

## MEMORANDUM OF AGREEMENT



This Memorandum of Agreement (the "Agreement"), including Appendix A, is made, entered into, by and among the State of Connecticut, through the Connecticut Commissioner of Consumer Protection, the Deputy Connecticut Insurance Commissioner and the Connecticut Attorney General, acting in their capacities as officials of the State of Connecticut (hereinafter, collectively, the "State"), and Liberty Mutual Fire Insurance Company, Liberty Mutual Insurance Company, Liberty Insurance Corporation, General Insurance Company of America, and Safeco Insurance Company of America along with any of their property-casualty affiliates that have issued policies insuring residential structures located in Connecticut (hereinafter, individually and collectively "Liberty").

### I. DEFINITIONS

1. "Party" or "Parties" means the State and Liberty.
2. "Claims" means any and all past, present and/or future claims, demands, obligations, requests, suits, actions, rights of action, administrative proceedings, administrative remedies, governmental actions and causes of action, at law, equity, or otherwise, on any legal theory, including but not limited to a *parens patriae* theory, whether arising out of tort, contract, statute (including but not limited to the Connecticut Unfair Trade Practices Act, Conn. Gen. Stat. § 42-110a et seq., and the Connecticut Unfair Insurance Practices Act, Conn. Gen. Stat. § 38a-715 et seq.), regulation or

otherwise, whether known or unknown, filed or unfiled, asserted or as yet unasserted, claimed or unclaimed, which exist or may in the future exist.

3. For purposes of this Agreement, "concrete foundation" includes, where applicable, concrete foundation walls (also known as basement walls, house foundation walls, retaining walls or garage foundation walls), concrete floor slabs, concrete footings and all other concrete elements of a structure.

4. The term "policies" means insurance policies issued by Liberty that provide property insurance coverage for homes, condominiums and/or structures located in Connecticut.

## **II. RECITALS**

WHEREAS, the concrete foundations of a number of homes (and where applicable garages) located in northeastern Connecticut have experienced deterioration related to the presence of pyrrhotite in the concrete;

WHEREAS, certain of the Connecticut homes that have experienced pyrrhotite-related concrete foundation deterioration are or were insured under policies issued to current or past Liberty policyholders;

WHEREAS, certain current or past Liberty policyholders have sought coverage under their respective Liberty policies for claimed pyrrhotite-related foundation deterioration as well as for claimed loss or damage resulting from such deterioration;

WHEREAS, Liberty disputes that the policies provide coverage for the claimed pyrrhotite-related foundation deterioration and/or for the claimed loss or damage resulting

from such deterioration;

WHEREAS, pursuant to General Statutes § 38a-91vv, the Connecticut Foundation Solutions Indemnity Company (hereinafter "CFSIC") has been established as a captive insurance company for the public purpose of providing financial assistance to owners of residential buildings with concrete foundations that have deteriorated due to the presence of pyrrhotite;

WHEREAS, Liberty proposes to establish and administer a \$7,000,000 benefit program for the purpose of providing certain Liberty insureds who receive financial assistance from CFSIC and who elect to participate in such program with certain financial assistance additional to that provided by CFSIC, as well as for the purpose of encouraging other insurance companies to do the same for their insureds;

WHEREAS, the Parties declare that the provisions, terms, and conditions set forth in this Agreement are the result of negotiations undertaken in good faith;

**NOW THEREFORE**, in consideration of the mutual promises contained herein, intending to be legally bound hereby, the Parties agree as follows:

### **III. UNDERTAKINGS**

1. Liberty will establish a Liberty Benefit Program that will be governed by the terms set forth in the document entitled "Program Terms," a copy of which is attached hereto as Appendix A.
2. In accordance with the Program Terms, Liberty will set aside \$7,000,000 for

the Liberty Benefit Program.

3. Liberty will provide administrative support for the Liberty Benefit Program in accordance with the Program Terms.

4. The Connecticut Insurance Department ("CID") will monitor Liberty's participation in the Liberty Benefit Program, and Liberty will, upon request by the CID, provide the CID with non-privileged information relating to Liberty's actions as part of the Liberty Benefit Program. Liberty may redact from any such information social security numbers, dates of birth, telephone numbers, personal financial information and any other information that Liberty may be required by Conn. Gen. Stat. §§ 38a-988 and 42-471 to keep confidential, of Liberty's insureds who have applied for and/or enrolled in the Liberty Benefit Program. Liberty may also mark as "confidential" information produced to the CID that it, in good faith, considers a trade secret or other confidential commercial or financial information, or personal information concerning a present or former policyholder of Liberty. Liberty's designation of information as "confidential" shall not be deemed to be either a waiver of the CID's right to challenge such designation or an acceptance of such designation. This Agreement shall not be interpreted as requiring the CID to take, or precluding the CID from taking, any position at any subsequent administrative or judicial proceeding with respect to any claim made by Liberty concerning its designation of information as "confidential." In the event that the CID receives a subpoena or request under the Connecticut Freedom of Information Act ("FOIA"), Conn. Gen. Stat. § 1-200 *et seq.*, for disclosure of information marked by Liberty as "confidential", the CID will not, without the consent of Liberty, release such information prior to four (4) business days after notifying Liberty of such request, unless

otherwise required by law or judicial order. Any day on which the Connecticut state courts are not open for regular business shall not be considered a "business day" for purposes of this provision. In the event that Liberty intends to seek an order from a court of competent jurisdiction quashing the subpoena or enjoining the CID from releasing said information, Liberty shall notify the CID of its intention to seek such an order by 12 o'clock p.m., noon, on the fourth (4<sup>th</sup>) business day after receipt of the subpoena or notice of the FOIA request from the CID. In the event that prior to the expiration of the fourth (4<sup>th</sup>) business day after the receipt of notice of a FOIA request, Liberty files an action or motion in a court of competent jurisdiction seeking to quash the subpoena or enjoin the CID from releasing "confidential" information, the CID shall not disclose the information sought by the FOIA request until the court has decided such action, unless otherwise ordered by the Freedom of Information Commission ("FOIC"), or judicial authority. Liberty is not obligated to seek emergency temporary relief from the Court. If a complaint is filed with the FOIC challenging the CID's withholding of "confidential" information, Liberty shall intervene in such proceeding to defend the withholding of the information.

5. The State and Liberty both will make a good faith effort to resolve any disputes that arise relating to Liberty's activities as part of the Liberty Benefit Program.

6. For and in consideration for Liberty's agreement to establish, fund and administer the Liberty Benefit Program in accordance with the Program Terms, the State hereby releases Liberty – and all of its respective past, present and future officers, directors, principals, shareholders, agents, representatives, employees, attorneys, parents, subsidiaries, affiliates, predecessors, successors and assigns – from any and all Claims that the State has or may have as of the date of this Agreement that arise from or

relate to Liberty's issuance of property insurance policy forms and/or adjustment or denial of property insurance claims to the extent that such policy forms and/or adjustments and/or denials pertain to the existence or nonexistence of coverage for pyrrhotite-related deterioration of concrete foundations or for loss or damage of any type resulting from such deterioration. The State also releases Liberty – and all of its respective past, present and future officers, directors, principals, shareholders, agents, representatives, employees, attorneys, parents, subsidiaries, affiliates, predecessors, successors and assigns – from any and all future Claims arising from or relating to Liberty's issuance of property insurance policy forms and/or adjustment and/or denial of property insurance claims to the extent that such forms and/or adjustments pertain to the existence or nonexistence of coverage for reported pyrrhotite-related deterioration of concrete foundations or for loss or damage of any type resulting from such deterioration under an Additional Coverage for Collapse provision that contains the same language as an Additional Coverage for Collapse provision contained in a Liberty policy in effect on the effective date of this Agreement. Irrespective of whether Liberty's insureds whose concrete foundations have experienced pyrrhotite-related deterioration elect or decline to participate in the Liberty Benefit Program, the State is hereby releasing and will not pursue any Claims against Liberty arising from or relating to those insurance claims and/or the issuance of insurance policy forms to those insureds.

#### **IV. REPRESENTATIONS AND WARRANTIES**

The Parties each represent and warrant that they are fully authorized to enter into this Agreement. Each individual executing this Agreement represents that he or she has taken all necessary corporate and internal actions to duly approve the making and

performance of this Agreement on behalf of the Party the individual represents, that he or she has the authority to enter into this Agreement on behalf of such Party and to bind such Party, and that no further corporate or other internal approval is necessary.

## **V. MISCELLANEOUS TERMS AND CONDITIONS**

### **1. Section Headings**

The paragraph headings in this Agreement are for ease of reference only and do not constitute part of this Agreement.

### **2. Governing Law**

This Agreement and all matters relating or pertaining hereto shall be governed and construed by and under the laws of the State of Connecticut. Any litigation regarding this Agreement shall be brought and litigated in the Connecticut Superior Court for the Judicial District of Hartford.

### **3. No Precedent**

This Agreement is not, and shall not be construed as, an admission or concession of liability and/or coverage and/or wrongdoing by Liberty. This Agreement also is not, and shall not be construed to operate as, a waiver of any rights or defenses that Liberty has, had or may have, including without limitation, any rights or defenses under any Liberty policy. All actions taken or statements made, whether orally or in writing, by the Parties or their representatives relating to their participation in the Agreement, including the development and implementation of the Agreement, shall be without prejudice or value as precedent and shall not be construed as a standard by which other matters may be

judged.

**4. Agreement Not In Violation Of Any Duty**

Nothing in the negotiation or execution of this Agreement or in the performance of this Agreement according to its terms shall be deemed to be or cited as an act of bad faith or a basis for extra-contractual liability or as a violation of any statute, regulation or legal duty.

**5. Construction**

The language of this Agreement shall be construed as a whole, according to its fair meaning and intent, and not strictly for or against any Party hereto, unless otherwise required by law. This Agreement shall be deemed to have been drafted by all Parties to this Agreement, and neither Party nor their respective attorneys shall urge otherwise. This Agreement is not a contract of insurance, and the Parties agree that any special rules of interpretation or construction of insurance contracts shall not apply.

**6. Successors**

This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective legal successors and assigns.

**7. Entire Agreement**

This Agreement constitutes all of the agreements between the Parties. Any representations, promises or statements not set forth in this Agreement shall be of no force and effect.



**8. Amendments**

No amendments or variations of the terms of this Agreement or termination of this Agreement shall be valid unless made in writing and signed by all Parties.

**9. Severability**

If any part of this Agreement is determined by a court to be invalid or unenforceable, such ruling shall not affect the validity or enforceability of other parts of this Agreement, provided that the provisions in Section III herein are still enforceable.

**10. Execution**

This Agreement may be executed by each of the Parties in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, with the same effect as if the Parties had signed the same copy. Signatures may be exchanged by e-mailing signature pages signed in Portable Document Format (PDF), and such signatures shall be valid and have the same effect as originals. The Agreement will become effective on the date the last Party executes it.

**11. No Third Party Rights**

This Agreement shall not confer any rights upon, and is not enforceable by, any persons or entities besides the Parties.

WHEREFORE, it is so agreed, and the following signatures are affixed hereto on  
this 7<sup>th</sup> day of January, 2019.

LIBERTY MUTUAL FIRE INSURANCE COMPANY AND LIBERTY MUTUAL  
INSURANCE COMPANY

BY:   
Brian Levy, Chief Product Officer

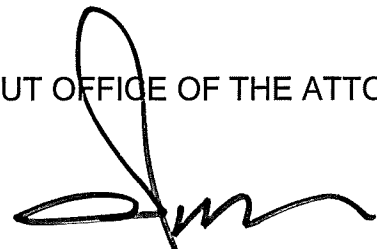
CONNECTICUT DEPARTMENT OF CONSUMER PROTECTION

BY:   
Michelle H. Seagull, Commissioner

CONNECTICUT INSURANCE DEPARTMENT

BY:   
Timothy J. Curry, Deputy Insurance Commissioner

CONNECTICUT OFFICE OF THE ATTORNEY GENERAL

BY:   
George Jepsen, Attorney General

## APPENDIX A PROGRAM TERMS

The following is an outline of the program ("Liberty Benefit Program") that Liberty has agreed to establish for the purpose of supplementing the financial assistance provided to certain Liberty insureds by the Connecticut Foundations Solutions Indemnity Company (CFSIC).

1. The provision of such supplemental assistance is based on assumptions regarding the CFSIC program. The CFSIC program and Guidelines being subject to change, Liberty reserves the right, subject to approval by the State, to make reasonable modifications to the Liberty Benefit Program in response to and consistent with any such changes. The assumptions upon which the Liberty Benefit Program is based include:
  - a. The per-home benefit offered by CFSIC will be based on objective unit costs set forth in the CFSIC Guidelines. Hereinafter the work for which CFSIC benefits are potentially payable is referred to as the "CFSIC Work."
  - b. CFSIC benefits will be paid to the contractor performing the CFSIC Work on behalf of the home owner(s).
  - c. With the possible exception of the initial payment, CFSIC payment will be only for completed work.
  - d. Once CFSIC has issued payment for the full per-home benefit from CFSIC, CFSIC will, upon request, provide the owner(s) of the home with documentation that includes:
    - o a stamped copy of the contract upon which payment of the CFSIC benefit was based;
    - o certification that the full CFSIC per-home benefit has been paid;
    - o the amount CFSIC paid; and
    - o documentation identifying the work for which the CFSIC payment(s) were made.
  - e. The per-home CFSIC benefit available to homeowners who are eligible to enroll in, enroll in or actually participate in the Liberty Benefit Program will be calculated in the same manner as the per-home benefit available to all other homeowners. The CFSIC benefit will not be reduced based on eligibility to enroll in, enrollment in or actual participation in the Liberty Benefit Program. In the event that: (a) CFSIC modifies its Program or Guidelines to reduce the benefit available from CFSIC based on the Liberty Benefit Program; and (b) the Parties cannot agree on reasonable modifications to the Program Terms that are designed to address such modification to the CFSIC Program or Guidelines, the Parties' agreement memorialized in the Memorandum of Agreement shall terminate.
2. Liberty's agreement to establish the Liberty Benefit Program is subject to the following:

- a. Liberty will set aside \$7,000,000 for the Liberty Benefit Program.
- b. The total of the benefits provided under the Liberty Benefit Program is limited to, and will not exceed, \$7,000,000.
- c. Liberty will administer the Liberty Benefit Program at its own expense.
- d. The maximum per-home potential Liberty Benefit for current insureds (defined below) of Liberty will be \$25,000.
- e. The maximum per-home potential Liberty Benefit for past insureds (defined below) of Liberty will be \$10,000.
- f. For purposes of this Agreement:
  - o "current insured" means present owner(s) of an affected home insured under a Liberty policy that: (a) was issued to the owner(s); (b) was in effect on the date the Liberty Benefit Program was announced; and (c) has not since ceased to be in effect;
  - o "past insured" means present owner(s) of an affected home that: (a) was insured under a Liberty policy that was issued to the owner(s); and (b) either was not in effect on the date the Liberty Benefit Program was announced or has since ceased to be in effect.
- g. The Liberty Benefit will be paid to the contractor performing the work on behalf of the owner(s) of the home.
- h. The Liberty Benefit will be paid only for completed work.
- i. The Liberty Benefit must be applied only to (and in the following order to): first, CFSIC Work for which CFSIC did not issue full payment (if any); second, repair of any Dwelling damage arising from the CFSIC Work or the concrete problem for which CFSIC did not issue full payment (if any); and third, repair of any Other Structure damage arising from the CFSIC Work or the concrete problem for which CFSIC did not issue full payment (if any).
- j. The amount of the Liberty Benefit payment will be determined in the first instance by Liberty in accordance with these Program Terms. If the enrollee(s) dispute the determination of their Liberty Benefit payment, they will be required to notify Liberty in writing within 30 days of receiving a letter from Liberty informing them of their Liberty Benefit payment amount, and provide any written documentation to support their position. Within 14 days of receipt of the letter from the enrollee(s), Liberty will respond and advise if it has made any change to its determination of the Liberty Benefit payment amount. If the enrollee(s) continue to disagree with Liberty's determination, they have two options: (1) they may withdraw from the Liberty Benefit Program; or (2) within 30 days of the date of the letter sent by Liberty responding to the dispute, the enrollee(s) may request that the CID resolve the dispute. The CID will then review submissions in writing by the enrollee(s) and Liberty, and make a final, binding decision within 30 days regarding the amount of the Liberty Benefit payment. If the dispute is submitted to the CID, there shall be no further review permitted and the enrollee must either accept the CID's final determination and sign the release attached as Exhibit B, or elect not to receive any funds from the Liberty Benefit Program.

- k. The Liberty Benefit Program will expire on the earlier of: (a) the time at which the total benefits provided under the Liberty Benefit Program reaches \$7,000,000; and (b) the date on which the existence of CFSIC is terminated by law. No further benefit payments will be made thereafter.
- l. To the extent that, at the time the Liberty Benefit Program expires, the total benefits that have been provided under the Liberty Benefit Program has not reached \$7,000,000, Liberty will deposit the amount, if any, of the \$7,000,000 that remains as directed by the Commissioner of the Department of Insurance, after consultation with the Attorney General and the Commissioner of the Department of Consumer Protection, for any purpose related to the crumbling foundation problem.
- m. Liberty insureds who participate in the Liberty Benefit Program shall not incur any insurance rate increase as a result thereof.

### 3. Enrolling in the Liberty Benefit Program

- a. In order for the owner(s) of an affected home to be eligible to enroll and potentially participate in the Liberty Benefit Program, the home must be, or have formerly been, insured under a policy Liberty issued to the owner(s) of the home that was in effect at a time prior to the date on which the Liberty's Benefit Program is announced.
- b. In order for the owner(s) of a home to be eligible to enroll and potentially participate in the Liberty Benefit Program, the owner(s) of the home cannot previously have obtained a judgment against Liberty or entered into a settlement agreement with Liberty regarding claims against Liberty related to the presence of pyrrhotite in their concrete foundation.
- c. The enrollment period will open on 1/31/19 (or, if later, the date on which the CFSIC program is operational). The following will be required in order to enroll:
  - o name(s) of home owner(s);
  - o address of the insured Dwelling;
  - o policy number of the Liberty policy that: (a) was issued to the home owner(s); (b) insures or previously insured the Dwelling; and (c) was in effect at a time prior to the date of the announcement of the Liberty Benefit Program;
  - o documentation demonstrating enrollment in CFSIC (details to be determined).

### 4. In order to qualify for a Liberty Benefit, enrollee(s) must satisfy the following requirements in addition to the requirements set forth in paragraph 3 above and only these requirements:

- a. Enrollee(s) must have qualified for and have had the full benefit available from CFSIC paid;
- b. Enrollee(s) must provide Liberty with the required CFSIC documentation

- and work completion documentation;
- c. Enrollee(s) must execute the release attached as Exhibit B of all claims against Liberty related to the presence of pyrrhotite in their concrete foundation and/or the issuance of policy forms including any Additional Coverage for Collapse;
  - d. To the extent that enrollee(s) have attempted to assign or otherwise transfer any claim(s) against Liberty related to the presence of pyrrhotite in their concrete foundation, the third party must similarly release any such claims (Liberty does not consent to any such assignment or concede that any of its insureds have the right to assign or transfer their claims; any purported assignee or transferee cannot receive benefits under the Liberty Benefit Program unless Liberty consents thereto in its sole discretion);
  - e. The total amount of per-home financial assistance provided to enrollee(s) from CFSIC, Liberty and any other source(s) (including but not limited to payments made by any other insurer in connection with an insurance claim) will not exceed 100% of costs incurred to: (a) remove and replace the concrete foundation; (b) repair any damage to the Dwelling and/or Other Structures resulting from the removal/replacement of the concrete foundation; and (c) repair any damage to the Dwelling and/or Other Structures otherwise caused by the presence of pyrrhotite in the concrete foundation.
  - f. In the event that enrollee(s) qualify for assistance from source(s) other than CFSIC and Liberty, the Liberty Benefit payment comes last except when:
    - o the other assistance is to cover costs that, while incurred due to the presence of pyrrhotite in the enrollee(s)' concrete foundation, are not included in paragraph 4(e) above, or
    - o the enrollee(s) are current insured(s), the other source of assistance is a prior insurer of the enrollee(s), and the other assistance is available to the enrollee(s) pursuant to a benefit program established by that insurer subject to terms equivalent to those that apply to the Liberty Benefit program.

In such cases, the Liberty Benefit payment will come before the payment by the other source of assistance.

**APPENDIX B**

**LIBERTY BENEFIT PROGRAM RELEASE AGREEMENT**

Homeowner(s): \_\_\_\_\_

Insured Property: \_\_\_\_\_

Homeowners' Insurer(s): \_\_\_\_\_

Liberty Benefit Amount: \_\_\_\_\_

This Liberty Benefit Program Release Agreement is made and entered into by and between the Homeowner(s) (listed above) and Homeowners' Insurer(s) (listed above).

**I. DEFINITIONS**

1. **"Agreement"** means this Liberty Benefit Program Release Agreement including its Definitions, Recitals, Undertakings, Representations and Warranties, and Terms and Conditions.

2. **"Liberty"** means, collectively, Homeowners' Insurer(s) and all of its or their respective past, present and future officers, directors, principals, shareholders, agents, representatives, employees, attorneys, parents, subsidiaries, affiliates, predecessors, successors and assigns.

3. **"Party" or "Parties"** means Homeowner(s) and Liberty.

4. **"Claims"** means any and all past, present and/or future claims, demands, obligations, requests, suits, actions, rights of action, liabilities, losses, damages, liens, administrative proceedings, administrative remedies, governmental actions, settlements and causes of action, at law, equity or otherwise, whether arising out of tort, contract,

statute, regulation, assignment, subrogation or otherwise, including but not limited to those for damage to real or personal property, personal injury, pain and suffering, mental anguish, emotional distress, lost wages or income, loss of earning capacity, loss of property, loss of use, diminution in value, additional living expense, loss of rents, consequential loss, bad faith, punitive or exemplary damages, interest, expert costs, contractors' costs, attorneys' fees or any other damage, loss, cost or expense of any kind or nature whatsoever, whether known or unknown, filed or unfiled, asserted or as yet unasserted, claimed or unclaimed, which exist or may in the future exist.

5. For purposes of this Agreement only, "concrete foundation" includes, where applicable, concrete foundation walls (also known as basement walls, house foundation walls or garage foundation walls), concrete floor slabs, concrete footings and all other concrete items.

## **II. RECITALS**

WHEREAS, Homeowners' own the Insured Property identified above;

WHEREAS, the concrete foundation of the Insured Property has deteriorated due to the presence of pyrrhotite;

WHEREAS, pursuant to General Statutes § 38a-9lv, the Connecticut Foundation Solutions Indemnity Company (hereinafter "CFSIC") has been established as a captive insurance company for the public purpose of providing financial assistance to owners of residential buildings with concrete foundations that have deteriorated due to the presence of pyrrhotite;



WHEREAS, Liberty has established the Liberty Benefit Program pursuant to an agreement with the State of Connecticut, for the purpose of providing certain Liberty insureds who receive financial assistance from CFSIC and who elect to participate in the Liberty Benefit Program with certain financial assistance additional to that provided by CFSIC, in exchange for execution by the Homeowner(s) of this Agreement;

WHEREAS, the Insured Property is or was insured under the following policies (hereinafter, collectively, the "Policies") issued by Homeowners Insurer;

WHEREAS, Homeowner(s) has enrolled in the Liberty Benefit Program;

WHEREAS, it has been determined that, under the terms of the Liberty Benefit Program, Homeowner(s) is eligible for a Liberty Benefit in the amount of the Liberty Benefit Amount;

WHEREAS, Homeowner(s) has been offered and has elected to accept a Liberty Benefit in the amount of the Liberty Benefit Amount;

**NOW THEREFORE**, in consideration of the mutual promises contained herein, intending to be legally bound hereby, the Parties agree as follows:

### **III. UNDERTAKINGS**

1. Liberty hereby agrees to provide a Liberty Benefit, in the amount of the Liberty Benefit Amount, for Homeowner(s). As required by the Program Terms, the Liberty Benefit will be paid to Homeowner(s)' contractor on behalf of Homeowner.

2. For and in consideration of Liberty's agreement in Paragraph III(1) to provide the Liberty Benefit, in the amount of the Liberty Benefit Amount, for Homeowner(s), Homeowner(s) hereby releases, remises, acquits and forever discharges

Liberty from any and all Claims arising out of or related to, directly or indirectly, pyrrhotite-related deterioration of the home's concrete foundation, including but not limited to Claims for loss or damage of any type resulting from such deterioration, any and all Claims arising from or relating to Liberty's issuance of property insurance policy forms and/or adjustment and/or denial of property insurance claims to the extent that such forms and/or adjustments pertain to the existence or nonexistence of coverage for reported pyrrhotite-related deterioration of concrete foundations or for loss or damage of any type resulting from such deterioration under an Additional Coverage for Collapse provision, and also including but not limited to any and all Claims that have been made, or could have been made, under the Policies and/or in any litigation (if any) between Homeowner(s) and Liberty.

3. Homeowner(s) hereby expressly acknowledges that the releases provided for in Paragraph III (2) of this Agreement include, but are not limited to, any and all Claims arising from or related to, directly or indirectly, damages, losses, or injuries that may be unknown, undiscovered and/or unanticipated.

4. Homeowner(s) hereby expressly acknowledges that the releases provided for in Paragraph III (2) of this Agreement include, but are not limited to, any and all Claims arising out of or relating to, directly or indirectly, any allegations of bad faith, unfair claims practices, unfair trade practices and/or any other act or failure to act in connection with issuance of any insurance policy form, claim investigation, claim handling, and/or conduct of any kind in violation of any law, statute, regulation, rule or insurance code provision.

5. To the extent that Homeowner(s) has litigation pending against Liberty arising out of or related to, directly or indirectly, pyrrhotite-related deterioration of the

home's concrete foundation, as part of the release of Liberty provided for herein, Homeowner agrees to dismiss such suit(s), with prejudice, and with each Party to bear its own costs, within ten (10) days of the receipt of the execution of this Agreement.

#### **IV. Representations and Warranties**

1. The Parties each represent and warrant that they are fully authorized to enter into this Agreement. Each individual executing this Agreement represents that he or she has taken all necessary corporate and internal actions to duly approve the making and performance of this Agreement on behalf of the Party the individual represents, that he or she has the authority to enter into this Agreement on behalf of such Party and to bind such Party, and that no further corporate or other internal approval is necessary.

2. Homeowner(s) represents and warrants that, as of the date of this Agreement, no other person or entity is entitled to present any of the Claims released herein and that Homeowner(s) has not assigned, subrogated, conveyed or otherwise transferred and has not attempted or purported to assign, subrogate, convey or otherwise transfer any right extinguished by the releases given in this Agreement to any other person or entity.

3. Homeowner(s) represents and warrants that Homeowner(s) has had an opportunity to consult with counsel of his/her/their choice prior to entering into this Agreement; that Homeowner(s) has read and become familiar with the entire Agreement; and that he/she/they has signed this Agreement of his/her/their own free will intending to be permanently bound by its terms. Homeowner(s) further declares that no promise or representation has been made by Liberty or by anyone acting for it to Homeowner(s) or

to anyone acting for Homeowner(s) except as expressly stated herein; that in entering into this Agreement, Homeowner(s) has relied upon his/her/their judgment; and that Homeowner(s) fully understands that this Agreement extinguishes all Claims directly or indirectly arising from or related to pyrrhotite-related foundation deterioration and/or issuance of policy forms relating to the Additional Coverage for Collapse against Liberty.

## **V. MISCELLANEOUS TERMS AND CONDITIONS**

### **1. Section Headings**

The paragraph headings in this Agreement are for ease of reference only and do not constitute part of this Agreement.

### **2. Governing Law**

This Agreement and all matters relating or pertaining hereto shall be governed and construed by and under the laws of the State of Connecticut. Any litigation regarding this Agreement shall be brought and litigated in the Connecticut Superior Court for the Judicial District of Hartford.

### **3. No Precedent**

This Agreement is not, and shall not be construed as, an admission or concession of liability and/or coverage and/or wrongdoing by Liberty. This Agreement also is not, and shall not be construed to operate as, a waiver of any rights or defenses that Liberty has, had or may have, including without limitation, any rights or defenses under any of the Policies or in any pending litigation. All actions taken or statements made, whether orally or in writing, by the Parties or their representatives relating to their participation in the Agreement, including the development and implementation of the Agreement, shall be

without prejudice or value as precedent and shall not be construed as a standard by which other matters may be judged.

**4. Agreement Not In Violation Of Any Duty**

Nothing in the negotiation or execution of this Agreement or in the performance of this Agreement according to its terms shall be deemed to be or cited as an act of bad faith or a basis for extra-contractual liability or as a violation of any statute, regulation or legal duty.

**5. Not Evidentiary**

No part of this Agreement may be used in any proceeding as evidence of the respective rights, duties or obligations of any of the Parties under the Policies and/or as evidence concerning the interpretation, meaning or existence of the Policies, provided however that this Agreement shall be admissible in any proceeding in connection with or related to the interpretation, validity or enforcement of this Agreement.

**6. Construction**

The language of this Agreement shall be construed as a whole, according to its fair meaning and intent, and not strictly for or against any Party hereto. This Agreement shall be deemed to have been drafted by all Parties to this Agreement, and neither Party nor their respective attorneys shall urge otherwise. This Agreement is not a contract of insurance, and the Parties agree that any special rules of interpretation or construction of insurance contracts shall not apply, but instead only those rules of interpretation or construction of contracts in general shall apply.

**7. Successors**

This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective legal successors and assigns.

**8. Entire Agreement**

This Agreement constitutes all of the agreements between the Parties. Any representations, promises or statements not set forth in this Agreement shall be of no force and effect.

**9. Amendments**

No amendments or variations of the terms of this Agreement or termination of this Agreement shall be valid unless made in writing and signed by all Parties.

**10. Severability**

If any part of this Agreement is determined by a court to be invalid or unenforceable, such ruling shall not affect the validity or enforceability of other parts of this Agreement, provided that the payment and release provisions in Section III herein are still enforceable.

**11. Execution**

This Agreement may be executed by each of the Parties in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, with the same effect as if the Parties had signed the same copy. Signatures may be exchanged by e-mailing signature pages signed in Portable Document Format (PDF) or by facsimile, and such signatures shall be valid and have the same effect as originals. The Agreement will become effective on the date the last Party

executes it.

**12. No Third Party Rights**

This Agreement shall not confer any rights upon, and is not enforceable by, any persons or entities besides the Parties.

**13. Costs**

Each Party is to bear its own attorneys' fees, costs, and expenses arising from the actions of its own counsel in connection with this Agreement, and all matters and documents referred to herein, and for all related matters.

**IN WITNESS WHEREOF, THIS AGREEMENT HAS BEEN READ AND SIGNED IN DUPLICATE ORIGINALS BY THE DULY AUTHORIZED REPRESENTATIVES OF THE PARTIES:**

WITNESSES:

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Print Name

Title \_\_\_\_\_

Sworn to and subscribed before me, Notary Public, at \_\_\_\_\_, on this \_\_\_\_ day of January, 2019.

\_\_\_\_\_  
NOTARY PUBLIC  
My commission expires: \_\_\_\_\_