

# **AGREEMENT AND PLAN OF MERGER**

**MERGER OF  
FALL CREEK MUTUAL INSURANCE COMPANY  
WITH AND INTO  
MUTUAL OF WAUSAU INSURANCE CORPORATION**

**AGREEMENT AND PLAN OF MERGER**

*Filed with the Wisconsin Office of the Commissioner of Insurance*

**September 14, 2023**

**AGREEMENT AND PLAN OF MERGER  
BETWEEN  
MUTUAL OF WAUSAU INSURANCE CORPORATION  
AND  
FALL CREEK MUTUAL INSURANCE COMPANY**

THIS AGREEMENT AND PLAN OF MERGER (this “Agreement”) is made and entered into as of the 29th day of August, 2023 (the “Signing Date”), by and between **MUTUAL OF WAUSAU INSURANCE CORPORATION**, a Wisconsin mutual insurance corporation with its place of business at 3910 W Stewart Avenue, Wausau, WI 54402 (“MWIC”), and **FALL CREEK MUTUAL INSURANCE COMPANY**, a Wisconsin town mutual insurance corporation with its place of business at 140 S. State Street, Fall Creek, WI 54742 (“FCMIC”, together with MWIC is collectively referred to herein as the “Constituent Corporations” and each a “Constituent Corporation”).

**RECITALS**

A. MWIC is a mutual insurance corporation organized and existing under Chapter 611 of the Wisconsin Statutes and FCMIC is a town mutual insurance corporation organized and existing under Chapter 612 of the Wisconsin Statutes. MWIC and FCMIC are duly authorized and licensed to transact the business of insurance within the State of Wisconsin under Chapters 611 and 612 of the Wisconsin Statutes, respectively (collectively, the “Wisconsin Insurance Law”).

B. MWIC is authorized to operate its insurance business in all counties in Wisconsin. FCMIC is authorized to operate its insurance business in the Wisconsin counties of Barron, Buffalo, Clark, Chippewa, Dunn, Eau Claire, Jackson and Trempealeau.

C. Each of the Constituent Corporations is fully informed as to the financial operations and conditions of the other as reflected in each Constituent Corporation’s most recent financial statements.

D. FCMIC presently maintains statutorily and administratively required reinsurance coverage pursuant to Wis. Stat. § 612.33 and Wis. Admin. Code § INS 13.09 from Wisconsin Reinsurance Corporation, a property and casualty reinsurance company (“WRC”). On June 21, 2023, the Wisconsin Office of the Commissioner of Insurance (the “Commissioner”) placed WRC into rehabilitation (the “WRC Rehabilitation”).

E. On June 28, 2023, as a result of the WRC Rehabilitation and FCMIC’s status as a WRC policyholder for 2023, the Commissioner issued an order to FCMIC notifying the company that it must find alternative reinsurance coverage for 2024 or take other action to maintain its certificate of authority and compliance with Wisconsin law including, without limitation, merging with another company (the “OCI Order”).

F. The Boards of Directors of MWIC and FCMIC, at duly convened meetings, have each (i) adopted a resolution approving the Merger (as defined below) and this Agreement, copies of which were submitted to each Board of Directors for consideration and (ii) determined that it is

advisable and in the best interests of their respective Constituent Corporations and the members of each Constituent Corporation to merge pursuant to the terms and conditions set forth in this Agreement, the provisions set forth in Wis. Stat. § 612.22, and in a manner approved by the Commissioner.

G. FCMIC and MWIC desire to proceed with the Merger and to jointly submit this Agreement to the Commissioner for the Commissioner's approval and, unless otherwise directed by the Commissioner, to submit the issue to the members of FCMIC for their approval.

## **AGREEMENT**

NOW, THEREFORE, in consideration of the above recitals and the mutual agreements and covenants set forth herein, the Constituent Corporations agree to the following terms, conditions and agreements for the Merger and the procedure for carrying the same into force and effect as follows:

1. **Merger.**

(a) In accordance with the provisions of this Agreement and the Wisconsin Insurance Law, at the Effective Time (as defined below), FCMIC shall merge with and into MWIC (the "Merger") and the separate existence of FCMIC shall thereupon cease and MWIC shall continue as the surviving company (at times herein referred to as the "Surviving Corporation").

(b) Surviving Corporation; Name. The Surviving Corporation. The Surviving Corporation shall not undergo a name change. It shall retain the name "Mutual of Wausau Insurance Corporation" upon the effectuation of the Merger.

2. **Closing.**

(a) Closing Date. The closing of the Merger (the "Closing") shall take place on December 31, 2023, or as soon as practicable after satisfaction or, to the extent permitted hereunder, waiver of all applicable conditions set forth in herein or at such other time and place as the Constituent Corporations shall mutually agree. The date upon which the Closing occurs is referred to herein as the "Closing Date".

(b) Items to be delivered by FCMIC. At or prior to the Closing, FCMIC shall deliver to MWIC each of the following, duly executed by or on behalf of FCMIC as appropriate:

- i. a certificate dated the Closing Date signed by an appropriate officer of FCMIC certifying as of the Closing Date (i) none of the covenants in Section 11 have been violated, (ii) the incumbency of the officers of FCMIC immediately prior to the Closing Date; (iii) the due adoption and text of the resolutions of the Board of Directors of FCMIC approving and authorizing this Agreement, the Merger, and all other documents and transactions contemplated hereby; and (iv) the due adoption and text of the consent of the members of FCMIC

approving and authorizing this Agreement, the Merger, and all other documents and transactions contemplated hereby;

- ii. proof of filing with the Commissioner the consent of the members of FCMIC approving and authorizing this Agreement, the Merger, and all other documents and transactions contemplated hereby; and
- iii. such other instruments, certificates, affidavits, consents, or other documents reasonably requested by MWIC or which are reasonably necessary to carry out the Merger contemplated by this Agreement and to comply with the terms hereof.

(c) Joint Deliverable of the Constituent Corporations. At or prior to the Closing, the Constituent Corporations shall obtain final Commissioner approval of the Merger, this Agreement, and all other documents and transactions contemplated hereby, and the Commissioner shall deliver a certificate of authority to the Surviving Company (the "OCI Approval").

3. **Effective Time**.

(a) On the Closing Date, the Constituent Corporations shall make all filings or recordings with the Commissioner as required under the Wisconsin Insurance Law.

(b) The effective time and date of the Merger shall be 11:59 PM on the December 31, 2023 (the "Effective Time").

4. **Principal Office of the Surviving Corporation**. The Surviving Corporation shall have its principal place of business at 3910 W Stewart Avenue, Wausau, WI 54402. As of the Effective Time, the Surviving Corporation shall be authorized to transact such business as is now authorized by the OCI for each of the parties or as may hereafter be authorized by the OCI for the Surviving Corporation.

5. **Effect of Merger**.

(a) At the Effective Time, title to all property owned by the Constituent Corporations shall be vested in the Surviving Corporation without reversion or impairment. All of the assets, rights, privileges, immunities, and franchises, whether of public or private nature, interests, properties, and business of FCMIC, of every character and description, including all real property, all policies of insurance, all debts due on whatever account, premiums and assessments payable from members, all rights to bring any suit or action and all and every other interest of, or belonging to or due to FCMIC, shall accrue to, be merged into and become the absolute property of the Surviving Corporation.

(b) The officers of FCMIC shall, as of the Effective Time, execute and deliver any deeds, titles, bills of sale or other instruments in writing as may otherwise be necessary to transfer, assign and convey to the Surviving Corporation all of FCMIC's assets, rights, interests and properties, including contracts of insurance, reinsurance agreements and agency contracts.

(c) At the Effective Time, the members of FCMIC shall automatically become members and policyholders of the Surviving Corporation. All premiums and assessments paid by the members of FCMIC shall be deemed to have been paid to the Surviving Corporation for the purpose of determining the value of each member's equitable share of the value of the Surviving Corporation.

(d) At the Effective Time, the Surviving Corporation shall assume all liabilities and obligations of FCMIC, including all policies of insurance. The Surviving Corporation shall thenceforth be responsible and liable for all of the liabilities and obligations of each of the Constituent Corporations hereto, and any claim existing or action pending by or against either of the Constituent Corporations may be prosecuted to judgment as if the Merger had not taken place or, if the claim or action is against FCMIC, the Surviving Corporation may be substituted in FCMIC's place. Neither the rights of creditors nor liens upon the property of either of the Constituent Corporations shall be impaired by the Merger, but such liens shall be limited to the property upon which there were liens immediately prior to the Effective Time.

6. **Articles of Incorporation and Bylaws.**

(a) The articles of incorporation of the Surviving Corporation shall be the articles of incorporation of MWIC, as amended and restated (if applicable) and attached hereto as Exhibit A (the "Surviving Articles").

(b) The bylaws of the Surviving Corporation shall be the bylaws of MWIC, as amended and restated (if applicable) and attached hereto as Exhibit B (the "Surviving Bylaws").

7. **Certificate of Assumption.** As soon after the Effective Time as is practicable, the Surviving Corporation shall send to each of FCMIC's members notice of the Merger and the Surviving Corporation's assumption of FCMIC's policies in the form of a Certificate of Assumption and Endorsement which shall be substantially the same as Exhibit C attached to and made a part of this Agreement.

8. **Assessments for Losses and Expenses Incurred Prior to Merger.** Assessments, if any are necessary, levied for losses and expenses incurred prior to the Effective Time on policies issued by the Constituent Corporations shall be levied only against the members of the respective Constituent Corporation.

9. **Directors.** The directors of MWIC in office immediately prior to the Effective Time will continue to serve as the directors of the Surviving Corporation. The directors of the Surviving Corporation and their terms of office as of the Effective Time are listed in Exhibit D attached hereto and made a part of this Agreement. If on or after the Effective Time a vacancy shall exist on the Board of Directors of the Surviving Corporation, such vacancy may thereafter be filled in the manner provided by the Surviving Articles or Surviving Bylaws, as applicable. When vacancies arise in the future on the Board of Directors of MWIC, the names of former directors of FCMIC may be given to the Nominating Committee of MWIC's Board of Directors for consideration.

10. **Officers.** The officers of the Surviving Corporation and their terms of office shall be those persons named in Exhibit D attached hereto and made a part of this Agreement, who shall serve until the next annual meeting of the Board of Directors of the Surviving Corporation or until their successors shall have been elected and shall qualify for office. If on or after the Effective Time a vacancy shall exist in any of the offices of the Surviving Corporation, such vacancy may thereafter be filled in the manner provided by the Surviving Articles or Surviving Bylaws, as applicable.

11. **Prohibited Transactions.**

(a) Between the Signing Date and the Effective Time (the “Interim Period”), the Constituent Corporations agree that except as otherwise expressly contemplated by any other provision of this Agreement or the prior written consent of the other (such consent not to be unreasonably withheld, conditioned or delayed), each Constituent Corporation shall (i) use commercially reasonable efforts to conduct its operations only in the ordinary course of business consistent with past practice, (ii) maintain its properties and other assets in good working condition (normal wear and tear excepted), (iii) use commercially reasonable efforts to maintain its business, employees, customers, assets, and operations as an ongoing concern in accordance with past practice, and (iv) not take any action (or omit to take any action) that would constitute a Material Adverse Change on such Constituent Corporation. By way of example and not in limitation of the foregoing, neither of the Constituent Corporations will during the Interim Period:

- i. Fail to (A) keep in full force and effect all insurance policies covering the Constituent Corporation and (B) notify its insurance carrier of any claims made or asserted, or threatened to be made or asserted if such notice is required to ensure coverage by such insurance carrier;
- ii. Amend its respective articles of incorporation or bylaws, except as provided in this Agreement;
- iii. Form any subsidiary or acquire any equity interest or other interest in any other entity, excluding any additional mergers, affiliations, or transactions that MWIC may pursue, consider, negotiate or consummate;
- iv. Materially change any of its methods of accounting or accounting practices in any respect;
- v. Amend or terminate any material contract;
- vi. Fail to keep in full force and effect, and without restriction, all permits, including all state certificates of authority necessary to conduct its business in the ordinary course;
- vii. Incur any obligation or liability (absolute or contingent), except current liabilities incurred, and obligations under contracts entered

into, in the ordinary course of business, excluding any obligations or liabilities incurred by MWIC in connection with any mergers, affiliations, or transactions that MWIC may consummate;

- viii. Discharge or satisfy any lien or encumbrance or pay any obligation or liability other than current liabilities in the ordinary course of business;
- ix. Make any dividend or other payment or distribution to its members, except for dividends required under policies of insurance in the ordinary course of business;
- x. Mortgage, pledge, create a security interest in, or subject to a lien or other encumbrance, any of its assets, tangible or intangible;
- xi. Sell or transfer any of its tangible assets or cancel any debts or claims except in the ordinary course of business;
- xii. Sell, assign, or transfer any trademark, trade name, patent or other intangible assets;
- xiii. Waive any right of any substantial value; or
- xiv. Enter into any transaction other than in the ordinary course of business, excluding any additional mergers, affiliations, or transactions that MWIC may pursue, consider, negotiate or consummate.

(b) FCMIC agrees that except as otherwise expressly contemplated by any other provision of this Agreement or the prior written consent of MWIC (such consent not to be unreasonably withheld, conditioned or delayed), FCMIC shall not sell any of its stock or investments during the Interim Period.

(c) Exclusive Negotiations. From the Signing Date until the earlier of the Effective Time or the termination of this Agreement, FCMIC will not and will not permit any of its officers, directors, brokers, or agents to directly or indirectly initiate, solicit, encourage, or otherwise facilitate any inquiries or the making of any proposal or offer with respect to a merger, reorganization, consolidation, or similar transaction involving any purchase of the assets of or demutualization or conversion of FCMIC, other than in connection with the Merger, nor provide any confidential information or data to, or have any discussions with, any entity or representative of any entity relating to such an alternative proposal. FCMIC will notify MWIC promptly if any alternative proposal is received by it or any discussions or negotiations are sought in connection with an alternative proposal.



12. **Access to Information.**

(a) From the Signing Date until the earlier of the Effective Time or the termination of this Agreement, subject to any applicable contractual restrictions and applicable legal privileges, and to the extent applicable Law would not thereby be violated, FCMIC will:

- i. Give MWIC and its authorized representatives full access to the respective offices, properties, books, and records of FCMIC upon reasonable prior notice and during normal business hours (including the copying of such materials as may reasonably be requested); and
- ii. Furnish MWIC and its counsel, financial advisors, auditors, and other authorized representatives such financial and operating data and other information relating to the business of FCMIC as MWIC may reasonably request.

(b) No investigation made by MWIC or its respective representatives shall affect the representation and warranties of FCMIC hereunder or the liability of FCMIC with respect thereto.

13. **Mutual Representations and Warranties.** Each of the Constituent Corporations hereby represents and warrants to the other Constituent Corporation as to the matters in this Section 13. All of the representations and warranties set forth in this Section 13 shall be made as of the Signing Date and as of the Effective Time (except in the case of representations and warranties that are made as of a specified date, in which case such representations and warranties will be true and correct as of such specified date).

(a) That it is a corporation duly authorized and validly existing under the laws of the State of Wisconsin and has the corporate power to own or lease its properties and to carry on its business as now being conducted;

(b) That the balance sheet and statements of income and surplus delivered to the other Constituent Corporation fairly present, in accordance with Wisconsin Statutes governing accounting for such Constituent Corporation, the financial condition and results of the operations of such Constituent Corporation as of the dates and for the periods indicated;

(c) That there has been no Material Adverse Change in its financial condition from the date the balance sheet and statements of income and surplus were delivered to the other Constituent Corporation until the Effective Time;

(d) The copies of its articles of incorporation and bylaws made available to the other Constituent Corporation are the true, correct and complete copies of such documents in effect as of the Effective Time and it is not in violation of any of the provisions of its articles of incorporation or bylaws;

(e) That there is no action, suit, or proceeding pending against it involving the possibility of any judgment, order, injunction, or decree which might result in any Material Adverse Change in its business, operations, properties or assets or the condition, financial or otherwise, or which would impair its ability to enter into this Agreement and consummate the Merger, except for the OCI Order.

(f) That its Board of Directors has adopted resolutions (i) approving this Agreement and the documents and transactions contemplated hereby, (ii) authorizing the execution and delivery of this Agreement, (iii) with respect to FCMIC, directing that this Agreement be submitted to a vote of FCMIC's members taken separately at a duly held meeting called for the purpose of considering and acting upon this Agreement;

(g) That it has the full power and authority to enter into this Agreement and, with respect to FCMIC, upon appropriate consent of FCMIC's members in accordance with applicable law, subject to obtaining all required regulatory approvals, to consummate the transactions contemplated hereby;

(h) That this Agreement has been duly executed by such Constituent Corporation and constitutes the valid and legally binding obligation of such Constituent Corporation, enforceable against such Constituent Corporation in accordance with its terms, subject to bankruptcy, receivership, insolvency, reorganization, moratorium or similar laws affecting or relating to creditors' rights generally and subject to general principles of equity;

(i) That it is not, and immediately prior to the Effective Time will not be in default under its articles of incorporation or bylaws, or in default under any indenture or under any material agreement or other material instrument to which it is a party or by which it or any of its properties is bound or to which it is subject;

(j) That, subject to the receipt of all consents and approvals contemplated by this Agreement, the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby or the fulfillment of and compliance with the terms and provisions hereof, will not (i) violate any judicial, administrative or arbitral order, writ, award, judgment, injunction or decree involving such Constituent Corporation, (ii) conflict with the terms, conditions or provisions of the articles of incorporation or bylaws of such Constituent Corporation, (iii) conflict with the terms, conditions or provisions of the articles of incorporation or bylaws, (iv) conflict with, result in a breach of, constitute a default under or accelerate or permit the acceleration of the performance required by, any indenture or any material agreement or other material instrument to which such Constituent Corporation is bound, (v) result in the creation of any lien, charge or encumbrance upon any of the assets of either company under any such agreement or instrument, or (vi) terminate or give any party thereto the right to terminate any such indenture, agreement or instrument;

(k) That no consent of any third party to any indenture of any material agreement or other material instrument to which such Constituent Corporation is a party is required in connection with this Agreement and the transactions contemplated hereby,

except with respect to and the consent of MWIC's current reinsurers as such consent relates to MWIC's ability to maintain mandatory and appropriate reinsurance coverage for calendar year 2024.; and

(l) That such Constituent Corporation has heretofore delivered to the other Constituent Corporation all employment contracts, contracts for the purchase or lease of tangible property, real or personal, and any other contracts creating executory obligations on its part beyond the Effective Time which may not be canceled on notice of thirty (30) days or less, and that it will not incur any new executory obligations, without the approval of the other corporation during the Interim Period.

14. **Representations and Warranties of FCMIC.** FCMIC hereby represents and warrants to MWIC as to the matters in this Section 14. All of the representations and warranties set forth in this Section 14 shall be made as of the Signing Date and as of the Effective Time (except in the case of representations and warranties that are made as of a specified date, in which case such representations and warranties will be true and correct as of such specified date).

(a) FCMIC has heretofore delivered to MWIC all contracts for the purchase or lease of tangible property, real or personal, and any other contracts creating executory obligations on MWIC's part beyond the Signing Date of this Agreement which may not be canceled on notice of thirty (30) days or less, and that FCMIC will not incur any new executory obligations, without approval of MWIC, between the Signing Date and the Effective Time.

15. **Representations and Warranties; Updated Information.** From the Signing Date until the earlier of the Effective Time or the termination of this Agreement, each Constituent Corporation shall, after having obtained knowledge thereof, promptly disclose in writing to the other Constituent Corporation any matter arising after the Signing Date that, if existing, occurring or known at the Effective Time would render inaccurate any of the representations or warranties of such Constituent Corporation contained in this Agreement (each, a "**Representation and Warranty Notice**"). The other Constituent Corporation may terminate this Agreement in accordance with Section 18(a)(ii)(3) in the event of any such disclosure. Notwithstanding the foregoing, a Constituent Corporation's disclosure pursuant to this Section 15 shall not automatically be deemed a breach giving rise to the right to terminate pursuant to Section 18(a)(ii)(2).

16. **Continuing Authority of FCMIC Officers.** On the Effective Date, the separate existence of FCMIC shall cease. However, the authority of the present officers of FCMIC shall continue for the limited purpose of executing and delivering all necessary documents to affect the terms of this Agreement. The officers of FCMIC shall execute and deliver any deeds, titles, bills of sale or other instruments in writing as may otherwise be necessary to transfer, assign, and convey to the Surviving Corporation all of FCMIC's assets, rights, interests, and properties, including without limitation contracts of insurance, reinsurance agreements, and agency contracts.

17. **Regulatory Approvals.**

(a) Subject to the terms and conditions of this Agreement, each party will use its best efforts to take, or cause to be taken, all actions reasonably necessary or advisable under applicable law to consummate the Merger, including (i) making or causing to be made the filings required by law with respect to the Merger as promptly as it practicable, (ii) complying, as promptly as is reasonable practicable, with any requests received from a governmental body by such party with respect to the Merger, and (iii) resolving any formal or informal objections of any governmental body with respect to any such filings or the Merger.

(b) The parties covenant and agree that if any required regulatory approval to consummate the Merger is denied or not obtained, the parties will use their best efforts to work together to restructure the Merger to achieve or acquire all required regulatory approvals, it being agreed that in all such instances the benefits sought to be delivered by the parties from the Merger, financial or otherwise, will not change as a result of such restructuring.

(c) Until the earlier of the Effective Time or the termination of this Agreement, each party shall promptly notify the other party of any communication it receives from any governmental body relating to the regulatory consents, registrations, approvals, permits and authorizations that are the subject of this Section and shall permit the other party to review in advance any proposed communication by such party to any governmental body in connection therewith. Neither party shall agree to participate in any meeting with any governmental body in respect of any such matter unless it consults with the other party in advance and, to the extent permitted by such governmental body, gives the other party the opportunity to attend and participate at such meeting. The parties will coordinate and cooperate fully with each other in exchanging such information and providing such assistance any other party may reasonably request in connection with the matters set forth in this Section. The parties will provide each other with copies of all correspondence, filings, or communications between them or any of their representatives, on the one hand, and any governmental body or members of its staff, on the other hand, with respect to the foregoing.

18. **FCMIC Member Approval.** Unless otherwise directed by the Commissioner, upon approval of this Agreement by the Commissioner, this Agreement shall be submitted to a vote at a meeting of the members of FCMIC to be held on a date and at a time and place to be determined by FCMIC. Notice of such meeting, if such notice is required by law or FCMIC's articles of incorporation or bylaws, stating the place, day and hour of the meeting and the purpose for which it is called, shall be given by FCMIC to its members in a manner acceptable pursuant to law and to FCMIC's articles of incorporation and bylaws. FCMIC agrees to use its good faith effort to obtain all necessary approvals.

19. **Notices of Certain Events.** From the Signing Date until the earlier of the Effective Time or the termination of this Agreement, FCMIC will notify MWIC of any of the following:

(a) Any notice or other communication received by FCMIC from any source alleging that the consent of another person or entity is or may be required in connection with the Merger;

(b) Any notice or communication received by FCMIC from any governmental or regulatory agency or authority relating to the Merger;

(c) Any actions, suits claims, investigations, or proceedings commenced or, to the knowledge of FCMIC, threatened against, relating to, involving, or otherwise affecting such party that if the same had been pending on the Signing Date would have been required to have been disclosed pursuant to such party's representations and warranties or that related to the consummation of the Merger; and

(d) Any breach of a representation or warranty of the notifying party that could reasonably be expected to constitute a Material Adverse Change on the consummation of the Merger.

20. **Conditions Precedent to Closing.**

(a) FCMIC Conditions. FCMIC's obligation to consummate the Merger and close the transactions contemplated by this Agreement shall be subject to the satisfaction of each of the following conditions on or prior to the Effective Time, unless any such condition is specifically waived in writing by FCMIC in whole or in part at or prior to the Closing:

- i. MWIC shall have duly executed and delivered all documents, instruments, and certificates required to be executed and delivered by MWIC pursuant to the provisions of this Agreement;
- ii. MWIC shall have performed or complied with each and all of the obligations, covenants, agreements, and conditions required to be performed or complied with by it on or prior to the Effective Time, except where the failure to do so has not had or would not reasonably be expected to constitute a Material Adverse Change on the parties' ability to consummate the Merger;
- iii. MWIC shall have received all necessary approvals regarding MWIC's execution of this Agreement and the consummation of the transactions contemplated hereunder, including without limitation all approvals required from MWIC's Board of Directors;
- iv. FCMIC shall have received all necessary approvals regarding FCMIC's execution of this Agreement and the consummation of the transactions contemplated hereunder, including without limitation all approvals required from FCMIC's Board of Directors and all approvals required from the members of FCMIC, as applicable;

- v. The Constituent Corporations shall have received the OCI Approval.
- vi. There shall have been no Material Adverse Change in the business, results of operations, prospects, condition (financial or otherwise) or assets of MWIC.

(b) MWIC Conditions. MWIC's obligation to consummate the Merger and close the transactions contemplated by this Agreement shall be subject to the satisfaction of each of the following conditions on or prior to the Effective Time, unless any such condition is specifically waived in writing by MWIC in whole or in part at or prior to the Closing:

- i. FCMIC shall have duly executed and delivered all documents, instruments, and certificates required to be executed and delivered by FCMIC pursuant to the provisions of this Agreement;
- ii. FCMIC shall have performed or complied with each and all of the obligations, covenants, agreements, and conditions required to be performed or complied with by it on or prior to the Effective Time, except where the failure to do so has not had or would not reasonably be expected to constitute a Material Adverse Change on the parties' ability to consummate the Merger;
- iii. FCMIC shall have received all necessary approvals regarding FCMIC's execution of this Agreement and the consummation of the transactions contemplated hereunder, including without limitation all approvals required from FCMIC's Board of Directors and the members of FCMIC;
- iv. MWIC shall have received all necessary approvals regarding MWIC's execution of this Agreement and the consummation of the transactions contemplated hereunder, including without limitation all approvals required from MWIC's Board of Directors;
- v. The Constituent Corporations shall have received the OCI Approval, as well as provided notices of the transactions contemplated in this Agreement to the regulatory agencies in the respective states of companies affiliated with MWIC;
- vi. There shall have been no Material Adverse Change in the business, results of operations, prospects, condition (financial or otherwise) or assets of FCMIC.

21. **Termination of this Agreement.**

(a) This Agreement may be terminated and the Merger abandoned at any time prior to the Effective Time:

- i. By mutual consent of the Boards of Directors of each of the Constituent Corporations;
- ii. By the Board of Directors of either Constituent Corporation if:
  - 1. the Merger is not approved by the Commissioner and, unless otherwise directed by the Commissioner, by the requisite number of members of FCMIC before December 31, 2023, or such later date as the Boards of Directors of the Constituent Corporations shall mutually agree;
  - 2. the other Constituent Corporation shall have engaged in any of the prohibited actions described under Section 11 of this Agreement, or shall have materially violated any of the representations or warranties contained herein, or if there shall have taken place any event or development after the date hereof which materially and adversely affects the business, operations, or properties of such other corporation; or
  - 3. Such Constituent Corporation receives a Representation and Warranty Notice;

(b) In the event of the termination of this Agreement under Section 18(a)(ii), written notice thereof shall be given by the terminating Constituent Corporation to the other Constituent Corporation specifying the provision hereof under which such termination is made. In the event of the termination of this Agreement pursuant to Section 18(a)(i), this Agreement shall be terminated and become void and have no effect, without any liability or obligation on the part of either Constituent Corporation; provided, however, that nothing herein shall relieve either party hereto of any liability for material breach of this Agreement or fraud, as the case may be, prior to termination of this Agreement.

22. **Additional Agreements.**

(a) **MWIC Agents.** The parties agree that MWIC will offer its current agency agreement to each agent who has an appointment with FCMIC as of the date of this Agreement (the “FCMIC Agents”). Prior to the Effective Time, FCMIC will transfer or assign any ownership interest in the book of business or expirations written by any FCMIC Agent to that FCMIC Agent.

(b) **Employee Matters.**

- i. Todd J. Lentz, President and CEO of MWIC immediately prior the Effective Time, will become the CEO of the Surviving Corporation.
- ii. The manager of FCMIC immediately prior to the Effective Time, Jane Sather, will be offered full-time employment with the Surviving Corporation as of the Effective Date with a salary not less than her current salary, subject to job performance satisfactory to the

Surviving Corporation. Jane Sather's title following the Effective Time will be "Manager – Fall Creek division."

- iii. The Surviving Corporation shall offer employment to all non-management employees of FCMIC with substantially similar roles and salaries to their roles and salaries at FCMIC immediately prior to the Merger, subject to the Surviving Corporation's standard onboarding procedures. Management and non-management employees of FCMIC will become eligible to participate in the same compensation and benefit programs available to MWIC's employees from before the Merger beginning in calendar year 2024.
- iv. All employees of the Surviving Corporation, including those hired from FCMIC, will be considered employees hired "at will," subject to the Surviving Corporation's standard job performance evaluation and discipline practices, and nothing in this Agreement is intended to be, nor shall be interpreted as, an employment contract for any employee.

(c) Rating and Underwriting In-Force MWIC Business.

- i. In accordance with Section 7 of this Agreement, MWIC will, as soon as practicable following the Effective Time, send all holders of FCMIC policies that are in force at the Effective Time a Certificate of Assumption on a form approved by the Commissioner.
- ii. All FCMIC policies will be rewritten using MWIC forms, rates and underwriting rules on the first renewal or anniversary date of each such policy following the Effective Date, or as soon as practicable and permitted under applicable law. The Surviving Corporation will adopt all current MWIC underwriting guidelines for all policies. The Surviving Corporation will adopt MWIC rates for all policies initially written by FCMIC, except that the Surviving Corporation may extend discounts relating to the transition from FCMIC's rates to the rates of the Surviving Corporation for a period not to exceed two (2) years from the Effective Date.

(d) FCMIC Office Location. The Surviving Corporation will evaluate the best use of the current FCMIC office location as an extended service location for MWIC and its affiliated parties.

(e) Interim Period Policy Procedures. During the Interim Period, FCMIC shall continue to do all of the following in the ordinary course of business in a manner consistent with its past practices: (i) adjust claims, (ii) pay claims, (iii) issue disbursements, (iv) underwrite new policies, and (v) renew existing policies, including sending renewal notices for policies scheduled to renew within sixty (60) days of the Effective Time; provided, that FCMIC shall provide MWIC with a weekly report of all such activities; and, provided



further, that MWIC may direct that the FCMIC no longer engage in such activity without the prior written consent of MWIC (such consent not to be unreasonably withheld, conditioned or delayed).

23. **General Provisions.**

(a) **Expenses of Merger.** The estimated expenses of implementing the Merger are approximately Twenty Thousand Dollars (\$20,000.00) which shall be borne by the Surviving Corporation. In the event, the Merger is not successfully completed, any cost of the Merger shall be borne equally between FCMIC and MWIC.

(b) **Authority to Effect Merger.** The officers and directors of each Constituent Corporation are hereby authorized to take such other action as may be necessary and required to comply with the requirements of the Wisconsin Insurance Law, or as may be required by the Commissioner to effect the Merger.

(c) **Entire Agreement.** This Agreement, including any exhibits referred to herein and attached hereto, shall constitute the entire agreement between the Constituent Corporations and supersedes all previous agreements and understandings, oral or written, with respect thereto.

(d) **Binding Effect.** This Agreement applies to, is binding upon, is enforceable against, and inures to the benefit of each Constituent Corporation and their respective successors and permitted assigns.

(e) **Severability.** If any provision of this Agreement is held invalid or unenforceable by any court of competent jurisdiction, the other provisions of this Agreement will remain in full force and effect. Any provision of this Agreement held invalid or unenforceable only in part or degree will remain in full force and effect to the extent not held invalid or unenforceable.

(f) **Modifications, Amendments and Waivers.** At any time prior to the Effective Time, the parties hereto may, by written agreement, (i) extend the time for the performance of any of the obligations or other acts of the parties hereto, (ii) waive any inaccuracies in the representations and warranties contained in this Agreement or in any document delivered pursuant hereto, (iii) waive compliance with any of the covenants or agreements contained in this Agreement, or (vi) make any other modification of this Agreement approved by the respective Boards of Directors of the parties hereto. This Agreement shall not be altered or otherwise amended except pursuant to an instrument in writing executed and delivered on behalf of each of the parties hereto.

(g) **Assignment.** Neither this Agreement nor any rights or obligations hereunder may be assigned or otherwise transferred, in whole or in part, by either Constituent Corporation without the prior written consent of the other Constituent Corporation.

(h) **Headings; Gender and Number.** The section and other headings contained in this Agreement and in the exhibits and schedules to this Agreement are included for the purpose of convenient reference only and shall not restrict, amplify, modify, or otherwise

affect in any way the meaning or interpretation of this Agreement or the exhibits and schedules hereto. All references to the neuter gender shall include the feminine or masculine gender and vice versa, where applicable, and all references to the singular shall include the plural and vice versa, where applicable.

(i) Interpretation. Each Constituent Corporation has jointly participated in the negotiation and drafting of this Agreement. In the event of any ambiguity or if a question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Constituent Corporation and no presumptions or burdens of proof shall arise favoring either Constituent Corporation by virtue of the authorship of any of the provisions of this Agreement.

(j) No Third Party Benefit. This Agreement is intended for the exclusive benefit of the Constituent Corporations and their respective heirs, successors and assigns, and nothing contained in this Agreement shall be construed as creating any rights or benefits in or to any third party.

(k) Notices. All notices required or permitted hereunder shall be in writing and shall be deemed effectively given: (i) upon personal delivery to the party to be notified, (ii) when sent by confirmed electronic mail or facsimile if sent during normal business hours of the recipient, if not, then on the next business day, (iii) five days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (iv) one day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt. All notices to a party shall be sent to the party's address set forth below or at such other address(es) as such party may designate in writing to the other party hereto.

**If to MWIC:**

Mutual of Wausau Insurance Corporation  
3910 W Stewart Avenue  
Wausau, WI 54402  
Attn: Todd J. Lentz, CEO  
Email: toddl@mutualofwausau.com

**If to FCMIC:**

Fall Creek Mutual Insurance Company  
140 S. State Street  
Fall Creek, WI 54742  
Attn: Jane Sather, Manage  
Email: jane@fallcreekmutual.com

(l) Governing Law. This Agreement is governed by and construed in accordance with the laws of the State of Wisconsin.

(m) Counterparts; Electronic Delivery. This Agreement may be executed and delivered by facsimile, portable document form (.pdf) or other electronic signature pages, which shall be deemed originals, and in any number of counterparts, which shall have the same effect as if the signatures on the counterparts were a single copy of this Agreement.

(n) Role of G&K. This Agreement has been drafted by Godfrey & Kahn, S.C. ("G&K") as counsel for MWIC. The parties hereto acknowledge and agree that: (i) G&K has not represented any other party other than MWIC in any way in connection with this

Agreement; and (ii) FCMIC has been advised to seek the advice of independent legal counsel and has had the opportunity to do so.

24. Definitions.

(a) “Material Adverse Change” means any event, circumstance, or condition that is, or would reasonably be expected to become, individually or in the aggregate, materially adverse to: (1) the business, results of operations, condition, or assets of (i) MWIC and its subsidiaries or FCMIC and its subsidiaries, as applicable (in each case, taken as a whole) or (2) the ability of MWIC or FCMIC, as applicable, to timely perform its obligations under this Agreement or timely consummate the transactions contemplated by this Agreement.

(b) “Commissioner” or “OCI” means the State of Wisconsin Office of the Commissioner of Insurance.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties to this Agreement have caused it to be executed as of the date and year first above written.

MUTUAL OF WAUSAU INSURANCE CORPORATION

Date: 8/28/2023

By: Todd J. Lentz  
Name: Todd J. Lentz  
Title: President and CEO

Attest:

Date: 8-28-2023

By: Bruce N. Bartell  
Name: Bruce N. Bartell  
Title: Secretary

FALL CREEK MUTUAL INSURANCE COMPANY

Date: 8-29-23

By: Dennis Schacht  
Name: Dennis Schacht  
Title: President

Attest:

Date: 8-29-23

By: Mark Zuber  
Name: Mark Zuber  
Title: Secretary