

2. The Complaint in the Liquidator Action is dated June 11, 2020 and service was admitted by the Settling Officers/Directors as set forth in the Stipulation for Admission of Service, Extension of Time to Answer or Respond and Stay that has been filed in the Liquidator Action.

3. The Liquidator Action has been brought pursuant to SDCL 58-29B-49(13), by which the Liquidator has sole authority to prosecute for the benefit of the Liquidation Estate any action which may exist on behalf of the creditors, members, policyholders, or shareholders of ReliaMax Surety Company (“RSC”) against any officer of the insurer or any other person, and pursuant to SDCL 58-29B-49(19), which states that the Liquidator may “exercise and enforce all the rights, remedies and powers of any creditor, shareholder, policyholder, or member”

4. Pursuant to the above-described statutory authority, the Liquidator has negotiated a separate settlement with the Settling Officers/Directors, the terms of which are contained in a Settlement Agreement (the “D&O Settlement Agreement”), a true executed copy of which is attached hereto as Exhibit 1. As set forth in the D&O Settlement Agreement, Unnamed Officers and Directors, as referenced therein, are included in the settlement even though not named as Defendants.

5. In negotiating and agreeing to this settlement, the Liquidator has taken into consideration the applicable law, disputed and undisputed facts, potential defenses, the costs of litigation and the potential effect on the Liquidator’s claims against the remaining defendant in the Liquidator Action. Based on all these factors, the Liquidator

believes and submits that the settlement described in the D&O Settlement Agreement is fair and reasonable.

6. By the terms of the D&O Settlement Agreement, the settlement cannot be concluded unless the Court enters an Order approving the D&O Settlement Agreement.

7. The requested form of Order Approving Settlement in 32CIV20-000207 is appended hereto as Exhibit C to the D&O Settlement Agreement.

8. The Liquidator respectfully requests that the Court determine that due and proper notice has been given and that the Order in the form appended hereto as Exhibit C to the D&O Settlement Agreement be entered by the Court.

Dated: January 5, 2021

CADWELL SANFORD DEIBERT
& GARRY LLP

By /s/ *SW Sanford*
Steven W. Sanford
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(605) 336-0828
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Pierre, SD 57501
(605) 773-3563
Email: *frank.marnell@state.sd.us*

*Attorneys for Liquidator
of ReliaMax Surety Company*

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true and correct copy of the foregoing was served on January 5, 2021 via Odyssey on the following:

Lisa Harmon [lisa.harmon@state.sd.us]
Frank Marnell [frank.marnell@state.sd.us]
Additional Counsel for Petitioner

Joshua Andersen [jandersen@reliamax.com]
ReliaMax Surety Company

Jeana L. Goosmann [goosmannj@goosmannlaw.com]
Counsel for Key Corp Trust

Jason R. Sutton [jrsutton@boycelaw.com]
Thomas J. Welk [tjwelk@boycelaw.com]
Counsel for Wright-Patt Credit Union Inc.

Dennis Duncan [dduncan@ddlawsd.com]

The same was also served on January 5, 2021 by email and U.S. mail, postage prepaid, on those listed below:

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CADWELL SANFORD DEIBERT
& GARRY LLP

By /s/ *SW Sanford*

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*Attorneys for Liquidator
of ReliaMax Surety Company*

EXHIBIT 1

SETTLEMENT AGREEMENT

THIS AGREEMENT is made and entered into this 4th day of January, 2021 (the “**Effective Date**”) by and among Larry Deiter, Director of the South Dakota Division of Insurance in his capacity as Liquidator of ReliaMax Surety Company (the “**Liquidator**”) and Michael Van Erdewyk, John Van Erdewyk, Bradley Messerli, Mark Payne, Randy Schaefer, and Jim Rickards (the “**Named Defendants**”) (together with the Liquidator the “**Parties**” and each individually a “**Party**”).

WHEREAS:

A. ReliaMax Surety Company (“**RSC**”) was a South Dakota domiciled insurer and a wholly-owned subsidiary of ReliaMax Holding Company, a Delaware corporation (“**RHC**”).

B. RSC became insolvent and, on June 27, 2018, the Circuit Court for the Sixth Judicial Circuit, Hughes County, South Dakota (the “**Liquidation Court**”) entered that certain Order of Liquidation, Judicial Declaration of Insolvency and Injunctive Relief (the “**Liquidation Order**”) in that certain action captioned *State of South Dakota, ex rel. Larry Deiter, Director of Insurance of the State of South Dakota v. ReliaMax Surety Company*, Case No. 32CIV18-125 (the “**Liquidation Proceeding**”).

C. The Liquidator is the duly appointed, authorized and acting liquidator of RSC in the Liquidation Proceeding and is charged and solely empowered under SDCL Chapter 58-29B with administering the assets and liabilities of RSC (the “**Liquidation Estate**”) and, pursuant to SDCL 58-29B-49(13) and -49(19), with asserting and recovering claims for the benefit of the Liquidation Estate on behalf of itself and all policyholders, creditors, or shareholders of RSC or RHC (as shareholder of RSC) (the “**Potential Claimants**”).

D. The Named Defendants were officers and/or directors of RSC and/or RHC during relevant periods prior to the Liquidation Proceeding. Other officers and/or directors of RSC and/or RHC during such periods include: Peter Shaw, Jonathon Albright, Miles Beacom, Sourabh Ahuja, Douglas Ramler, and Bill Kilmer (the “**Unnamed Officers/Directors**”) (together with the Named Defendants the “**Settling Officers/Directors**”).

E. Pursuant to his statutory powers under SDCL Chapter 58-29B, the Liquidator investigated potential claims against the Settling Officers/Directors arising out of their relationship with RSC, RSH and their affiliates, and it ultimately commenced that certain action in the Liquidation Court against the Named Defendants entitled *Larry Deiter, Director of Insurance of the State of South Dakota, as Liquidator of ReliaMax Surety Company in Liquidation v. Michael Van Erdewyk, John Van Erdewyk, Bradley*

Messerli, Mark Payne, Randy Schaefer, and Jim Rickards, Individually and as the Directors and Officers of ReliaMax Surety Company and ReliaMax Holding Company; and RSM US LLP (the “Liquidator’s Suit”).

F. Counsel for all parties in the Liquidator’s Suit have entered into a Stipulation for Admission of Service, Extension of Time to Answer or Respond and Stay dated June 20, 2020.

G. The Liquidator is entering into a separate settlement agreement with RSM US LLP (“RSM”) (the “RSM Settlement”) to resolve claims that were or could have been made against RSM in the Liquidator’s Suit.

H. Before entry of the Liquidation Order, RHC procured and was a party to, for the benefit of itself, its subsidiaries, and the directors and officers of RHC and its subsidiaries, including but not limited to RSC, the following insurance policies providing director’s and officer’s liability coverage to Settling Officers/Directors: (1) policy No. IFP-0000069-02 issued by Pioneer Special Risk Insurance Services, Inc. (“Pioneer” and the “Pioneer Policy”); and (2) policy No. ELU150747-17 issued by XL Specialty Insurance Company (“XL” and the “XL Policy”). The details of the Pioneer Policy and the XL Policy are summarized in Declaration Pages attached hereto as **Exhibits A and B**. Pioneer and XL are referred to collectively in this Agreement as the “Insurers.”

I. In the Liquidator’s Suit, the Liquidator alleges that by procedures or actions undertaken and/or approved or neglected by the Named Defendants: (i) RSC’s financial statements showed that RSC was solvent when it was not; (ii) assets and income of RSC were loaned or transferred to RHC at a time when RHC had no capacity for repayment; (iii) conflicts of interest resulted in using RSC assets to fund other RHC investments; (iv) unwarranted officer bonuses were paid while RSC and RHC were insolvent; and, (v) RSC and RHC failed to take advantage of capitalization opportunities that may have restored RSC to solvency (together the “Alleged Misconduct”). As a result of these actions or inactions, the Liquidator claims the Named Defendants are liable for an amount of not less than \$20 million.

J. The Named Defendants deny the Alleged Misconduct and are prepared to defend themselves on the merits, but they recognize the Liquidator’s claims are fact-intensive, the outcome of the Liquidator’s Suit is uncertain, and their potential exposure is substantial and appears to vastly exceed available insurance coverage.

K. On behalf and in the name of RSC, the Liquidator tendered the above-described claims against the Settling Officers/Directors to the Insurers and demanded that they pay the limits of their respective policies to the Liquidator.

L. In response to the Liquidator's demand, Pioneer accepted its responsibility to defend and indemnify Settling Officers/Directors under the Pioneer Policy and has conditionally agreed to tender the remaining limits of the Pioneer Policy to the Liquidator, subject to the terms and conditions of this Agreement. In contrast, XL denied coverage under the XL Policy, refuses to defend and indemnify the Settling Officers/Directors for claims asserted by the Liquidator, and is engaged in litigation with the Liquidator over XL's rights and obligation to cover the Settling Officers/Directors in that certain action captioned *Larry Deiter, Director of Insurance of the State of South Dakota, as Liquidator of ReliaMax Surety Company in Liquidation v. XL Specialty Insurance Co.*, United States District Court for the District of South Dakota, Central Division, Case No. 20-cv-3009-RAL.

M. The Named Defendants are concerned that should judgment be entered against them in the Liquidator's Suit, the nature and extent of their liability may be such that should XL not defend and indemnify them under the XL policy, the Named Defendants would not be able to pay such damages.

N. In light of the declination of coverage by XL under the XL Policy, the substantial cost and burden of ongoing litigation, and uncertainties surrounding any potential damage awards, the Parties wish to resolve their differences and terminate the Liquidator's Suit pursuant to *Miller v. Shugart*, 316 N.W. 2d 729 (Minn. 1982) and its progeny, as recognized by the South Dakota Supreme Court in *Western Agricultural Ins. Co. v. Arbab-Azzein*, 940 N.W.2d 865 (S.D. 2020).

O. XL was advised that the Parties were considering a *Miller v. Shugart* settlement and was invited to participate in this settlement, and has failed and apparently refused to do so.

P. The parties have now reached an agreement to settle the Liquidator's Suit on the terms and conditions described below.

NOW, THEREFORE, intending to be legally bound, and for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Liquidator and the Named Defendants agree as follows:

1. **Recitals.** The Parties acknowledge the accuracy of the Recitals above and incorporate them herein by reference.

2. **Court Orders.**

2.1 *Court Approval.* This Agreement is subject to and not enforceable by or against any Party unless and until the Liquidation Court enters an Order ("**Court Approval**") (i) approving this Agreement; (ii) finding it to be fair and reasonable; (iii)

holding that the Liquidator is solely authorized to pursue all the claims that were or could have been alleged against Settling Officers/Directors in their capacities as officers or directors of RSC or RHC, including but not limited to those that were asserted in the Liquidator's Suit; (iv) determining this Agreement is fully binding and enforceable against all persons and entities for whom the Liquidator is authorized to act under Chapter 58-29B, including all Potential Claimants; and (v) enjoining all such persons or entities from pursuing any claim against the Settling Officers/Directors and any other insured under the Pioneer Policy or the XL Policy, the Insurers under the Pioneer Policy or the XL Policy, and all other persons or entities described in Section 7 of this Agreement. The Liquidator further covenants, on behalf of itself and any Potential Claimants, not to sue any Defendant or to assist any person in commencing or maintaining any suit relating to any settled claims against any Defendant, including any derivative suit.

2.2 *Bar Order.* In conjunction with their request for Court Approval, the Parties will stipulate to and seek an order from the Liquidation Court (the "**Bar Order**") confirming the Liquidator and any Potential Claimants shall be deemed by operation of law to have fully, finally, and forever released, relinquished, waived, discharged, and dismissed, each and every claim against the Settling Officers/Directors, and shall forever be enjoined and barred from prosecuting any and all such claims. The Bar Order shall be stipulated to as set forth in **Exhibit C** of this Agreement and permanently bar, enjoin and restrain any person or entity from commencing, prosecuting, or asserting any Barred Claims (as defined in the Bar Order) against the Settling Officers/Directors and any other insured under the Pioneer Policy or XL Policy, whether as claims, cross-claims, counterclaims, third-party claims, or otherwise, and whether asserted in the Liquidator's Suit or in any other judicial, administrative or arbitration proceeding in any jurisdiction.

3. **No Admissions Concerning the Liquidator's Suit.** Nothing in this Agreement shall constitute an admission of legal liability by the Named Defendants or a waiver of any defense that may otherwise be available to the Named Defendants in the Liquidator's Suit.

4. **Settlement Amount.**

4.1 *Initial Amount.* In full settlement of all claims that were or could have been asserted in the Liquidator Suit, the Named Defendants agree to pay the Liquidator jointly and severally the sum of \$10,000,000 (the "**Initial Amount**"), inclusive of costs and disbursements, and subject to all terms and conditions of this Agreement.

4.2 *Insurance Limits.* As of the Effective Date, the Parties acknowledge the remaining limits of the Pioneer Policy are approximately \$2,725,000, and the remaining limits of the XL Policy are \$2,000,000. For purposes of this Agreement only,

the separate claims of the Liquidator in the Liquidator's Suit shall be considered Interrelated Wrongful Acts (as defined under the Pioneer Policy and the XL Policy), such that no insurance limits shall be reinstated for such claims after any payments under Section 4.5 of this Agreement.

4.3 *Potential Reduction.* Within 10 days of Court Approval, entry of the Bar Order, and completion of all procedures required under this Agreement, Pioneer shall tender and pay to the Liquidator the entirety of the then remaining limits under the Pioneer Policy, which will serve as a dollar for dollar reduction of the Initial Amount payable by the Named Defendants under Section 4.1. If XL makes a binding written agreement to tender and pay the entire limits of the XL Policy to the Liquidator within 21 days of the Effective Date of this Agreement, then the Initial Amount shall be reduced to the amount of the payments the Liquidator receives from Pioneer and XL under this Section 4.3.

4.4 *Insurer Noncompliance.* In the event the Insurers fail to make the payments required or allowed under Section 4.3, then upon Court Approval of this Agreement, the Liquidator may pursue the remedies described in Section 6. Subject to the terms of this Agreement, the Liquidator and the Settling Officers/Directors expressly preserve their claims against the Insurers.

4.5 *No Collection from Settling Officers/Directors.* The Liquidator agrees that it will in no way seek to collect any amount under this Agreement from the Settling Officers/Directors personally, or from any of their heirs, beneficiaries, executors, agents, representatives, administrators, predecessors, successors, or assigns, including by way of entering a judgment against any of the Settling Officers/Directors. Nor shall any obligation in this Agreement become a lien upon any real property or other assets owned by the Settling Officers/Directors.

5. **No Contribution or Indemnity from RSM.** The Named Defendants acknowledge that with respect to certain claims in the Liquidator's Suit against the Named Defendants, RSM is not a joint tortfeasor or claimed to be a joint tortfeasor. The Named Defendants further acknowledge that the amount payable hereunder takes into account the liability of RSM as to the claims asserted in the Liquidator's Suit against RSM and that no portion of the amount payable hereunder shall in any way or to any extent be the responsibility of RSM. Particularly since a separate settlement with RSM is being accomplished contemporaneously with this settlement, the Named Defendants shall have no claim against RSM for contribution or indemnity; and all such claims are hereby waived.

6. **Remedies Against Defaulting Insurer.**

6.1 *Remedies Against Defaulting Insurer.* In the event that Pioneer and/or XL fail to fully comply with Section 4.3 above, then, upon Court Approval, the Liquidator may exercise as against such defaulting insurer all rights and remedies available to the Liquidator under this Agreement, the Liquidation Order, SDCL Chapter 58-29B, and any and all rights and remedies of the Named Defendants as insureds under the Pioneer Policy or the XL Policy, which the Named Defendants hereby assign to the Liquidator. The Liquidator's ultimate recovery against Pioneer and/or XL shall constitute a full and complete payment and satisfaction of all liability of the Settling Officers/Directors to the Liquidator hereunder.

6.2 *Good Faith.* To the extent reasonably required, each Named Defendant agrees to cooperate in good faith with the Liquidator's pursuit of remedies against Pioneer or XL under Section 6.1

6.3 *Judgment.* In the event the Liquidator is entitled to pursue the remedies in section 6.1, for such purpose judgment may be entered against the Named Defendants for the Initial Amount, less any payment received from under the Pioneer Policy, made expressly subject to the limitations in Section 4.5.

7. **Full and Final Release.** Except for performance of this Agreement, and expressly conditioned upon Court Approval, the Liquidator, for himself and on behalf of all persons and entities whose rights and claims with respect to RSC the Liquidator is authorized to represent and pursue under SDCL Chapter 58-29B, including but not limited to Potential Claimants, hereby fully and forever releases and discharges the Settling Officers/Directors and the Insurers that make the payments contemplated in Section 4.3 of this Agreement, from any and all claims, actions, liability, damages, penalties, fees, costs and expenses, including attorney's fees and expenses, arising directly or indirectly from any role or relationship of the Settling Officers/Directors with RSC and any affiliate of RSC, including but not limited to RHS, and including, without limitation, the Alleged Misconduct and those claims which were or could have been asserted by existing or amended pleadings in the Liquidator's Suit. The Liquidator will not pursue any administrative enforcement proceedings seeking removal, prohibition, civil money penalties or restitution, or take any other actions seeking relief against the Settling Officers/Directors, or their lawful spouses or domestic partners, arising out of or relating to their conduct as officers, directors, governors, or employees of RSC or any affiliate of RSC.

8. **Disposition of the Liquidator's Suit.** The Summons and Complaint in the Liquidator's Suit shall be promptly filed, but the Named Defendants shall not be obligated to serve or file any responsive pleading. Upon full payment of amounts to be paid to the Liquidator that entitle the Named Defendants to a complete satisfaction hereunder, the Liquidator shall dismiss the Liquidator's Suit on its merits, with prejudice and without costs to any party.

9 **Prohibition on Further Prosecution.** In the event that this Agreement or any part of this Agreement is set aside or vacated for any reason, or deemed to be void, unreasonable, collusive or in bad faith, or the Liquidator's Suit is revived or reinstated, it is expressly agreed and understood that notwithstanding such determination, as of the Effective Date of this Agreement, any claims the Liquidator had or may have against the Settling Officers/Directors are fully and finally resolved by this Agreement and the Liquidator shall have no past, present or future claims, demands, obligations, damages, actions, causes of action or suits at law or in equity or any other claims whatsoever of any kind or nature against the Settling Officers/Directors for matters that were or could have been alleged in the Liquidator's Suit. In the event of such a determination, the Liquidator shall promptly file with the Court a dismissal with prejudice of the Liquidator's Suit, without fees or costs to any party. It is further understood and agreed that the Settling Officers/Directors may assert this Agreement as a complete bar to prosecution of any and all claims that were or could have been alleged in the Liquidator's Suit, now or in the future, in the Liquidator's Suit or any other proceeding. The benefits of this Section shall not be available to any Defendant who fails to reasonably cooperate with the Liquidator in implementing the essential purposes of this Agreement.

10. **No Warranty as to Outcome.** The Liquidator and Named Defendants acknowledge the Named Defendants are not warranting or guaranteeing that the Liquidator will be successful in collecting anything from the Insurers and the Liquidator is not relying on any representation from the Named Defendants. The Liquidator expressly agrees to assume all risks attendant to the prosecution of the actions contemplated by this Agreement. The Liquidator is satisfied that it has all information necessary to make an informed decision in this matter.

11. **Reasonable - Good Faith Settlement.** This Agreement is the product of arms-length negotiations and is entered into in good faith based on a reasonable assessment of the law and facts, including potential liability and damages as well as the risk of personal liability for the Named Defendants. The Parties warrant that no promise or inducement has been offered except as set forth in this Agreement, and that they are legally competent to execute this document and accept full responsibility therefore and assume the risk of any mistake of fact as stated herein. The Parties acknowledge that they have carefully reviewed this document, know its contents, and have signed it freely and voluntarily after having an opportunity to review it with their respective counsel.

12. **Indemnity and Hold-Harmless Agreement.** In the event that XL or Pioneer make a claim against the Settling Officers/Directors with respect to the XL Policy or Pioneer Policy, the Liquidator agrees to defend, indemnify and hold the Settling Officers/Directors harmless for any and all such claims and, if appropriate, promptly move to substitute the Liquidator for the Settling Officers/Directors as a party in any related proceedings.

13. **General Terms.**

13.1 *Attorneys' Fees and Costs.* Each Party shall bear its own attorneys' fees and costs incurred in connection with the Liquidator's Suit and all matters arising in connection with this Agreement.

13.2 *Successors and Assigns.* This Agreement shall be binding upon and inure to the benefit of the Parties hereto, their partners, principals, officers, employees, agents, and insurers, and their respective successors and assigns.

13.3 *Entire Agreement.* This Agreement constitutes the entire agreement of the Parties hereto as to the subject matter hereof. The undersigned acknowledge that there are no communications or oral understandings contrary to, different than, or that in any way restrict this Agreement, and that all prior agreements or understandings within the scope of the subject matter of this Agreement are, upon the execution and delivery of this Agreement, superseded, null, and void.

13.4 *No Third Party Rights.* With the exception of the release contained in Paragraph 7 and the prohibitions contained in the Bar Order in favor of the Unnamed Officers/Directors, this Agreement is intended to establish rights only of the Parties hereto. No other person or entity other than the Parties shall have any legally enforceable right under this Agreement.

13.5 *Amendments.* No waiver, modification, or amendment of the terms of this Agreement shall be valid or binding unless made in writing and signed by the Parties, and then only to the extent as set forth in such written waiver, modification, or amendment.

13.6 *Choice of Law and Consent to Jurisdiction.* This Agreement shall be governed by, construed, and enforced in accordance with, the laws of the State of South Dakota, without regard to its conflict of law principles. The Parties agree that any litigation or proceeding to enforce the provisions of this Agreement shall be brought before the Sixth Judicial Circuit Court, Hughes County, South Dakota.

13.7 *Neutral Interpretation.* In the event any dispute arises among the Parties with regard to the interpretation of any term of this Agreement, all of the Parties shall be considered collectively to be the drafting party and any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall be inapplicable.

13.8 *Advice of Counsel.* The Parties acknowledge that they have been represented by counsel of their own choice in the negotiations leading up to the execution of this Agreement and that they have read this Agreement and have had the opportunity

to receive an explanation from legal counsel regarding the legal nature and effect of the same, and each Party has had it fully explained to them by its counsel and understands the terms and provisions of this Agreement and its nature and effect. Each Party further represents that they are entering into this Agreement freely and voluntarily, relying solely upon the advice of its own counsel, and not relying on the representation of any other Party or of counsel for any other Party.

13.9 *Acknowledgment.* This Agreement was executed after arm's length negotiations between the Parties and their respective counsel, and reflects the conclusion of each Party that this Agreement is in the best interests of such Party.


13.10 *Divisions and Headings.* The divisions of this Agreement into sections and the use of captions and headings in connection therewith are solely for convenience and shall have no legal effect in construing the provisions of this Agreement.

13.10 *Counterparts.* This Agreement may be executed in separate counterparts and by separate signature pages and each counterpart with attached executed signature pages shall constitute an executed original of this Agreement and shall be effective on the date above stated.

SIGNATURE PAGE

The undersigned hereby executes that certain Settlement Agreement by and among Larry Deiter, Director of the South Dakota Division of Insurance in his capacity as Liquidator of ReliaMax Surety Company and Michael Van Erdewyk, John Van Erdewyk, Bradley Messerli, Mark Payne, Randy Schaefer and Jim Rickards. After this signature page is executed, it may be attached to the original or original counterpart of that Settlement Agreement to the same effect as though the signature page was so attached at the time of its execution.

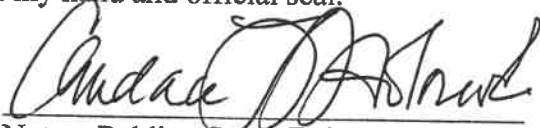
Dated: 1/5/21


Larry Deiter, Director of the South
Dakota Division of Insurance in his
capacity as Liquidator of ReliaMax
Surety Company

STATE OF SOUTH DAKOTA)
: SS
COUNTY OF HUGHES)

On this the 5th day of January, ²⁰²¹ ~~2020~~ ^{att}, before me, the undersigned officer, personally appeared Larry Deiter, who acknowledged himself to be the Director of the South Dakota Division of Insurance, and that he, in his capacity as Liquidator of ReliaMax Surety Company, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing by himself in his capacity as Liquidator.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.


Notary Public - South Dakota
My commission expires: 8-29-2022

SIGNATURE PAGE

The undersigned hereby executes that certain Settlement Agreement by and among Larry Deiter, Director of the South Dakota Division of Insurance in his capacity as Liquidator of ReliaMax Surety Company and Michael Van Erdewyk, John Van Erdewyk, Bradley Messerli, Mark Payne, Randy Schaefer and Jim Rickards. After this signature page is executed, it may be attached to the original or original counterpart of that Settlement Agreement to the same effect as though the signature page was so attached at the time of its execution.

Dated: 12-18-20

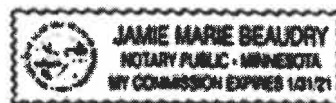
Michael Van Erdevyk
Michael Van Erdevyk

STATE OF Minnesota)
COUNTY OF Scott) ss

On this the 18th day of December, 2020, before me, the undersigned officer, personally appeared Michael Van Erdewyk, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public
My commission expires: 01/31/2021



SIGNATURE PAGE

The undersigned hereby executes that certain Settlement Agreement by and among Larry Deiter, Director of the South Dakota Division of Insurance in his capacity as Liquidator of ReliaMax Surety Company and Michael Van Erdewyk, John Van Erdewyk, Bradley Messerli, Mark Payne, Randy Schaefer and Jim Rickards. After this signature page is executed, it may be attached to the original or original counterpart of that Settlement Agreement to the same effect as though the signature page was so attached at the time of its execution.

Dated: 1-5-21


John Van Erdewyk

STATE OF South Dakota)
: SS
COUNTY OF Davison)

On this the 5 day of January, 2020, before me, the undersigned officer, personally appeared John Van Erdewyk, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.




Notary Public
My commission expires: 6-7-25

SIGNATURE PAGE

The undersigned hereby executes that certain Settlement Agreement by and among Larry Deiter, Director of the South Dakota Division of Insurance in his capacity as Liquidator of ReliaMax Surety Company and Michael Van Erdewyk, John Van Erdewyk, Bradley Messerli, Mark Payne, Randy Schaefer and Jim Rickards. After this signature page is executed, it may be attached to the original or original counterpart of that Settlement Agreement to the same effect as though the signature page was so attached at the time of its execution.


Dated: 12/27/2020

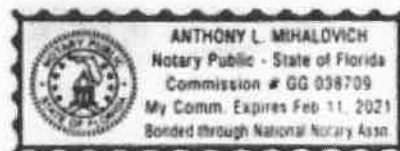

Bradley Messerli

STATE OF Florida)
COUNTY OF Lee) : SS

On this the 27 day of December, 2020, before me, the undersigned officer, personally appeared Bradley Messerli, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.



Notary Public
My commission expires: Feb. 11, 2021



SIGNATURE PAGE

The undersigned hereby executes that certain Settlement Agreement by and among Larry Deiter, Director of the South Dakota Division of Insurance in his capacity as Liquidator of ReliaMax Surety Company and Michael Van Erdewyk, John Van Erdewyk, Bradley Messerli, Mark Payne, Randy Schaefer and Jim Rickards. After this signature page is executed, it may be attached to the original or original counterpart of that Settlement Agreement to the same effect as though the signature page was so attached at the time of its execution.

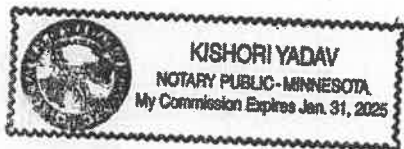
Dated: 12/19/2020


Mark Payne

STATE OF Minnesota)
COUNTY OF Hennepin) : SS

On this the 19th day of December, 2020, before me, the undersigned officer, personally appeared Mark Payne, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

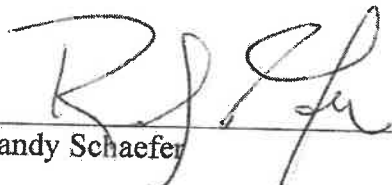


Notary Public
My commission expires: 01/31/2025

SIGNATURE PAGE

The undersigned hereby executes that certain Settlement Agreement by and among Larry Deiter, Director of the South Dakota Division of Insurance in his capacity as Liquidator of ReliaMax Surety Company and Michael Van Erdewyk, John Van Erdewyk, Bradley Messerli, Mark Payne, Randy Schaefer and Jim Rickards. After this signature page is executed, it may be attached to the original or original counterpart of that Settlement Agreement to the same effect as though the signature page was so attached at the time of its execution.

Dated: 12-28-2020




Randy Schaefer

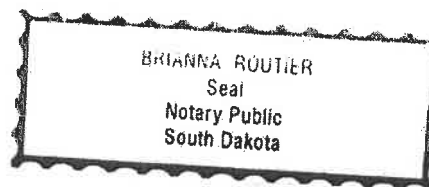
STATE OF ^{SL} ~~La~~ South Dakota
COUNTY OF Lake) : SS

On this the ____ day of _____, 2020, before me, the undersigned officer, personally appeared Randy Schaefer, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.



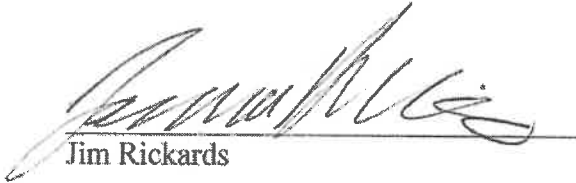
Notary Public
My commission expires: 10-14-23



SIGNATURE PAGE

The undersigned hereby executes that certain Settlement Agreement by and among Larry Deiter, Director of the South Dakota Division of Insurance in his capacity as Liquidator of ReliaMax Surety Company and Michael Van Erdewyk, John Van Erdewyk, Bradley Messerli, Mark Payne, Randy Schaefer and Jim Rickards. After this signature page is executed, it may be attached to the original or original counterpart of that Settlement Agreement to the same effect as though the signature page was so attached at the time of its execution.


Dated: DECEMBER 21, 2020


Jim Rickards

STATE OF New Hampshire)
: SS
COUNTY OF Rockingham

On this the 21st day of December, 2020, before me, the undersigned officer, personally appeared Jim Rickards, known to me or satisfactorily proven to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.


Notary Public
My commission expires: Dec 5, 2023

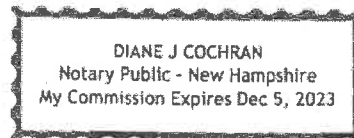


EXHIBIT A

PIONEER

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DECLARATIONS

International Management Liability Policy

THIS IS A CLAIMS MADE AND REPORTED POLICY. SUBJECT TO ITS TERMS, THIS POLICY APPLIES ONLY TO ANY CLAIM FIRST MADE, ANY INVESTIGATION FIRST COMMENCED AND ANY INQUIRY FIRST REPORTED DURING THE POLICY PERIOD PROVIDED:

- (1) SUCH CLAIM OR INVESTIGATION IS REPORTED TO UNDERWRITERS IN ACCORDANCE WITH THE TERMS OF CLAUSE VI.A.; AND
- (2) SUCH INQUIRY IS FIRST RECEIVED BY THE INSURED PERSONS ON OR AFTER THE DATE SET FORTH IN ITEM J. OF THE DECLARATIONS.

AMOUNTS INCURRED AS COSTS, CHARGES AND EXPENSES AND INQUIRY COSTS SHALL REDUCE AND MAY EXHAUST THE LIMIT OF LIABILITY OR THE SUBLIMIT OF LIABILITY, IF APPLICABLE, AND ARE SUBJECT TO THE RETENTIONS. THIS POLICY DOES NOT PROVIDE FOR ANY DUTY BY UNDERWRITERS TO DEFEND ANY OF THE INSUREDS.

These Declarations along with the completed and signed Application and the Policy with endorsements shall constitute the contract between the Insureds and Underwriters.

Policy No: IFP-0000069-02

Item A. **Parent Company:** ReliaMax Holding Company
Principal Address: 2300 E. 54th Street North
 Sioux Falls, SD 57104
Incorporation: SD

Item B. Policy Period: **From:** 07/01/2017 **To:** 07/01/2018
Both days 12.01 a.m. Local Time at the Principal Address stated in Item A.

Item C. Limit of Liability:

1. \$9,000,000 in the aggregate for the Policy Period, but sublimited to
2. \$3,000,000 in the aggregate for the Policy Period for all Security Holder Demand Investigatory Costs under insuring Clause I.D.

Such Sublimit of Liability shall be part of, and not in addition to, the overall Limit of Liability stated in C.1. above.

"THIS INSURANCE CONTRACT IS ISSUED BY A NONADMITTED INSURER WHICH IS NOT LICENSED BY NOR UNDER THE JURISDICTION OF THE SOUTH DAKOTA INSURANCE DIRECTOR."

PIONEER

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Item D. Retentions:

- \$0 each of the Insured Persons each Claim, Investigation or Inquiry but in no event exceeding
- \$0 in the aggregate each Claim, Investigation or Inquiry all Insured Persons under Insuring Clause I.A.
- \$100,000 each Claim, Investigation or Inquiry under Insuring Clause I.B., other than a Securities Claim
- \$100,000 each Securities Claim under Insuring Clause I.B.
- \$100,000 each Securities Claim under Insuring Clause I.C.
- \$100,000 each Security Holder Demand under Insuring Clause I.D.

Item E. Insured Percentage:

- 100% of Loss in excess of retention under Insuring Clause I.A.
- 100% of Loss in excess of retention under Insuring Clause I.B.
- 100% of Loss in excess of retention under Insuring Clause I.C.
- 100% of Security Holder Demand Investigatory Costs under Insuring Clause I.D.

Item F. Premium: \$102,000.00

- Item G. 1. Premium for Optional Extension Period: 200% of the total premium as provided in Clause IX.
2. Length of Optional Extension Period: 12 months

- Item H. 1. Premium for Predetermined Run-Off Period: 200% of the total premium as provided in Clause IX.
2. Length of Predetermined Run-Off Period: 12 months

Item I. Notification pursuant to Clause VI. shall be given to:

COO
Pioneer Special Risk
80 Broad Street, Suite 1203
New York, NY 10004
Claims@psrclaims.com

Item J. Inquiry Coverage Date: 07/01/2017

Item K. Prior and Pending Litigation Date: July 1, 2007 for the first \$1M D&O/ \$1M EPL/ \$1 FID
Prior and Pending Litigation Date: July 1, 2012 for the \$2M x 1M

Item L. Outside Entities: N/A

Item M. Service of process in any suit shall be made upon: SD

Item N. Choice of Law: SD

Item O. Attorney in Fact: (if applicable) N/A

Item P. Endorsements:

PSR-N-PIFP-DEC-01 (01/17)

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1. Lloyd's Amendatory Wording
2. Professional Services Exclusion Endorsement
3. Pending & Prior Litigation Exclusion
4. Future Offering Exclusion
5. Media/Advertising E&O Exclusion
6. Employed Lawyer Endorsement
7. Fiduciary Coverage Extension
8. EPL Extension Endorsement – Third Party Liability Coverage
9. Entity Coverage Endorsement
10. Amendatory Endorsement – Am WINS
11. Amend Declarations Page Endorsement

In accordance with the authorization granted to Pioneer Special Risk Insurance Services, Inc. under Contract No. B131210393U17 by certain Underwriters at Lloyd's, London, whose names and the proportions underwritten by them can be ascertained by reference to the said Contract, which bears the Seal of Lloyd's Policy Signing Office and is on file at the office of the said Agency and in consideration of the premium specified herein, the said Underwriters do hereby bind themselves, each for their own part and not one for another, their heirs, executors and administrators, to insure as follows in accordance with the terms and conditions contained or endorsed hereon.

The Policy terms and conditions contained herein or endorsed hereon and such other provisions, agreements or conditions as may be endorsed hereon or added hereto are hereby incorporated in this Policy. No representative of the Underwriters shall have the power to waive or be deemed to have waived any provision or condition of this Policy unless such waiver, if any, shall be written upon or attached hereto; nor shall any privilege or permission affecting the insurance under this Policy exist or be claimed by the Insured(s) unless so written or attached.



Authorized Representative
Eugene K. Hinman
CEO
Pioneer Special Risk Insurance Services, Inc.

EXHIBIT B

Policy Number: ELU150747-17
Renewal of Number: ELU145359-16

☐ Greenwich Insurance Company
☒ XL Specialty Insurance Company

Members of the XL America Companies

Executive Offices
70 Seaview Avenue
Stamford, CT 06902-6040
Telephone 877-953-2636

EXCESS POLICY DECLARATIONS

THIS IS A CLAIMS MADE POLICY. EXCEPT AS OTHERWISE PROVIDED HEREIN, THIS POLICY ONLY APPLIES TO CLAIMS FIRST MADE DURING THE POLICY PERIOD. THE LIMIT OF LIABILITY AVAILABLE TO PAY DAMAGES OR SETTLEMENTS SHALL BE REDUCED AND MAY BE EXHAUSTED BY THE PAYMENT OF DEFENSE EXPENSES. THIS POLICY DOES NOT PROVIDE FOR ANY DUTY BY THE INSURER TO DEFEND ANY INSURED. PLEASE READ AND REVIEW THE POLICY CAREFULLY.

Item 1. Name and Mailing Address of Insured Entity:

ReliaMax Holding Company
2300 E. 54th Street North
Sioux Falls, SD 57104

Item 2. Policy Period: From: July 01, 2017 To: July 01, 2018

At 12:01 A.M. Standard Time at your Mailing Address Shown Above

Item 3. Limit of Liability:

\$2,000,000 Aggregate each Policy Period (Including Defense Expenses)

Item 4. Schedule of Underlying Insurance:

	Insurer	Policy No	Limit of Liability
(a) Primary Policy	Lloyds of London	IFP-0000069-02	\$3,000,000

Item 5. Notices required to be given to the Insurer must be addressed to:

Executive Liability Underwriters
One Constitution Plaza, 16th Floor
Hartford, CT 06103
Toll Free Telephone: 877-953-2636

Item 6. Premium:

Taxes, Surcharges or Fees:	\$0.00
Total Policy Premium:	\$60,000.00

Item 7. Policy Forms and Endorsements Attached at Issuance:

EX 71 01 09 99 EX 82 01 07 07 XL 80 24 03 03 EX 80 75 09 02 EX 80 107 10 03 EX 83 22 11 01
EX 80 32 03 01

EX 70 00 11 01

Page 1 of 2

EXCESS POLICY DECLARATIONS

Countersigned: _____

Date _____

By: _____

Authorized Representative

THESE DECLARATIONS AND THE POLICY, WITH THE ENDORSEMENTS, ATTACHMENTS, AND THE APPLICATION SHALL CONSTITUTE THE ENTIRE AGREEMENT BETWEEN THE INSURER AND THE INSURED RELATING TO THIS INSURANCE.

In Witness Whereof, the Insurer has caused this Policy to be executed by its authorized officers, but this Policy will not be valid unless countersigned on the Declarations page, if required by law, by a duly authorized representative of the Insurer.

Nicholas M. Brown, Jr.

Nicholas M. Brown, Jr.
President

Theresa M. Morgan

Theresa M. Morgan
Secretary

Greenwich Insurance Company

Nicholas M. Brown, Jr.

Nicholas M. Brown, Jr.
President

Theresa M. Morgan

Theresa M. Morgan
Secretary

XL Specialty Insurance Company

EXHIBIT C

STATE OF SOUTH DAKOTA)
 : SS
COUNTY OF HUGHES)

IN CIRCUIT COURT

SIXTH JUDICIAL CIRCUIT

STATE OF SOUTH DAKOTA, EX REL.	)	32CIV18-125
LARRY DEITER, DIRECTOR OF)	
INSURANCE OF THE STATE OF SOUTH	)	ORDER APPROVING
DAKOTA,	)	SETTLEMENT WITH
Petitioner,	)	DIRECTORS AND
	)	OFFICERS OF
v.	)	RELIAMAX SURETY
	)	COMPANY AND
RELIAMAX SURETY COMPANY,	)	RELIAMAX HOLDING
Respondent.	)	COMPANY IN 32CIV20-
	)	000207
)	

A. The court-appointed Liquidator in this proceeding (the "Liquidator") having commenced that certain civil action entitled *Larry Deiter, Director of Insurance of the State of South Dakota, as Liquidator of ReliaMax Surety Company in Liquidation v. Michael Van Erdewyk, John Van Erdewyk, Bradley Messerli, Mark Payne, Randy Schaefer, and Jim Rickards, individually and as the Directors and Officers of ReliaMax Surety Company and ReliMax Holding Company; and RSM US LLP* in Circuit Court for the Sixth Judicial Circuit, Hughes County, South Dakota, 32CIV20-000207 (the "Liquidator Action"); and

B. The Liquidator having reached an agreement to settle any and all claims against Michael Van Erdewyk, John Van Erdewyk, Bradley Messerli, Mark Payne, Randy Schaefer, Jim Rickards (collectively, the "Named Defendants") and all other current or former officers or directors of ReliaMax Surety Company, ReliaMax Holding Company, or their affiliates (together with the Named Defendants, the "Settling Officers/Directors"), as described in that certain Settlement Agreement dated January 4, 2021 (the "D&O Settlement Agreement"); and

C. The Liquidator having filed his Motion to Approve Settlements dated January 5, 2021; and

D. Due and proper notice of such Motion having been given to creditors in this Liquidation and all other interested parties and no objection has been filed; and

E. The Court having reviewed all filings with respect to such Motion and having considered all files and proceedings herein, and for cause shown:

IT IS HEREBY ORDERED AS FOLLOWS:

1. The Liquidator's Motion to Approve Settlements is hereby GRANTED in all respects.
2. The terms of the D&O Settlement Agreement are APPROVED in all respects.
3. The D&O Settlement Agreement is fair and reasonable.
4. Pursuant to SDCL 58-29B-49(13) the Liquidator has the sole authority to prosecute for the benefit of the liquidation estate any action which may exist on behalf of the creditors, members, policyholders, or shareholders of ReliaMax Surety Company ("RSC") against any officer of the insurer, or any other person, and SDCL 58-29B-49(19) states that the liquidator may "exercise and enforce all the rights, remedies, and powers of any creditor shareholder, policyholder, or member."
5. The D&O Settlement Agreement is fully binding and enforceable against all persons and entities for whom the Liquidator is authorized to act under Chapter 58-29B; and the Liquidator and all such persons and entities shall be deemed to have fully, finally, and forever released, relinquished, discharged, and dismissed each and every claim against the Settling Officers/Directors arising directly or indirectly from any role or relationship of the Settling Officers/Directors with ReliaMax Surety Company and any of its affiliates, including but not limited to ReliaMax Holding Company.
6. Any and all creditors, members, policyholders, or shareholders of RSC or its affiliates and all of their respective present or former agents, officers, directors, consultants, employees, members, partners, principals, attorneys, advisors, and representatives are hereby permanently **BARRED, ENJOINED, AND RESTRAINED** from commencing, prosecuting, or asserting against the Settling Officers/Directors any right, claim, debt, cause of action, demand, suit of damages, liability act or right of action of any nature whatsoever, whether in the right of such creditors, members, policyholders, or shareholders or derivatively, and whether asserted or unasserted, known or unknown, arising out of or relating to their conduct as officers, directors, governors, or employees of ReliaMax Surety Company and its affiliates.
7. When the Liquidator Action is fully and finally concluded, including all claims against the Settling Officers/Directors and their Insurers (as defined in the D&O Settlement Agreement), the final judgment shall include dismissal of the Named Defendants with prejudice and without costs to any party.

8. A certified copy of this Order shall also be filed in the Liquidator Action.

BY THE COURT:

Circuit Court Judge

Attest:

Deuter-Cross, TaraJo

Clerk/Deputy