

Sample
SURPLUS NOTE

Whereas, the insurance laws of the State of Delaware permit a Delaware domestic captive insurance company to borrow money and issue a surplus note.

Whereas, it is the intention of the parties that for value received, the undersigned, Donor Company (“Donor”), does hereby promise to pay to Captive Insurer (“Captive”) the sum of _____ Dollars (\$00.00). In return for receiving the principal amount of _____ Dollars, CAPTIVE agrees to repay the principal with interest at the rate of _____ percent (___%) and in return to provide Donor this Surplus Note.

Whereas, it is the intention of CAPTIVE and Donor for _____ 20__ to be the date of execution of this Surplus Note.

Now therefore, in consideration of the mutual covenants and promises set forth above, CAPTIVE and Donor agree as follows:

Article I

Donor agrees to provide CAPTIVE _____ Dollars (\$00.00) within _____ () business days after execution of this Surplus Note.

Article II

CAPTIVE shall repay this Surplus Note semi-annually with the first payment commencing on the first June 30 or December 31 date following the execution of this Surplus Note. The terms of repayment are that this Surplus Note shall be fully repaid to include both principal and interest on the tenth anniversary following the first June 30 or December 31 date following the execution of this Surplus Note. Any failure by CAPTIVE to make a payment of principal and/or interest due to disapproval of such payment by the Delaware Insurance Department does not constitute a default of the terms and obligations of this Surplus Note. (The term of the note and the semi-annual payment schedule are for sample purposes).

Article III

No demand upon this Surplus Note shall be made by the Donor or honored by CAPTIVE, and no payment of principal or interest shall be due or required by the Donor or made by CAPTIVE at any time when any such payment would reduce CAPTIVE’s capital paid in to an amount less than the amount of CAPTIVE’s surplus as noted on the most recent statutory financial statement filed according to the laws of Delaware and the regulations of the Delaware Insurance Department. Such financial statement shall be the statement filed before the execution of this Surplus Note.

Article IV

All payments of principal and interest shall be payable in order of precedence from the following sources:

a. The general account of the CAPTIVE.

b. Other account(s) specified as _____.

(Some surplus note repayment funds are held in a sinking fund).

Article V

Wherever and whenever reference is made herein to the CAPTIVE or the Donor, the same shall include any transferee, assignee or successor of either the CAPTIVE or the Donor, and any transferee, assignee or successor of either the CAPTIVE or the Donor shall take this Surplus Note subject to all of the rights, privileges, duties and obligations of the CAPTIVE or the Donor.

Notwithstanding any set forth above, the surplus note, accrued interest, and all payments of principal and interest due under the terms of this Note shall be:

- (1) Subordinate to policyholders;
- (2) Subordinate to claimant and beneficiary claims;
- (3) Subordinate to all other classes of creditors other than surplus note holders; and
- (4) Interest payments and principal repayments require prior approval of the Delaware Department of Insurance.

Article VI

As a condition of entering into this Surplus Note, CAPTIVE agrees that it shall not enter into any other surplus note agreements that subordinate the terms of this Surplus Note. Furthermore, because CAPTIVE does not owe any debt obligations as of the execution of this Surplus Note, before entering into any debt obligations it shall first provide notice to Donor and allow Donor thirty (30) days to object to such a debt obligation and demand the prepayment of this Surplus Note. (This is an optional article)

Article VII

This Surplus Note and all rights and obligations hereunder shall be governed and interpreted in accordance with the laws of the State of Delaware and the parties agree to subject themselves to the jurisdiction of the courts of Delaware for any action or proceeding arising from this Surplus Note.

Article VIII

Any notices in regard to this Surplus Note shall be in writing and have been deemed delivered the next business day when sent via overnight courier, and deemed delivered after three business days when deposited in the United States Mail and sent via registered with return receipt requested, postage prepaid. When sent to CAPTIVE all notices shall be addressed to the

attention of the President and Chief Executive Officer at CAPTIVE's office address. When sent to Donor all notices shall be addressed to the attention of the President and Chief Executive Officer at the Donor's office address. (The captive manager can be an alternative point of contact)

GIVEN UNDER THE HAND AND SEAL of the undersigned the day and year written below.

CAPTIVE _____
ADDRESS _____

DONOR _____
ADDRESS _____

By _____
Name:
Title: President and Chief Executive Officer

By _____
Name:
Title: President and Chief Executive Officer

Date: _____

Date: _____