

**PLAINTIFF'S  
EXHIBIT  
420**

**From:** Holland, Andrew  
**Sent:** Tuesday, June 20, 2000 6:42 PM  
**To:** Umansky, Joseph; Brown, PaulA@Comptroller's; Spier, Arnold  
**Cc:** Harkins, Ken; Rose, Scott@Notes  
**Subject:** Warranty Reinsurance

**Attachments:** shagmt3.doc; REDSHAGMT.doc; promnote3.doc; REDPROMNOTE.doc  
Please find attached revised drafts of the promissory note and the subscription/shareholder agreement reflecting comments received from Paul Brown and Ken Harkins.



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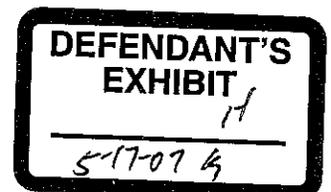
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**SUBSCRIPTION AND OPERATING AGREEMENT**

SUBSCRIPTION AND OPERATING AGREEMENT, dated as of June [ ], 2000 (the “Agreement”), by and among Capco Reinsurance Company Ltd., a Barbados corporation (the “Company”), [AIG Company], a [ ] corporation (the “Preferred Shareholder”), Western General Insurance Ltd., a Bermuda corporation (“WestGen”), [Common Shareholder 1 (“ ”)], [Common Shareholder 2 (“ ”)] and [Common Shareholder 3 (“ ”)] (each of WestGen, \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_, a “Common Shareholder” and together, the “Common Shareholders”).

**W I T N E S S E T H:**

WHEREAS, the Company desires to issue and sell to the Common Shareholders, and the Common Shareholders desire to purchase from the Company, for aggregate consideration of US\$19,800,000, 19,800,000 of the Company’s Common Shares (the “Common Shares”); and

WHEREAS, the Company desires to issue and sell to the Preferred Shareholder, and the Preferred Shareholder desires to purchase from the Company, for aggregate consideration of US\$170,000,000, 8,500 shares of a newly created series of the Company’s Preferred Shares (the “Preferred Shares”) having the rights, preferences, privileges, and restrictions set forth in the form of [Amended and Restated Articles of Incorporation] of the Company attached hereto as Exhibit B (the “Amended Articles”); and

WHEREAS, the Company, the Preferred Shareholder and the Common Shareholders desire to set forth certain provisions relating to the governance of the Company and certain other matters.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements hereinafter contained, the parties hereby agree as follows:

**ARTICLE I  
AUTHORIZATION; CLOSING**

1.1 Authorization. The Company has authorized the issuance (i) to the Common Shareholders an aggregate of 19,800,000 Common Shares, and (ii) to the Preferred Shareholder of 8,500 Preferred Shares, each issuable as provided in Section 1.2 hereof.

1.2 Closing.

(a) The closing of the transactions contemplated hereby (the “Closing”) shall occur five business days after the satisfaction of all conditions to closing specified in Article VIII hereof, at such time and at such location as the parties hereto may agree.

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(b) At the Closing, the Company shall issue and sell (i) to the Common Shareholders, and the Common Shareholders shall purchase from the Company, upon the terms and subject to the conditions set forth herein, 19,800,000 Common Shares for an aggregate purchase price of US\$19,800,000 (the "Common Purchase Price") and (ii) to the Preferred Shareholder, and the Preferred Shareholder shall purchase from the Company, upon the terms and subject to the conditions set forth herein, 8,500 Preferred Shares for an aggregate purchase price of US\$170,000,000 (the "Preferred Purchase Price"). Each Common Shareholder shall purchase the number of Common Shares set forth under his name on Exhibit A hereto.

(c) At the Closing, each of the Company, the Common Shareholders, and the Preferred Shareholder shall execute and deliver to each other, as applicable, (i) certificates in respect of the Common Shares and Preferred Shares described above, and (ii) any other certificates, resolutions or documents which any of the Company, Common Shareholders or the Preferred Shareholder shall reasonably require.

## ARTICLE II REPRESENTATIONS AND WARRANTIES OF THE COMPANY AND WESTGEN

Each of the Company and WestGen hereby jointly and severally represents and warrants to the Preferred Shareholder and the other Common Shareholders as follows:

2.1 Organization and Good Standing. The Company is a corporation duly organized, validly existing and in good standing under the laws of Barbados and has all requisite corporate power and authority to own, lease and operate its properties and to carry on its business.

2.2 Capitalization. As of the date hereof, the authorized capital of the Company consists of an unlimited number of Common Shares, of which 200,000 Common Shares are issued and outstanding. All of the issued and outstanding Common Shares are owned by WestGen, free and clear of any Liens (as defined below).

2.3 Authorization. The execution, delivery and performance by the Company of this Agreement, including the issuance, sale and delivery of the Common Shares and the Preferred Shares, have been duly authorized by all requisite corporate action. This Agreement has been duly executed and delivered by the Company, and is the legal, valid and binding obligation of the Company, enforceable against it in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium and similar laws affecting creditors' rights and remedies generally, and subject, as to enforceability, to general principles of equity, including principles of commercial reasonableness, good faith and fair dealing (regardless of whether enforcement is sought in a proceeding at law or in equity). The Common Shares, when issued to the Common Shareholders as contemplated hereby, will be validly issued and outstanding, fully paid and non-assessable and not subject to preemptive or any other similar rights of the shareholders of the Company or others. The Preferred Shares, when issued to the Preferred Shareholder as contemplated hereby, will be validly issued and outstanding, fully paid and non-assessable and

not subject to preemptive or any other similar rights of the shareholders of the Company or others.

2.4 No Conflicts; Consents of Third Parties. The execution, delivery and performance of this Agreement, the issuance, sale and delivery of the Common Shares and the Preferred Shares, and compliance with the provisions hereof by the Company will not (i) conflict with, or result in the breach of, any provision of the Articles of Incorporation or By-laws or comparable organizational documents of the Company; (ii) conflict with, violate, result in the breach or termination of, or constitute a default under any note, bond, mortgage, indenture, license, agreement or other instrument or obligation to which the Company is a party or by which the Company or its properties or assets is bound; (iii) violate any statute, rule, regulation, order or decree of any governmental body by which the Company is bound; or (iv) result in the creation of any lien, pledge, mortgage, deed of trust, security interest, claim, lease, charge, option, right of first refusal, preemptive right, easement, servitude, transfer restriction under any shareholder or similar agreement, encumbrance or any other restriction or limitation whatsoever (collectively, "Liens") upon the properties or assets of the Company. No consent, waiver, approval, order, permit or authorization of, or declaration or filing with, or notification to, any person, including without limitation any governmental body, is required on the part of the Company in connection with the execution, delivery and performance of the Agreement, or the compliance by the Company with any of the provisions hereof, except for the approval of the Barbados Supervisor of Insurance of the transactions contemplated hereby.

2.5 Contracts. Schedule 2.5 sets forth a true and complete list of all agreements to which the Company is a party.

2.6 No Liabilities. As of the date hereof, the Company has no liabilities, direct or indirect, absolute or contingent, including without limitation tax liabilities, and there is no existing condition, situation or set of circumstances which could result in any such liabilities.

2.7 Licenses. The Company has obtained all licenses, certificates of authority, permits, authorizations, orders and approvals of, and has made all registrations or filings with, all governmental bodies as required in connection with the conduct of its business (collectively, "Licenses"). All Licenses are valid and in full force and effect.

2.8 No Litigation. There is no suit, action, proceeding, investigation, claim or order pending or, to the knowledge of the Company, threatened against the Company or to which the Company is otherwise a party before any court, or before any governmental department, commission, board, agency, or instrumentality.

2.9 Compliance with Laws; Permits. The Company is in compliance with all laws applicable to the Company or to the conduct of its business and operations or the use of its properties and assets.

2.10 No Misrepresentation. No representation or warranty of the Company contained in this Agreement or in any certificate or other instrument furnished by the Company to the Common Shareholders and the Preferred Shareholder pursuant to the terms hereof, contains any

untrue statement of a material fact or omits to state a material fact necessary to make the statements contained herein or therein not misleading.

ARTICLE III  
REPRESENTATIONS AND WARRANTIES OF THE PREFERRED SHAREHOLDER

The Preferred Shareholder hereby represents and warrants to the Company and the Common Shareholders as follows:

3.1 Organization and Good Standing. The Preferred Shareholder is a corporation duly organized, validly existing and in good standing under the laws of [ ] and has all requisite corporate power and authority to own, lease and operate its properties and to carry on its business.

3.2 Authority. The execution, delivery and performance by the Preferred Shareholder of this Agreement have been duly authorized by all requisite corporate action. This Agreement has been duly executed and delivered by the Preferred Shareholder, and is the legal, valid and binding obligation of the Preferred Shareholder, enforceable against it in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium and similar laws affecting creditors' rights and remedies generally, and subject, as to enforceability, to general principles of equity, including principles of commercial reasonableness, good faith and fair dealing (regardless of whether enforcement is sought in a proceeding at law or in equity).

3.3 No Conflicts; Consents of Third Parties. The execution, delivery and performance of this Agreement and compliance with the provisions hereof by the Preferred Shareholder will not (i) conflict with, or result in the breach of, any provision of the Articles of Incorporation or By-laws or comparable organizational documents of the Preferred Shareholder; (ii) conflict with, violate, result in the breach or termination of, or constitute a default under any note, bond, mortgage, indenture, license, agreement or other instrument or obligation to which the Preferred Shareholder is a party or by which the Preferred Shareholder or its properties or assets is bound; or (iii) violate any statute, rule, regulation, order or decree of any governmental body by which the Preferred Shareholder is bound, other than any conflicts, violations or breaches which would not, individually or in the aggregate, have a material adverse effect on the Preferred Shareholder. No consent, waiver, approval, order, permit or authorization of, or declaration or filing with, or notification to, any person, including without limitation any governmental body, is required on the part of the Preferred Shareholder in connection with the execution, delivery and performance of the Agreement, or the compliance by the Preferred Shareholder with any of the provisions hereof, except for the approval of the Barbados Supervisor of Insurance of the transactions contemplated hereby.

3.4 Investment Intention. The Preferred Shareholder is acquiring the Preferred Shares for its own account, for investment purposes only and not with a view to the distribution thereof.

ARTICLE IV  
ADDITIONAL REPRESENTATIONS AND WARRANTIES OF WESTGEN

WestGen hereby additionally represents and warrants to the Company, the Preferred Shareholder and each other Common Shareholder as follows:

4.1 Organization and Good Standing. WestGen is a corporation duly organized, validly existing and in good standing under the laws of Bermuda and has all requisite corporate power and authority to own, lease and operate its properties and to carry on its business.

4.2 Authority. The execution, delivery and performance by WestGen of this Agreement have been duly authorized by all requisite corporate action. This Agreement has been duly executed and delivered by WestGen, and is the legal, valid and binding obligation of WestGen, enforceable against it in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium and similar laws affecting creditors' rights and remedies generally, and subject, as to enforceability, to general principles of equity, including principles of commercial reasonableness, good faith and fair dealing (regardless of whether enforcement is sought in a proceeding at law or in equity).

4.3 No Conflicts; Consents of Third Parties. The execution, delivery and performance of this Agreement and compliance with the provisions hereof by WestGen will not (i) conflict with, or result in the breach of, any provision of the Articles of Incorporation or By-laws or comparable organizational documents of WestGen; (ii) conflict with, violate, result in the breach or termination of, or constitute a default under any note, bond, mortgage, indenture, license, agreement or other instrument or obligation to which WestGen is a party or by which WestGen or its properties or assets is bound; or (iii) violate any statute, rule, regulation, order or decree of any governmental body by which WestGen is bound, other than any conflicts, violations or breaches which would not, individually or in the aggregate, have a material adverse effect on WestGen. No consent, waiver, approval, order, permit or authorization of, or declaration or filing with, or notification to, any person, including without limitation any governmental body, is required on the part of WestGen in connection with the execution, delivery and performance of the Agreement, or the compliance by WestGen with any of the provisions hereof.

ARTICLE V  
REPRESENTATIONS AND WARRANTIES OF THE COMMON SHAREHOLDERS

Each Common Shareholder other than WestGen, for such Common Shareholder only and not for any other Common Shareholder, hereby represents and warrants to the Company, the Preferred Shareholder, WestGen and each other Common Shareholder as follows:

5.1 Authority. Such Common Shareholder has full power and authority to execute and deliver this Agreement and to consummate the transactions contemplated hereby. This Agreement has been duly executed and delivered by such Common Shareholder and constitutes the legal, valid and binding obligation of such Common Shareholder, enforceable against such

Common Shareholder in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium and similar laws affecting creditors' rights and remedies generally, and subject, as to enforceability, to general principles of equity, including principles of commercial reasonableness, good faith and fair dealing (regardless of whether enforcement is sought in a proceeding at law or in equity).

5.2 No Conflicts; Consents of Third Parties. The execution, delivery and performance of this Agreement and compliance with the provisions hereof by such Common Shareholder will not (i) conflict with, violate, result in the breach or termination of, or constitute a default under any note, bond, mortgage, indenture, license, agreement or other instrument or obligation to which such Common Shareholder is a party or by which such Common Shareholder or its properties or assets is bound; (ii) violate any statute, rule, regulation, order or decree of any governmental body by which such Common Shareholder is bound; or (iii) result in the creation of any Lien upon the properties or assets of such Common Shareholder. No consent, waiver, approval, order, permit or authorization of, or declaration or filing with, or notification to, any person, including without limitation any governmental body, is required on the part of such Common Shareholder in connection with the execution, delivery and performance of the Agreement, or the compliance by such Common Shareholder with any of the provisions hereof.

## ARTICLE VI CORPORATE GOVERNANCE MATTERS

6.1 Board of Directors. From and after the Closing Date, the board of directors of the Company (the "Board of Directors") shall consist of the following three directors: John Marion, Trevor Carmichael and Martin Hole.

6.2 Preferred Shareholder Representative. From and after the Closing Date, the Preferred Shareholder shall have the right to designate a representative to attend meetings of the Board of Directors (the "Representative"). The Representative shall be entitled to receive notice of all meetings of the Board of Directors, as well as copies of all meeting agendas or other materials distributed to directors (including any proposed action by written consent).

6.3 Limitation on Conduct of the Company's Business. From and after the Closing Date, the Company shall not effect any of the following actions without the prior consent of a majority of the holders of the Common Shares and the Preferred Shares, each voting separately as a class:

- (a) engage in any business other than the proposed reinsurance arrangement with National Union Fire Insurance Company of Pittsburgh, Pa.;
- (b) sell the principal assets of the Company;
- (c) borrow any sum of money;

- (d) make any loan or advance or give any credit to any person or entity (each, a "Person");
- (e) give any guarantee or indemnity to secure the liabilities or obligations of any Person;
- (f) enter into any contract, arrangement or commitment involving an expenditure more than US\$20,000;
- (g) issue any unissued Common Shares or Preferred Shares, create a new class or series of equity securities of the Company or alter any rights attaching to either the Common Shares or the Preferred Shares;
- (h) create or acquire any subsidiary;
- (i) enter into any joint venture, partnership, merger, consolidation, profit sharing, or recapitalization agreement, or any agreement to sell all or substantially all of the Company's assets with any Person;
- (j) issue any debentures, warrants, rights or other securities convertible into Common Shares or Preferred Shares;
- (k) acquire, purchase or subscribe for any shares, debentures, mortgages or securities (or any interest therein) in any Person;
- (l) adopt any employee benefit program or incentive plan;
- (m) engage any employee of the Company;
- (n) amend the Company's Amended Articles or By-laws;
- (o) alter the number of the Company's directors; or
- (p) liquidate or wind-up the Company.

6.4 Management Agreement. The Company shall enter into (or maintain) a management agreement with MIMs International Ltd upon such terms as the parties thereto shall in good faith negotiate providing for, among other services, such accounting, financial, tax and services as the Company may require.

## ARTICLE VII TRANSFERS OF COMMON SHARES AND PREFERRED SHARES

7.1 Restrictions on Transfer. During the term of this Agreement, no holder of Preferred Shares or Common Shares may, directly or indirectly, sell assign, pledge, encumber,

hypothecate, grant a security interest in, or otherwise transfer (each, a "Transfer") any Common Shares or Preferred Shares held by it except as permitted by Section 7.2 or 7.4 hereof. The Company shall not, and shall not permit any transfer agent or registrar for the Common Shares or Preferred Shares to, transfer upon the books of the Company any Common Shares or Preferred Shares to any transferee other than in accordance with this Agreement. Any purported transfer not in compliance with Agreement shall be void.

7.2 Permitted Transfers. Notwithstanding the provisions of Section 7.1 hereof, (i) each Common Shareholder other than WestGen shall be permitted to pledge its Common Shares to the Preferred Shareholder pursuant to those certain Pledge Agreements, dated as of June [ ], 2000, by and between the Preferred Shareholder and such Common Shareholder, (ii) the Preferred Shareholder shall be permitted to Transfer its Preferred Shares to one or more subsidiaries or Affiliates, (iii) the Preferred Shareholder shall be permitted to Transfer its Preferred Shares to the Company in accordance with the terms of the Preferred Shares, (iv) any shareholder shall be permitted to Transfer its Common Shares or Preferred Shares with the prior written consent of all other shareholders of the Company, and (v) WestGen shall be obligated and permitted to effect certain Transfers in accordance with Section 7.4; provided, however, that any permitted transferee shall have executed and delivered to the Company and all other shareholders of the Company an instrument in customary form and reasonably satisfactory to such shareholders agreeing to be bound by the provisions of this Agreement applicable to holders of Common Shares and Preferred Shares. For purposes of this Agreement, (A) an "Affiliate" of any Person shall mean any other Person that, directly or indirectly, controls, is controlled by or is under common control with, such Person, and (B) "control" shall mean the possession, directly or indirectly, of power to direct or cause the direction of management or policies (whether through ownership of securities or partnership or other interests; by contract or otherwise) of any other Person.

7.3 Death of Shareholder. In the event of the death of any Common Shareholder who is a natural person, pending a Transfer of such Common Shares in compliance with Section 7.2 hereof, such Common Shareholder's Common Shares shall be held by his estate, who shall be bound by all of the provisions of this Agreement.

7.4 Change of Control of WestGen. In the event that any Person or group of Persons other than Western International Financial Group Ltd or its Affiliates shall (i) obtain ownership or control in one or more series of transactions of more than 50% of the voting power of WestGen entitled to vote in the election of members of the board of directors of WestGen, or (ii) shall otherwise obtain, directly or indirectly, the power to direct or cause the direction of management or policies of WestGen (whether by contract or otherwise) (each, a Change of Control"), then (A) WestGen shall provide prompt written notice of such Change of Control to the other parties hereto, and (B) upon receipt of such written notice, the other Common Shareholders shall have 45 days to notify WestGen of their desire to buy all or a portion of WestGen's Common Shares at a price of US\$1.00 per share, the closing of such purchase to occur no later than 30 days after the date of such notice to WestGen. Such Common Shares shall be allocated to each such Common Shareholder desiring to purchase WestGen's Common Shares pro rata, if necessary. At the closing of the purchase of such Common Shares, WestGen shall deliver certificates representing such Common Shares, free and clear of any Liens, duly endorsed

or accompanied by written instruments of transfer executed by WestGen in form reasonably satisfactory to the purchaser, against payment of the purchase price therefor in cash, and any such other customary documents reasonably requested by either party.

## ARTICLE VIII CONDITIONS TO CLOSING

8.1 Conditions Precedent to Obligations of the Preferred Shareholder. The obligation of the Preferred Shareholder to consummate the transactions contemplated by this Agreement is subject to the fulfillment, on or prior to the Closing Date, of each of the following conditions (any or all of which may be waived by the Preferred Shareholder in whole or in part):

(a) all representations and warranties of the Company and WestGen contained in Article II hereof, of WestGen contained in Article IV hereof, and of the other Common Shareholders contained in Article V hereof shall be true and correct in all material respects, at and as of the Closing Date, except to the extent expressly made as of an earlier date;

(b) each of the Company, WestGen and the other Common Shareholders shall have performed and complied in all material respects with all obligations and covenants required by this Agreement to be performed or complied with by such party on or prior to the Closing Date;

(c) the Amended Articles shall have been filed with the Barbados Registrar of Companies; and

(d) any required approval of the Barbados Supervisor of Insurance of the transactions contemplated hereby shall have been obtained.

8.2 Conditions Precedent to Obligations of the Common Shareholders. The obligation of the Common Shareholders to consummate the transactions contemplated by this Agreement is subject to the fulfillment, on or prior to the Closing Date, of each of the following conditions (any or all of which may be waived by the Common Shareholders in whole or in part):

(a) all representations and warranties of the Company and WestGen contained in Article II hereof and of the Preferred Shareholder contained in Article III hereof shall be true and correct in all material respects, at and as of the Closing Date, except to the extent expressly made as of an earlier date;

(b) each of the Company and the Preferred Shareholder shall have performed and complied in all material respects with all obligations and covenants required by this Agreement to be performed or complied with by such party on or prior to the Closing Date;

(c) the Amended Articles shall have been filed with the Barbados Registrar of Companies; and

(d) any required approval of the Barbados Supervisor of Insurance of the transactions contemplated hereby shall have been obtained.

8.3 Conditions Precedent to Obligations of the Company. The obligations of the Company to consummate the transactions contemplated by this Agreement are subject to the fulfillment, on or prior to the Closing Date, of each of the following conditions (any or all of which may be waived by the Company in whole or in part):

(a) all representations and warranties of the Preferred Shareholder contained in Article III hereof, of WestGen contained in Article IV hereof and of the other Common Shareholders contained in Article V hereof shall be true and correct in all material respects, at and as of the Closing Date;

(b) each of the Preferred Shareholder, WestGen and the other Common Shareholders shall have performed and complied in all material respects with all obligations and covenants required by this Agreement to be performed or complied with by such party on or prior to the Closing Date;

(c) the Amended Articles shall have been filed with the Barbados Registrar of Companies; and

(d) any required approval of the Barbados Supervisor of Insurance of the transactions contemplated hereby shall have been obtained.

#### ARTICLE IX DOCUMENTS TO BE DELIVERED

9.1 Deliveries by the Company to the Preferred Shareholder and the Common Shareholders. At the Closing, the Company shall deliver, or shall cause to be delivered, (i) to the Preferred Shareholder certificates evidencing the Preferred Shares, a receipt for the Preferred Purchase Price paid at Closing and any other certificates, resolutions or documents deliverable pursuant to Section 1.2 hereof, and (ii) to the Common Shareholders certificates evidencing the Common Shares, a receipt for the Common Purchase Price paid at Closing and any other certificates, resolutions or documents deliverable pursuant to Section 1.2 hereof. The Company shall also deliver the written resignation of all directors other than John Marion, Trevor Carmichael and Martin Hole.

9.2 Deliveries by the Preferred Shareholder to the Company. At the Closing, the Preferred Shareholder shall deliver to the Company the Preferred Purchase Price, a receipt for the Preferred Shares, and any other certificates, resolutions or documents deliverable pursuant to Section 1.2 hereof.

9.3 Deliveries by the Common Shareholders to the Company. At the Closing, each Common Shareholder shall deliver to the Company his respective portion of the Common

Purchase Price as set forth on Exhibit A hereto, a receipt for the his respective Common Shares as set forth on Exhibit A hereto, and any other certificates, resolutions or documents deliverable pursuant to Section 1.2 hereof.

## ARTICLE X INDEMNIFICATION

10.1 General. Each party hereto (the “Indemnifying Party”) hereby agrees to indemnify and hold each of the other parties hereto, and any of such parties’ directors, officers, employees, agents, successors and assigns, harmless from and against:

(a) any and all losses, liabilities, obligations, damages, costs and expenses (collectively, “Losses”) based upon, attributable to or resulting from the failure of any representation or warranty made by the Indemnifying Party, or any representation or warranty contained in any certificate delivered by or on behalf of the Indemnifying Party pursuant to this Agreement, to be true and correct in all respects as of the date made;

(b) any and all Losses based upon, attributable to or resulting from the breach of any covenant or other agreement on the part of such Indemnifying Party under this Agreement; and

(c) any and all notices, actions, suits, proceedings, claims, demands, assessments, judgments, costs, penalties and expenses, including attorneys' and other professionals' fees and disbursements (collectively, “Expenses”) incident to any Losses with respect to which indemnification is provided under this Section 10.1.

10.2 Indemnification by WestGen. WestGen hereby agrees to further indemnify and hold each of the other parties hereto, and any of such parties’ directors, officers, employees, agents, successors and assigns, harmless from and against:

(a) any and all Losses relating to the operation or conduct of the Company’s business during the period from date of its incorporation to the Closing Date; and

(b) any and all Expenses incident to any Losses with respect to which indemnification is provided under this Section 10.2.

## ARTICLE XI CONFIDENTIALITY

11.1 Confidentiality. Each of the parties hereto agrees that it will not publish, communicate or otherwise disclose any confidential or proprietary information of the Company or any of the other parties or their Affiliates, including without limitation, this Agreement, the substance of the transactions contemplated hereby, and the involvement of the parties hereto with each other as contemplated hereby (“Confidential Information”); provided, however, that such

Confidential Information may be published, communicated or otherwise disclosed (i) to any person who is a director, officer or employee of, or counsel or advisor to, any of the Company or such party or any of such party's Affiliates, (ii) to any person who is an official or employee of, or counsel to, any regulatory body or agency having jurisdiction over any of the Company or such party or such party's Affiliates, (iii) pursuant to a subpoena or order issued by a court of competent jurisdiction or as otherwise required by law, or (iv) with the unanimous consent of all parties to this Agreement.

11.2 Breach. In the event of a breach or threatened breach of Section 11.1, the Company and the other parties shall each be entitled to an injunction restraining the breaching party from disclosing, in whole or in part, such Confidential Information. Nothing contained herein shall be construed as prohibiting the Company or any party from pursuing any other remedies available to it for such breach or threatened breach, including the recovery of damages.

## ARTICLE XII TERMINATION

12.1 Prior to Closing. This Agreement may be terminated and the transactions contemplated hereby may be abandoned at any time before the Closing:

- (a) by mutual written consent of the Company, the Preferred Shareholder and the Common Shareholders;
- (b) by the Preferred Shareholder, if the Company or any Common Shareholder has materially breached any representation, warranty, or covenant or agreement and such breach is not capable of being cured prior to the Closing;
- (c) by the Company, if the Preferred Shareholder or any Common Shareholder has materially breached any representation, warranty, or covenant or agreement and such breach is not capable of being cured prior to the Closing;
- (d) by any Common Shareholder, if the Company or the Preferred Shareholder has materially breached any representation, warranty, or covenant or agreement and such breach is not capable of being cured prior to the Closing; or
- (e) by the Company, the Preferred Shareholder or any of the Common Shareholders at any time after November 30, 2000.

12.2 Procedure Upon Termination Prior to Closing. In the event of termination and abandonment of this Agreement pursuant to Section 12.1, written notice thereof shall forthwith be given to the other parties and this Agreement shall terminate and the transactions contemplated hereby shall be abandoned, without further action by any party.

12.3 Termination After Closing. After Closing, the Company, the Preferred Shareholder and the Common Shareholders shall continue to be bound by the provisions of this

Agreement until this Agreement is terminated by written consent of the Preferred Shareholder and all of the Common Shareholders.

### ARTICLE XIII MISCELLANEOUS

13.1 Parties Bound. Each party hereto undertakes with the others to exercise its obligations in relation to the Company so as to ensure that the Company fully and promptly observes performs and complies with its obligations under this Agreement.

13.2 Nature and Survival of Representations and Warranties. All representations and warranties and agreements made by the parties hereto in this Agreement or pursuant hereto shall survive the Closing hereunder and any investigation at any time made by or on behalf of any party hereto. No suit or action may be commenced for claims under Section 10.1 or 10.2 at any time more than 60 months after the Closing Date.

13.3 Further Assurances. Each of the parties hereto agrees to execute and deliver all such other documents or agreements and to take all such other action as may be reasonably necessary or desirable for further effectuate the purposes and intent of this Agreement and the consummation of the transactions contemplated hereby, including without limitation, any tax returns relating to the Company.

13.4 Injunctive Relief. The parties hereto agree and acknowledge that it would be impossible to measure in money the damages that would be suffered if any party hereto should breach any obligation, covenant or representation herein imposed or made, and that in the event of any such breach, the non-breaching parties would be irreparably damaged and would not have an adequate remedy at law. Any such non-breaching party shall, therefore, be entitled to injunctive relief, including specific performance, to enforce such obligations, and if any action should be brought in equity to enforce any of the provisions of this Agreement, none of the other parties hereto shall raise the defense that there is an adequate remedy at law.

13.5 Submission to Jurisdiction; Consent to Service of Process.

(a) The parties hereto hereby irrevocably submit to the non-exclusive jurisdiction of the courts of the United Kingdom over any dispute arising out of or relating to this Agreement or any of the transactions contemplated hereby and each party hereby irrevocably agrees that all claims in respect of such dispute or any suit, action proceeding related thereto may be heard and determined in such courts. The parties hereby irrevocably waive, to the fullest extent permitted by applicable law, any objection that they may now or hereafter have to the laying of venue of any such dispute brought in such court or any defense of inconvenient forum for the maintenance of such dispute. Each of the parties hereto agrees that a judgment in any such dispute may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

(b) Each of the parties hereto hereby consents to process being served by any party to this Agreement in any suit, action or proceeding by the mailing of a copy thereof in accordance with the provisions of Section 13.6 hereof.

13.6 Notices. All notices and other communications under this Agreement shall be in writing and deemed to have been duly given if sent by registered airmail, internationally recognized overnight delivery service, or facsimile transmission as follows (or to such other address as a party may have specified by notice given to the other party pursuant to this provision):

If to the Company to:

[\_\_\_\_\_  
[\_\_\_\_\_  
[\_\_\_\_\_  
Attention: [\_\_\_\_\_  
Facsimile: [\_\_\_\_\_]

If to WestGen, to:

Western General Insurance Ltd.  
[\_\_\_\_\_  
[\_\_\_\_\_  
Attention: [\_\_\_\_\_  
Telecopier: [\_\_\_\_\_]

If to the Preferred Shareholder, to:

[AIG Company]  
[\_\_\_\_\_  
[\_\_\_\_\_  
Attention: [\_\_\_\_\_  
Facsimile: [\_\_\_\_\_]

with a copy to:

American International Companies  
160 Water Street, 24th Floor  
New York, NY 10038 USA  
Attention: General Counsel, Domestic Brokerage Group  
Facsimile: (212) 820-4504

[Add Common Shareholders]

Any notice sent by registered airmail shall be deemed to have been delivered seven days after dispatch, any notice sent by internationally recognized overnight delivery service shall be

deemed to have been delivered upon receipt, and any notice sent by facsimile transmission shall be deemed to have been delivered upon confirmed transmission.

13.7 Entire Agreement; Amendments and Waivers. This Agreement (including the schedules and exhibits hereto) represents the entire understanding and agreement between the parties hereto with respect to the subject matter hereof and can be amended, supplemented or changed, and any provision hereof can be waived, only by written instrument making specific reference to this Agreement signed by the party against whom enforcement of any such amendment, supplement, modification or waiver is sought. The waiver by any party hereto of a breach of any provision of this Agreement shall not operate or be construed as a further or continuing waiver of such breach or as a waiver of any other or subsequent breach. No failure on the part of any party to exercise, and no delay in exercising, any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of such right, power or remedy by such party preclude any other or further exercise thereof or the exercise of any other right, power or remedy. All remedies hereunder are cumulative and are not exclusive of any other remedies provided by law.

13.8 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the United Kingdom.

13.9 Severability. The provisions of this Agreement shall be deemed severable, so that if any provision hereof is declared invalid under applicable law, all other provisions of this Agreement shall continue in full force and effect.

13.10 Binding Effect; Assignment. This Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, successors and permitted assigns. Nothing in this Agreement shall create or be deemed to create any third party beneficiary rights in any person or entity not a party to this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first set forth above.

CAPCO REINSURANCE COMPANY LTD.

By: \_\_\_\_\_  
Name:  
Title:

[AIG COMPANY]

By: \_\_\_\_\_  
Name:  
Title:

WESTERN GENERAL INSURANCE LTD.

By: \_\_\_\_\_  
Name:  
Title:

\_\_\_\_\_  
[Common Shareholder 1]

\_\_\_\_\_  
[Common Shareholder 2]

\_\_\_\_\_  
[Common Shareholder 3]

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**Exhibit A**

Purchaser, Address  
and Facsimile Number

Number of Common Shares

Purchase Price

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Form of Amended and Restated Articles of Incorporation

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**Schedule 2.5**  
**Contracts**

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**LIMITED RECOURSE PROMISSORY NOTE**

US\$[\_\_\_\_\_]

June [\_\_\_], 2000  
New York, New York

FOR VALUE RECEIVED, the undersigned **[Investor]** (the “Borrower”), unconditionally promises to pay to **[Lender]**, a [\_\_\_\_\_] corporation (the “Company”), or any successor, assign or other holder of this Note (collectively, the “Holder”) on June [\_\_\_], 2005 (the “Maturity Date”), at such place as may be designated by the Holder to the Borrower, the principal amount of [\_\_\_\_\_] United States dollars (US\$[\_\_\_\_\_]), together with interest thereon accrued at a rate per annum of 6%, from and after the date hereof (the “Original Issue Date”), compounded on an annual basis, the initial such compounding to take place on the date which is one year from and after the Original Issue Date (each such date, a “Compounding Date”).

**1. Payments.**

(a) Unless earlier prepaid in accordance with the terms hereof, the entire outstanding principal amount of this Note, together with all accrued and unpaid interest thereon, shall be due and payable on the Maturity Date.

(b) Accrued interest shall be capitalized and added to the principal amount hereunder on each Compounding Date.

(c) The Borrower shall be entitled to prepay any amount outstanding under this Note by paying to the Holder in cash such amount.

(d) In the event of a prepayment or other acceleration of amounts due hereunder, interest shall be calculated from the last Compounding Date to the date of such payment based upon a 365 day year.

**2. Use of Proceeds.**

The Borrower shall use the proceeds of this Note solely for the purchase of Common Shares of Capco Reinsurance Company Ltd., a Barbados corporation (“Capco”).

**3. Events of Default.**

The occurrence of any of the following events shall constitute an event of default (an “Event of Default”):

(a) a default in the payment of the principal amount of this Note, when and as the same shall become due and payable;

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(b) a default in the payment of any accrued and unpaid interest on this Note, when and as the same shall become due and payable;

(c) a default in the performance, or a breach of any other covenant or agreement, of the Borrower in or relating to this Note, which default or breach continues for a period of ten days after the Holder has notified the Borrower of its occurrence;

(d) any representation, warranty, or certification made by the Borrower in or pursuant to that certain Subscription and Shareholders Agreement, dated as of June [ ], 2000, by and among Capco, [AIG Company], Western General Insurance Ltd., the Borrower, [Common Shareholder] and [Common Shareholder] shall prove to have been false or misleading in any material respect as of the date made;

(e) a material default by the Borrower of any of his obligations under any Transaction Document; or

(f) (i) the entry of a decree or order of a court having jurisdiction adjudging the Borrower bankrupt or insolvent, approving a petition seeking reorganization, arrangement, adjustment or composition of or in respect of the Borrower under applicable bankruptcy or insolvency law, as now or hereafter constituted, and the continuance of any such decree or order unstayed and in effect for a period of 60 days; (ii) the commencement by the Borrower of a voluntary case under applicable bankruptcy or insolvency law, as now or hereafter constituted, or the consent by the Borrower to the institution of bankruptcy or insolvency proceedings against him; (iii) the filing by the Borrower of a petition or answer or consent seeking reorganization or relief under applicable bankruptcy or insolvency law; (iv) the appointment of a receiver, liquidator, assignee, trustee or similar official for the Borrower or for any substantial part of his property which is not discharged within 60 days; or (v) the making by the Borrower of an assignment for the benefit of creditors, or the admission by the Borrower in writing of his inability to pay his debts generally as they become due, or the taking of any corporate action by the Borrower, in furtherance of any such action.

#### **4. Remedies in the Event of Default.**

(a) In the case of an Event of Default by the Borrower, the principal amount of this Note together with all accrued and unpaid interest thereon shall, in addition to all other rights of the Holder hereunder and under applicable law, be and become immediately due and payable upon written notice delivered by the Holder to the Borrower.

(b) The Borrower hereby waives demand and presentment for payment, notice of nonpayment, protest and notice of protest, diligence, filing suit, and other notices, and promises to pay the Holder its costs of collection of all amounts due hereunder, including reasonable attorneys' fees.

#### **5. Security Interest; Limited Recourse.**

In order to secure the Borrower's obligations hereunder, the Borrower has entered into a Pledge Agreement, dated the date hereof, with the Company (the "Pledge Agreement"). It is expressly agreed by the Company that in the event of a default by the Borrower in any of his obligations hereunder, the Company's recourse shall be limited solely to the collateral pledged pursuant to the Pledge Agreement.

**6. Miscellaneous.**

(a) The Company may assign this Note to an affiliate; provided, however, that the Company shall remain liable for its obligations hereunder after any such assignment. This Note and all of the provisions hereof shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and assigns.

(b) All notices, demand and requests of any kind to be delivered to any party in connection with this Note shall be in writing and deemed to have been duly given if sent by registered airmail, internationally recognized overnight delivery service, or facsimile transmission as follows:

if to the Pledgee:

[Lender]  
[\_\_\_\_\_  
[\_\_\_\_\_  
Attention: [\_\_\_\_\_  
Facsimile: [\_\_\_\_\_]

with a copy to:

American International Companies  
160 Water Street, 24th Floor  
New York, NY 10038 USA  
Attention: General Counsel, Domestic Brokerage Group  
Facsimile: (212) 820-4504

if to the Pledgor:

[Investor]  
[\_\_\_\_\_  
[\_\_\_\_\_  
Attention: [\_\_\_\_\_  
Facsimile: [\_\_\_\_\_]

with a copy to:

[\_\_\_\_\_  
[\_\_\_\_\_]

[\_\_\_\_\_]
Attention: [\_\_\_\_\_]
Facsimile: [\_\_\_\_\_]

or to such other address as may from time to time be provided by either party to the other hereunder. Any notice sent by registered airmail shall be deemed to have been delivered seven days after dispatch, any notice sent by internationally recognized overnight delivery service shall be deemed to have been delivered upon receipt, and any notice sent by facsimile transmission shall be deemed to have been delivered upon confirmed transmission.

(c) No waiver that may be given by a party hereunder will be applicable except in the specific instance for which it is given.

(d) This Note (i) may not be modified or amended other than in a writing signed by all parties hereto, and (ii) shall be governed and construed in accordance with the laws of the State of New York without giving effect to the principles of conflicts of law thereof.

(e) In case any one or more of the provisions contained herein shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such provision or provisions shall be ineffective only to the extent of such invalidity, illegality or unenforceability, without invalidating the remainder of such provision or provisions or the remaining provisions of this Note, and this Note shall be construed as if such invalid, illegal or unenforceable provision or provisions had never been contained herein, unless such a construction would be unreasonable.

[SIGNATURE PAGE FOLLOWS.]

IN WITNESS WHEREOF, the Borrower has executed this Note in favor of the Company as of the date first above written.

\_\_\_\_\_  
[Investor]

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LIMITED RECOURSE PROMISSORY NOTE

US\$[\_\_\_\_\_]

June [\_\_\_], 2000  
New York, New York

FOR VALUE RECEIVED, the undersigned [Investor] (the “Borrower”), unconditionally promises to pay to [Lender], a [\_\_\_\_\_] corporation (the “Company”), or any successor, assign or other holder of this Note (collectively, the “Holder”) on June [\_\_\_], 2005 (the “Maturity Date”), at such place as may be designated by the Holder to the Borrower, the principal amount of [\_\_\_\_\_] United States dollars (US\$[\_\_\_\_\_]), together with interest thereon accrued at a rate per annum of 6%, from and after the date hereof (the “Original Issue Date”), compounded on an annual basis, the initial such compounding to take place on the date which is one year from and after the Original Issue Date (each such date, a “Compounding Date”).

**1. Payments.**

(a) Unless earlier prepaid in accordance with the terms hereof, the entire outstanding principal amount of this Note, together with all accrued and unpaid interest thereon, shall be due and payable on the Maturity Date.

(b) Accrued interest shall be capitalized and added to the principal amount hereunder on each Compounding Date.

(c) The Borrower shall be entitled to prepay any amount outstanding under this Note by paying to the Holder in cash such amount.

(d) **In the event of a prepayment or other acceleration of amounts due hereunder, interest shall be calculated from the last Compounding Date to the date of such payment based upon a 365 day year.**

**2. Use of Proceeds.**

The Borrower shall use the proceeds of this Note solely for the purchase of Common Shares of Capco Reinsurance Company Ltd., a Barbados corporation (“Capco”).

**3. Events of Default.**

The occurrence of any of the following events shall constitute an event of default (an “Event of Default”):

(a) a default in the payment of the principal amount of this Note, when and as the same shall become due and payable;

(b) a default in the payment of any accrued and unpaid interest on this Note, when and as the same shall become due and payable;

(c) a default in the performance, or a breach of any other covenant or agreement, of the Borrower in or relating to this Note, which default or breach continues for a period of ten days after the Holder has notified the Borrower of its occurrence;

(d) any representation, warranty, or certification made by the Borrower in or pursuant to that certain Subscription and Shareholders Agreement, dated as of June [ ], 2000, by and among Capco, [AIG Company], [~~WestGen~~] **Western General Insurance Ltd.**, the Borrower, [Common Shareholder] and [Common Shareholder] shall prove to have been false or misleading in any material respect as of the date made;

(e) a material default by the Borrower of any of his obligations under any Transaction Document; or

(f) (i) the entry of a decree or order of a court having jurisdiction adjudging the Borrower bankrupt or insolvent, approving a petition seeking reorganization, arrangement, adjustment or composition of or in respect of the Borrower under applicable bankruptcy or insolvency law, as now or hereafter constituted, and the continuance of any such decree or order unstayed and in effect for a period of 60 days; (ii) the commencement by the Borrower of a voluntary case under applicable bankruptcy or insolvency law, as now or hereafter constituted, or the consent by the Borrower to the institution of bankruptcy or insolvency proceedings against him; (iii) the filing by the Borrower of a petition or answer or consent seeking reorganization or relief under applicable bankruptcy or insolvency law; (iv) the appointment of a receiver, liquidator, assignee, trustee or similar official for the Borrower or for any substantial part of his property which is not discharged within 60 days; or (v) the making by the Borrower of an assignment for the benefit of creditors, or the admission by the Borrower in writing of his inability to pay his debts generally as they become due, or the taking of any corporate action by the Borrower, in furtherance of any such action.

#### **4. Remedies in the Event of Default.**

(a) In the case of an Event of Default by the Borrower, the principal amount of this Note together with all accrued and unpaid interest thereon shall, in addition to all other rights of the Holder hereunder and under applicable law, be and become immediately due and payable upon written notice delivered by the Holder to the Borrower.

(b) The Borrower hereby waives demand and presentment for payment, notice of nonpayment, protest and notice of protest, diligence, filing suit, and other notices, and promises to pay the Holder its costs of collection of all amounts due hereunder, including reasonable attorneys' fees.

#### **5. Security Interest; Limited Recourse.**

In order to secure the Borrower's obligations hereunder, the Borrower has entered into a Pledge Agreement, dated the date hereof, with the Company (the "Pledge Agreement"). It is expressly agreed by the Company that in the event of a default by the Borrower in any of his obligations hereunder, the Company's recourse shall be limited solely to the collateral pledged pursuant to the Pledge Agreement.

**6. Miscellaneous.**

(a) The Company may assign this Note to an affiliate; provided, however, that the Company shall remain liable for its obligations hereunder after any such assignment. This Note and all of the provisions hereof shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and assigns.

(b) All notices, demand and requests of any kind to be delivered to any party in connection with this Note shall be in writing and deemed to have been duly given if sent by registered airmail, internationally recognized overnight delivery service, or facsimile transmission as follows:

if to the Pledgee:

[Lender]  
[\_\_\_\_\_  
[\_\_\_\_\_  
Attention: [\_\_\_\_\_  
Facsimile: [\_\_\_\_\_]

with a copy to:

American International Companies  
160 Water Street, 24th Floor  
New York, NY 10038 USA  
Attention: General Counsel, Domestic Brokerage Group  
Facsimile: (212) 820-4504

if to the Pledgor:

[Investor]  
[\_\_\_\_\_  
[\_\_\_\_\_  
Attention: [\_\_\_\_\_  
Facsimile: [\_\_\_\_\_]

with a copy to:

[\_\_\_\_\_  
[\_\_\_\_\_]

[ ]  
Attention: [ ]  
Facsimile: [ ]

or to such other address as may from time to time be provided by either party to the other hereunder. Any notice sent by registered airmail shall be deemed to have been delivered seven days after dispatch, any notice sent by internationally recognized overnight delivery service shall be deemed to have been delivered upon receipt, and any notice sent by facsimile transmission shall be deemed to have been delivered upon confirmed transmission.

(c) No waiver that may be given by a party hereunder will be applicable except in the specific instance for which it is given.

(d) This Note (i) may not be modified or amended other than in a writing signed by all parties hereto, and (ii) shall be governed and construed in accordance with the laws of the State of New York without giving effect to the principles of conflicts of law thereof.

(e) In case any one or more of the provisions contained herein shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such provision or provisions shall be ineffective only to the extent of such invalidity, illegality or unenforceability, without invalidating the remainder of such provision or provisions or the remaining provisions of this Note, and this Note shall be construed as if such invalid, illegal or unenforceable provision or provisions had never been contained herein, unless such a construction would be unreasonable.

[SIGNATURE PAGE FOLLOWS.]

IN WITNESS WHEREOF, the Borrower has executed this Note in favor of the Company as of the date first above written.

\_\_\_\_\_  
[Investor]

----- COMPARISON OF FOOTERS

-----  
-FOOTER 1-  
2

-FOOTER 2-  
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(TM) - The Instant Redliner, shows the differences between -  
original document :  
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and revised document:  
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CompareRite found 3 change(s) in the text  
CompareRite found 0 change(s) in the notes

Deletions appear as Overstrike text  
Additions appear as Bold-Underline text

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**SUBSCRIPTION AND OPERATING AGREEMENT**

SUBSCRIPTION AND OPERATING AGREEMENT, dated as of June [ ], 2000 (the “Agreement”), by and among Capco Reinsurance Company Ltd., a Barbados corporation (the “Company”), [AIG Company], a [ ] corporation (the “Preferred Shareholder”), [WestGen], a [ ] **Western General Insurance Ltd., a Bermuda** corporation (“WestGen”), [Common Shareholder 1 (“ ”)], [Common Shareholder 2 (“ ”)] and [Common Shareholder 3 (“ ”)] (each of WestGen, \_\_\_\_\_, \_\_\_\_\_, and \_\_\_\_\_, a “Common Shareholder” and together, the “Common Shareholders”).

**W I T N E S S E T H:**

WHEREAS, the Company desires to issue and sell to the Common Shareholders, and the Common Shareholders desire to purchase from the Company, for aggregate consideration of US\$19,800,000, 19,800,000 of the Company’s Common Shares (the “Common Shares”); and

WHEREAS, the Company desires to issue and sell to the Preferred Shareholder, and the Preferred Shareholder desires to purchase from the Company, for aggregate consideration of US\$170,000,000, 8,500 shares of a newly created series of the Company’s Preferred Shares (the “Preferred Shares”) having the rights, preferences, privileges, and restrictions set forth in the form of [Amended and Restated Articles of Incorporation] of the Company attached hereto as Exhibit B (the “Amended Articles”); and

WHEREAS, the Company, the Preferred Shareholder and the Common Shareholders desire to set forth certain provisions relating to the governance of the Company and certain other matters.

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements hereinafter contained, the parties hereby agree as follows:

**ARTICLE I  
AUTHORIZATION; CLOSING**

1.1 Authorization. The Company has authorized the issuance (i) to the Common Shareholders an aggregate of 19,800,000 Common Shares, and (ii) to the Preferred Shareholder of 8,500 Preferred Shares, each issuable as provided in Section 1.2 hereof.

1.2 Closing.

(a) The closing of the transactions contemplated hereby (the “Closing”) shall occur ~~at such place and at such time~~ **five business days after the satisfaction of all conditions**

to closing specified in Article VIII hereof, at such time and at such location as the parties hereto may agree.

(b) At the Closing, the Company shall issue and sell (i) to the Common Shareholders, and the Common Shareholders shall purchase from the Company, upon the terms and subject to the conditions set forth herein, 19,800,000 Preferred **Common** Shares for an aggregate purchase price of US\$19,800,000 (the "Common Purchase Price") and (ii) to the Preferred Shareholder, and the Preferred Shareholder shall purchase from the Company, upon the terms and subject to the conditions set forth herein, 8,500 Preferred Shares for an aggregate purchase price of US\$170,000,000 (the "Preferred Purchase Price"). Each Common Shareholder shall purchase the number of Common Shares set forth under his name on Exhibit A hereto.

(c) At the Closing, each of the Company, the Common Shareholders, and the Preferred Shareholder shall execute and deliver to each other, as applicable, (i) certificates in respect of the Common Shares and Preferred Shares described above, and (ii) any other certificates, resolutions or documents which any of the Company, Common Shareholders or the Preferred Shareholder shall reasonably require.

## ARTICLE II REPRESENTATIONS AND WARRANTIES OF THE COMPANY AND WESTGEN

Each of the Company and WestGen hereby jointly and severally represents and warrants to the Preferred Shareholder and the other Common Shareholders as follows:

2.1 Organization and Good Standing. The Company is a corporation duly organized, validly existing and in good standing under the laws of Barbados and has all requisite corporate power and authority to own, lease and operate its properties and to carry on its business.

2.2 Capitalization. As of the date hereof, the authorized capital of the Company consists of an unlimited number of Common Shares, of which 200,000 Common Shares are issued and outstanding, ~~and 10,000 Preferred Shares, none of which are issued and outstanding.~~ All of the issued and outstanding Common Shares are owned by WestGen, free and clear of any ~~Lines~~ **Liens** (as defined below).

2.3 Authorization. The execution, delivery and performance by the Company of this Agreement, including the issuance, sale and delivery of the Common Shares and the Preferred Shares, have been duly authorized by all requisite corporate action. This Agreement has been duly executed and delivered by the Company, and is the legal, valid and binding obligation of the Company, enforceable against it in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium and similar laws affecting creditors' rights and remedies generally, and subject, as to enforceability, to general principles of equity, including principles of commercial reasonableness, good faith and fair dealing (regardless of whether enforcement is sought in a proceeding at law or in equity). The Common Shares, when issued to the Common Shareholders as contemplated hereby, will be validly issued and outstanding, fully paid and non-assessable and not subject to preemptive or any other similar rights of the shareholders of the

Company or others. The Preferred Shares, when issued to the Preferred Shareholder as contemplated hereby, will be validly issued and outstanding, fully paid and non-assessable and not subject to preemptive or any other similar rights of the shareholders of the Company or others.

2.4 No Conflicts; Consents of Third Parties. The execution, delivery and performance of this Agreement, the issuance, sale and delivery of the Common Shares and the Preferred Shares, and compliance with the provisions hereof by the Company will not (i) conflict with, or result in the breach of, any provision of the Articles of Incorporation or By-laws or comparable organizational documents of the Company; (ii) conflict with, violate, result in the breach or termination of, or constitute a default under any note, bond, mortgage, indenture, license, agreement or other instrument or obligation to which the Company is a party or by which the Company or its properties or assets is bound; (iii) violate any statute, rule, regulation, order or decree of any governmental body by which the Company is bound; or (iv) result in the creation of any lien, pledge, mortgage, deed of trust, security interest, claim, lease, charge, option, right of first refusal, preemptive right, easement, servitude, transfer restriction under any shareholder or similar agreement, encumbrance or any other restriction or limitation whatsoever (collectively, "Liens") upon the properties or assets of the Company. No consent, waiver, approval, order, permit or authorization of, or declaration or filing with, or notification to, any person, including without limitation any governmental body, is required on the part of the Company in connection with the execution, delivery and performance of the Agreement, or the compliance by the Company with any of the provisions hereof, except for the approval of the Barbados Supervisor of Insurance of the transactions contemplated hereby.

2.5 Contracts. Schedule 2.5 sets forth a true and complete list of all agreements to which the Company is a party.

2.6 No Liabilities. As of the date hereof, the Company has no liabilities, direct or indirect, absolute or contingent, including without limitation tax liabilities, and there is no existing condition, situation or set of circumstances which could result in any such liabilities.

2.7 Licenses. The Company has obtained all licenses, certificates of authority, permits, authorizations, orders and approvals of, and has made all registrations or filings with, all governmental bodies as required in connection with the conduct of its business (collectively, "Licenses"). All Licenses are valid and in full force and effect.

2.8 No Litigation. There is no suit, action, proceeding, investigation, claim or order pending or, to the knowledge of the Company, threatened against the Company or to which the Company is otherwise a party before any court, or before any governmental department, commission, board, agency, or instrumentality.

2.9 Compliance with Laws; Permits. The Company is in compliance with all laws applicable to the Company or to the conduct of its business and operations or the use of its properties and assets.

2.10 No Misrepresentation. No representation or warranty of the Company contained in this Agreement or in any certificate or other instrument furnished by the Company to the Common Shareholders and the Preferred Shareholder pursuant to the terms hereof, contains any untrue statement of a material fact or omits to state a material fact necessary to make the statements contained herein or therein not misleading.

ARTICLE III  
REPRESENTATIONS AND WARRANTIES OF THE PREFERRED SHAREHOLDER

The Preferred Shareholder hereby represents and warrants to the Company and the Common Shareholders as follows:

3.1 Organization and Good Standing. The Preferred Shareholder is a corporation duly organized, validly existing and in good standing under the laws of [ ] and has all requisite corporate power and authority to own, lease and operate its properties and to carry on its business.

3.2 Authority. The execution, delivery and performance by the Preferred Shareholder of this Agreement have been duly authorized by all requisite corporate action. This Agreement has been duly executed and delivered by the Preferred Shareholder, and is the legal, valid and binding obligation of the Preferred Shareholder, enforceable against it in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium and similar laws affecting creditors' rights and remedies generally, and subject, as to enforceability, to general principles of equity, including principles of commercial reasonableness, good faith and fair dealing (regardless of whether enforcement is sought in a proceeding at law or in equity).

3.3 No Conflicts; Consents of Third Parties. The execution, delivery and performance of this Agreement and compliance with the provisions hereof by the Preferred Shareholder will not (i) conflict with, or result in the breach of, any provision of the Articles of Incorporation or By-laws or comparable organizational documents of the Preferred Shareholder; (ii) conflict with, violate, result in the breach or termination of, or constitute a default under any note, bond, mortgage, indenture, license, agreement or other instrument or obligation to which the Preferred Shareholder is a party or by which the Preferred Shareholder or its properties or assets is bound; or (iii) violate any statute, rule, regulation, order or decree of any governmental body by which the Preferred Shareholder is bound, other than any conflicts, violations or breaches which would not, individually or in the aggregate, have a material adverse effect on the Preferred Shareholder. No consent, waiver, approval, order, permit or authorization of, or declaration or filing with, or notification to, any person, including without limitation any governmental body, is required on the part of the Preferred Shareholder in connection with the execution, delivery and performance of the Agreement, or the compliance by the Preferred Shareholder with any of the provisions hereof, except for the approval of the Barbados Supervisor of Insurance of the transactions contemplated hereby.

3.4 Investment Intention. The Preferred Shareholder is acquiring the Preferred Shares for its own account, for investment purposes only and not with a view to the distribution thereof.

ARTICLE IV  
ADDITIONAL REPRESENTATIONS AND WARRANTIES OF WESTGEN

WestGen hereby additionally represents and warrants to the Company, the Preferred Shareholder and each other Common Shareholder as follows:

4.1 Organization and Good Standing. WestGen is a corporation duly organized, validly existing and in good standing under the laws of [ ] **Bermuda** and has all requisite corporate power and authority to own, lease and operate its properties and to carry on its business.

4.2 Authority. The execution, delivery and performance by WestGen of this Agreement have been duly authorized by all requisite corporate action. This Agreement has been duly executed and delivered by WestGen, and is the legal, valid and binding obligation of WestGen, enforceable against it in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium and similar laws affecting creditors' rights and remedies generally, and subject, as to enforceability, to general principles of equity, including principles of commercial reasonableness, good faith and fair dealing (regardless of whether enforcement is sought in a proceeding at law or in equity).

4.3 No Conflicts; Consents of Third Parties. The execution, delivery and performance of this Agreement and compliance with the provisions hereof by WestGen will not (i) conflict with, or result in the breach of, any provision of the Articles of Incorporation or By-laws or comparable organizational documents of WestGen; (ii) conflict with, violate, result in the breach or termination of, or constitute a default under any note, bond, mortgage, indenture, license, agreement or other instrument or obligation to which WestGen is a party or by which WestGen or its properties or assets is bound; or (iii) violate any statute, rule, regulation, order or decree of any governmental body by which WestGen is bound, other than any conflicts, violations or breaches which would not, individually or in the aggregate, have a material adverse effect on WestGen. No consent, waiver, approval, order, permit or authorization of, or declaration or filing with, or notification to, any person, including without limitation any governmental body, is required on the part of WestGen in connection with the execution, delivery and performance of the Agreement, or the compliance by WestGen with any of the provisions hereof.

ARTICLE V  
REPRESENTATIONS AND WARRANTIES OF THE COMMON SHAREHOLDERS

Each Common Shareholder other than WestGen, for such Common Shareholder only and not for any other Common Shareholder, hereby represents and warrants to the Company, the Preferred Shareholder, WestGen and each other Common Shareholder as follows:

5.1 Authority. Such Common Shareholder has full power and authority to execute and deliver this Agreement and to consummate the transactions contemplated hereby. This Agreement has been duly executed and delivered by such Common Shareholder and constitutes the legal, valid and binding obligation of such Common Shareholder, enforceable against such Common Shareholder in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium and similar laws affecting creditors' rights and remedies generally, and subject, as to enforceability, to general principles of equity, including principles of commercial reasonableness, good faith and fair dealing (regardless of whether enforcement is sought in a proceeding at law or in equity).

5.2 No Conflicts; Consents of Third Parties. The execution, delivery and performance of this Agreement and compliance with the provisions hereof by such Common Shareholder will not (i) conflict with, violate, result in the breach or termination of, or constitute a default under any note, bond, mortgage, indenture, license, agreement or other instrument or obligation to which such Common Shareholder is a party or by which such Common Shareholder or its properties or assets is bound; (ii) violate any statute, rule, regulation, order or decree of any governmental body by which such Common Shareholder is bound; or (iii) result in the creation of any Lien upon the properties or assets of such Common Shareholder. No consent, waiver, approval, order, permit or authorization of, or declaration or filing with, or notification to, any person, including without limitation any governmental body, is required on the part of such Common Shareholder in connection with the execution, delivery and performance of the Agreement, or the compliance by such Common Shareholder with any of the provisions hereof.

## ARTICLE VI CORPORATE GOVERNANCE MATTERS

6.1 Board of Directors. From and after the Closing Date, the board of directors of the Company (the "Board of Directors") shall consist of the following three directors: John Marion, Trevor Carmichael and Martin Hole.

6.2 Preferred Shareholder Representative. From and after the Closing Date, the Preferred Shareholder shall have the right to designate a representative to attend meetings of the Board of Directors (the "Representative"). The Representative shall be entitled to receive notice of all meetings of the Board of Directors, as well as copies of all meeting agendas or other materials distributed to directors (including any proposed action by written consent).

6.3 Limitation on Conduct of the Company's Business. From and after the Closing Date, the Company shall not effect any of the following actions without the prior consent of a majority of the holders of the Common Shares and the Preferred Shares, each voting separately as a class:

(a) engage in any business other than the proposed reinsurance arrangement with National Union Fire Insurance Company of Pittsburgh, Pa.;

(b) sell the principal assets of the Company;

- (c) borrow any sum of money;
- (d) make any loan or advance or give any credit to any person or entity (each, a "Person");
- (e) give any guarantee or indemnity to secure the liabilities or obligations of any Person;
- (f) enter into any contract, arrangement or commitment involving an expenditure more than US\$20,000;
- (g) issue any unissued Common Shares or Preferred Shares, create a new class or series of equity securities of the Company or alter any rights attaching to either the Common Shares or the Preferred Shares;
- (h) create or acquire any subsidiary;
- (i) enter into any joint venture, partnership, merger, consolidation, profit sharing, or recapitalization agreement, or any agreement to sell all or substantially all of the Company's assets with any Person;
- (j) issue any debentures, warrants, rights or other securities convertible into Common Shares or Preferred Shares;
- (k) acquire, purchase ~~or~~ subscribe for any shares, debentures, mortgages or securities (or any interest therein) in any Person;
- (l) adopt any employee benefit program or incentive plan;
- (m) engage any employee of the Company;
- (n) amend the Company's Amended Articles or By-laws;
- (o) alter the number of the Company's directors; or
- (p) liquidate or wind-up the Company.

6.4 Management Agreement. The Company shall enter into **(or maintain)** a management agreement with [ ] **MIMs International Ltd** upon such terms as the parties thereto shall in good faith negotiate providing for, among other services, such accounting, financial, tax and services as the Company may require.

ARTICLE VII  
TRANSFERS OF COMMON SHARES AND PREFERRED SHARES

7.1 Restrictions on Transfer. During the term of this Agreement, no holder of Preferred Shares or Common Shares may, directly or indirectly, sell assign, pledge, encumber, hypothecate, grant a security interest in, or otherwise transfer (each, a "Transfer") any Common Shares or Preferred Shares held by it except as permitted by Section 7.2 or 7.4 hereof. The Company shall not, and shall not permit any transfer agent or registrar for the Common Shares or Preferred Shares to, transfer upon the books of the Company any Common Shares or Preferred Shares to any transferee other than in accordance with this Agreement. Any purported transfer not in compliance with Agreement shall be void.

7.2 Permitted Transfers. Notwithstanding the provisions of Section 7.1 hereof, (i) each Common Shareholder other than WestGen shall be permitted to pledge its Common Shares to the Preferred Shareholder pursuant to those certain Pledge Agreements, dated as of June [ ], 2000, by and between the Preferred Shareholder and such Common Shareholder, (ii) the Preferred Shareholder shall be permitted to Transfer its Preferred Shares to one or more subsidiaries or Affiliates, (iii) ~~any shareholder~~ **the Preferred Shareholder** shall be permitted to Transfer its **Preferred Shares to the Company in accordance with the terms of the Preferred Shares,** (iv) **any shareholder shall be permitted to Transfer its** Common Shares or Preferred Shares with the prior written consent of all other shareholders of the Company, and ~~(iv)~~(v) WestGen shall be obligated and permitted to effect certain Transfers in accordance with ~~Section~~ **Section 7.4; provided, however,** that any permitted transferee shall have executed and delivered to the Company and all other shareholders of the Company an instrument in customary form and reasonably satisfactory to such shareholders agreeing to be bound by the provisions of this Agreement applicable to holders of Common Shares and Preferred Shares. For purposes of this Agreement, (A) an "Affiliate" of any Person shall mean any other Person that, directly or indirectly, controls, is controlled by or is under common control with, such Person, and (B) "control" shall mean the possession, directly or indirectly, of power to direct or cause the direction of management or policies (whether through ownership of securities or partnership or other interests, by contract or otherwise) of any other Person.

7.3 Death of Shareholder. In the event of the death of any Common Shareholder who is a natural person, pending a Transfer of such Common Shares in compliance with Section 7.2 hereof, such Common Shareholder's Common Shares shall be held by his estate, who shall be bound by all of the provisions of this Agreement.

7.4 Change of Control of WestGen. In the event that any Person or group of Persons **other than Western International Financial Group Ltd or its Affiliates** shall (i) obtain ownership or control in one or more series of transactions of more than 50% of the voting power of WestGen entitled to vote in the election of members of the board of directors of WestGen, or (ii) shall otherwise obtain, directly or indirectly, the power to direct or cause the direction of management or policies of WestGen (whether by contract or otherwise) (each, a Change of Control"), then (A) WestGen shall provide prompt written notice of such Change of Control to the other parties hereto, and (B) upon receipt of such written notice, the other Common Shareholders shall have 45 days to notify WestGen of their desire to buy all or a portion of WestGen's Common Shares at a price of US\$1.00 per share, the closing of such purchase to occur no later than 30 days after the date of such notice to WestGen. Such Common Shares shall

be allocated to each such Common Shareholder desiring to purchase WestGen's Common Shares pro rata, if necessary. At the closing of the purchase of such Common Shares, WestGen shall deliver certificates representing such Common Shares, free and clear of any Liens, duly endorsed or accompanied by written instruments of transfer executed by WestGen in form reasonably satisfactory to the purchaser, against payment of the purchase price therefor in cash, and any such other customary documents reasonably requested by either party.

## ARTICLE VIII CONDITIONS TO CLOSING

8.1 Conditions Precedent to Obligations of the Preferred Shareholder. The obligation of the Preferred Shareholder to consummate the transactions contemplated by this Agreement is subject to the fulfillment, on or prior to the Closing Date, of each of the following conditions (any or all of which may be waived by the Preferred Shareholder in whole or in part):

(a) all representations and warranties of the Company, ~~WestGen and~~ **and WestGen contained in Article II hereof, of WestGen contained in Article IV hereof, and of the other Common Shareholders contained herein in Article V hereof** shall be true and correct in all material respects, at and as of the Closing Date, except to the extent expressly made as of an earlier date;

(b) each of the Company, WestGen and the other Common Shareholders shall have performed and complied in all material respects with all obligations and covenants required by this Agreement to be performed or complied with by such party on or prior to the Closing Date;

(c) the Amended Articles shall have been filed with the Barbados Registrar of Companies; and

(d) any required approval of the Barbados Supervisor of Insurance of the transactions contemplated hereby shall have been obtained.

8.2 Conditions Precedent to Obligations of the Common Shareholders. **The obligation of the Common Shareholders to consummate the transactions contemplated by this Agreement is subject to the fulfillment, on or prior to the Closing Date, of each of the following conditions (any or all of which may be waived by the Common Shareholders in whole or in part):**

(a) **all representations and warranties of the Company and WestGen contained in Article II hereof and of the Preferred Shareholder contained in Article III hereof shall be true and correct in all material respects, at and as of the Closing Date, except to the extent expressly made as of an earlier date;**

(b) **each of the Company and the Preferred Shareholder shall have performed and complied in all material respects with all obligations and covenants**

**required by this Agreement to be performed or complied with by such party on or prior to the Closing Date;**

**(c) the Amended Articles shall have been filed with the Barbados Registrar of Companies; and**

**(d) any required approval of the Barbados Supervisor of Insurance of the transactions contemplated hereby shall have been obtained.**

**8.3** **Conditions Precedent to Obligations of the Company.** The obligations of the Company to consummate the transactions contemplated by this Agreement are subject to the fulfillment, on or prior to the Closing Date, of each of the following conditions (any or all of which may be waived by the Company in whole or in part):

(a) all representations and warranties of the Preferred Shareholder, ~~WestGen~~ and **contained in Article III hereof, of WestGen contained in Article IV hereof and of the other Common Shareholders contained herein in Article V hereof** shall be true and correct in all material respects, at and as of the Closing Date;

(b) each of the Preferred Shareholder, WestGen and the other Common Shareholders shall have performed and complied in all material respects with all obligations and covenants required by this Agreement to be performed or complied with by such party on or prior to the Closing Date;

(c) the Amended Articles shall have been filed with the Barbados Registrar of Companies; and

(d) any required approval of the Barbados Supervisor of Insurance of the transactions contemplated hereby shall have been obtained.

#### ARTICLE IX DOCUMENTS TO BE DELIVERED

9.1 **Deliveries by the Company to the Preferred Shareholder and the Common Shareholders.** At the Closing, the Company shall deliver, or shall cause to be delivered, (i) to the Preferred Shareholder certificates evidencing the Preferred Shares, a receipt for the Preferred Purchase Price paid at Closing and any other certificates, resolutions or documents deliverable pursuant to Section 1.2 hereof, and (ii) to the Common Shareholders certificates evidencing the Common Shares, a receipt for the Common Purchase Price paid at Closing and any other certificates, resolutions or documents deliverable pursuant to Section 1.2 hereof. The Company shall also deliver the written resignation of all directors other than John Marion, Trevor Carmichael and Martin Hole.

9.2 **Deliveries by the Preferred Shareholder to the Company.** At the Closing, the Preferred Shareholder shall deliver to the Company the Preferred Purchase Price, a receipt for

the Preferred Shares, and any other certificates, resolutions or documents deliverable pursuant to Section 1.2 hereof.

9.3 Deliveries by the Common Shareholders to the Company. At the Closing, each Common Shareholder shall deliver to the Company his respective portion of the Common Purchase Price as set forth on Exhibit A hereto, a receipt for the his respective Common Shares as set forth on Exhibit A hereto, and any other certificates, resolutions or documents deliverable pursuant to Section 1.2 hereof.

## ARTICLE X INDEMNIFICATION

10.1 General. Each party hereto (the “Indemnifying Party”) hereby agrees to indemnify and hold each of the other parties hereto, and any of such parties’ directors, officers, employees, agents, successors and assigns, harmless from and against:

(a) any and all losses, liabilities, obligations, damages, costs and expenses (collectively, “Losses”) based upon, attributable to or resulting from the failure of any representation or warranty made by the Indemnifying Party, or any representation or warranty contained in any certificate delivered by or on behalf of the Indemnifying Party pursuant to this Agreement, to be true and correct in all respects as of the date made;

(b) any and all Losses based upon, attributable to or resulting from the breach of any covenant or other agreement on the part of such Indemnifying Party under this Agreement; and

(c) any and all notices, actions, suits, proceedings, claims, demands, assessments, judgments, costs, penalties and expenses, including attorneys' and other professionals' fees and disbursements (collectively, “Expenses”) incident to any Losses with respect to which indemnification is provided under this Section 10.1.

10.2 Indemnification by WestGen. WestGen hereby agrees to further indemnify and hold each of the other parties hereto, and any of such parties’ directors, officers, employees, agents, successors and assigns, harmless from and against:

(a) any and all Losses relating to the operation or conduct of the Company’s business during the period from date of its incorporation to the ~~date of this Agreement~~ Closing Date; and

(b) any and all Expenses incident to any Losses with respect to which indemnification is provided under this Section 10.2.

## ARTICLE XI CONFIDENTIALITY

11.1 Confidentiality. Each of the parties hereto agrees that it will not publish, communicate or otherwise disclose any confidential or proprietary information of the Company or any of the other parties or their Affiliates, including without limitation, this Agreement, the substance of the transactions contemplated hereby, and the involvement of the parties hereto with each other as contemplated hereby ("Confidential Information"); provided, however, that such Confidential Information may be published, communicated or otherwise disclosed (i) to any person who is a director, officer or employee of, or counsel or advisor to, any of the Company or such party or any of such party's Affiliates, (ii) to any person who is an official or employee of, or counsel to, any regulatory body or agency having jurisdiction over any of the Company or such party or such party's Affiliates, (iii) pursuant to a subpoena or order issued by a court of competent jurisdiction or as otherwise required by law, or (iv) with the unanimous consent of all parties to this Agreement.

11.2 Breach. In the event of a breach or threatened breach of Section 11.1, the Company and the other parties shall each be entitled to an injunction restraining the breaching party from disclosing, in whole or in part, such Confidential Information. Nothing contained herein shall be construed as prohibiting the Company or any party from pursuing any other remedies available to it for such breach or threatened breach, including the recovery of damages.

## ARTICLE XII TERMINATION

12.1 Prior to Closing. This Agreement may be terminated and the transactions contemplated hereby may be abandoned at any time before the Closing:

- (a) by mutual written consent of the Company, the Preferred Shareholder and the Common Shareholders;
- (b) by the Preferred Shareholder, if the Company or any Common Shareholder has materially breached any representation, warranty, or covenant or agreement and such breach is not capable of being cured prior to the Closing;
- (c) by the Company, if the Preferred Shareholder or any Common Shareholder has materially breached any representation, warranty, or covenant or agreement and such breach is not capable of being cured prior to the Closing;
- (d) by any Common Shareholder, if the Company or the Preferred Shareholder has materially breached any representation, warranty, or covenant or agreement and such breach is not capable of being cured prior to the Closing; or
- (e) by the Company, the Preferred Shareholder or any of the Common Shareholders at any time after [\_\_\_\_\_], November 30, 2000].

12.2 Procedure Upon Termination Prior to Closing. In the event of termination and abandonment of this Agreement pursuant to Section 12.1, written notice thereof shall forthwith be given to the other parties and this Agreement shall terminate and the transactions contemplated hereby shall be abandoned, without further action by any party.

12.3 Termination After Closing. After Closing, the Company, the Preferred Shareholder and the Common Shareholders shall continue to be bound by the provisions of this Agreement until this Agreement is terminated by written consent of the Preferred Shareholder and all of the Common Shareholders.

### ARTICLE XIII MISCELLANEOUS

13.1 Parties Bound. Each party hereto undertakes with the others to exercise its obligations in relation to the Company so as to ensure that the Company fully and promptly observes performs and complies with its obligations under this Agreement.

13.2 Nature and Survival of Representations and Warranties. All representations and warranties and agreements made by the parties hereto in this Agreement or pursuant hereto shall survive the Closing hereunder and any investigation at any time made by or on behalf of any party hereto. No suit or action may be commenced for claims under Section 10.1 or 10.2 at any time more than 60 months after the Closing Date.

13.3 Further Assurances. Each of the parties hereto agrees to execute and deliver all such other documents or agreements and to take all such other action as may be reasonably necessary or desirable for further effectuate the purposes and intent of this Agreement and the consummation of the transactions contemplated hereby, including without limitation, any tax returns relating to the Company.

13.4 Injunctive Relief. The parties hereto agree and acknowledge that it would be impossible to measure in money the damages that would be suffered if any party hereto should breach any obligation, covenant or representation herein imposed or made, and that in the event of any such breach, the non-breaching parties would be irreparably damaged and would not have an adequate remedy at law. Any such non-breaching party shall, therefore, be entitled to injunctive relief, including specific performance, to enforce such obligations, and if any action should be brought in equity to enforce any of the provisions of this Agreement, none of the other parties hereto shall raise the defense that there is an adequate remedy at law.

13.5 Submission to Jurisdiction; Consent to Service of Process.

(a) The parties hereto hereby irrevocably submit to the non-exclusive jurisdiction of the courts of the United Kingdom over any dispute arising out of or relating to this Agreement or any of the transactions contemplated hereby and each party hereby irrevocably agrees that all claims in respect of such dispute or any suit, action proceeding related thereto may be heard and determined in such courts. The parties hereby irrevocably waive, to the fullest

extent permitted by applicable law, any objection that they may now or hereafter have to the laying of venue of any such dispute brought in such court or any defense of inconvenient forum for the maintenance of such dispute. Each of the parties hereto agrees that a judgment in any such dispute may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

(b) Each of the parties hereto hereby consents to process being served by any party to this Agreement in any suit, action or proceeding by the mailing of a copy thereof in accordance with the provisions of Section 13.6 hereof.

13.6 Notices. All notices and other communications under this Agreement shall be in writing and deemed to have been duly given if sent by registered airmail, internationally recognized overnight delivery service, or facsimile transmission as follows (or to such other address as a party may have specified by notice given to the other party pursuant to this provision):

If to the Company to:

[\_\_\_\_\_  
[\_\_\_\_\_  
[\_\_\_\_\_  
Attention: [\_\_\_\_\_  
Facsimile: [\_\_\_\_\_]

If to WestGen, to:

{WestGen} **Western General Insurance Ltd.**  
[\_\_\_\_\_  
[\_\_\_\_\_  
Attention: [\_\_\_\_\_  
Telecopier: [\_\_\_\_\_]

If to the Preferred Shareholder, to:

[AIG Company]  
[\_\_\_\_\_  
[\_\_\_\_\_  
Attention: [\_\_\_\_\_  
Facsimile: [\_\_\_\_\_]

with a copy to:

American International Companies  
160 Water Street, 24th Floor  
New York, NY 10038 USA  
Attention: General Counsel, Domestic Brokerage Group  
Facsimile: (212) 820-4504

[Add Common Shareholders]

Any notice sent by registered airmail shall be deemed to have been delivered seven days after dispatch, any notice sent by internationally recognized overnight delivery service shall be deemed to have been delivered upon receipt, and any notice sent by facsimile transmission shall be deemed to have been delivered upon confirmed transmission.

13.7 Entire Agreement; Amendments and Waivers. This Agreement (including the schedules and exhibits hereto) represents the entire understanding and agreement between the parties hereto with respect to the subject matter hereof and can be amended, supplemented or changed, and any provision hereof can be waived, only by written instrument making specific reference to this Agreement signed by the party against whom enforcement of any such amendment, supplement, modification or waiver is sought. The waiver by any party hereto of a breach of any provision of this Agreement shall not operate or be construed as a further or continuing waiver of such breach or as a waiver of any other or subsequent breach. No failure on the part of any party to exercise, and no delay in exercising, any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of such right, power or remedy by such party preclude any other or further exercise thereof or the exercise of any other right, power or remedy. All remedies hereunder are cumulative and are not exclusive of any other remedies provided by law.

13.8 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the United Kingdom.

13.9 Severability. The provisions of this Agreement shall be deemed severable, so that if any provision hereof is declared invalid under applicable law, all other provisions of this Agreement shall continue in full force and effect.

13.10 Binding Effect; Assignment. This Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, successors and permitted assigns. Nothing in this Agreement shall create or be deemed to create any third party beneficiary rights in any person or entity not a party to this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first set forth above.

CAPCO REINSURANCE COMPANY LTD.

By: \_\_\_\_\_  
Name:  
Title:

[AIG COMPANY]

By: \_\_\_\_\_  
Name:  
Title:

[~~WESTGEN~~] WESTERN GENERAL

INSURANCE LTD.

By: \_\_\_\_\_  
Name:  
Title:

\_\_\_\_\_  
[Common Shareholder 1]

\_\_\_\_\_  
[Common Shareholder 2]

\_\_\_\_\_  
[Common Shareholder 3]

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**Exhibit A**

Purchaser, Address  
and Facsimile Number

Number of Common Shares

Purchase Price

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**Exhibit B**

**Form of Amended and Restated Articles of Incorporation**

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Schedule 2.5  
Contracts

----- COMPARISON OF FOOTERS -----

-FOOTER 1-

-FOOTER 2-

11

-FOOTER 3-

8

-FOOTER 4 3-

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This redlined draft, generated by CompareRite (TM) - The Instant Redliner, shows the differences between -  
original document : H:\AIGRE\WARRANTY\SHAGMT2.DOC  
and revised document: H:\AIGRE\WARRANTY\SHAGMT3.DOC

CompareRite found 25 change(s) in the text  
CompareRite found 2 change(s) in the notes

Deletions appear as Overstrike text  
Additions appear as Bold-Underline text

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