal action. We would be agreeable to provide an affidavit stating that all commission is due to third parties and would be disbursed to them if we received those funds.

Additionally, Robert J. Meyer is not the president of Brokers Insurance Corporation. I am the current president. All future correspondence should be addressed to me. Thank you in advance for your cooperation.

Sincerely,

Magdalene Zybko
President

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Kerr, Christopher (AG)

From: Gerber, Jim (LARA)
Sent: Friday, February 10, 2012 7:43 AM
To: Kerr, Christopher (AG)
Subject: FW: Midland States Bank v. Brokers Insurance Corp. (our file 11-599)
Attachments: SCAN3041_000.pdf; Brokers Insurance Corp - Comm Sec Agr & UCC.pdf

Let's discuss.

James Gerber
Director of Receiverships
Office of Financial and Insurance Regulation
State of Michigan
(517)-335-1738

e-mail: gerberj@michigan.gov

NOTICE: This message is intended for the named recipient(s) only and may contain confidential, privileged, or private information exempt from disclosure under Michigan law. If you have received this message in error, do not forward, share, save or duplicate it. Please reply and notify me of the error in transmission and then delete the message. Thank you.

From: Loren Ettinger [lettinger@kwklaw.net]
Sent: Thursday, February 09, 2012 3:47 PM
To: Gerber, Jim (LARA)
Subject: Midland States Bank v. Brokers Insurance Corp. (our file 11-599)

Mr. Gerber,gerberj@michigan.gov

I am in receipt of your letter dated January 23, 2012, addressed by you to Norman Meyer of Brokers Insurance, in which you indicated that (i) on January 4, 2012, the Rehabilitation Court approved payment of withheld and suspended commissions to American Community Mutual agents, (ii) your records reflect that Brokers Insurance Corporation has \$9,155.78 in commissions due, (iii) you received the letter from our firm dated October 19, 2011 in which Midland States Bank claimed a security interest in any commission owed Brokers Insurance Corporation by American Community Mutual, and (iv) you requested Broker's Insurance provide you with written consent to pay said suspended commissions to Midland States Bank.

Please know that the underlying loan secured by the assignment of these brokerage commissions is in default, and attached hereto is a letter from Midland States Bank evidencing said default. Accordingly, we do not anticipate that Brokers Insurance Corporation will provide you with consent to pay the commissions to Midland States Bank. However, pursuant to the terms of the loan documents, copies of which are attached hereto, and the filed UCC Financing Statement, a copy of which is attached hereto, the consent of Brokers Insurance Corporation is not required in order for you to pay said commissions to Midland States Bank.

Please review these documents and let me know Midland States Bank can anticipate receiving the suspended commissions above, and any further suspended commissions that have accrued thereafter.

Kindest regards,

Loren I. Ettinger
Attorney at Law
Kodner Watkins Kloecker, LC
7800 Forsyth Blvd., 7th Floor
St. Louis, MO 63105
Telephone: 314-727-9111, x205
Facsimile: 314-727-9110
Mobile: 314-378-1006

E-mail: lettinger@kwklaw.net

****PRIVACY NOTICE****

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November 1, 2011

Brokers Insurance Corporation

9201 Watson Rd Suite 300

St. Louis, MO 63126

Subject: Loan 1000037800

The Brokers Insurance loan 1000037800 is currently in default.

Sincerely,

A handwritten signature in black ink, appearing to read "Austin Simpson". The signature is written in a cursive style with a long horizontal line extending to the right.

Austin Simpson

Special Assets Officer

5761SS1 V6R1M0 080215 Print Key Output ATXSLP05

12/05/11 Page 1 11:26:08

Display Device : V36D2116G1
User : V36ABS001

12/05/11 Loan Payoff Inquiry

11:25:10

BROKERS INSURANCE CORPORATION
9201 WATSON RD SUITE 300
ST LOUIS MO 63126

Shadow

Loan# 1000037800 L
Type: C&I 365/360
Eff. Dt: 12/05/11
PerDiem: 67.62753
Ins PerDiem:

Description	Amounts	Rebates	Payoffs
Current Balance	211,703.58		211,703.58
Accrued Interest	10,874.67		222,578.25
Late Charges	562.50		223,140.75
Other Charges/Fees	5,591.37		228,732.12
Total Payoff			228,732.12

F3=Exit F6=Messages F7=Escrow/Insurance F8=Set P/O Pending F12=Previous Bottom
F14=Fee Inq. F15=Calculate DP F16=Calculate Penalty F20=Generate P/O Letter

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COMMERCIAL SECURITY AGREEMENT

Principal \$804,080.00	Loan Date 07-02-2007	Maturity 01-02-2008	Loan No. 400037800	Call / Coll.	Account	Officer JSJ	Initials JSJ
References in the shaded area are for Lender's use only and do not limit the applicability of this document to any particular loan or item. Any item above containing "****" has been omitted due to text length limitations.							

Grantor: Brokers Insurance Corporation (TIN: 43-1328733)
9201 Watson Rd. Ste 300
St. Louis, MO 63126

Lender: WestBridge Bank & Trust
17300 N. Outer 40 Road
Suite 203
Chesterfield, MO 63005
(636) 449-8500

THIS COMMERCIAL SECURITY AGREEMENT dated July 2, 2007, is made and executed between Brokers Insurance Corporation ("Grantor") and WestBridge Bank & Trust ("Lender").

GRANT OF SECURITY INTEREST. For valuable consideration, Grantor grants to Lender a security interest in the Collateral to secure the Indebtedness and agrees that Lender shall have the rights stated in this Agreement with respect to the Collateral, in addition to all other rights which Lender may have by law.

COLLATERAL DESCRIPTION. The word "Collateral" as used in this Agreement means the following described property, whether now owned or hereafter acquired, whether now existing or hereafter arising, and wherever located, in which Grantor is giving to Lender a security interest for the payment of the Indebtedness and performance of all other obligations under the Note and this Agreement:

All direct assignments of insurance commissions, General Agent commissions and overrides or other commissions and overrides, inventory, equipment, accounts (including but not limited to all health-care-insurance receivables), chattel paper, instruments (including but not limited to all promissory notes), letter-of-credit rights, letters of credit, documents, deposit accounts, investment property, money, other rights to payment and performance, and general intangibles (including but not limited to all software and all payment intangibles); all oil, gas and other minerals before extraction; all oil, gas, other minerals and accounts constituting as-extracted collateral; all fixtures; all timber to be cut; all attachments, accessions, accessories, fittings, increases, tools, parts, repairs, supplies, and commingled goods relating to the foregoing property, and all additions, replacements of and substitutions for all or any part of the foregoing property; all insurance refunds relating to the foregoing property; all good will relating to the foregoing property; all records and data and embedded software relating to the foregoing property, and all equipment, inventory and software to utilize, create, maintain and process any such records and data on electronic media; and all supporting obligations relating to the foregoing property; all whether now existing or hereafter arising, whether now owned or hereafter acquired or whether now or hereafter subject to any rights in the foregoing property; and all products and proceeds (including but not limited to all insurance payments) of or relating to the foregoing property.

In addition, the word "Collateral" also includes all the following, whether now owned or hereafter acquired, whether now existing or hereafter arising, and wherever located:

- (A) All accessions, attachments, accessories, tools, parts, supplies, replacements of and additions to any of the collateral described herein, whether added now or later.
- (B) All products and produce of any of the property described in this Collateral section.
- (C) All accounts, general intangibles, instruments, rents, monies, payments, and all other rights, arising out of a sale, lease, consignment or other disposition of any of the property described in this Collateral section.
- (D) All proceeds (including insurance proceeds) from the sale, destruction, loss, or other disposition of any of the property described in this Collateral section, and sums due from a third party who has damaged or destroyed the Collateral or from that party's insurer, whether due to judgment, settlement or other process.
- (E) All records and data relating to any of the property described in this Collateral section, whether in the form of a writing, photograph, microfilm, microfiche, or electronic media, together with all of Grantor's right, title, and interest in and to all computer software required to utilize, create, maintain, and process any such records or data on electronic media.

RIGHT OF SETOFF. To the extent permitted by applicable law, Lender reserves a right of setoff in all Grantor's accounts with Lender (whether checking, savings, or some other account). This includes all accounts Grantor holds jointly with someone else and all accounts Grantor may open in the future. However, this does not include any IRA or Keogh accounts, or any trust accounts for which setoff would be prohibited by law. Grantor authorizes Lender, to the extent permitted by applicable law, to charge or setoff all sums owing on the Indebtedness against any and all such accounts.

GRANTOR'S REPRESENTATIONS AND WARRANTIES WITH RESPECT TO THE COLLATERAL. With respect to the Collateral, Grantor represents and promises to Lender that:

Perfection of Security Interest. Grantor agrees to take whatever actions are requested by Lender to perfect and continue Lender's security interest in the Collateral. Upon request of Lender, Grantor will deliver to Lender any and all of the documents evidencing or constituting the Collateral, and Grantor will note Lender's interest upon any and all chattel paper and instruments if not delivered to Lender for possession by Lender.

Notices to Lender. Grantor will promptly notify Lender in writing at Lender's address shown above (or such other addresses as Lender may designate from time to time) prior to any (1) change in Grantor's name; (2) change in Grantor's assumed business name(s); (3) change in the management of the Corporation Grantor; (4) change in the authorized signer(s); (5) change in Grantor's principal office address; (6) change in Grantor's state of organization; (7) conversion of Grantor to a new or different type of business entity; or (8) change in any other aspect of Grantor that directly or indirectly relates to any agreements between Grantor and Lender. No change in Grantor's name or state of organization will take effect until after Lender has received notice.

No Violation. The execution and delivery of this Agreement will not violate any law or agreement governing Grantor or to which Grantor is a party, and its certificate or articles of incorporation and bylaws do not prohibit any term or condition of this Agreement.

Enforceability of Collateral. To the extent the Collateral consists of accounts, chattel paper, or general intangibles, as defined by the Uniform Commercial Code, the Collateral is enforceable in accordance with its terms, is genuine, and fully complies with all applicable laws and regulations concerning form, content and manner of preparation and execution, and all persons appearing to be obligated on the Collateral have authority and capacity to contract and are in fact obligated as they appear to be on the Collateral. At the time any account becomes subject to a security interest in favor of Lender, the account shall be a good and valid account representing an undisputed, bona

vide indebtedness incurred by the account debtor, for merchandise held subject to delivery instructions or previously shipped or delivered pursuant to a contract of sale, or for services previously performed by Grantor with or for the account debtor. So long as this Agreement remains in effect, Grantor shall not, without Lender's prior written consent, compromise, settle, adjust, or extend payment under or with regard to any such Accounts. There shall be no setoffs or counterclaims against any of the Collateral, and no agreement shall have been made under which any deductions or discounts may be claimed concerning the Collateral except those disclosed to Lender in writing.

Location of the Collateral. Except in the ordinary course of Grantor's business, Grantor agrees to keep the Collateral (or to the extent the Collateral consists of intangible property such as accounts or general intangibles, the records concerning the Collateral) at Grantor's address shown above or at such other locations as are acceptable to Lender. Upon Lender's request, Grantor will deliver to Lender in form satisfactory to Lender a schedule of real properties and Collateral locations relating to Grantor's operations, including without limitation the following: (1) all real property Grantor owns or is purchasing; (2) all real property Grantor is renting or leasing; (3) all storage facilities Grantor owns, rents, leases, or uses; and (4) all other properties where Collateral is or may be located.

Removal of the Collateral. Except in the ordinary course of Grantor's business, including the sales of inventory, Grantor shall not remove the Collateral from its existing location without Lender's prior written consent. To the extent that the Collateral consists of vehicles, or other titled property, Grantor shall not take or permit any action which would require application for certificates of title for the vehicles outside the State of Missouri, without Lender's prior written consent. Grantor shall, whenever requested, advise Lender of the exact location of the Collateral.

Transactions Involving Collateral. Except for inventory sold or accounts collected in the ordinary course of Grantor's business, or as otherwise provided for in this Agreement, Grantor shall not sell, offer to sell, or otherwise transfer or dispose of the Collateral. While Grantor is not in default under this Agreement, Grantor may sell inventory, but only in the ordinary course of its business and only to buyers who qualify as a buyer in the ordinary course of business. A sale in the ordinary course of Grantor's business does not include a transfer in partial or total satisfaction of a debt or any bulk sale. Grantor shall not pledge, mortgage, encumber or otherwise permit the Collateral to be subject to any lien, security interest, encumbrance, or charge, other than the security interest provided for in this Agreement, without the prior written consent of Lender. This includes security interests even if junior in right to the security interests granted under this Agreement. Unless waived by Lender, all proceeds from any disposition of the Collateral (for whatever reason) shall be held in trust for Lender and shall not be commingled with any other funds; provided however, this requirement shall not constitute consent by Lender to any sale or other disposition. Upon receipt, Grantor shall immediately deliver any such proceeds to Lender.

Title. Grantor represents and warrants to Lender that Grantor holds good and marketable title to the Collateral, free and clear of all liens and encumbrances except for the lien of this Agreement. No financing statement covering any of the Collateral is on file in any public office other than those which reflect the security interest created by this Agreement or to which Lender has specifically consented. Grantor shall defend Lender's rights in the Collateral against the claims and demands of all other persons.

Repairs and Maintenance. Grantor agrees to keep and maintain, and to cause others to keep and maintain, the Collateral in good order, repair and condition at all times while this Agreement remains in effect. Grantor further agrees to pay when due all claims for work done on, or services rendered or material furnished in connection with the Collateral so that no lien or encumbrance may ever attach to or be filed against the Collateral.

Inspection of Collateral. Lender and Lender's designated representatives and agents shall have the right at all reasonable times to examine and inspect the Collateral wherever located. N

Taxes, Assessments and Liens. Grantor will pay when due all taxes, assessments and liens upon the Collateral, its use or operation, upon this Agreement, upon any promissory note or notes evidencing the indebtedness, or upon any of the other Related Documents. Grantor may withhold any such payment or may elect to contest any lien if Grantor is in good faith conducting an appropriate proceeding to contest the obligation to pay and so long as Lender's interest in the Collateral is not jeopardized in Lender's sole opinion. If the Collateral is subjected to a lien which is not discharged within fifteen (15) days, Grantor shall deposit with Lender cash, a sufficient corporate surety bond or other security satisfactory to Lender in an amount adequate to provide for the discharge of the lien plus any interest, costs, permissible fees or other charges that could accrue as a result of foreclosure or sale of the Collateral. In any contest Grantor shall defend itself and Lender and shall satisfy any final adverse judgment before enforcement against the Collateral. Grantor shall name Lender as an additional obligee under any surety bond furnished in the contest proceedings. Grantor further agrees to furnish Lender with evidence that such taxes, assessments, and governmental and other charges have been paid in full and in a timely manner. Grantor may withhold any such payment or may elect to contest any lien if Grantor is in good faith conducting an appropriate proceeding to contest the obligation to pay and so long as Lender's interest in the Collateral is not jeopardized.

Compliance with Governmental Requirements. Grantor shall comply promptly with all laws, ordinances, rules and regulations of all governmental authorities, now or hereafter in effect, applicable to the ownership, production, disposition, or use of the Collateral, including all laws or regulations relating to the undue erosion of highly-erodible land or relating to the conversion of wetlands for the production of an agricultural product or commodity. Grantor may contest in good faith any such law, ordinance or regulation and withhold compliance during any proceeding, including appropriate appeals, so long as Lender's interest in the Collateral, in Lender's opinion, is not jeopardized.

Hazardous Substances. Grantor represents and warrants that the Collateral never has been, and never will be so long as this Agreement remains a lien on the Collateral, used in violation of any Environmental Laws or for the generation, manufacture, storage, transportation, treatment, disposal, release or threatened release of any Hazardous Substance. The representations and warranties contained herein are based on Grantor's due diligence in investigating the Collateral for Hazardous Substances. Grantor hereby (1) releases and waives any future claims against Lender for indemnity or contribution in the event Grantor becomes liable for cleanup or other costs under any Environmental Laws, and (2) agrees to indemnify, defend, and hold harmless Lender against any and all claims and losses resulting from a breach of this provision of this Agreement. This obligation to indemnify and defend shall survive the payment of the indebtedness and the satisfaction of this Agreement.

Maintenance of Casualty Insurance. Grantor shall procure and maintain all risks insurance, including without limitation fire, theft and liability coverage together with such other insurance as Lender may require with respect to the Collateral, in form, amounts, coverages and basis reasonably acceptable to Lender and issued by a company or companies reasonably acceptable to Lender. Grantor, upon request of Lender, will deliver to Lender from time to time the policies or certificates of insurance in form satisfactory to Lender, including stipulations that coverages will not be cancelled or diminished without at least thirty (30) days' prior written notice to Lender and not including any disclaimer of the insurer's liability for failure to give such a notice. Each insurance policy also shall include an endorsement providing that coverage in favor of Lender will not be impaired in any way by any act, omission or default of Grantor or any other person. In connection with all policies covering assets in which Lender holds or is offered a security interest, Grantor will provide Lender with such loss payable or other endorsements as Lender may require. If Grantor at any time fails to obtain or maintain any insurance as required under this Agreement, Lender may (but shall not be obligated to) obtain such insurance as Lender deems appropriate, including if Lender so chooses "single interest insurance," which will cover only Lender's interest in the Collateral.

Application of Insurance Proceeds. Grantor shall promptly notify Lender of any loss or damage to the Collateral, whether or not such

casualty or loss is covered by insurance. Lender may make proof of loss if Grantor fails to do so within fifteen (15) days of the casualty. All proceeds of any insurance on the Collateral, including accrued proceeds thereon, shall be held by Lender as part of the Collateral. If Lender consents to repair or replacement of the damaged or destroyed Collateral, Lender shall, upon satisfactory proof of expenditure, pay or reimburse Grantor from the proceeds for the reasonable cost of repair or restoration. If Lender does not consent to repair or replacement of the Collateral, Lender shall retain a sufficient amount of the proceeds to pay all of the indebtedness, and shall pay the balance to Grantor. Any proceeds which have not been disbursed within six (6) months after their receipt and which Grantor has not committed to the repair or restoration of the Collateral shall be used to prepay the indebtedness.

Insurance Reserves. Lender may require Grantor to maintain with Lender reserves for payment of insurance premiums, which reserves shall be created by monthly payments from Grantor of a sum estimated by Lender to be sufficient to produce, at least fifteen (15) days before the premium due date, amounts at least equal to the insurance premiums to be paid. If fifteen (15) days before payment is due, the reserve funds are insufficient, Grantor shall upon demand pay any deficiency to Lender. The reserve funds shall be held by Lender as a general deposit and shall constitute a non-interest-bearing account which Lender may satisfy by payment of the insurance premiums required to be paid by Grantor as they become due. Lender does not hold the reserve funds in trust for Grantor, and Lender is not the agent of Grantor for payment of the insurance premiums required to be paid by Grantor. The responsibility for the payment of premiums shall remain Grantor's sole responsibility.

Insurance Reports. Grantor, upon request of Lender, shall furnish to Lender reports on each existing policy of insurance showing such information as Lender may reasonably request including the following: (1) the name of the insurer; (2) the risks insured; (3) the amount of the policy; (4) the property insured; (5) the then current value on the basis of which insurance has been obtained and the manner of determining that value; and (6) the expiration date of the policy. In addition, Grantor shall upon request by Lender (however not more often than annually) have an independent appraiser satisfactory to Lender determine, as applicable, the cash value or replacement cost of the Collateral.

Financing Statements. Grantor authorizes Lender to file a UCC financing statement, or alternatively, a copy of this Agreement to perfect Lender's security interest. At Lender's request, Grantor additionally agrees to sign all other documents that are necessary to perfect, protect, and continue Lender's security interest in the Property. Grantor will pay all filing fees, title transfer fees, and other fees and costs involved unless prohibited by law or unless Lender is required by law to pay such fees and costs. Grantor irrevocably appoints Lender to execute documents necessary to transfer title if there is a default. Lender may file a copy of this Agreement as a financing statement. If Grantor changes Grantor's name or address, or the name or address of any person granting a security interest under this Agreement changes, Grantor will promptly notify the Lender of such change.

GRANTOR'S RIGHT TO POSSESSION AND TO COLLECT ACCOUNTS. Until default and except as otherwise provided below with respect to accounts, Grantor may have possession of the tangible personal property and beneficial use of all the Collateral and may use it in any lawful manner not inconsistent with this Agreement or the Related Documents, provided that Grantor's right to possession and beneficial use shall not apply to any Collateral where possession of the Collateral by Lender is required by law to perfect Lender's security interest in such Collateral. Until otherwise notified by Lender, Grantor may collect any of the Collateral consisting of accounts. At any time and even though no Event of Default exists, Lender may exercise its rights to collect the accounts and to notify account debtors to make payments directly to Lender for application to the indebtedness. If Lender at any time has possession of any Collateral, whether before or after an Event of Default, Lender shall be deemed to have exercised reasonable care in the custody and preservation of the Collateral if Lender takes such action for that purpose as Grantor shall request or as Lender, in Lender's sole discretion, shall deem appropriate under the circumstances, but failure to honor any request by Grantor shall not of itself be deemed to be a failure to exercise reasonable care. Lender shall not be required to take any steps necessary to preserve any rights in the Collateral against prior parties, nor to protect, preserve or maintain any security interest given to secure the indebtedness.

LENDER'S EXPENDITURES. If any action or proceeding is commenced that would materially affect Lender's interest in the Collateral or if Grantor fails to comply with any provision of this Agreement or any Related Documents, including but not limited to Grantor's failure to discharge or pay when due any amounts Grantor is required to discharge or pay under this Agreement or any Related Documents, Lender on Grantor's behalf may (but shall not be obligated to) take any action that Lender deems appropriate, including but not limited to discharging or paying all taxes, liens, security interests, encumbrances and other claims, at any time levied or placed on the Collateral and paying all costs for insuring, maintaining and preserving the Collateral. All such expenditures incurred or paid by Lender for such purposes will then bear interest at the rate charged under the Note from the date incurred or paid by Lender to the date of repayment by Grantor. All such expenses will become a part of the indebtedness and, at Lender's option, will (A) be payable on demand; (B) be added to the balance of the Note and be apportioned among and be payable with any installment payments to become due during either (1) the term of any applicable insurance policy; or (2) the remaining term of the Note; or (C) be treated as a balloon payment which will be due and payable at the Note's maturity. The Agreement also will secure payment of these amounts. Such right shall be in addition to all other rights and remedies to which Lender may be entitled upon Default.

REINSTATEMENT OF SECURITY INTEREST. If payment is made by Grantor, whether voluntarily or otherwise, or by guarantor or by any third party, on the indebtedness and thereafter Lender is forced to remit the amount of that payment (A) to Grantor's trustee in bankruptcy or to any similar person under any federal or state bankruptcy law or law for the relief of debtors, (B) by reason of any judgment, decree or order of any court or administrative body having jurisdiction over Lender or any of Lender's property, or (C) by reason of any settlement or compromise of any claim made by Lender with any claimant (including without limitation Grantor), the indebtedness shall be considered unpaid for the purpose of enforcement of this Agreement and this Agreement shall continue to be effective or shall be reinstated, as the case may be, notwithstanding any cancellation of this Agreement or of any note or other instrument or agreement evidencing the indebtedness and the Collateral will continue to secure the amount repaid or recovered to the same extent as if that amount never had been originally received by Lender, and Grantor shall be bound by any judgment, decree, order, settlement or compromise relating to the indebtedness or to this Agreement.

DEFAULT. Each of the following shall constitute an Event of Default under this Agreement:

Payment Default. Grantor fails to make any payment when due under the indebtedness.

Other Defaults. Grantor fails to comply with or to perform any other term, obligation, covenant or condition contained in this Agreement or in any of the Related Documents or to comply with or to perform any term, obligation, covenant or condition contained in any other agreement between Lender and Grantor.

Default in Favor of Third Parties. Should Borrower or any Grantor default under any loan, extension of credit, security agreement, purchase or sales agreement, or any other agreement, in favor of any other creditor or person that may materially affect any of Grantor's property or Grantor's or any Grantor's ability to repay the indebtedness or perform their respective obligations under this Agreement or any of the Related Documents.

False Statements. Any warranty, representation or statement made or furnished to Lender by Grantor or on Grantor's behalf under this Agreement or the Related Documents is false or misleading in any material respect, either now or at the time made or furnished or becomes false or misleading at any time thereafter.

Defective Collateralization. This Agreement or any of the Related Documents ceases to be in full force and effect (including failure of any collateral document to create a valid and perfected security interest or lien) at any time and for any reason.

Insolvency. The dissolution or termination of Grantor's existence as a going business, the insolvency of Grantor, the appointment of a receiver for any part of Grantor's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Grantor.

Creditor or Forfeiture Proceedings. Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Grantor or by any governmental agency against any collateral securing the Indebtedness. This includes a garnishment of any of Grantor's accounts, including deposit accounts, with Lender. However, this Event of Default shall not apply if there is a good faith dispute by Grantor as to the validity or reasonableness of the claim which is the basis of the creditor or forfeiture proceeding and if Grantor gives Lender written notice of the creditor or forfeiture proceeding and deposits with Lender monies or a surety bond for the creditor or forfeiture proceeding, in an amount determined by Lender, in its sole discretion, as being an adequate reserve or bond for the dispute.

Events Affecting Guarantor. Any of the preceding events occurs with respect to any Guarantor of any of the Indebtedness or Guarantor dies or becomes incompetent or revokes or disputes the validity of, or liability under, any Guaranty of the Indebtedness.

Adverse Change. A material adverse change occurs in Grantor's financial condition, or Lender believes the prospect of payment or performance of the Indebtedness is impaired.

Insecurity. Lender in good faith believes itself insecure.

RIGHTS AND REMEDIES ON DEFAULT. If an Event of Default occurs under this Agreement, at any time thereafter, Lender shall have all the rights of a secured party under the Missouri Uniform Commercial Code. In addition and without limitation, Lender may exercise any one or more of the following rights and remedies:

Accelerate Indebtedness. Lender may declare the entire Indebtedness, including any prepayment penalty which Grantor would be required to pay, immediately due and payable, without notice of any kind to Grantor.

Assemble Collateral. Lender may require Grantor to deliver to Lender all or any portion of the Collateral and any and all certificates of title and other documents relating to the Collateral. Lender may require Grantor to assemble the Collateral and make it available to Lender at a place to be designated by Lender. Lender also shall have full power to enter upon the property of Grantor to take possession of and remove the Collateral. If the Collateral contains other goods not covered by this Agreement at the time of repossession, Grantor agrees Lender may take such other goods, provided that Lender makes reasonable efforts to return them to Grantor after repossession.

Sell the Collateral. Lender shall have full power to sell, lease, transfer, or otherwise deal with the Collateral or proceeds thereof in Lender's own name or that of Grantor. Lender may sell the Collateral at public auction or private sale. Unless the Collateral threatens to decline speedily in value or is of a type customarily sold on a recognized market, Lender will give Grantor, and other persons as required by law, reasonable notice of the time and place of any public sale, or the time after which any private sale or any other disposition of the Collateral is to be made. However, no notice need be provided to any person who, after Event of Default occurs, enters into and authenticates an agreement waiving that person's right to notification of sale. The requirements of reasonable notice shall be met if such notice is given at least ten (10) days before the time of the sale or disposition. All expenses relating to the disposition of the Collateral, including without limitation the expenses of retaking, holding, insuring, preparing for sale and selling the Collateral, shall become a part of the Indebtedness secured by this Agreement and shall be payable on demand, with interest at the Note rate from date of expenditure until repaid.

Appoint Receiver. Lender shall have the right to have a receiver appointed to take possession of all or any part of the Collateral, with the power to protect and preserve the Collateral, to operate the Collateral preceding foreclosure or sale, and to collect the Rents from the Collateral and apply the proceeds, over and above the cost of the receivership, against the Indebtedness. The receiver may serve without bond if permitted by law. Lender's right to the appointment of a receiver shall exist whether or not the apparent value of the Collateral exceeds the Indebtedness by a substantial amount. Employment by Lender shall not disqualify a person from serving as a receiver.

Collect Revenues, Apply Accounts. Lender, either itself or through a receiver, may collect the payments, rents, income, and revenues from the Collateral. Lender may at any time in Lender's discretion transfer any Collateral into Lender's own name or that of Lender's nominee and receive the payments, rents, income, and revenues therefrom and hold the same as security for the Indebtedness or apply it to payment of the Indebtedness in such order of preference as Lender may determine. Insofar as the Collateral consists of accounts, general intangibles, insurance policies, instruments, chattel paper, choses in action, or similar property, Lender may demand, collect, receipt for, settle, compromise, adjust, sue for, foreclose, or realize on the Collateral as Lender may determine, whether or not Indebtedness or Collateral is then due. For these purposes, Lender may, on behalf of and in the name of Grantor, receive, open and dispose of mail addressed to Grantor; change any address to which mail and payments are to be sent; and endorse notes, checks, drafts, money orders, documents of title, instruments and items pertaining to payment, shipment, or storage of any Collateral. To facilitate collection, Lender may notify account debtors and obligors on any Collateral to make payments directly to Lender.

Obtain Deficiency. If Lender chooses to sell any or all of the Collateral, Lender may obtain a judgment against Grantor for any deficiency remaining on the Indebtedness due to Lender after application of all amounts received from the exercise of the rights provided in this Agreement. Grantor shall be liable for a deficiency even if the transaction described in this subsection is a sale of accounts or chattel paper.

Other Rights and Remedies. Lender shall have all the rights and remedies of a secured creditor under the provisions of the Uniform Commercial Code, as may be amended from time to time. In addition, Lender shall have and may exercise any or all other rights and remedies it may have available at law, in equity, or otherwise.

Election of Remedies. Except as may be prohibited by applicable law, all of Lender's rights and remedies, whether evidenced by this Agreement, the Related Documents, or by any other writing, shall be cumulative and may be exercised singularly or concurrently. Election by Lender to pursue any remedy shall not exclude pursuit of any other remedy, and an election to make expenditures or to take action to perform an obligation of Grantor under this Agreement, after Grantor's failure to perform, shall not affect Lender's right to declare a default and exercise its remedies.

CHOICE OF VENUE. If there is a lawsuit, Grantor agrees upon Lender's request to submit to the jurisdiction of the courts of Saint Louis County, State of Missouri or any other court jurisdiction as solely determined by Bank.

MISCELLANEOUS PROVISIONS. The following miscellaneous provisions are a part of this Agreement:

Amendments. This Agreement, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Agreement. No alteration of or amendment to this Agreement shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

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Expenses. If Lender institutes any suit or action to enforce any of the terms of this Agreement, Lender shall be entitled to recover such sum as the court may adjudge reasonable. Whether or not any court action is involved, and to the extent not prohibited by law, all reasonable expenses Lender incurs that in Lender's opinion are necessary at any time for the protection of its interest or the enforcement of its rights shall become a part of the indebtedness payable on demand and shall bear interest at the Note rate from the date of the expenditure until repaid. Expenses covered by this paragraph include, without limitation, however subject to any limits under applicable law, Lender's expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), and appeals, the cost of searching records, obtaining title reports (including foreclosure reports), surveyors' reports, and appraisal fees and title insurance, to the extent permitted by applicable law. Grantor also will pay any court costs, in addition to all other sums provided by law. Caption Headings. Caption headings in this Agreement are for convenience purposes only and are not to be used to interpret or define the provisions of this Agreement.

Governing Law. This Agreement will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of Missouri without regard to its conflicts of law provisions. This Agreement has been accepted by Lender in the State of Missouri.

No Waiver by Lender. Lender shall not be deemed to have waived any rights under this Agreement unless such waiver is given in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by Lender of a provision of this Agreement shall not prejudice or constitute a waiver of Lender's right otherwise to demand strict compliance with that provision or any other provision of this Agreement. No prior waiver by Lender, nor any course of dealing between Lender and Grantor, shall constitute a waiver of any of Lender's rights or of any of Grantor's obligations as to any future transactions. Whenever the consent of Lender is required under this Agreement, the granting of such consent by Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of Lender.

Notices. Any notice required to be given under this Agreement shall be given in writing, and shall be effective when actually delivered, or, if mailed, when deposited by first-class mail, as first class, certified, or registered or registered mail postage prepaid, directed to the addresses shown near the beginning of this Agreement. Any party may change its address for notices under this Agreement by giving formal written notice to the other parties, specifying that the purpose is to change the party's address. For notice purposes, Grantor agrees to keep Lender informed at all times of Grantor's current address. Unless otherwise provided or required by law, if there is more than one Grantor, any notice given by Lender to any Grantor is deemed to be notice given to all Grantors.

Power of Attorney. Grantor hereby appoints Lender as Grantor's irrevocable attorney-in-fact for the purpose of executing any documents necessary to perfect, amend, or to continue the security interest granted in this Agreement or to demand termination of filings of other secured parties. Lender may at any time, and without further authorization from Grantor, file a carbon, photographic or other reproduction of any financing statement or of this Agreement for use as a financing statement. Grantor will reimburse Lender for all expenses for the perfection and the continuation of the perfection of Lender's security interest in the Collateral.

Severability. If a court of competent jurisdiction finds any provision of this Agreement to be illegal, invalid, or unenforceable as to any circumstance, that finding shall not make the offending provision illegal, invalid, or unenforceable as to any other provision of this Agreement. If the offending provision cannot be so modified, it shall be considered deleted from this Agreement. Unless otherwise required by law, the illegality, invalidity, or unenforceability of any provision of this Agreement shall not affect the legality, validity or enforceability of any other provision of this Agreement.

Successors and Assigns. Subject to any limitations stated in this Agreement on transfer of Grantor's interest, this Agreement shall be binding upon and inure to the benefit of the parties, their successors and assigns. If ownership of the Collateral becomes vested in a person other than Grantor, Lender, without notice to Grantor, may deal with Grantor's successors with reference to this Agreement and the indebtedness by way of forbearance or extension without releasing Grantor from the obligations of this Agreement or liability under the Survival of Representations and Warranties. All representations, warranties, and agreements made by Grantor in this Agreement shall survive the execution and delivery of this Agreement, shall be continuing in nature, and shall remain in full force and effect until such time as Grantor's indebtedness shall be paid in full.

Time is of the Essence. Time is of the essence in the performance of this Agreement.

DEFINITIONS. The following capitalized words and terms shall have the following meanings when used in this Agreement. Unless specifically stated to the contrary, all references to dollar amounts shall mean amounts in lawful money of the United States of America. Words and terms used in the singular shall include the plural, and the plural shall include the singular, as the context may require. Words and terms defined in this Agreement shall have the meanings attributed to such terms in the Uniform Commercial Code.

Agreement. The word "Agreement" means this Commercial Security Agreement, as this Commercial Security Agreement may be amended or modified from time to time, together with all exhibits and schedules attached to this Commercial Security Agreement from time to time. Borrower. The word "Borrower" means Brokers Insurance Corporation and includes all co-signers and co-makers signing the Note and all their successors and assigns. Collateral. The word "Collateral" means all of Grantor's right, title and interest in and to all the Collateral as described in the Collateral Description section of this Agreement. Default. The word "Default" means the Default set forth in this Agreement in the section titled "Default". Environmental Laws. The words "Environmental Laws" mean any and all state, federal and local statutes, regulations and ordinances relating to the protection of human health or the environment, including without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq. ("CERCLA"), the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499 ("SARA"), the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., or other applicable state or federal laws, rules, or regulations adopted pursuant thereto. Event of Default. The words "Event of Default" mean any of the events of default set forth in this Agreement in the default section of this Agreement. Grantor. The word "Grantor" means Brokers Insurance Corporation. The word "Guarantor" means any guarantor, surety, or accommodation party of any or all of the indebtedness. Guaranty. The word "Guaranty" means the guaranty from Guarantor to Lender, including without limitation a guaranty of all or part of the

Note.

Hazardous Substances. The words "Hazardous Substances" mean materials that, because of their quantity, concentration or physical, chemical or infectious characteristics, may cause or pose a present or potential hazard to human health or the environment when improperly used, treated, stored, disposed of, generated, manufactured, transported or otherwise handled. The words "Hazardous Substances" are used in their very broadest sense and include without limitation any and all hazardous or toxic substances, materials or waste as defined by or listed under the Environmental Laws. The term "Hazardous Substances" also includes, without limitation, petroleum and petroleum by-products or any fraction thereof and asbestos.

Indebtedness. The word "Indebtedness" means the indebtedness evidenced by the Note or Related Documents, including all principal and interest together with all other indebtedness and costs and expenses for which Grantor is responsible under this Agreement or under any of the Related Documents.

Lender. The word "Lender" means WestBridge Bank & Trust, its successors and assigns.

Note. The word "Note" means the Note executed by Brokers Insurance Corporation in the principal amount of \$804,080.00 dated July 2, 2007, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of, and substitutions for the note or credit agreement.

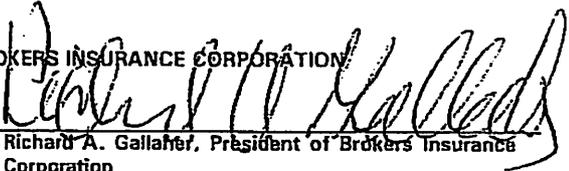
Property. The word "Property" means all of Grantor's right, title and interest in and to all the Property as described in the "Collateral Description" section of this Agreement.

Related Documents. The words "Related Documents" mean all promissory notes, credit agreements, loan agreements, environmental agreements, guaranties, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the Indebtedness.

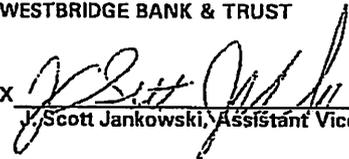
WAIVE JURY. All parties to this Agreement hereby waive the right to any jury trial in any action, proceeding, or counterclaim brought by any party against any other party.

GRANTOR HAS READ AND UNDERSTOOD ALL THE PROVISIONS OF THIS COMMERCIAL SECURITY AGREEMENT AND AGREES TO ITS TERMS. THIS AGREEMENT IS DATED JULY 2, 2007.

GRANTOR:

BROKERS INSURANCE CORPORATION
By: 
Richard A. Gallaher, President of Brokers Insurance Corporation

LENDER:

WESTBRIDGE BANK & TRUST
x 
J. Scott Jankowski, Assistant Vice President

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File Number: 20070077490H
 Date Filed: 07/06/2007 05:35 PM
 Robin Carnahan
 Secretary of State

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER [optional] WestBridge Bank and Trust
B. SEND ACKNOWLEDGMENT TO: (Name and Address) WestBridge Bank and Trust 17300 N Outer 40 Rd., Ste. 203 Chesterfield MO 63005 EMail: dphelps@westbridgebank.com

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S EXACT FULL LEGAL NAME

1a. ORGANIZATION'S NAME Brokers Insurance Corporation					
OR	1b. INDIVIDUAL'S LAST NAME				
	FIRST NAME	MIDDLE NAME	SUFFIX		
1c. MAILING ADDRESS 9201 Watson Rd. Ste 300		CITY St. Louis	STATE MO	POSTAL CODE 63126	COUNTRY USA
	1e. TYPE OF ORGANIZATION Corporation	1f. JURISDICTION OF ORGANIZATION MO	1g. ORGANIZATIONAL ID # 00263135	<input type="checkbox"/> None	

1. SECURED PARTY'S NAME

2a. ORGANIZATION'S NAME WestBridge Bank & Trust					
OR	2b. INDIVIDUAL'S LAST NAME				
	FIRST NAME	MIDDLE NAME	SUFFIX		
2c. MAILING ADDRESS 17300 N Outer 40 Road Ste. 203		CITY Chesterfield	STATE MO	POSTAL CODE 63005	COUNTRY USA

This FINANCING STATEMENT covers the following collateral:

All direct assignments of insurance commissions, General Agent commissions and overrides or other commissions and overrides, inventor equipment, accounts (including but not limited to all health-care-insurance receivables), chattel paper, instruments (including but not limited to all promissory notes), letter-of-credit rights, letters of credit, documents, deposit accounts, investment property, money, other rights to payment and performance, and general intangibles (including but not limited to all software and all payment intangibles); all oil, gas and other minerals before extraction; all oil, gas, other minerals and accounts constituting as-extracted collateral; all fixtures; all timber to be cut all attachments, accessions, accessories, fittings, increases, tools, parts, repairs, supplies, and commingled goods relating to the foregoing property, and all additions, replacements of and substitutions for all or any part of the foregoing property; all insurance refunds relating to the foregoing property; all good will relating to the foregoing property; all records and data and embedded software relating to the foregoing property, and all equipment, inventory and software to utilize, create, maintain and process any such records and data on electronic media; and all supporting obligations relating to the foregoing property; all whether now existing or hereafter arising, whether now owned or hereafter acquired or whether now or hereafter subject to any rights in the foregoing property; and all products and proceeds (including but not limited to all insurance payments) of or relating to the foregoing property.

5. ALTERNATE NAME DESIGNATION LESSEE/LESSOR CONSIGNEE/CONSIGNOR BAILEE/BAILOR SELLER/BUYER AG LIEN NON-UCC

6. This FINANCING STATEMENT is to be filed [or record] [or recorded] in the REAL ESTATE RECORDS.

8. OPTIONAL FILER REFERENCE DATA
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STATE OF MICHIGAN
CIRCUIT COURT FOR THE 30TH JUDICIAL CIRCUIT
INGHAM COUNTY

KEN ROSS, COMMISSIONER OF THE OFFICE
OF FINANCIAL AND INSURANCE
REGULATION,

Petitioner,

No. 10-397-CR

v

HON. WILLIAM E. COLLETTE

AMERICAN COMMUNITY MUTUAL
INSURANCE COMPANY,

Respondent.

**ORDER GRANTING PETITION FOR COURT DETERMINATION AND
SETTING BRIEFING SCHEDULE REGARDING
AGENT COMMISSIONS DISPUTE**

At a session of said Court held in the
Circuit Courtrooms for the
County of Ingham, State of Michigan
on the ____ day of March, 2012.

PRESENT: HONORABLE WILLIAM E. COLLETTE, CIRCUIT COURT JUDGE

WHEREAS, R. Kevin Clinton, the Commissioner of the Michigan Office of Financial and Insurance Regulation and duly appointed Rehabilitator of American Community Mutual Insurance Company (the "Rehabilitator") has filed a Petition for Court Determination Regarding Proper Payee of Agent Commissions (the "Petition"); and

WHEREAS, as required by MCL 500.8113(1), the Rehabilitation Order directed the Rehabilitator to "take immediate possession of all the assets of American Community and administer those assets under the Court's general supervision."

WHEREAS, the Rehabilitator has served the Petition, together with the attached Exhibits (which included a copy of this proposed Order): (a) via regular mail on Brokers Insurance Corp. c/o its President, Magdalene Zybko, and on Midland States Bank c/o its attorney, Loren Ettinger, which are the two primary claimants to \$9,155.78 in disputed agent commissions held by the Rehabilitator and approved for payment by the Court; and (b) on other potentially interested parties by posting electronic copies on the “American Community” section of OFIR's website; and

WHEREAS, as explained in the Petition, a good faith dispute exists between Brokers Insurance Corp. and Midland States Bank regarding which entity is legally entitled to payment of the \$9,155.78 in agent commissions; and

WHEREAS, absent a determination by this Court regarding the proper, legal payee of the disputed agent commissions, the rehabilitation estate would be subjected to the risk of multiple liability and/or payments arising from the same commissions;

NOW, THEREFORE, IT IS HEREBY ORDERED that the Petition is GRANTED. Accordingly, the Court will determine whether Brokers Insurance Corp. or Midland States Bank is the proper, legal payee of the \$9,155.78 in agent commissions held by the Rehabilitator and approved for payment by the Court;

IT IS FURTHER ORDERED that Brokers Insurance Corp., Midland States Bank, and any other party claiming legal entitlement to the \$9,155.78 in disputed agent commissions must submit a brief and any documentation supporting such entitlement within twenty-one (21) days after the date this Order is entered. Any briefs submitted must bear the caption shown above, comply with the Michigan Rules of Court, and be mailed to: Clerk of the Court, Ingham County Circuit Court, Mason Courthouse, 341 S. Jefferson, Mason, MI 48854;

IT IS FURTHER ORDERED that following the submission of briefs, the Court will determine the proper, legal payee of the \$9,155.78 in disputed agent commissions and will instruct the Rehabilitator to pay the commissions accordingly;

IT IS FURTHER ORDERED that the Court authorizes, approves, and/or ratifies the Rehabilitator's service of the Petition, together with the attached Exhibits and this Order, via regular mail on Brokers Insurance Corp. c/o its President, Magdalene Zybko, and on Midland States Bank c/o its attorney, Loren Ettinger;

IT IS FURTHER ORDERED that due to the difficulty and prohibitive cost associated with providing personalized notice of the Petition and this Order to all other parties having an interest in the American Community rehabilitation, the Court authorizes, approves, and/or ratifies the Rehabilitator's service of these papers on other potentially interested parties by posting electronic copies on the OFIR website, www.michigan.gov/ofir, under the section "Who We Regulate", and the subsection "American Community." The Court finds that service in this manner is reasonably calculated to give these other potentially interested parties actual notice of these proceedings and is otherwise reasonable under the circumstances.

IT IS SO ORDERED.

Honorable William E. Collette
Circuit Court Judge

STATE OF MICHIGAN
CIRCUIT COURT FOR THE 30TH JUDICIAL CIRCUIT
INGHAM COUNTY

KEN ROSS, COMMISSIONER OF THE OFFICE
OF FINANCIAL AND INSURANCE
REGULATION,

Petitioner,

No. 10-397-CR

v

HON. WILLIAM E. COLLETE

AMERICAN COMMUNITY MUTUAL
INSURANCE COMPANY,

Respondent.

PROOF OF SERVICE

The undersigned certifies that a copy of the **Petition for Court Determination Regarding Proper Payee of Agent Commissions, together with Exhibits A-H** and this Proof of Service, was served upon the parties listed below by mailing the same to them at their respective addresses with first class postage fully prepaid thereon, on the 9th day of March, 2012:

Brokers Insurance Corp.
c/o Magdalene Zybko, President
Millenium Centre
9201 Watson Road, Ste. 300
St. Louis, MO 63126

Midland States Bank
c/o Loren I. Ettinger, its Attorney
Kodner Watkins Kloecker, LC
7800 Forsyth Blvd., 7th Floor
St. Louis, MO 63105

And on all other parties in interest by posting electronic copies on the OFIR website, www.michigan.gov/ofir, under the section "Who We Regulate" and the subsection "American Community."


Linda S. Miers, Legal Secretary