

**COPY**

IN THE CIRCUIT COURT OF THE  
SECOND JUDICIAL CIRCUIT  
IN AND FOR LEON COUNTY, FLORIDA

IN RE: The Receivership of  
AMERICAN KEYSTONE INSURANCE  
COMPANY, a Florida  
corporation authorized to transact an  
insurance business in Florida

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CASE NO.: 2009-3955

09 OCT 23 PM 4:03  
BOB INZER  
CLERK  
CIRCUIT COURT  
LEON COUNTY, FLORIDA

FILED

**MOTION FOR APPROVAL OF AGREEMENTS WITH HOMEOWNERS CHOICE  
PROPERTY AND CASUALTY INSURANCE COMPANY**

The Florida Department of Financial Services as Receiver of AMERICAN KEYSTONE INSURANCE COMPANY, ("AKIC"), a Florida corporation in LIQUIDATION, by and through undersigned counsel, respectfully moves the Court for an Order Approving an Agreement with HOMEOWNERS CHOICE PROPERTY AND CASUALTY INSURANCE COMPANY ("HCPCT") to offer insurance policies to selected AKIC homeowners' insurance policyholders, and as grounds therefore states:

1. AKIC is a corporation authorized pursuant to the Florida Insurance Code to transact business in the state of Florida as a domestic property and casualty insurer. Respondent's principal place of business is 816 A1A North, Suite 301, Ponte Vedra Beach, Florida 32082.

2. On October 9, 2009, this Court appointed the Florida Department of Financial Services as Receiver for Purposes of Liquidation, Injunction and Notice of Automatic Stay.

3. As of October 20, 2009, AKIC had approximately 6,800 in force insurance policies, including homeowners, condo and inland marine policies. In an effort to find insurance coverage for AKIC's policyholders, the Receiver initiated discussions with HPCIC, a property and casualty insurer domiciled in the State of Florida.

4. As a result of this discussion, HPCIC made the following offer: *(A copy of the proposed Agreement is attached as Exhibit "A.")*

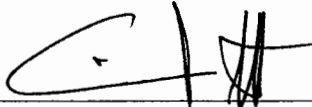
- a) For all policies positively renewed by HCPCI and maintained as active for one year without agent representation, 12.5% commission.
- b) For all policies positively renewed by HCPCI and maintained as active for one year with agent representation, 5% commission.
- c) Book loss ratio less than 17.5%, excluding hurricane, additional 5%.

5. The Receiver recommends that the Court approve this Agreement because it provides an opportunity for AKIC's homeowners' insurance Policyholders to obtain a new policy after their AKIC policy is canceled and/or expires, although Policyholders are under no obligation to accept the coverage offered by HPCIC. The Agreement also provides a potential monetary benefit to the AKIC estate.

WHEREFORE, the Receiver respectfully moves the Court to enter an Order Approving the Agreement with HOMEOWNERS CHOICE PROPERTY AND CASUALTY INSURANCE COMPANY to offer homeowners' insurance policies to selected AMERICAN KEYSTONE INSURANCE COMPANY Policyholders.

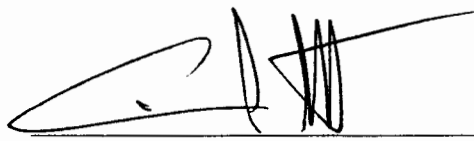
Respectfully submitted,

Florida Department of Financial Services  
Division of Rehabilitation & Liquidation  
P.O. Box 110  
Tallahassee, Florida 32302-0110  
(850) 413-4414 – Telephone  
(850) 488-1510 – Facsimile

By:   
ERIC S. SCOTT, Senior Attorney  
Florida Bar No. 0911496

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to F.X. McCahill , President/CEO, Homeowners Choice, Inc., 2340 Drew Street, Suite 200, Clearwater, FL 33765 this 23<sup>rd</sup> day of October 2009.

  
ERIC S. SCOTT, Senior Attorney  
Florida Bar No. 0911496

### AGREEMENT

This Agreement ("Agreement") is made and effective this 21 day of October, 2009 ("Effective Date"), between the Florida Department of Financial Services, as Receiver for American Keystone Insurance Company (hereinafter "AKIC"), whose principal place of business is located at 2020 Capital Circle, S.E., Tallahassee, Florida 32302-0110 and Homeowners Choice Property & Casualty Insurance Company, Inc. (hereinafter "HCPCI"), whose principal place of business is located at 2340 Drew Street, Suite 200, Clearwater, Florida 33765.

### RECITALS

- A. By Court Order entered on October 9, 2009 ("Order"), the Circuit Court of Leon County, Florida ("Court") ordered the liquidation of AKIC, a property and casualty insurance company, and appointed the Florida Department of Financial Services as its Receiver ("Receiver"); and
- B. Pursuant to the Order, the Florida Department of Financial Services as Receiver is in possession of or is now acquiring possession of the assets of AKIC and is administering those assets under the general supervision of the Circuit Court; and
- C. AKIC has outstanding and in force policies and is exiting this business and canceling those policies; and
- D. HCPCI is willing to write new policies to replace the policies currently underwritten by AKIC, marketing those policies under the conditions stated below; and AKIC has outstanding and in force insurance policies; and

NOW, THEREFORE, in consideration of the mutual covenants and understandings contained herein and upon the terms and conditions set forth below, the parties hereto agree as follows:

### ARTICLE I

#### Definitions:

"Agreement" means this Agreement.

"Book of Business" collectively means all of the currently effective insurance policies written by AKIC.

"Circuit Court" means the Circuit Court of Leon County, Florida.

"Effective Date" means the effective date of this Agreement, which is October 21, 2009.

"Liability" means any liability, demand, claim, action or cause of action arising out of or in connection with an insurance policy, including all claims for credits due on the policy, refunds,

commission claims of agents in connection with, any premium tax related to, and any special, incidental, consequential, extra-contractual or punitive damages arising out of a policy.

"Notice" means any notice, consent, request, waiver, election and other communication authorized, required or permitted to be given under this Agreement.

"OTR" means the Florida Office of Insurance Regulation.

"Order of Liquidation" means the order entered by the Circuit Court on October 9, 2009, that ordered the liquidation of AKIC and appointed the Florida Department of Financial Services as Receiver.

"Policyholder" means each person identified as an insured in a currently effective insurance policy written by AKIC.

"Pre-Existing Condition" means damage or loss to property prior to the date of issuance of a policy by HCPCI.

"HCPCI" means Homeowners Choice Property & Casualty Insurance Company, Inc., a property and casualty insurance company domiciled in the State of Florida.

"AKIC" means the Florida Department of Financial Services in its capacity as Receiver of American Keystone Insurance Company (in Rehabilitation), a property and casualty insurer in the State of Florida.

## ARTICLE II

### Business Covered /Temporary Exceptions:

HCPCI is not assuming any Liability relating to any AKIC policy. HCPCI shall not become a successor in interest of AKIC that may result in HCPCI assuming any obligation or Liability of AKIC.

AKIC is not assuming any Liability relating to any HCPCI policy. AKIC shall not be deemed a predecessor in interest of HCPCI that may result in AKIC assuming any obligation or Liability of HCPCI.

HCPCI will offer a new policy of insurance to all Policyholders of AKIC in force policies with a coverage A dwelling replacement costs of less than \$1,000,000. HCPCI shall not be required to issue policies on properties that have a Pre-Existing Condition until the policyholder submits to HCPCI a written representation and warranty that the Pre-Existing Condition has been repaired, together with a picture of the front and back of the insured property. HCPCI retains the right to inspect the remedy of any such Pre-Existing Condition, and is only required to offer replacement coverage if the remedy has been performed to HCPCI's sole satisfaction.

Upon acceptance of coverage from HCPCI, the Policyholder's premium on said policy coverage will be due no later than November 9, 2009.

### ARTICLE III

#### Notice to Policyholders:

HCPCI shall cause to be issued and shall mail to each Policyholder the following:

If the policyholder's property does not have a Pre-Existing Condition:

1. An introduction letter to each Policyholder from HCPCI.
2. A pre-filled abstract of coverage prepared based on the AKIC policy data.
3. A premium quote based on the coverage abstract under HCPCI's premium rates.
4. An invoice.

If the policyholder's property does have a Pre-Existing Condition:

A letter from HCPCI instructing them to contact their agent or HCPCI when their Pre-Existing Condition has been remedied.

AKIC shall cause to be issued and shall mail to each Policyholder the following:

If the policyholder's property does not have a Pre-Existing Condition:

A letter from AKIC notifying the Policyholder that his/her policy is being canceled, informing them of this transaction and introducing HCPCI as the replacement insurer. This letter will include information on obtaining a new policy and receiving an unearned premium refund.

If the policyholder's property does have a Pre-Existing Condition:

A letter from AKIC notifying the Policyholder that his / her policy is being canceled, informing them of this transaction and introducing HCPCI as the replacement insurer. This letter will include information on the necessity of remedying the Pre-Existing Condition prior to being eligible for obtaining a new policy and receiving an earned premium refund.

All of the materials to be sent out by HCPCI shall be reviewed and approved by AKIC prior to mailing and will be sent out no later than October 30, 2009.

#### ARTICLE IV

##### Indemnification:

HCPCI, as applicable, will hold harmless and indemnify AKIC from and against any liability, cost or expense (including reasonable fees of legal counsel and related disbursements) incurred by AKIC for any claim, demand, action or cause of action asserted by any third party as a result of or related to: (a) HCPCI's breach of any term contained in this Agreement; (b) an insurance policy written by HCPCI pursuant to the terms of this Agreement; and (c) HCPCI's negligent or wrongful performance or non-performance of its obligations pursuant to this Agreement or any other agreement provided for or contemplated in this Agreement. HCPCI shall not be obligated to pay AKIC any amounts which may be due and payable as a result of the other insurer's indemnity obligations hereunder.

#### ARTICLE V

##### Determination of Consideration:

HCPCI shall provide AKIC with documentation reporting all new policies accepted from AKIC's former Policyholders. This report shall include the policyholder's information, the date of the inception of the policy and the premium charged for the coverage. All supporting documentation relating to the reports produced by HCPCI will be subject to audit by AKIC.

A second "true up" report shall be provided no later than thirty days after the one year renewal period for policies accepted from AKIC and will include final information on any policy cancellations, endorsements, return premium, and other premium data pertaining to the policies issued by HCPCI. Based on the second "true-up" report provided by HCPCI, HCPCI will pay the following commission to AKIC:

- a) For all new policies positively issued by HCPCI to former Policyholders and maintained as active for one year without agent representation, 12.5% of premiums collected; plus.
- b) For all new policies positively issued by HCPCI to former Policyholders and maintained as active for one year with agent representation, 5% of premiums collected; plus
- c) If the book loss ratio for the foregoing policies is less than 17.5%, excluding hurricane, then additional 5% of premiums received.

The foregoing commission will be based on gross premiums collected in connection with the identified policies, less policy cancellation and return premiums and any other refunds, discounts, credits, rebates and similar items. The term "premiums" does not include any fees, assessments, taxes or surcharges collected or received by HCPCI in connection with the foregoing identified

policies. Once AKIC notifies HCPCI of its determination of consideration, HCPCI shall pay the consideration to AKIC within thirty (30) days from the date it delivers the true up report.

#### ARTICLE VI

##### Further Instruments:

The parties hereto agree to execute and deliver such further instruments and do such further acts as may be reasonably necessary and proper to carry out the purposes of this Agreement.

#### ARTICLE VII

##### Partial Invalidity:

If any court holds any provision of this Agreement or its applicability to any person or circumstance invalid, the remainder of this Agreement, including the remainder of the section in which such provision appears, or the applicability of such provision to other persons or circumstances, shall not be affected thereby.

#### ARTICLE VIII

##### Entire Understanding:

This Agreement contains the entire understanding of the parties with respect to the subject matter hereof; there are no restrictions, promises, warranties, covenants or undertakings with respect to such subject matter, other than those expressly set forth herein; and this Agreement supersedes all prior agreements and understandings between the parties with respect to such subject matter.

#### ARTICLE IX

##### Burden and Benefit:

This Agreement is binding on and shall inure to the benefit of the parties hereto, their successors and assigns.

#### ARTICLE X

##### Counterparts:



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

## ARTICLE XI

### Notices:

All notices, consents, requests, waivers, elections and other communications (collectively "Notices") authorized, required or permitted to be given under this Agreement shall be addressed as follows:

If to HCPCI:

2340 Drew Street, Suite 200  
Clearwater, Florida 33765

If to AKIC:

The Florida Department of Financial Services as Receiver for  
AKIC  
P.O. Box 110  
Tallahassee, FL 32302-0110

All Notices must be given in writing, mailed by first class registered or certified mail, and shall be deemed to be received three (3) days after the day of mailing. Either party may change its address for the receipt of Notices or the party to whose attention Notices are sent at any time by giving notice thereof to the other party hereto. In the event that any legal process, notice, regulatory bulletin, is served on one party in a legal action or proceeding against the other party, or for any other reason whatsoever, the party receiving the process, notice or regulatory bulletin, shall promptly and forthwith forward such process, notice or bulletin to the other party as directed above, via registered or certified mail, and with an additional copy sent via fax.

## ARTICLE XII

### No Intermediary:

The parties represent and warrant to each other that no intermediary was involved in the transactions contemplated by this Agreement nor are any payments being made as a result of the transactions contemplated by this Agreement.

### ARTICLE XIII

#### No Third Party Beneficiaries:

This Agreement shall not confer any rights or remedies upon any person other than the parties and their respective affiliates or successors.

### ARTICLE XIV

#### Jurisdiction:

The Circuit Court of Leon County, Florida ("Receivership Court") shall have exclusive jurisdiction with respect to this Agreement.

### ARTICLE XV

#### Applicable Law:

The laws of the State of Florida shall govern this Agreement.

### ARTICLE XVI

#### Drafting of Agreement:

All parties participated in the drafting of this Agreement. Any language in this Agreement determined to be ambiguous shall not be construed against any party by reason of having drafted said language.

### ARTICLE XVII

#### Approval of Receivership Court AND:

The enforceability of this Agreement is subject to the approval of the Receivership Court.

### ARTICLE XVIII

#### Notification of Agreement to the Florida Office of Insurance Regulation

Prior to submitting the Agreement to the Receivership Court for approval, the Receiver shall send written notification of the Agreement to the Florida Office of Insurance Regulation in order to determine if any approvals are required from the Florida Office of Insurance Regulation.

FLORIDA DEPARTMENT OF FINANCIAL SERVICES  
AS RECEIVER FOR AMERICAN KEYSTONE INSURANCE COMPANY

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

Witness: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

## HOMEOWNERS CHOICE PROPERTY &amp; CASUALTY INSURANCE COMPANY, INC.

By: Witness: Title: PRESIDENT / CEODate: 10/22/09Date: 10/22/09