

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS.

SUPERIOR COURT

Docket No. 217-2003-EQ-00106

**In the Matter of the Liquidation of
The Home Insurance Company**

**LIQUIDATOR'S MOTION FOR APPROVAL OF
SETTLEMENT AGREEMENTS WITH BORGWARNER MORSE TEC LLC,
BORGWARNER, INC., FLOWSERVE CORPORATION, AND YORK
INTERNATIONAL CORPORATION**

John R. Elias, Insurance Commissioner of the State of New Hampshire, as Liquidator ("Liquidator") of The Home Insurance Company ("Home"), moves that the Court enter an order in the form submitted herewith approving three Settlement Agreements and Mutual Releases (the "Settlement Agreements"), the first between the Liquidator and BorgWarner Morse Tec LLC and BorgWarner, Inc. (collectively, "BorgWarner"), the second between the Liquidator and Flowserve Corporation ("Flowserve"), and the third between the Liquidator and York International Corporation ("York"). As reasons therefor, the Liquidator states as follows:

1. The Settlement Agreements were negotiated under the supervision of the Special Deputy Liquidator. Copies of the BorgWarner Settlement Agreement, the Flowserve Settlement Agreement, and the York Settlement Agreement are attached hereto as Exhibits A, B and C. Affidavit of Peter A. Bengelsdorf, Special Deputy Liquidator, in Support of Motion for Approval of Settlement Agreements with BorgWarner Morse Tec LLC, BorgWarner, Inc., Flowserve Corporation, and York International Corporation ("Bengelsdorf Aff.") ¶ 2.

2. Home issued two insurance policies under which BorgWarner Corporation is the named insured for various policy periods between July 1, 1968 and September 1, 1974 which, together with all other insurance policies Home may have issued to BorgWarner Corporation are

referred to collectively as the “Policies” in the Settlement Agreements. Settlement Agreements, second whereas clause. Bengelsdorf Aff. ¶ 3.

3. Each of BorgWarner Morse TEC LLC, Flowserve and York is a successor with respect to certain liabilities related to BorgWarner Corporation and has certain rights under the Policies. BorgWarner Morse TEC LLC is a successor to BorgWarner Corporation; Flowserve is a successor to BorgWarner Industrial Products, Inc., subsidiary of BorgWarner Corporation; and York is a successor to BorgWarner Corporation. BorgWarner, Inc., has certain rights under the Policies. As described below, the three Settlement Agreements together resolve all rights and obligations BorgWarner, Flowserve and York have under the Policies. Bengelsdorf Aff. ¶ 4.

4. BorgWarner submitted a proof of claim in the Home liquidation seeking coverage under the Policies for asbestos bodily injury exposures which was assigned proof of claim number INSU703495 which, together with all other proofs of claim hereinbefore or hereinafter filed by BorgWarner under the Policies in the Home liquidation, are referred to collectively as the “BorgWarner Proof of Claim”. BorgWarner Settlement Agreement, third whereas clause. Two partial allowances relating to liabilities arising out of asbestos bodily injury exposures under the Policies were previously issued as Notice of Determination INSU703495-01 for \$9,463,604.18 and INSU703495-02 for \$2,790,795.45. These partial allowances were approved by the Court on September 18, 2014 and June 15, 2015, respectively. *Id.*, fifth whereas clause. Bengelsdorf Aff. ¶ 5.

5. Burns International Services Corporation (“Burns”) filed proofs of claim in the Home liquidation seeking coverage under the Policies for asbestos bodily injury exposures for itself and on behalf Flowserve and York. The Burns claims were assigned proof of claim numbers INSU702471, INSU702472, INSU702473, and INSU702474 (the “Burns Proof of

Claim”).¹ The claims filed on behalf of Flowserve were assigned proof of claim INSU715195 which, together with all other proofs of claim hereinbefore or hereinafter filed by Flowserve in the Home liquidation are referred to collectively as the “Flowserve Proof of Claim” The claims filed on behalf of York were assigned proof of claim INSU715194 which, together with all other proofs of claim hereinbefore or hereinafter filed by York in the Home liquidation are referred to collectively as the “York Proof of Claim”. BorgWarner Settlement Agreement, fourth whereas clause; Flowserve and York Settlement Agreements, third whereas clauses. Bengelsdorf Aff.

¶ 6.

6. The Liquidator and BorgWarner have negotiated the BorgWarner Settlement Agreement reflecting a resolution of all remaining matters concerning the BorgWarner Proof of Claim and their rights and obligations with respect to the Policies. See BorgWarner Settlement Agreement, sixth whereas clause, ¶ 2(B). The Liquidator and Flowserve have negotiated the Flowserve Settlement Agreement reflecting a resolution of all matters concerning the Flowserve Proof of Claim and their rights and obligations with respect to the Policies, and the Liquidator and York have negotiated the York Settlement Agreement reflecting a resolution of all matters concerning the York Proof of Claim and their rights and obligations with respect to the Policies. See Flowserve and York Settlement Agreements, fifth whereas clause, ¶ 2(B). The Settlement Agreements do not address any rights or obligations of Burns under the Policies. Bengelsdorf Aff. ¶ 7.

7. Each of the Settlement Agreements is subject to approval by the Court.
Settlement Agreements ¶ 1. Bengelsdorf Aff. ¶ 8.

¹ Burns also filed two proofs of claim seeking coverage for environmental damages under the Policies which were assigned numbers INSU709398 and INSU709399 (the “Burns Environmental Claims”). The Burns Proof of Claim and the Burns Environmental Claims are not the subject of the Settlement Agreements.

8. The BorgWarner Settlement Agreement provides that the Liquidator will recommend allowance of the BorgWarner Proof of Claim in the amount of \$30,259,032 (“BorgWarner Recommended Amount”) as a Class II priority claim under RSA 402-C:44. BorgWarner Settlement Agreement ¶ 2(A). This is in addition to the two prior partial allowances. Allowance of the BorgWarner Recommended Amount as a Class II claim will fully and finally resolve the BorgWarner Proof of Claim and all claims BorgWarner has under the Policies. Id. ¶ 2(B). Distributions based on that allowance will be made at the same intervals and at the same percentages as distributions to other Class II creditors of Home. Id. ¶ 2(C). Bengelsdorf Aff. ¶ 9.

9. The Flowserve Settlement Agreement provides that the Liquidator will recommend allowance of the Flowserve Proof of Claim in the amount of \$7,630,616 (“Flowserve Recommended Amount”) as a Class II priority claim under RSA 402-C:44. Flowserve Settlement Agreement ¶ 2(A). Allowance of the Flowserve Recommended Amount as a Class II claim will fully and finally resolve the Flowserve Proof of Claim and all claims Flowserve has under the Policies. Id. ¶ 2(B). Distributions based on that allowance will be made at the same intervals and at the same percentages as distributions to other Class II creditors of Home. Id. ¶ 2(C). Bengelsdorf Aff. ¶ 10.

10. The York Settlement Agreement provides that the Liquidator will recommend allowance of the York Proof of Claim in the amount of \$4,360,352 (“York Recommended Amount”) as a Class II priority claim under RSA 402-C:44. York Settlement Agreement ¶ 2(A). Allowance of the York Recommended Amount as a Class II claim will fully and finally resolve the York Proof of Claim and all claims York has under the Policies. Id. ¶ 2(B). Distributions

based on that allowance will be made at the same intervals and at the same percentages as distributions to other Class II creditors of Home. Id. ¶ 2(C). Bengelsdorf Aff. ¶ 11.

11. Each Settlement Agreement is intended to resolve the proofs of claim of the claimant (BorgWarner, Flowserve or York as the case may be) and all claims that the claimant has under the Policies. See Settlement Agreements ¶ 2(B). To that end, each Settlement Agreement provides for mutual releases of all claims among the Liquidator, Home, and the claimant arising from or related to the proofs of claim or the Policies. Id. ¶¶ 3, 4. Bengelsdorf Aff. ¶ 12.

12. In resolving all of the claimant's claims relating to its proofs of claim and the Policies, each Settlement Agreement is intended to resolve all matters arising out of or relating to any rights the claimant ever had, now has, or hereafter may have in the Policies and its proofs of claim, including any asserted rights of third-party claimants against the claimant under the Policies. Settlement Agreements ¶ 5. The claimant agrees to address, at its sole cost, any such claims of third-party claimants against the claimant as if there had been no liquidation proceeding for Home and as if the claimant had no insurance coverage from Home by virtue of the Policies. Id. Each claimant agrees to indemnify and hold the Liquidator and Home harmless from all claims arising from or relating to its proofs of claim or the Policies, including asserted rights of third party claimants, up to the amount ultimately distributed or distributable in relation to the Recommended Amount. Id. Bengelsdorf Aff. ¶ 13.

13. The Liquidator is not aware of any third party claimants asserting claims under the Policies. However, the denial of any third party claimants' claims without prejudice to their claims against a claimant (BorgWarner, Flowserve, or York) will not harm the third party claimants who will continue to have their claims against the claimant. As noted above, each

claimant has agreed to address third party claims against it as if it had no insurance coverage from Home under the Policies. Settlement Agreements ¶ 5. Third party claimants' proofs of claim against the insolvent Home, if not denied with the agreement, would release the claimant from those claims up to the limits of the Policies but only entitle the third party claimants (assuming their claims were allowed) to the initial interim distributions and any later distribution at a presently undetermined distribution percentage from Home at the future date when distribution is made. See RSA 402-C:40, I; Gonya v. Commissioner, New Hampshire Insurance Dept., 153 N.H. 521, 535 (2006) (noting the "inherent uncertainty of any creditor's recovery in a liquidation"). It is not expected that the allowed claims of any third party claimants (or other Class II creditors) of Home will be paid in full. Under the Settlement Agreements, each claimant will continue to be responsible for any third party claimants' claims against it. See Settlement Agreements ¶ 5. See Bengelsdorf Aff. ¶ 14.

14. With the exception of the Burns Proofs of Claim, the Liquidator is not aware of any pending proofs of claim asserting a claim to the same policy limit as the proofs of claim resolved by the three Settlement Agreements.² However, if a claim of another claimant is subject to the same limit of liability as the claims resolved by the three Settlement Agreements, and if the total allowed amounts for all claimants exceed the limit, then the allowed amounts for all claimants will be subject to adjustment under RSA 402-C:40, IV, so that the policy limit will not be exceeded. See Settlement Agreements ¶ 6. Bengelsdorf Aff. ¶ 15.

15. The Settlement Agreements reflect compromises of the claims asserted in the proofs of claim. They are the result of negotiations involving the Claims Department, under the supervision of the Special Deputy Liquidator, which has extensive experience in assessing the

² The Burns Environmental Claims do not assert a claim to the same policy limits as the proofs of claim concerning asbestos. Two insurers filed contribution claims respecting BorgWarner but both have been disallowed.

exposure presented by claims under Home's insurance policies. The agreed settlement amounts are based on careful evaluation and negotiation of coverage obligations under the Policies respecting the underlying liabilities of the claimants. The Liquidator accordingly recommends approval of the Settlement Agreements and allowance of the \$30,259,032 settlement amount to BorgWarner, the \$7,630,616 settlement amount to Flowserve, and the \$4,360,352 settlement amount to York as Class II claims of the respective claimants in accordance with RSA 402-C:45 and RSA 402-C:44. Bengelsdorf Aff. ¶ 16.

16. The Court has previously approved many similar settlement agreements. See, e.g., Order Approving Settlement Agreement with Navistar, Inc. (December 11, 2018); Order Approving Settlement Agreement with Graham Corporation (July 8, 2016); Order Approving Settlement Agreement with Washington Gas (July 15, 2013); Order Approving Settlement Agreement with Wisconsin Energy (March 18, 2010); Order Approving Commutation Agreement with Northwestern National Insurance Company and Settlement Agreement and Assignment of Distribution with AK Steel Corporation (March 10, 2006). The Liquidator's negotiation and the Court's approval of such agreements are authorized by the broad authority of the Liquidator to "compound, compromise or in any other manner negotiate the amount for which claims will be recommended to the court," RSA 402-C:45, I, and the authority of the Court to "approve, disapprove or modify any report on claims by the liquidator." RSA 402-C:45, II. It is also an appropriate exercise of the Liquidator's authority ("[s]ubject to the court's control") to "do such other acts . . . as are necessary or expedient for the accomplishment of or in aid of the purpose of liquidation." RSA 402-C:25, XXII.

17. In his Motion for Approval of Commutation with Northwestern National Insurance Company and Settlement Agreement and Assignment of Distribution with AK Steel

Corporation ¶¶ 19-23 (February 16, 2006), the Liquidator provided his analysis of New Hampshire law, including RSA 402-C:40, III, as it applies to this type of comprehensive policy coverage compromise and settlement in an insurer liquidation context. That analysis also applies to the three Settlement Agreements.

18. The Liquidator submits that the Settlement Agreements are fair and reasonable and in the best interests of the policyholders and creditors of Home. See Bengelsdorf Aff. ¶ 17.

WHEREFORE, the Liquidator respectfully requests that this Court:

- A. Grant this Motion;
- B. Enter an Order in the form submitted herewith approving the Settlement Agreements, approving the Liquidator's claim recommendations, and allowing BorgWarner's claim in the amount of \$30,259,032, Flowserve's claim in the amount of \$7,630,616, and York's claim in the amount of \$4,360,352 at priority Class II in accordance with RSA 402-C:45 and RSA 402-C:44; and
- C. Grant such other and further relief as justice may require.

Respectfully submitted,

JOHN R. ELIAS, INSURANCE
COMMISSIONER OF THE STATE OF
NEW HAMPSHIRE, AS LIQUIDATOR
OF THE HOME INSURANCE
COMPANY,

By his attorneys,
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September 9, 2019

Certificate of Service

I hereby certify that a copy of the foregoing Liquidator's Motion for Approval of Settlement Agreements with BorgWarner Morse Tec, LLC, BorgWarner, Inc., Flowserve Corporation and York International Corporation, the Affidavit of Peter A. Bengelsdorf, and the Proposed Order, were sent this 9th day of September, 2019, by first class mail, postage prepaid to all persons on the attached service list.



Eric A. Smith
NH Bar ID No. 16952

THE STATE OF NEW HAMPSHIRE

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SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Mutual Release ("Settlement Agreement") is made as of this 5th day of ~~August~~ ^{SEPT} 2019, by and between BorgWarner Morse TEC LLC, a successor to BorgWarner Corporation, and BorgWarner, Inc. (collectively the "Claimant"), on the one hand, and John R. Elias, Insurance Commissioner of the State of New Hampshire, solely in his capacity as Liquidator ("Liquidator") of The Home Insurance Company ("Home"), on the other hand (Claimant and the Liquidator are hereinafter referred to collectively as the "Parties").

WHEREAS, Home is being liquidated pursuant to the June 13, 2003 Order of the Superior Court of the State of New Hampshire, Merrimack County (the "Liquidation Court"), pursuant to which the Liquidator was appointed as the Liquidator of Home;

WHEREAS, Home issued the following insurance policies under which BorgWarner Corporation is the named insured:

<u>Policy Number</u>	<u>Policy Period</u>
HEC9558700	7/1/68-9/1/71
HEC4763017	9/1/73-9/1/74

which together with all other insurance policies Home may have issued to BorgWarner Corporation, or any successors thereto including Claimant, are defined collectively as the "Policies".

WHEREAS, Claimant has submitted claims in the Home liquidation seeking coverage under the Policies in connection with liability arising out of asbestos bodily injury exposures. The claims have been assigned proof of claim number INSU703495, which together with any other proofs of claim, hereinbefore or hereinafter filed by Claimant in the Home liquidation are defined collectively as the "Proof of Claim";

WHEREAS, proofs of claim asserting coverage for claims under the Policies were filed by Burns International Services Corporation assigned proof of claim numbers INSU702471, INSU702472, INSU702473 and INSU702474¹, York International assigned proof of claim number INSU715194 and Flowserve Corporation assigned proof of claim number INSU715195 (hereinafter the “Burns, York and Flowserve Proofs of Claim”). These proofs of claim are not addressed in this Settlement Agreement;

WHEREAS, partial allowances relating to liabilities arising out of asbestos bodily injury exposures under the Policies were rendered to the Claimant pursuant to Notices of Determination numbered INSU703495-01, for \$9,463,604.18, and INSU703495-02, for \$2,790,795.45, which were approved by the Liquidation Court by orders dated September 18, 2014 and June 15, 2015 respectively;

WHEREAS, the Parties are now desirous of resolving all claims that were asserted, or could have been or could be asserted, between them and resolving all matters concerning the Proof of Claim and their rights and obligations with respect to the Policies; and

WHEREAS, the Parties agree that this Settlement Agreement is subject to and conditioned upon its approval by the Liquidation Court and allowance of the Recommended Amount (as defined below) into the Home liquidation and in the event that the Liquidation Court does not approve the Settlement Agreement and allow the Recommended Amount, this Settlement Agreement shall be null and void and without any force or effect;

¹ In addition to these four proofs of claim, Burns International Services Corporation also filed two proofs of claim seeking coverage for environmental damages which were assigned proof of claim numbers INSU709398 and INSU709399 (“Burns Environmental Claims”). These Burns Environmental Claims are not addressed in this Settlement Agreement. Unlike the Burns Environmental Claims, the Burns, York and Flowserve Proofs of Claim and the Claimant’s Proof of Claim all seek coverage for asbestos bodily injury exposures under the Policies.

NOW, THEREFORE, in consideration of all the respective transactions contemplated by this Settlement Agreement, and the mutual covenants and representations herein contained, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. Effectiveness. This Settlement Agreement is conditioned and shall only become effective (the "Effective Date") upon approval by the Liquidation Court. The Liquidator shall move for approval of this Settlement Agreement promptly following execution by all Parties.

2. Recommendation, Allowance, and Classification of Claims.
 - A. Subject to all the terms of this Settlement Agreement, and with the agreement of Claimant, which by Claimant's execution hereof is hereby granted, the Liquidator shall recommend pursuant to N.H. RSA 402-C:45 that the Proof of Claim be allowed in the amount of \$30,259,032.00 (the "Recommended Amount") as a Class II priority claim under N.H. RSA 402-C:44. The Liquidator shall seek allowance of the Recommended Amount as a Class II priority claim by the Liquidation Court in the Liquidator's motion for approval of this Settlement Agreement.

 - B. Allowance of the Recommended Amount as a Class II priority claim by the Liquidation Court shall fully and finally resolve the Proof of Claim and any and all claims of whatever nature that Claimant has under the Policies. In the event that the Liquidation Court does not allow the Recommended Amount as a Class II priority claim, this Settlement Agreement shall be null and void and shall have no force and effect and the Parties will be returned to *status quo ante*, as if

no such agreement was ever reached, with this Settlement Agreement thereafter being inadmissible for any purpose in any dispute between the Parties.

- C. If and when the Liquidation Court allows the Recommended Amount as a Class II priority claim, Claimant will become a Class II creditor in the Home liquidation pursuant to N.H. RSA 402-C:44, and Claimant shall, subject to this Settlement Agreement, receive distributions on the allowed amount at the same intervals and at the same percentages as other Class II creditors of Home. All distributions to Claimant shall be made payable to BorgWarner Morse TEC LLC and sent to the Claimant at the following address:

BorgWarner Morse TEC LLC
3850 Hamlin Road
Auburn Hills, MI 48326
Attn: Michelle S. Logan, President

Claimant agrees that they will promptly notify the Liquidator of any change of address or addressee.

3. Release by Claimant. Subject to the terms of this Settlement Agreement and the Liquidation Court's approval of the Recommended Amount as a Class II priority claim, Claimant for itself and on behalf of each of its officers, directors, employees, agents, attorneys, subsidiaries, affiliates, predecessors, successors, and assigns, irrevocably and unconditionally releases and discharges the Liquidator and Home and each of their respective officers, directors, employees, agents, attorneys, subsidiaries, affiliates, predecessors, successors, and assigns (including any trustee or other statutory successor), from any and all actions, causes of action, liabilities, adjustments, obligations, offsets, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, premiums, losses, salvage, specialties, covenants, contracts,

controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims, and/or demands, arising from or related to the Proof of Claim or the Policies, in law, admiralty, or equity, which Claimant, its subsidiaries, affiliates, predecessors, successors, and assigns, ever had, now has, or hereafter may have against the Liquidator or Home or their respective officers, directors, employees, agents, attorneys, subsidiaries, affiliates, predecessors, successors, and assigns, all whether known or unknown, suspected or unsuspected, fixed or contingent, in law, admiralty or equity, arising from or related to the Proof of Claim or the Policies.

4. Release by Liquidator. Subject to the terms of this Settlement Agreement and the Liquidation Court's approval of the Recommended Amount as a Class II priority claim, the Liquidator, in his capacity as such, and on behalf of Home and each of its officers, directors, employees, agents, attorneys, subsidiaries, affiliates, predecessors, successors, and assigns, irrevocably and unconditionally releases and discharges Claimant and each of its officers, directors, employees, agents, attorneys, subsidiaries, affiliates, predecessors, successors, and assigns, from any and all actions, causes of action, liabilities, adjustments, obligations, offsets, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, premiums, losses, salvage, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims, and/or demands, arising from or related to the Proof of Claim or the Policies, in law, admiralty, or equity, which the Liquidator, Home, or their subsidiaries, affiliates, predecessors, successors, and assigns, ever had, now have, or hereafter may have against Claimant or its officers, directors, employees, agents, attorneys, respective subsidiaries, affiliates, predecessors, successors, and assigns, all whether known or unknown,

suspected or unsuspected, fixed or contingent, in law, admiralty or equity, arising from or related to the Proof of Claim or the Policies.

5. Resolution of Matters and Indemnification. Claimant acknowledges that this Settlement Agreement is intended to resolve all matters arising out of or relating to any rights Claimant ever had, now has or hereafter may have in the Policies and the Proof of Claim, including any asserted rights of third-party claimants against Claimant under the Policies, and Claimant agrees to address, at its sole cost and expense, any such claims of third-party claimants against Claimant as if there had been no liquidation proceeding for Home and as if Claimant had no insurance coverage from Home by virtue of the Policies. In consideration of the Recommended Amount being allowed by the Liquidation Court as a Class II claim, Claimant agrees to indemnify and hold the Liquidator and Home harmless from and against any and all claims, losses, liabilities, debts, damages, costs or expenses arising from or related to the Proof of Claim or the Policies and such indemnification shall be capped at the total amount ultimately distributed or distributable in relation to the Recommended Amount as allowed by the Liquidation Court. The future obligations of Claimant under this paragraph shall extend to and include (by way of example and not limitation) any claims for defense or indemnity for claims made with respect to Claimant's rights under the Policies against the Liquidator or Home by vendors, or by other insurers of Claimant, or by any individuals or entities asserting "direct action" claims arising out of or related to the Policies. The Liquidator shall promptly notify Claimant of any such claim, and shall afford Claimant the opportunity to reasonably participate in the defense of such claims. The Liquidator shall assert all defenses to such claims reasonably available to the Liquidator, including defenses under the Order of Liquidation or the New Hampshire Insurers Rehabilitation and Liquidation Act. Claimant shall cooperate with the

Liquidator (including but not limited to the provision of affidavits or testimony) to defend against and resolve such claims. The Liquidator represents and warrants that he is presently unaware of any claims that would trigger an indemnification obligation of Claimant pursuant to this Settlement Agreement.

6. Multiple Claims. The Home policies against which this claim is made contain certain limits. New Hampshire RSA 402-C:40 (IV) provides that in the event multiple claims against such a policy are filed, and the aggregate allowed amount of all claims to which the same limit of liability in the policy is applicable exceeds that limit, then each claim as allowed shall be reduced in the same proportion so that the total equals the policy limit. The Liquidator is presently aware of the Burns, York and Flowserve Proofs of Claim in the Home Liquidation which assert a claim subject to the same limits in the Home Policies as this claim.² If an allowance is made such that the aggregate allowed amount of all claims subject to the same limit exceeds the limit, each claim will be prorated so that the total equals the policy limit, to the extent required by RSA 402-C:20 (IV). The Liquidator will be unable to determine whether, or the extent to which, Claimant's claim may be subject to proration until all claims against the policy have been determined. If the aggregate allowed amount of claims exceeds the applicable limit such that Claimant's claim is subject to proration, the Liquidator will inform Claimant accordingly.

7. Mutual Release of Settling Carriers. Claimant agrees to use reasonable commercial efforts to cause any settlement agreement relating to the underlying matters covered by the Proof of Claim with any other insurance company to include a waiver by that other insurance company of any claim, including contribution, apportionment, indemnification, subrogation, equitable

² The Burns Environmental Claims do not assert a claim subject to the same limits in the Home policies as this claim.

subrogation, allocation, or recoupment, against Home regarding the underlying matters covered by the Proof of Claim. The Liquidator agrees to waive, relinquish and release any claim, including contribution, apportionment, indemnification, subrogation, equitable subrogation, allocation, or recoupment, as to the underlying matters covered by the Proof of Claim against any other insurance company which executes a settlement with Claimants that includes a provision that is materially the same as this paragraph.

8. No Assignments. Claimant warrants and represents that it has not assigned, conveyed, or otherwise transferred any claims, demands, causes of action, rights, or obligations related in any way to the Policies, or any proceeds thereof, or the Proof of Claim, or the claims, losses and expenses released herein, to any person or entity. Claimant shall not assign or otherwise transfer this Settlement Agreement or any rights or obligations thereunder without the written consent of the Liquidator, which consent shall not be unreasonably withheld.

9. Further Assurances. The Parties shall take all further actions as may be necessary to carry out the intent and purpose of this Settlement Agreement and to consummate the transactions contemplated herein. Claimant acknowledges it is aware of the requirements of the Medicare Secondary Payer Act and the Medicare, Medicaid and SCHIP Extension Act of 2007, including provisions concerning Medicare set-asides and/or notification to the Centers for Medicare and Medicaid Services ("CMS") regarding certain Medicare-eligible, or potentially eligible, claimants who enter into settlement agreements that may justify recovery for Medicare covered case-related services. Claimant acknowledges that it may be obligated, and otherwise agrees, to provide data, if and when required or requested, for CMS regarding claimants who will share in distributions from Claimant's assets that include a portion of the Recommended Amount.

10. Governing Law and Venue. This Settlement Agreement shall be governed by and construed in accordance with the laws of the State of New Hampshire without regard to the conflicts of law provisions thereof. The Parties agree that the exclusive venue for any dispute between the Parties arising out of the Proof of Claim, the Policies or this Settlement Agreement shall be the Liquidation Court.

11. Due Diligence. The Parties acknowledge and agree that, in negotiating and executing this Settlement Agreement, they have relied upon their own judgment and upon the recommendations of their own legal counsel, that they have read this Settlement Agreement and have had the opportunity to consider its terms and effects, and that they have executed this Settlement Agreement voluntarily and with full understanding of its terms and effects. This Settlement Agreement is the product of negotiations between the Parties. No Party shall be charged with having promulgated this Settlement Agreement, and the general rule that ambiguities are to be construed against the drafter shall not apply to this Agreement.

12. No Third Party Rights. This Settlement Agreement is entered into solely for the benefit of the Liquidator, Home, and Claimant and is not intended to, and does not give or create any rights to or in any person or entity other than the Parties.

13. Counterparts. This Settlement Agreement may be executed in multiple counterparts, each of which, when so delivered, shall be an original, but such counterparts shall together constitute one and the same instrument. The Parties agree that a signature sent by facsimile or electronic mail to the other Party shall have the same force and effect as an original signature.

14. Power and Authority to Execute. Subject to the approval of the Liquidation Court required by paragraph 1, each Party hereto represents and warrants that it has the full power and authority to execute, deliver, and perform this Settlement Agreement; that all requisite and

necessary approvals have been obtained to consummate the transactions contemplated by this Settlement Agreement; that there are no other agreements or transactions to which it is a party that would render this Settlement Agreement or any part thereof, void, voidable or unenforceable; that each individual signing on behalf of a Party has been duly authorized by that Party to execute this Settlement Agreement on its behalf; and that no claims being released under the terms of this Settlement Agreement have been assigned, sold, or otherwise transferred to any other entity.

15. Successor-in-Interest Bound. This Settlement Agreement shall be binding upon, and shall inure to the benefit of the Parties and their respective officers, directors, employees, agents, attorneys, liquidators, receivers, administrators, successors, and assigns.

16. Entire Agreement. This Settlement Agreement constitutes the entire agreement and understanding between the Parties with respect to the subject matter thereof. This Settlement Agreement supersedes all prior agreements and understandings, whether written or oral, concerning such matters.

17. Survival of Warranties and Representations. The warranties and representations made herein shall survive the execution of this Settlement Agreement.

18. Validity of Settlement Agreement. Subject to approval of this Settlement Agreement by the Liquidation Court as required by paragraph 1, each Party represents and warrants that this Settlement Agreement is a legal, valid, and binding obligation, enforceable in accordance with its terms.

19. No Waiver. No waiver of any right under this Settlement Agreement shall be deemed effective unless contained in a writing signed by the Party or an authorized representative of the Party charged with such waiver, and no waiver of any breach or failure to

perform shall be deemed to be a waiver of any future breach or failure to perform or of any other provision of this Settlement Agreement. This Settlement Agreement may not be amended except in a document signed by the Party or an officer or other authorized official of the Party to be charged.

20. Notice. All notices to be given under this Settlement Agreement shall be given by e-mail and first class U.S. mail directed to:

If to Claimant, to:

Michelle S. Logan, President
BorgWarner Morse TEC LLC
3850 Hamlin Road
Auburn Hills, MI 48326
Email: mlogan@borgwarner.com

And

Bette M. Orr, Esq.
Gilbert LLP
1100 New York Ave, NW
Suite 700
Washington, DC 20005
Email: orb@gotofirm.com

If to the Liquidator, to:

Thomas W. Kober
Chief Claims Officer
The Home Insurance Company in Liquidation
61 Broadway, 6th Floor
New York, New York 10006
Email: tom.kober@homeinsco.com

and

J. Christopher Marshall
Civil Bureau
New Hampshire Department of Justice
33 Capitol Street
Concord, New Hampshire 03301-6397
Email: christopher.marshall@doj.nh.gov

and

J. David Leslie, Esq.
Rackemann, Sawyer & Brewster, P.C.
160 Federal Street
Boston, Massachusetts 02110-1700
Email: dleslie@rackemann.com

21. Severability. If any provision of this Settlement Agreement is invalid, unenforceable, or illegal under the law of any applicable jurisdiction, the validity and enforceability of such provision in any other jurisdiction shall not be affected thereby and the remaining provisions of this Settlement Agreement shall remain valid and enforceable. However, in the event of such invalidity, unenforceability, or illegality, the Parties shall negotiate in good faith to amend this Settlement Agreement through the insertion of additional provisions which are valid, enforceable, and legal and which reflect, to the extent possible, the purposes contained in the invalid, unenforceable, or illegal provision.

WHEREFORE, the Parties have caused this Settlement Agreement to be executed on their respective behalves by their duly authorized representatives.

BORGWARNER MORSE TEC, LLC

By: Michelle Logan

Name: Michelle Logan

Title: President, Morse TEC, LLC

Date: August 29, 2019

BORGWARNER, INC.

By: Thomas J. McGill

Name: Thomas J. McGill

Title: Vice President, Controller, Tax

Date: August 30, 2019

**JOHN R. ELIAS, INSURANCE COMMISSIONER OF
THE STATE OF NEW HAMPSHIRE, SOLELY IN
HIS CAPACITY AS LIQUIDATOR OF
THE HOME INSURANCE COMPANY**

By: Thomas W. Kopen

Name: Thomas W. Kopen

Title: Chief Claims Officer

Date: ~~August~~ ^{SEPT} 5, 2019

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Mutual Release ("Settlement Agreement") is made as of this 5th day of ~~August~~ ^{September} 2019, by and between Flowserve Corporation, a successor to Borg-Warner Industrial Products, Inc., subsidiary of BorgWarner Corporation ("Claimant"), on the one hand, and John R. Elias, Insurance Commissioner of the State of New Hampshire, solely in his capacity as Liquidator ("Liquidator") of The Home Insurance Company ("Home"), on the other hand (Claimant and the Liquidator are hereinafter referred to collectively as the "Parties").

WHEREAS, Home is being liquidated pursuant to the June 13, 2003 Order of the Superior Court of the State of New Hampshire, Merrimack County (the "Liquidation Court"), pursuant to which the Liquidator was appointed as the Liquidator of Home;

WHEREAS, Home issued the following insurance policies under which BorgWarner Corporation is the named insured:

<u>Policy Number</u>	<u>Policy Period</u>
HEC9558700	7/1/68-9/1/71
HEC4763017	9/1/73-9/1/74

which together with all other insurance policies Home may have issued to BorgWarner Corporation, or any successors thereto including Claimant, are defined collectively as the "Policies".

WHEREAS, Burns International Services Corporation ("Burns") filed claims in the Home liquidation on behalf of itself as well as the Claimant and York International Corporation ("York") seeking coverage under the Policies in connection with liability arising out of asbestos bodily injury exposures. The Burns claims were assigned proof of claim numbers INSU702471,

INSU702472, INSU702473, and INSU702474¹, the claims filed on behalf of York were assigned proof of claim number INSU715194, and the claims filed on behalf of Claimant were assigned proof of claim number INSU715195. INSU715195 together with any other proofs of claim, hereinbefore or hereinafter filed by Claimant in the Home liquidation are defined collectively as the "Proof of Claim";

WHEREAS, proofs of claim asserting coverage for asbestos bodily injury exposures under the Policies were also filed by BorgWarner Morse TEC LLC. The proofs of claim filed by BorgWarner Morse TEC LLC, and Burns, and Burns on behalf of York (hereinafter collectively the "BorgWarner, Burns and York Proofs of Claim"), are not addressed in this Settlement Agreement;

WHEREAS, the Parties are now desirous of resolving all claims that were asserted, or could have been or could be asserted, between them and resolving all matters concerning the Proof of Claim and their rights and obligations with respect to the Policies; and

WHEREAS, the Parties agree that this Settlement Agreement is subject to and conditioned upon its approval by the Liquidation Court and allowance of the Recommended Amount (as defined below) into the Home liquidation and in the event that the Liquidation Court does not approve the Settlement Agreement and allow the Recommended Amount, this Settlement Agreement shall be null and void and without any force or effect;

NOW, THEREFORE, in consideration of all the respective transactions contemplated by this Settlement Agreement, and the mutual covenants and representations herein contained,

¹ In addition to these four proof of claim numbers, Burns also filed two proofs of claim seeking coverage for environmental damages which were assigned proof of claim numbers INSU709398 and INSU709399 ("Burns Environmental Claims"). These Burns Environmental Claims are not addressed in this Settlement Agreement. Unlike the Burns Environmental Claims, the Borg Warner, Burns, and York Proofs of Claim and the Claimant's Proof of Claim all seek coverage for asbestos bodily injury exposure under the Policies.

the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. Effectiveness. This Settlement Agreement is conditioned and shall only become effective (the "Effective Date") upon approval by the Liquidation Court. The Liquidator shall move for approval of this Settlement Agreement promptly following execution by all Parties.

2. Recommendation, Allowance, and Classification of Claims.

A. Subject to all the terms of this Settlement Agreement, and with the agreement of Claimant, which by Claimant's execution hereof is hereby granted, the Liquidator shall recommend pursuant to N.H. RSA 402-C:45 that the Proof of Claim be allowed in the amount of \$7,630,616.00 (the "Recommended Amount") as a Class II priority claim under N.H. RSA 402-C:44. The Liquidator shall seek allowance of the Recommended Amount as a Class II priority claim by the Liquidation Court in the Liquidator's motion for approval of this Settlement Agreement.

B. Allowance of the Recommended Amount as a Class II priority claim by the Liquidation Court shall fully and finally resolve the Proof of Claim and any and all claims of whatever nature that Claimant has under the Policies. In the event that the Liquidation Court does not allow the Recommended Amount as a Class II priority claim, this Settlement Agreement shall be null and void and shall have no force and effect and the Parties will be returned to *status quo ante*, as if no such agreement was ever reached, with this Settlement Agreement thereafter being inadmissible for any purpose in any dispute between the Parties.

C. If and when the Liquidation Court allows the Recommended Amount as a Class II priority claim, Claimant will become a Class II creditor in the Home liquidation pursuant to N.H. RSA 402-C:44, and Claimant shall, subject to this Settlement Agreement, receive distributions on the allowed amount at the same intervals and at the same percentages as other Class II creditors of Home. All distributions to Claimant shall be made payable to Flowserve Corporation and sent to the Claimant at the following address:

Matt Hawkins
Associate General Counsel
Flowserve Corporation
5215 N. O'Connor Blvd., Suite 2300
Irving, TX 75039

Claimant agrees that they will promptly notify the Liquidator of any change of address or addressee.

3. Release by Claimant. Subject to the terms of this Settlement Agreement and the Liquidation Court's approval of the Recommended Amount as a Class II priority claim, Claimant for itself and on behalf of each of its officers, directors, employees, agents, attorneys, subsidiaries, affiliates, predecessors, successors, and assigns, irrevocably and unconditionally releases and discharges the Liquidator and Home and each of their respective officers, directors, employees, agents, attorneys, subsidiaries, affiliates, predecessors, successors, and assigns (including any trustee or other statutory successor), from any and all actions, causes of action, liabilities, adjustments, obligations, offsets, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, premiums, losses, salvage, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims, and/or demands, arising from or related to the Proof of Claim or the Policies,

in law, admiralty, or equity, which Claimant, its subsidiaries, affiliates, predecessors, successors, and assigns, ever had, now has, or hereafter may have against the Liquidator or Home or their respective officers, directors, employees, agents, attorneys, subsidiaries, affiliates, predecessors, successors, and assigns, all whether known or unknown, suspected or unsuspected, fixed or contingent, in law, admiralty or equity, arising from or related to the Proof of Claim or the Policies.

4. Release by Liquidator. Subject to the terms of this Settlement Agreement and the Liquidation Court's approval of the Recommended Amount as a Class II priority claim, the Liquidator, in his capacity as such, and on behalf of Home and each of its officers, directors, employees, agents, attorneys, subsidiaries, affiliates, predecessors, successors, and assigns, irrevocably and unconditionally releases and discharges Claimant and each of its officers, directors, employees, agents, attorneys, subsidiaries, affiliates, predecessors, successors, and assigns, from any and all actions, causes of action, liabilities, adjustments, obligations, offsets, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, premiums, losses, salvage, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims, and/or demands, arising from or related to the Proof of Claim or the Policies, in law, admiralty, or equity, which the Liquidator, Home, or their subsidiaries, affiliates, predecessors, successors, and assigns, ever had, now have, or hereafter may have against Claimant or its officers, directors, employees, agents, attorneys, respective subsidiaries, affiliates, predecessors, successors, and assigns, all whether known or unknown, suspected or unsuspected, fixed or contingent, in law, admiralty or equity, arising from or related to the Proof of Claim or the Policies.

5. Resolution of Matters and Indemnification. Claimant acknowledges that this Settlement Agreement is intended to resolve all matters arising out of or relating to any rights Claimant ever had, now has or hereafter may have in the Policies and the Proof of Claim, including any asserted rights of third-party claimants against Claimant under the Policies, and Claimant agrees to address, at its sole cost and expense, any such claims of third-party claimants against Claimant as if there had been no liquidation proceeding for Home and as if Claimant had no insurance coverage from Home by virtue of the Policies. In consideration of the Recommended Amount being allowed by the Liquidation Court as a Class II claim, Claimant agrees to indemnify and hold the Liquidator and Home harmless from and against any and all claims, losses, liabilities, debts, damages, costs or expenses arising from or related to the Proof of Claim or the Policies and such indemnification shall be capped at the total amount ultimately distributed or distributable in relation to the Recommended Amount as allowed by the Liquidation Court. The future obligations of Claimant under this paragraph shall extend to and include (by way of example and not limitation) any claims for defense or indemnity for claims made with respect to Claimant's rights under the Policies against the Liquidator or Home by vendors, or by other insurers of Claimant, or by any individuals or entities asserting "direct action" claims arising out of or related to the Policies. The Liquidator shall promptly notify Claimant of any such claim, and shall afford Claimant the opportunity to reasonably participate in the defense of such claims. The Liquidator shall assert all defenses to such claims reasonably available to the Liquidator, including defenses under the Order of Liquidation or the New Hampshire Insurers Rehabilitation and Liquidation Act. Claimant shall cooperate with the Liquidator (including but not limited to the provision of affidavits or testimony) to defend against and resolve such claims. The Liquidator represents and warrants that he is presently

unaware of any claims that would trigger an indemnification obligation of Claimant pursuant to this Settlement Agreement.

6. Multiple Claims. The Home policies against which this claim is made contain certain limits. New Hampshire RSA 402-C:40 (IV) provides that in the event multiple claims against such a policy are filed, and the aggregate allowed amount of all claims to which the same limit of liability in the policy is applicable exceeds that limit, then each claim as allowed shall be reduced in the same proportion so that the total equals the policy limit. The Liquidator is presently aware of the BorgWarner, Burns, and York Proofs of Claim in the Home Liquidation which assert a claim subject to the same limits in the Home Policies as this claim.² If an allowance is made such that the aggregate allowed amount of all claims subject to the same limit exceeds the limit, each claim will be prorated so that the total equals the policy limit, to the extent required by RSA 402-C:20 (IV). The Liquidator will be unable to determine whether, or the extent to which, Claimant's claim may be subject to proration until all claims against the policy have been determined. If the aggregate allowed amount of claims exceeds the applicable limit such that Claimant's claim is subject to proration, the Liquidator will inform Claimant accordingly.

7. Mutual Release of Settling Carriers. Claimant agrees to use reasonable commercial efforts to cause any settlement agreement relating to the underlying matters covered by the Proof of Claim with any other insurance company to include a waiver by that other insurance company of any claim, including contribution, apportionment, indemnification, subrogation, equitable subrogation, allocation, or recoupment, against Home regarding the underlying matters covered by the Proof of Claim. The Liquidator agrees to waive, relinquish and release any claim,

² The Burns Environmental Claims do not assert a claim subject to the same limits in the Home policies as this claim.

including contribution, apportionment, indemnification, subrogation, equitable subrogation, allocation, or recoupment, as to the underlying matters covered by the Proof of Claim against any other insurance company which executes a settlement with Claimants that includes a provision that is materially the same as this paragraph.

8. No Assignments. Claimant warrants and represents that it has not assigned, conveyed, or otherwise transferred any claims, demands, causes of action, rights, or obligations related in any way to the Policies, or any proceeds thereof, or the Proof of Claim, or the claims, losses and expenses released herein, to any person or entity. Claimant shall not assign or otherwise transfer this Settlement Agreement or any rights or obligations thereunder without the written consent of the Liquidator, which consent shall not be unreasonably withheld.

9. Further Assurances. The Parties shall take all further actions as may be necessary to carry out the intent and purpose of this Settlement Agreement and to consummate the transactions contemplated herein. Claimant acknowledges it is aware of the requirements of the Medicare Secondary Payer Act and the Medicare, Medicaid and SCHIP Extension Act of 2007, including provisions concerning Medicare set-asides and/or notification to the Centers for Medicare and Medicaid Services (“CMS”) regarding certain Medicare-eligible, or potentially eligible, claimants who enter into settlement agreements that may justify recovery for Medicare covered case-related services. Claimant acknowledges that it may be obligated, and otherwise agrees, to provide data, if and when required or requested, for CMS regarding claimants who will share in distributions from Claimant’s assets that include a portion of the Recommended Amount.

10. Governing Law and Venue. This Settlement Agreement shall be governed by and construed in accordance with the laws of the State of New Hampshire without regard to the

conflicts of law provisions thereof. The Parties agree that the exclusive venue for any dispute between the Parties arising out of the Proof of Claim, the Policies or this Settlement Agreement shall be the Liquidation Court.

11. Due Diligence. The Parties acknowledge and agree that, in negotiating and executing this Settlement Agreement, they have relied upon their own judgment and upon the recommendations of their own legal counsel, that they have read this Settlement Agreement and have had the opportunity to consider its terms and effects, and that they have executed this Settlement Agreement voluntarily and with full understanding of its terms and effects. This Settlement Agreement is the product of negotiations between the Parties. No Party shall be charged with having promulgated this Settlement Agreement, and the general rule that ambiguities are to be construed against the drafter shall not apply to this Agreement.

12. No Third Party Rights. This Settlement Agreement is entered into solely for the benefit of the Liquidator, Home, and Claimant and is not intended to, and does not give or create any rights to or in any person or entity other than the Parties.

13. Counterparts. This Settlement Agreement may be executed in multiple counterparts, each of which, when so delivered, shall be an original, but such counterparts shall together constitute one and the same instrument. The Parties agree that a signature sent by facsimile or electronic mail to the other Party shall have the same force and effect as an original signature.

14. Power and Authority to Execute. Subject to the approval of the Liquidation Court required by paragraph 1, each Party hereto represents and warrants that it has the full power and authority to execute, deliver, and perform this Settlement Agreement; that all requisite and necessary approvals have been obtained to consummate the transactions contemplated by this Settlement Agreement; that there are no other agreements or transactions to which it is a party

that would render this Settlement Agreement or any part thereof, void, voidable or unenforceable; that each individual signing on behalf of a Party has been duly authorized by that Party to execute this Settlement Agreement on its behalf; and that no claims being released under the terms of this Settlement Agreement have been assigned, sold, or otherwise transferred to any other entity.

15. Successor-in-Interest Bound. This Settlement Agreement shall be binding upon, and shall inure to the benefit of the Parties and their respective officers, directors, employees, agents, attorneys, liquidators, receivers, administrators, successors, and assigns.

16. Entire Agreement. This Settlement Agreement constitutes the entire agreement and understanding between the Parties with respect to the subject matter thereof. This Settlement Agreement supersedes all prior agreements and understandings, whether written or oral, concerning such matters.

17. Survival of Warranties and Representations. The warranties and representations made herein shall survive the execution of this Settlement Agreement.

18. Validity of Settlement Agreement. Subject to approval of this Settlement Agreement by the Liquidation Court as required by paragraph 1, each Party represents and warrants that this Settlement Agreement is a legal, valid, and binding obligation, enforceable in accordance with its terms.

19. No Waiver. No waiver of any right under this Settlement Agreement shall be deemed effective unless contained in a writing signed by the Party or an authorized representative of the Party charged with such waiver, and no waiver of any breach or failure to perform shall be deemed to be a waiver of any future breach or failure to perform or of any other provision of this Settlement Agreement. This Settlement Agreement may not be amended except

in a document signed by the Party or an officer or other authorized official of the Party to be charged.

20. Notice. All notices to be given under this Settlement Agreement shall be given by e-mail and first class U.S. mail directed to:

If to Claimant, to:

Matt Hawkins
Associate General Counsel
Flowserve Corporation
5215 N. O'Connor Blvd., Suite 2300
Irving, TX 75039
Email: MHawkins@Flowserve.com

And

Christopher M. Bechhold, Esq.
Thompson Hine LLP
312 Walnut Street, 14th Floor
Cincinnati, OH 45202
Email: Christopher.Bechhold@ThompsonHine.com

If to the Liquidator, to:

Thomas W. Kober
Chief Claims Officer
The Home Insurance Company in Liquidation
61 Broadway, 6th Floor
New York, New York 10006
Email: tom.kober@homeinsco.com

And

J. Christopher Marshall
Civil Bureau
New Hampshire Department of Justice
33 Capitol Street
Concord, New Hampshire 03301-6397
Email: christopher.marshall@doj.nh.gov


And

J. David Leslie, Esq.
Rackemann, Sawyer & Brewster, P.C.
160 Federal Street
Boston, Massachusetts 02110-1700
Email: dleslie@rackemann.com

21. Severability. If any provision of this Settlement Agreement is invalid, unenforceable, or illegal under the law of any applicable jurisdiction, the validity and enforceability of such provision in any other jurisdiction shall not be affected thereby and the remaining provisions of this Settlement Agreement shall remain valid and enforceable. However, in the event of such invalidity, unenforceability, or illegality, the Parties shall negotiate in good faith to amend this Settlement Agreement through the insertion of additional provisions which are valid, enforceable, and legal and which reflect, to the extent possible, the purposes contained in the invalid, unenforceable, or illegal provision.

WHEREFORE, the Parties have caused this Settlement Agreement to be executed on their respective behalves by their duly authorized representatives.

FLOWERVE CORPORATION

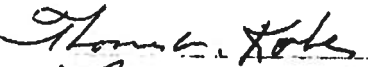
By: 

Name: Matt Hawkins

Title: Associate General Counsel

Date: ^{Sept} August 4, 2019

**JOHN R. ELIAS, INSURANCE COMMISSIONER OF
THE STATE OF NEW HAMPSHIRE, SOLELY IN
HIS CAPACITY AS LIQUIDATOR OF
THE HOME INSURANCE COMPANY**

By: 

Name: Thomas W. Kosen

Title: Chief Claims Officer

Date: ^{SEPT.} August 5, 2019

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

This Settlement Agreement and Mutual Release ("Settlement Agreement") is made as of this 5th day of Sept ~~August~~ 2019, by and between York International Corporation, a successor to BorgWarner Corporation ("Claimant"), on the one hand, and John R. Elias, Insurance Commissioner of the State of New Hampshire, solely in his capacity as Liquidator ("Liquidator") of The Home Insurance Company ("Home"), on the other hand (Claimant and the Liquidator are hereinafter referred to collectively as the "Parties").

WHEREAS, Home is being liquidated pursuant to the June 13, 2003 Order of the Superior Court of the State of New Hampshire, Merrimack County (the "Liquidation Court"), pursuant to which the Liquidator was appointed as the Liquidator of Home;

WHEREAS, Home issued the following insurance policies under which BorgWarner Corporation is the named insured:

<u>Policy Number</u>	<u>Policy Period</u>
HEC9558700	7/1/68-9/1/71
HEC4763017	9/1/73-9/1/74

which together with all other insurance policies Home may have issued to BorgWarner Corporation, or any successors thereto including Claimant, are defined collectively as the "Policies".

WHEREAS, Burns International Services Corporation ("Burns") filed claims in the Home liquidation on behalf of itself as well as the Claimant and Flowserve Corporation ("Flowserve") seeking coverage under the Policies in connection with liability arising out of asbestos bodily injury exposures. The Burns claims were assigned proof of claim numbers

INSU702471, INSU702472, INSU702473, and INSU702474¹, the claims filed on behalf of Flowserve were assigned proof of claim number INSU715195, and the claims filed on behalf of Claimant were assigned proof of claim number INSU715194. INSU715194 together with any other proofs of claim, hereinbefore or hereinafter filed by Claimant in the Home liquidation are defined collectively as the "Proof of Claim";

WHEREAS, proofs of claim asserting coverage for asbestos bodily injury exposures under the Policies were also filed by BorgWarner Morse TEC L.L.C. The proofs of claim filed by BorgWarner Morse TEC L.L.C, and Burns, and Burns on behalf of Flowserve (hereinafter collectively the "BorgWarner, Burns and Flowserve Proofs of Claim") are not addressed in this Settlement Agreement;

WHEREAS, the Parties are now desirous of resolving all claims that were asserted, or could have been or could be asserted, between them and resolving all matters concerning the Proof of Claim and their rights and obligations with respect to the Policies; and

WHEREAS, the Parties agree that this Settlement Agreement is subject to and conditioned upon its approval by the Liquidation Court and allowance of the Recommended Amount (as defined below) into the Home liquidation and in the event that the Liquidation Court does not approve the Settlement Agreement and allow the Recommended Amount, this Settlement Agreement shall be null and void and without any force or effect;

NOW, THEREFORE, in consideration of all the respective transactions contemplated by this Settlement Agreement, and the mutual covenants and representations herein contained,

¹ In addition to these four proof of claim numbers, Burns also filed two proofs of claim seeking coverage for environmental damages which were assigned proof of claim numbers INSU709398 and INSU709399 ("Burns Environmental Claims"). These Burns Environmental Claims are not addressed in this Settlement Agreement. Unlike the Burns Environmental Claims, the Borg Warner, Burns, and Flowserve Proofs of Claim and the Claimant's Proof of Claim all seek coverage for asbestos bodily injury exposure under the Policies.

the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. Effectiveness. This Settlement Agreement is conditioned and shall only become effective (the "Effective Date") upon approval by the Liquidation Court. The Liquidator shall move for approval of this Settlement Agreement promptly following execution by all Parties.

2. Recommendation, Allowance, and Classification of Claims.

A. Subject to all the terms of this Settlement Agreement, and with the agreement of Claimant, which by Claimant's execution hereof is hereby granted, the Liquidator shall recommend pursuant to N.H. RSA 402-C:45 that the Proof of Claim be allowed in the amount of \$4,360,352.00 (the "Recommended Amount") as a Class II priority claim under N.H. RSA 402-C:44. The Liquidator shall seek allowance of the Recommended Amount as a Class II priority claim by the Liquidation Court in the Liquidator's motion for approval of this Settlement Agreement.

B. Allowance of the Recommended Amount as a Class II priority claim by the Liquidation Court shall fully and finally resolve the Proof of Claim and any and all claims of whatever nature that Claimant has under the Policies. In the event that the Liquidation Court does not allow the Recommended Amount as a Class II priority claim, this Settlement Agreement shall be null and void and shall have no force and effect and the Parties will be returned to *status quo ante*, as if no such agreement was ever reached, with this Settlement Agreement thereafter being inadmissible for any purpose in any dispute between the Parties.

C. If and when the Liquidation Court allows the Recommended Amount as a Class II priority claim, Claimant will become a Class II creditor in the Home liquidation pursuant to N.H. RSA 402-C:44, and Claimant shall, subject to this Settlement Agreement, receive distributions on the allowed amount at the same intervals and at the same percentages as other Class II creditors of Home. All distributions to Claimant shall be made payable to York International Corporation and sent to the Claimant at the following address:

Tim Maciolek, Legal Director - Litigation
Johnson Controls
5757 N. Green Bay Avenue
Milwaukee, WI 53201

Claimant agrees that they will promptly notify the Liquidator of any change of address or addressee.

3. Release by Claimant. Subject to the terms of this Settlement Agreement and the Liquidation Court's approval of the Recommended Amount as a Class II priority claim, Claimant for itself and on behalf of each of its officers, directors, employees, agents, attorneys, subsidiaries, affiliates, predecessors, successors, and assigns, irrevocably and unconditionally releases and discharges the Liquidator and Home and each of their respective officers, directors, employees, agents, attorneys, subsidiaries, affiliates, predecessors, successors, and assigns (including any trustee or other statutory successor), from any and all actions, causes of action, liabilities, adjustments, obligations, offsets, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, premiums, losses, salvage, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims, and/or demands, arising from or related to the Proof of Claim or the Policies,

in law, admiralty, or equity, which Claimant, its subsidiaries, affiliates, predecessors, successors, and assigns, ever had, now has, or hereafter may have against the Liquidator or Home or their respective officers, directors, employees, agents, attorneys, subsidiaries, affiliates, predecessors, successors, and assigns, all whether known or unknown, suspected or unsuspected, fixed or contingent, in law, admiralty or equity, arising from or related to the Proof of Claim or the Policies.

4. Release by Liquidator. Subject to the terms of this Settlement Agreement and the Liquidation Court's approval of the Recommended Amount as a Class II priority claim, the Liquidator, in his capacity as such, and on behalf of Home and each of its officers, directors, employees, agents, attorneys, subsidiaries, affiliates, predecessors, successors, and assigns, irrevocably and unconditionally releases and discharges Claimant and each of its officers, directors, employees, agents, attorneys, subsidiaries, affiliates, predecessors, successors, and assigns, from any and all actions, causes of action, liabilities, adjustments, obligations, offsets, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, premiums, losses, salvage, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims, and/or demands, arising from or related to the Proof of Claim or the Policies, in law, admiralty, or equity, which the Liquidator, Home, or their subsidiaries, affiliates, predecessors, successors, and assigns, ever had, now have, or hereafter may have against Claimant or its officers, directors, employees, agents, attorneys, respective subsidiaries, affiliates, predecessors, successors, and assigns, all whether known or unknown, suspected or unsuspected, fixed or contingent, in law, admiralty or equity, arising from or related to the Proof of Claim or the Policies.

5. Resolution of Matters and Indemnification. Claimant acknowledges that this Settlement Agreement is intended to resolve all matters arising out of or relating to any rights Claimant ever had, now has or hereafter may have in the Policies and the Proof of Claim, including any asserted rights of third-party claimants against Claimant under the Policies, and Claimant agrees to address, at its sole cost and expense, any such claims of third-party claimants against Claimant as if there had been no liquidation proceeding for Home and as if Claimant had no insurance coverage from Home by virtue of the Policies. In consideration of the Recommended Amount being allowed by the Liquidation Court as a Class II claim, Claimant agrees to indemnify and hold the Liquidator and Home harmless from and against any and all claims, losses, liabilities, debts, damages, costs or expenses arising from or related to the Proof of Claim or the Policies and such indemnification shall be capped at the total amount ultimately distributed or distributable in relation to the Recommended Amount as allowed by the Liquidation Court. The future obligations of Claimant under this paragraph shall extend to and include (by way of example and not limitation) any claims for defense or indemnity for claims made with respect to Claimant's rights under the Policies against the Liquidator or Home by vendors, or by other insurers of Claimant, or by any individuals or entities asserting "direct action" claims arising out of or related to the Policies. The Liquidator shall promptly notify Claimant of any such claim, and shall afford Claimant the opportunity to reasonably participate in the defense of such claims. The Liquidator shall assert all defenses to such claims reasonably available to the Liquidator, including defenses under the Order of Liquidation or the New Hampshire Insurers Rehabilitation and Liquidation Act. Claimant shall cooperate with the Liquidator (including but not limited to the provision of affidavits or testimony) to defend against and resolve such claims. The Liquidator represents and warrants that he is presently

unaware of any claims that would trigger an indemnification obligation of Claimant pursuant to this Settlement Agreement.

6. Multiple Claims. The Home policies against which this claim is made contain certain limits. New Hampshire RSA 402-C:40 (IV) provides that in the event multiple claims against such a policy are filed, and the aggregate allowed amount of all claims to which the same limit of liability in the policy is applicable exceeds that limit, then each claim as allowed shall be reduced in the same proportion so that the total equals the policy limit. The Liquidator is presently aware of the Borg Warner, Burns, and Flowserve Proofs of Claim in the Home Liquidation which assert a claim subject to the same limits in the Home Policies as this claim.² If an allowance is made such that the aggregate allowed amount of all claims subject to the same limit exceeds the limit, each claim will be prorated so that the total equals the policy limit, to the extent required by RSA 402-C:20 (IV). The Liquidator will be unable to determine whether, or the extent to which, Claimant's claim may be subject to proration until all claims against the policy have been determined. If the aggregate allowed amount of claims exceeds the applicable limit such that Claimant's claim is subject to proration, the Liquidator will inform Claimant accordingly.

7. Mutual Release of Settling Carriers. Claimant agrees to use reasonable commercial efforts to cause any settlement agreement relating to the underlying matters covered by the Proof of Claim with any other insurance company to include a waiver by that other insurance company of any claim, including contribution, apportionment, indemnification, subrogation, equitable subrogation, allocation, or recoupment, against Home regarding the underlying matters covered by the Proof of Claim. The Liquidator agrees to waive, relinquish and release any claim,

² The Burns Environmental Claims do not assert a claim subject to the same limits in the Home policies as this claim.

including contribution, apportionment, indemnification, subrogation, equitable subrogation, allocation, or recoupment, as to the underlying matters covered by the Proof of Claim against any other insurance company which executes a settlement with Claimants that includes a provision that is materially the same as this paragraph.

8. No Assignments. Claimant warrants and represents that it has not assigned, conveyed, or otherwise transferred any claims, demands, causes of action, rights, or obligations related in any way to the Policies, or any proceeds thereof, or the Proof of Claim, or the claims, losses and expenses released herein, to any person or entity. Claimant shall not assign or otherwise transfer this Settlement Agreement or any rights or obligations thereunder without the written consent of the Liquidator, which consent shall not be unreasonably withheld.

9. Further Assurances. The Parties shall take all further actions as may be necessary to carry out the intent and purpose of this Settlement Agreement and to consummate the transactions contemplated herein. Claimant acknowledges it is aware of the requirements of the Medicare Secondary Payer Act and the Medicare, Medicaid and SCHIP Extension Act of 2007, including provisions concerning Medicare set-asides and/or notification to the Centers for Medicare and Medicaid Services ("CMS") regarding certain Medicare-eligible, or potentially eligible, claimants who enter into settlement agreements that may justify recovery for Medicare covered case-related services. Claimant acknowledges that it may be obligated, and otherwise agrees, to provide data, if and when required or requested, for CMS regarding claimants who will share in distributions from Claimant's assets that include a portion of the Recommended Amount.

10. Governing Law and Venue. This Settlement Agreement shall be governed by and construed in accordance with the laws of the State of New Hampshire without regard to the

conflicts of law provisions thereof. The Parties agree that the exclusive venue for any dispute between the Parties arising out of the Proof of Claim, the Policies or this Settlement Agreement shall be the Liquidation Court.

11. Due Diligence. The Parties acknowledge and agree that, in negotiating and executing this Settlement Agreement, they have relied upon their own judgment and upon the recommendations of their own legal counsel, that they have read this Settlement Agreement and have had the opportunity to consider its terms and effects, and that they have executed this Settlement Agreement voluntarily and with full understanding of its terms and effects. This Settlement Agreement is the product of negotiations between the Parties. No Party shall be charged with having promulgated this Settlement Agreement, and the general rule that ambiguities are to be construed against the drafter shall not apply to this Agreement.

12. No Third Party Rights. This Settlement Agreement is entered into solely for the benefit of the Liquidator, Home, and Claimant and is not intended to, and does not give or create any rights to or in any person or entity other than the Parties.

13. Counterparts. This Settlement Agreement may be executed in multiple counterparts, each of which, when so delivered, shall be an original, but such counterparts shall together constitute one and the same instrument. The Parties agree that a signature sent by facsimile or electronic mail to the other Party shall have the same force and effect as an original signature.

14. Power and Authority to Execute. Subject to the approval of the Liquidation Court required by paragraph 1, each Party hereto represents and warrants that it has the full power and authority to execute, deliver, and perform this Settlement Agreement; that all requisite and necessary approvals have been obtained to consummate the transactions contemplated by this Settlement Agreement; that there are no other agreements or transactions to which it is a party

that would render this Settlement Agreement or any part thereof, void, voidable or unenforceable; that each individual signing on behalf of a Party has been duly authorized by that Party to execute this Settlement Agreement on its behalf; and that no claims being released under the terms of this Settlement Agreement have been assigned, sold, or otherwise transferred to any other entity.

15. Successor-in-Interest Bound. This Settlement Agreement shall be binding upon, and shall inure to the benefit of the Parties and their respective officers, directors, employees, agents, attorneys, liquidators, receivers, administrators, successors, and assigns.

16. Entire Agreement. This Settlement Agreement constitutes the entire agreement and understanding between the Parties with respect to the subject matter thereof. This Settlement Agreement supersedes all prior agreements and understandings, whether written or oral, concerning such matters.

17. Survival of Warranties and Representations. The warranties and representations made herein shall survive the execution of this Settlement Agreement.

18. Validity of Settlement Agreement. Subject to approval of this Settlement Agreement by the Liquidation Court as required by paragraph 1, each Party represents and warrants that this Settlement Agreement is a legal, valid, and binding obligation, enforceable in accordance with its terms.

19. No Waiver. No waiver of any right under this Settlement Agreement shall be deemed effective unless contained in a writing signed by the Party or an authorized representative of the Party charged with such waiver, and no waiver of any breach or failure to perform shall be deemed to be a waiver of any future breach or failure to perform or of any other provision of this Settlement Agreement. This Settlement Agreement may not be amended except

in a document signed by the Party or an officer or other authorized official of the Party to be charged.

20. Notice. All notices to be given under this Settlement Agreement shall be given by e-mail and first class U.S. mail directed to:

If to Claimant, to:

Tim Maciolek
Legal Director – Litigation
Johnson Controls
5757 N. Green Bay Avenue
Milwaukee, WI 53201
Email: Tim.Maciolek@jci.com

and

Patrick Murphy, Esq.
Quarles & Brady LLP
411 East Wisconsin Ave., Suite 2400
Milwaukee, WI 53202-4426
Email: Patrick.Murphy@quarles.com

If to the Liquidator, to:

Thomas W. Kober
Chief Claims Officer
The Home Insurance Company in Liquidation
61 Broadway, 6th Floor
New York, New York 10006
Email: tom.kober@homeinseo.com

and

J. Christopher Marshall
Civil Bureau
New Hampshire Department of Justice
33 Capitol Street
Concord, New Hampshire 03301-6397
Email: christopher.marshall@doj.nh.gov

and

J. David Leslie, Esq.
Rackemann, Sawyer & Brewster, P.C.
160 Federal Street
Boston, Massachusetts 02110-1700
Email: dleslie@rackemann.com

21. Severability. If any provision of this Settlement Agreement is invalid, unenforceable, or illegal under the law of any applicable jurisdiction, the validity and enforceability of such provision in any other jurisdiction shall not be affected thereby and the remaining provisions of this Settlement Agreement shall remain valid and enforceable. However, in the event of such invalidity, unenforceability, or illegality, the Parties shall negotiate in good faith to amend this Settlement Agreement through the insertion of additional provisions which are valid, enforceable, and legal and which reflect, to the extent possible, the purposes contained in the invalid, unenforceable, or illegal provision.

WHEREFORE, the Parties have caused this Settlement Agreement to be executed on their respective behalves by their duly authorized representatives.

YORK INTERNATIONAL CORPORATION

By: 

Name Mike Peterson

Title: Vice President

Date: August 31, 2019

**JOHN R. ELIAS, INSURANCE COMMISSIONER OF
THE STATE OF NEW HAMPSHIRE, SOLELY IN
HIS CAPACITY AS LIQUIDATOR OF
THE HOME INSURANCE COMPANY**

By: 

Name: Thomas W. Kober

Title: Chief Claims Officer

Date: ~~August~~ ^{SEPT.} 5, 2019