

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

In Re: The Receivership of  
American Capital Assurance Corp.

CASE NO.: 2021 CA 0641

**APPLICATION FOR ORDER AUTHORIZING EARLY ACCESS DISBURSEMENTS TO  
ELIGIBLE GUARANTY ASSOCIATIONS**

**COMES NOW**, The Florida Department of Financial Services, Division of Rehabilitation and Liquidation as Receiver of American Capital Assurance Corp. (hereinafter “Department”), by and through the undersigned counsel, and hereby files this Application for entry of an Order Authorizing the Department to disburse funds in the amount of Thirty Million Four Hundred Thirty Thousand Dollars (\$30,430,000.00) to eligible Guaranty Associations (hereinafter “GAs”). These funds are hereinafter referred to as early access funds. In support of its application, the Department states as follows:

1. American Capital Assurance Corp. (hereinafter “AmCap”) was a corporation authorized pursuant to the Florida Insurance Code to transact business in the State of Florida.
2. On April 14, 2021, this Court entered an *Order Appointing the Florida Department of Financial Services as the Receiver of AmCap for purposes of Liquidation, Injunction, and Notice of Automatic Stay* (“Liquidation Order”).
3. Pursuant to section 631.021(1), Florida Statutes, this Court has jurisdiction over the Receivership and is authorized to enter all necessary and/or proper orders to carry out the purpose of the Florida Insurers Rehabilitation and Liquidation Act, sections 631.001 et seq., Florida Statutes (“the Act”).
4. Section 631.397, Florida Statutes, provides, in substance, that the Department may disburse assets out of AmCap’s marshaled assets, as such assets become available, to each GA entitled to receive such funds contingent on each GA agreeing to return to the Department such previously

disbursed funds as may be required to pay claims of secured creditors and claims having a higher priority than the claims of the GAs.

5. In compliance with section 631.397(2)(d), Florida Statutes, the Department has entered into Agreements with the eligible GAs which provide in substance that each GA shall return such early access disbursements as may be required to pay claims of secured creditors and claims falling within the priority scheme established by part I of Chapter 631, Florida Statutes. Further, each GA will not be entitled to share in the funds ultimately distributed from the GIC receivership estate until such allocated distributions to which each GA is otherwise entitled exceed the previous disbursements ordered by this Court and the amount of early access disbursement prayed for in this application. A copy of the executed Early Access Agreement is attached hereto and incorporated herein by reference as **Exhibit A**.

6. The Department represents that in accord with section 631.397(2)(a), Florida Statutes, there are sufficient assets in the estate of AmCap to permit the proposed early access disbursements to the GAs, while reserving amounts for the payment of expenses of administration, the payment of claims of secured creditors to the extent of the value of the security held, and the payment of claims falling within the priorities established by Part I of Chapter 631, Florida Statutes. A chart of GAs entitled to a disbursement from the GIC receivership and the amount each is entitled to receive is attached hereto as **Exhibit B**.

7. In accord with section 631.397(2)(b), Florida Statutes, if additional assets become available in an amount sufficient to allow further early access disbursements, the Department will seek additional authority to disburse same.

8. The Department also represents that the proposed early access disbursement provides for the equitable allocation of disbursements to each association entitled thereto, consistent with section 631.397(2)(c), Florida Statutes.

**WHEREFORE**, the Department respectfully requests this Court enter an Order authorizing the disbursement of early access funds in the amount of Thirty Million Four Hundred Thirty Thousand Dollars (\$30,430,000.00) to the eligible Guaranty Associations.

**Respectfully Submitted** on this the 28<sup>th</sup> day of February, 2022.

/s/ Jamila G. Gooden  
**Jamila G. Gooden, Senior Attorney**  
Florida Bar No. 46740  
[Jamila.Gooden@myfloridacfo.com](mailto:Jamila.Gooden@myfloridacfo.com)  
Florida Department of Financial Services  
Division of Rehabilitation and Liquidation  
325 John Knox Road  
The Atrium, Suite 101  
Tallahassee, FL 32303  
Telephone: (850) 413-4414

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that on February 28, 2022, a complete and accurate copy of the foregoing document was filed with the Clerk of Courts using the Florida Courts e-filing portal and was served on all email addresses listed in the portal for service in this matter.

/s/Jamila G. Gooden, Esq.

# **Exhibit A**

**American Capital Assurance Corp., In Liquidation**  
**Early Access Agreement**

**This Early Access Agreement** is entered into on this the 1st day of November 2021, between the **Florida Department of Financial Services, as Receiver of American Capital Assurance Corp. (“Department”)**, and the undersigned **Insurance Guaranty Association(s) (“Guaranty Association”)**.

**WHEREAS, American Capital Assurance Corp., (“AmCap”)**, was a Florida domiciled corporation previously authorized to transact insurance business in the State of Florida and other states; and

**WHEREAS, on April 14, 2021, the Second Judicial Circuit Court in and for Leon County, Florida, (the “Court”)** entered its **Consent Order of Liquidation, Injunction, and Notice of Automatic Stay (“Liquidation Order”)**; and

**WHEREAS, section 631.397(1), Florida Statutes, provides, in relevant part, that the Department may apply to this Court for authorization to “disburse assets out of such insurer’s marshaled assets, as such assets become available, to each Guaranty Association entitled thereto” (“Early Access disbursement”)**; and

**WHEREAS, the Department will from time to time determine whether the AmCap receivership estate has sufficient liquid assets available to make an Early Access disbursement to the Guaranty Association;** and

**WHEREAS, if the Department determines that the AmCap receivership estate has sufficient liquid funds available to make an Early Access disbursement, the Department may apply to the Court for an order permitting the Department to make an Early Access disbursement to the Guaranty Association pursuant to section 631.397, Florida Statutes, for the partial payment of claims and/or administrative expenses;** and

**WHEREAS**, the Guaranty Association may only receive such a disbursement if the total amount of the contemplated disbursement plus the total amount of all Early Access disbursements already received by the Guaranty Association is less than the Guaranty Association's incurred claims and administrative expenses; and

**WHEREAS**, the Department and the Guaranty Association acknowledge and agree that neither the Department's review of the Guaranty Association's documentation for purposes of Early Access disbursement(s) nor this Early Access Agreement constitute an evaluation of or recommendation on any claim which the Guaranty Association may be entitled to under section 631.271, Florida Statutes;

**NOW THEREFORE**, the Department and the Guaranty Association agree as follows:

1. The Guaranty Association will respond in good faith to requests from the Department for information, files and documents. The Department will be permitted full access to the books, records, and files of the Guaranty Association pertaining to the handling and payment of covered claims and administrative expenses incurred by the Guaranty Association in fulfilling its obligations under its enabling statute.

2. Beginning with the quarter ending September 30, 2021, and on at least a quarterly basis thereafter, the Department shall produce a reasonably detailed and current statement of the Estate's financial condition. The statement will be in substantially the format published on the Department's website. The Department shall provide this information as soon as it is available following the close of each quarter.

3. The Guaranty Association will make reports to the Department no less frequently than quarterly, through the Secure Uniform Data Standard ("UDS") or in another form acceptable to the Department disclosing the status of the following items received, held or processed during the reporting period: current open claims count, open claims reserves,

claim payments, salvage or subrogation recoveries, if any, and such other items as may be reasonably required by the Department. The reports shall be sent to the Department electronically via the UDS server housed by the National Conference of Insurance Guaranty Funds (“NCIGF”) or mailed to the Department at to the address listed in Paragraph 11 below, or such other location designated by the Department

4. The Guaranty Association will utilize any payment received pursuant to this Agreement solely for the payment of covered claims, as defined by section 631.271, and Part II, Chapter 631, Florida Statutes, or the pertinent part of the relevant state statute applicable to the Guaranty Association, and for the payment of claims handling or administrative expenses, as defined by section 631.271(1)(a)(2), Florida Statutes, relating to the Receivership of AmCap.

5. The Guaranty Association will not be penalized, by offset or otherwise, by the amount of any special deposit or any other statutory deposit or asset of the insolvent insurer held in that state unless the Guaranty Association has actually received such deposit or asset.

6. The Guaranty Association agrees to return to the Department within 60 days all or any portion of any Early Access disbursements acquired by the Guaranty Association pursuant to this Agreement, with any income earned thereon, if the Department determines, at any time, that such repayment is necessary to pay claims or expenses which the Department determines to be of equal or superior priority. Should it be necessary for the Guaranty Association to make an assessment in order to return the relevant portion of the disbursement to the Department, the Guaranty Association shall have 90 days within which to return the disbursement. In the event the Guaranty Association is required to repay to the Department any Early Access disbursements, the Guaranty Association will pay the Department in cash or

other liquid assets as may be acceptable to the Department.

7. Pursuant to section 631.271, Florida Statutes, the Guaranty Association understands and agrees that any disbursement made pursuant to this Agreement constitutes partial payment on any claim which the Guaranty Association may have in the AmCap Receivership and that it will not share in any final distribution of assets from the AmCap Receivership until claimants of an equal priority receive an equal pro rata distribution on their claims. Any and all interest that the Guaranty Association earns on funds so disbursed shall also be considered Early Access disbursements for purposes of this Agreement.

8. Prior to the final distribution of the assets of AmCap, the Department will be given reasonable access to the financial accounts, records and procedures of the Guaranty Association with respect to the receipt of assets or the payment of covered claims. The Guaranty Association will, within 30 days after receipt of a written request from the Department, return to the Department any Early Access disbursements made pursuant to this Agreement which are more than the amount ultimately determined by the Department to be due the Guaranty Association as a final distribution of the assets of AmCap. The Department and the Guaranty Association shall cooperate in planning the destruction or other final disposition of the information, files and documents received by the Guaranty Association from AmCap or the Department.

9. The Guaranty Association's execution of this Agreement and acceptance of any amount distributed thereunder, shall be without prejudice to the Guaranty Association's rights with respect to final or other distributions from the estate of AmCap.

10. This Early Access Agreement shall be construed in accordance with Florida

law. Any legal action by either party to enforce or interpret this Agreement or the parties' obligations under this Agreement shall be commenced, litigated, and adjudicated in and by the Second Judicial Circuit Court, in and for Leon County, Florida. The Guaranty Association's submission to the aforementioned jurisdiction is strictly for the purposes of enforcement of this Agreement and not for any other purpose.

11. Any notice required to be given to the parties shall be given by regular United States mail, postage prepaid, addressed as follows:

Department: Toma Wilkerson [or her successor],  
Division Director  
Florida Department of Financial Services,  
Division of Rehabilitation and Liquidation  
325 John Knox Rd,  
Atrium Building, Suite 101  
Tallahassee, Florida 32303

Guaranty Assoc.: See address identified in signature block below.

12. This Agreement merges all prior offers and agreements of every kind as related to Early Access and expresses the full and final intent of the parties and shall be effective only upon Court approval. This Agreement shall not be modified, except by an instrument in writing, executed by the authorized representatives of the parties, and subject to Court approval.

13. This Agreement supersedes all earlier Early Access agreements and will apply to all future Early Access disbursements to the Guaranty Association. It will be attached to all future Early Access motions filed by the Department.

14. This Agreement may be executed in any number of counterparts, any or all of which may contain the signature of only one of the Parties, and all of which together shall be considered a single original document.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date last indicated below:

[THIS SECTION INTENTIONALLY LEFT BLANK]

[SIGNATURES OF THE PARTIES ARE ON THE FOLLOWING PAGES]

American Capital Assurance Corp., in Liquidation  
By and through Toma Wilkerson, Division Director Florida  
Department of Financial Services,  
Division of Rehabilitation and Liquidation

By: Wilkerson, Toma Digitally signed by Wilkerson,  
Toma  
Date: 2021.11.01 11:48:04 -04'00'

Printed Name: Toma L. Wilkerson

Date: 11/1/2021

Florida Insurance Guaranty Association

“Guaranty Association”

By: Thomas D. Streukens

Printed Name: Thomas D. Streukens

Title: Executive Director

Date: 10/5/2021


Address: P.O. Box 14249

Tallahassee, FL 32317

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Georgia Insurers Insolvency Pool

“Guaranty Association”

By: 

Printed Name: Frank Knighton, Jr.

Title: Executive Director

Date: 10/8/2021

Address: 3700 Crestwood Parkway, NW

Suite 400

Duluth, Georgia 30096

"Guaranty Association"

By: 

Printed Name: John C. Wells

Title: Executive Director

Date: 10/19/2021

Address: 2142 Qua. / Run

Baton Rouge LA 70808

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South Carolina Property & Casualty Insurance Guaranty Association

“Guaranty Association”

By: 

Printed Name: J. Smith Harrison, Jr.

Title: Executive Director

Date: 10/5/2021

Address: SC Property & Casualty Insurance Guaranty

240 Stoneridge Drive, Suite 101

Columbia, SC 29210

“Guaranty Association”

By: Marvin Kelly

Printed Name: MARVIN KELLY

Title: EXECUTIVE DIRECTOR

Date: 10/5/21

Address: 9120 BURNET ROAD

AUSTIN, TX. 78758

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# **Exhibit B**

**American Capital Assurance Corp.  
Early Access Disbursements  
To Eligible Guaranty Associations**

<b>Guaranty Association</b>	<b>Early Access Amount to Disburse</b>
Florida (FIGA)	\$ 26,600,000
Georgia (GIIP)	\$ 10,000
Louisiana (LIGA)	\$ 350,000
South Carolina (SCPCIGA)	\$ 670,000
Texas PC (TPCIGA)	\$ 2,800,000
<b>Total</b>	<b>\$ 30,430,000</b>