



DEPARTMENT OF THE ATTORNEY GENERAL

**News Release**

**LINDA LINGLE**  
GOVERNOR

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FOR IMMEDIATE RELEASE: May 9, 2007

News Release No. 2007-11

**FINANCIAL STABILITY OF HAWAII FUNERAL AND CEMETERY TRUSTS  
STRENGTHENED BY RIGHTSTAR RESOLUTION AGREEMENT**

(HONOLULU) Attorney General Mark Bennett and Department of Commerce and Consumer Affairs Director Lawrence Reifurth today announced that the State of Hawaii has reached an agreement that will help secure the financial stability of the funeral and cemetery trust funds of the RightStar corporations in Hawaii.

The agreement, which includes Comerica, the fund's current trustee, and Vestin, RightStar's largest creditor, calls for RightStar's corporate assets to be sold to a new operator at auction by the Circuit Court, for a minimum price of \$25 million, and directs that notwithstanding the significant debts of RightStar, \$9 million of the sales proceeds will be allocated to provide additional funds to the "pre-need" and "perpetual care" trust funds. Certain of RightStar's creditors had contended in litigation that none of the monies from any sale should fund the trusts, unless and until their debts were first satisfied. In addition, until the Trusts receive an additional \$11 million, 75% of any additional net proceeds from the foreclosure sale and litigation will go to the Trusts.

RightStar's Court-appointed Receiver has asked the Court for authority to take the steps necessary to complete the corporate asset sale.

The agreement<sup>1</sup> specifically provides that any new operator must honor all valid consumers contracts for pre-need services made with RightStar or their predecessors. The agreement also mandates that the operator provide for perpetual care of the cemetery properties.

The resolution creates a solid platform for the State, the current Trustee, and affected creditors to continue to pursue in civil litigation, those responsible for RightStar's fiscal problems.

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<sup>1</sup> See Exhibit B, paragraphs 14 and 16, governing the sale.

Attorney General Bennett stated: "This is an excellent agreement that will help protect Hawaii consumers. I congratulate the lawyers in the Department of the Attorney General and the regulators in DCCA for their excellent and diligent work in helping make this agreement happen. Their overriding interest has always been protecting affected consumers."

Director Reifurth stated: "This is a good agreement for the consumers as it promotes the long-term stability of the affected trusts; in short, it helps the consumers get precisely what they paid for. The DCCA will continue to work to protect consumers throughout the State of Hawaii."

For more information, contact:  
Dana Viola  
Special Assistant to the Attorney General  
Department of the Attorney General  
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Attachment provided upon request.

## **RIGHTSTAR RESOLUTION AGREEMENT**

THIS RIGHTSTAR RESOLUTION AGREEMENT ("Agreement") is made effective as of the \_\_\_ day of May, 2007, among the STATE OF HAWAI'I, RIGHTSTAR through its Receiver, VESTIN and COMERICA BANK & TRUST, N.A. (collectively, the "SETTLING PARTIES"), in connection with the "RIGHTSTAR LITIGATION" (all terms as identified in Section 2).

### ***SUMMARY OF THE AGREEMENT***

In order to avoid the further expense and risk of litigation, the SETTLING PARTIES will execute this mutual release; proceed to a public foreclosure sale of the RIGHTSTAR properties and conduct litigation against third parties. Under the direction of the Court, the SETTLING PARTIES will allocate the proceeds of the foreclosure sale and litigation recoveries between the replenishment of the TRUSTS and the recovery of RIGHTSTAR'S creditors.

**WHEREAS**, the SETTLING PARTIES desire a sale of the RIGHTSTAR properties for the highest possible price in a public foreclosure auction;

**WHEREAS**, each of SETTLING PARTIES is interested in maximizing the value of the TRUSTS as this will result in the highest possible recovery in the foreclosure auction of the RIGHTSTAR properties;

**WHEREAS**, the SETTLING PARTIES recognize that the Receiver must obtain Court approval to sign this Agreement, and recognize the Receiver's judicial immunity before, during and after any sale of the RIGHTSTAR properties;

**WHEREAS**, VESTIN holds a security interest in the RIGHTSTAR properties and the recovery of VESTIN'S interest through a foreclosure sale, or through litigation with the SETTLING PARTIES, presents an economic risk;

**WHEREAS**, since continued litigation among the SETTLING PARTIES will depress the value of the RIGHTSTAR properties and the TRUSTS, the SETTLING PARTIES desire to terminate litigation among themselves and allocate various assets to the benefit of the TRUSTS and RIGHTSTAR'S creditors;

**WHEREAS**, the Court has ordered that any purchaser of the RIGHTSTAR properties must make arrangements satisfactory to the STATE OF HAWAI'I regarding the assumption and performance of all consumer contracts;

**WHEREAS**, the SETTLING PARTIES have valuable claims against third parties that the SETTLING PARTIES intend to pursue in order to compensate the TRUSTS and any potential deficiency VESTIN may suffer in the recovery of its secured interests in the foreclosure sale;

**WHEREAS**, the SETTLING PARTIES agree to a division of the proceeds from the foreclosure sale of the RIGHTSTAR properties between the TRUSTS and VESTIN pursuant to the terms of this Agreement;

**WHEREAS**, the SETTLING PARTIES agree to distribute the net proceeds of the currently unliquidated claims that the settling parties obtain from third parties through litigation, settlement, or otherwise, to the TRUSTS and VESTIN pursuant to the terms of this Agreement;

**NOW, THEREFORE**, in consideration of the mutual covenants herein contained and other good and valuable consideration, the sufficiency and receipt of which is hereby acknowledged, the SETTLING PARTIES, intending to be legally bound, agree as follows.

## ***1. IDENTIFICATION***

**1.1. "SETTLING PARTIES"** are the STATE OF HAWAI'I, RIGHTSTAR, VESTIN and COMERICA.

**1.2.** The "**STATE OF HAWAI'I**" ("**STATE**") includes the STATE in its capacity as sovereign, and the STATE's Attorney General as *parens patriae*, as well as all departments, agencies, offices, elected or appointed officials, employees and agents.

**1.3. "RIGHTSTAR"** includes RIGHTSTAR AMG LLC; RIGHTSTAR HAWAII MANAGEMENT INC.; RIGHTSTAR INTERNATIONAL INC.; RIGHTSTAR VOT LLC; RIGHTSTAR HMP LLC; RIGHTSTAR WINDWARD LLC; RIGHTSTAR MAUI MEMORIAL LLC; RIGHTSTAR NMI LLC; RIGHTSTAR AAI LLC; RIGHTSTAR MAUI FUNERAL LLC; RIGHTSTAR 50TH STATE LLC; RIGHTSTAR NUUANU MORTUARY LLC; RIGHTSTAR CPF LLC; RS HAWAII PARTNERS; RIGHTSTAR HAWAII HOLDINGS LLC; through the Court appointed Receiver, Guido Giacometti, in his capacity as Receiver. "RIGHTSTAR" as herein defined does not include officers, directors, employees, trustees or agents of RIGHTSTAR.

**1.4. "COMERICA"** is COMERICA BANK & TRUST, N.A., the current Trustee for the Trusts.

**1.5. "VESTIN"** includes Vestin Capital, Inc., a Nevada Corporation, Vestin Fund I, LLC, a Nevada Limited Liability Company, Vestin Fund II, LLC, a Nevada Limited Liability Company, Vestin Group, Inc., a Delaware Corporation, Vestin Mortgage, Inc., a Nevada Corporation, Vestin Realty Mortgage I, Inc., a Maryland Corporation successor to Vestin Fund I, LLC, a Nevada Limited Liability Company, Vestin Realty Mortgage II, Inc., a Maryland Corporation successor to Vestin Fund II, LLC, a Nevada Limited Liability Company, Vestin Originations, Inc., a Nevada Corporation, Michael V. Shustek and all other Officers and Directors of the foregoing entities.

1.6. **“RIGHTSTAR Litigation”** comprises multiple civil actions now pending in the First Circuit Court of the State of Hawai’i and the U.S. District Court and Bankruptcy Court for the District of Hawai’i, some of which have been consolidated for discovery purposes entitled *In re RightStar Related Cases*, Civil No. 06-1-RIGHTSTAR (SSM), the style of which is attached and incorporated as Exhibit “A.”

## 2. DEFINITIONS

2.1. **“Agreement”** means this RIGHTSTAR RESOLUTION AGREEMENT.

2.2. **“Best efforts”** means all attempts or endeavors that can reasonably be made under the circumstances that are directed to obtaining a result, achieving a goal or accomplishing an objective.

2.3. **“Court”** or the **“Registry of the Court”** is the Circuit Court of the First Circuit, State of Hawai’i, of the Honorable Sabrina McKenna, the Court Clerk and its registry under her supervision.

2.4. **“Covered Claims”** means any and all past, present or future claims, demands, obligations, actions, causes of action, rights, damages, costs, loss of services, expenses and compensation for pain and suffering, mental and emotional distress or other elements of damages including claims for any expenses, loss of income, or any element of general or special damages, or any element of punitive damages or exemplary damages which were or could have been alleged in the RIGHTSTAR Litigation, known or unknown to the SETTLING PARTIES, whether based on constitutional claims, statute, regulation, contract, tort, or other theory of recovery, which any SETTLING PARTY now has, or may hereafter accrue or otherwise acquire which may not be anticipated at the time that this Agreement is signed, or in any way may grow out of the events that gave rise to any of the RIGHTSTAR Litigation; **provided, however that this Agreement does not release RIGHTSTAR from any liability incurred as a result of loans made to RIGHTSTAR by any party. This Agreement does not release RIGHTSTAR from any potential deficiency judgment that may be entered as a result of a foreclosure sale that fails to satisfy any RIGHTSTAR creditor, nor does it release RIGHTSTAR from any tax liability, nor does it release any officers, directors, employees, trustees or agents of RIGHTSTAR from any claims of any type.**

2.5. **“Foreclosure Sale”** is the judicial foreclosure auction of the RIGHTSTAR properties held pursuant to Chapter 667, H.R.S.

2.6. **“Litigation Net Proceeds”** are any amounts the SETTLING PARTIES shall acquire through mediation, arbitration, settlement, or judgment by way of any of the RIGHTSTAR Litigation, or from any claims related to the current RIGHTSTAR litigation and from any Covered Claims or litigation that is brought in the future, after deducting the costs and legal fees actually incurred and payable in the acquisition of the Net Proceeds. None of the costs and legal fees of the SETTLING PARTIES incurred prior to the closing of escrow of the Foreclosure Sale shall be deducted from proceeds of

the foreclosure sale. Otherwise, each of the SETTLING PARTIES shall bear its own costs and legal fees. "Litigation Net Proceeds" does not include funds payable in whole or in part to or for the benefit of any settling party from any previously established escrow accounts or §§ 441-22 and 441-37, H.R.S., governed bond proceeds from any previously issued bonds. Any recovery from such bond proceeds or escrow accounts shall be paid directly to their respective beneficiaries. However, for the purposes of this Agreement, any such funds paid to the TRUSTS shall be credited to the twenty million dollars (\$20,000,000.00) TRUSTS' recovery hereunder; similarly, VESTIN's recovery, if any shall be directly credited to the recovery of any shortage on VESTIN's outstanding loan balance, which is agreed to be forty-nine million nine hundred forty-four thousand dollars (\$49,944,416.67), for purposes of this Agreement.

The parties acknowledge that the escrow accounts and existing §§ 441-22 and 441-37, H.R.S., bonds include but are not limited to those:

bonds issued by one or more of the Lumbermens Mutual Casualty Company and/or the American Manufacturers Mutual Insurance Company and/or the American Motorist Insurance Company and/or Kemper Surety Underwriting and/or Platte River Insurance Company, which may be payable, in whole or in part, to the State to the benefit of the TRUSTS;

funds in escrow account number A11013520 established with Title Guaranty Escrow of Honolulu, Hawaii, which may hold funds payable, in whole or in part, to the TRUSTS; and

funds in escrow account number 66000686 established with Commerce Bank, N.A., of Kansas City, Missouri, which may be payable, in whole or in part, to VESTIN and/or the TRUSTS, which funds shall be allocated pursuant to the terms of requested relief in VESTIN's Motion for Summary Judgment Against Alternative Debt Portfolio, L.P., filed on April 25, 2007, in the Rightstar Litigation, or as otherwise ordered by the Court.

2.7 "Upset Price Contingency" is the Net amount received from the Foreclosure Sale after payment of any court costs, foreclosure costs and commissions or fees approved by the Court.

2.8 "RIGHTSTAR properties" are those properties identified in the Findings of Fact; Conclusions of Law; and Order Granting Motion for Partial Summary Judgment Against All Defendants and For Decree of Foreclosure, in *Vestin et al. v. RightStar et al.*, Civil No. 04-1-2126, entered on May 12, 2005, as amended. The properties to be sold will be described in more detail in the Receiver's due diligence package, but excludes any and all claims and causes of action of RIGHTSTAR. VESTIN shall prepare a list of the collateral that will be sold, and information regarding the collateral identified on the list will be included in the Receiver's due diligence materials package. The property to be sold will be identified as Exhibit "C" to this Agreement, and said exhibit will be included as an integral part of this Agreement pursuant to Section 9.3 of the Agreement.

**2.9. “TRUST” or “TRUSTS”** are the perpetual care and pre-need trusts associated with each of the RIGHTSTAR properties.

**2.10. “VESTIN’S Secured Interest”** is the amount of VESTIN’S security in the RIGHTSTAR properties.

### ***3. MUTUAL RELEASE OF CLAIMS***

**3.1. Release.** Each of the SETTLING PARTIES fully releases and discharges absolutely and forever from the Covered Claims (including any claim for indemnity from any other SETTLING PARTY) the STATE, RIGHTSTAR, VESTIN and COMERICA, provided that RIGHTSTAR is not released from any liability for any sums owed to VESTIN, or any creditor under Section 2.4. No indemnification of any party is expressed or implied in this agreement.

**3.2. Court Approval.** The Receiver in this proceeding is an officer of the Court, and shall be entitled to such immunity as is provided by law, and shall not be liable in his individual capacity for taking any act that is authorized or directed by the Court, provided that he shall have exercised due care and acted in good faith in taking such act and discharging his duties. The Court retains jurisdiction with respect to any claim asserted against the Receiver for acts taken pursuant to order of the Court (whether such claims are asserted against him in his capacity as officer of the Court or in his individual capacity), including jurisdiction (i) to dismiss with prejudice any claim asserted against the Receiver in violation of this order or any order hereafter, and (ii) to award attorneys' fees and costs against any person who asserts a claim against the Receiver in violation of this order or any order hereafter. This Agreement is the resolution of a foreclosure action and not a "joint tortfeasor release" under § 663-15, H.R.S. The Court's approval of the entirety of this Agreement is a condition precedent to every part of this Agreement.

**3.3. Unknown Claims.** The SETTLING PARTIES acknowledge and agree that the releases and discharges set forth in this Agreement are general releases applicable to the Covered Claims. The SETTLING PARTIES expressly assume the risk of any and all claims, whether known or unknown, that exist as of the date they execute this Agreement, and which, if known, would materially affect their decision to enter into this Agreement. The SETTLING PARTIES further agree that they will accept the consideration to be given herein as a complete compromise of matters involving disputed issues of law and fact. The SETTLING PARTIES assume the risk that the facts or law may be other than they may now believe. It is understood and agreed by the SETTLING PARTIES that this Agreement comprises a compromise of disputed claims and the consideration is not to be construed as an admission of liability on the part of any of the SETTLING PARTIES and that liability on the part of each of the SETTLING PARTIES is expressly denied.

**3.4. Warranties.** Each of the SETTLING PARTIES represents and warrants that it owns all rights, title and interest in all claims that it is releasing and that it has not assigned or transferred or purported to assign or transfer, voluntarily or involuntarily, their right, title or interest in any such claim to any person, including insurance carriers. Each of the SETTLING PARTIES further represents and warrants that the settlement is fair and equitable to that party and is in the best interest of that party.

**3.5 Assignment of RIGHTSTAR claims.** As part of the approval by the Court of the Receiver's authority to enter this Agreement, the Receiver will obtain Court approval



of the assignment of any and all of RIGHTSTAR's claims and causes of action to the STATE, VESTIN and COMERICA, jointly and severally, with such assignment to be effective upon the termination of the Receivership, and prior to that the Receiver agrees to join in any action in which claims may be pursued on behalf of or in the name of RIGHTSTAR.

#### ***4. DISCLAIMER OF LIABILITY***

**4.1. No Admission of Liability or Wrongdoing.** This Agreement is not an admission of liability, nor an admission that any of the facts alleged in the RIGHTSTAR Litigation are true, nor an admission that any portion of the RIGHTSTAR Litigation is well-founded. Each of the SETTLING PARTIES denies that it is liable for any of the claims asserted in the RIGHTSTAR Litigation.

**4.2. Complete Compromise.** The SETTLING PARTIES agree and acknowledge that the releases and the other terms, covenants and conditions of this Agreement represent a full and complete compromise of matters involving disputed issues; that each of the SETTLING PARTIES fully assumes the risk that the facts or law may be other than each might believe; and that the releases and any event occurring during the negotiation of the Agreement and any statement or communications made in connection therewith by the representatives and attorneys of the SETTLING PARTIES shall not be considered an admission by any of the SETTLING PARTIES and that no past or present wrongdoing or culpability on the part of any of the SETTLING PARTIES shall be implied.

#### ***5. FORECLOSURE SALE***

**5.1. Expedited sale.** The foreclosure sale of the RIGHTSTAR properties will be scheduled as soon as it is legally possible and commercially reasonable.

**5.2. Upset Price Requirement.** A further condition precedent of this Agreement is that the Foreclosure Sale must have an upset price of twenty-five million dollars (\$25,000,000.00) for the RIGHTSTAR properties NET of all foreclosure costs and commissions. If no bid at the Foreclosure Sale provides a net recovery of at least twenty-five million dollars (\$25,000,000.00), there shall be no sale of the RIGHTSTAR properties. **Furthermore, should a sale providing a net of at least twenty-five million dollars (\$25,000,000.00) not close escrow, this Settlement Agreement and all releases contained herein shall be void and without effect.** Provided, further, that no party may use any part of this Agreement, or negotiations leading up to this Agreement, if the Agreement should become void due to a purchase of the RIGHTSTAR properties not producing the minimum sales price. This agreement and negotiations leading to it shall be deemed subject to the protections of Hawai'i Rules of Evidence 408.

**5.3. Foreclosure Commissioner.** The SETTLING PARTIES agree to nominate a mutually agreeable cemetery sale consultant to advise the Receiver in his capacity as foreclosure commissioner for the sale of the property. The foreclosure commissioner will advertise the foreclosure sale in a commercially reasonable manner, and will be

compensated pursuant to terms mutually acceptable to the SETTLING PARTIES, as approved by the Court. The due diligence costs incurred by the Receiver and RIGHTSTAR and the consultant's fees and costs will be included as part of the costs of sale identified in Section 7.2.

**5.4. Terms of Sale.** The Foreclosure Sale shall be subject to the terms of sale attached as Exhibit "B".

**5.5. No Other Interests Affected.** Apart from the interests of the SETTLING PARTIES (specifically, the distribution of proceeds from the Foreclosure Sale of VESTIN's secured interest in the RIGHTSTAR properties), this Agreement does not affect the interests, rights or liabilities, of any other party to the foreclosure action.

**5.6. Distribution of Proceeds.** The net Foreclosure Sale proceeds up to twenty-five million dollars (\$25,000,000.00), shall be distributed as follows: sixteen million dollars (\$16,000,000.00) to VESTIN, and nine million dollars (\$9,000,000.00), to the TRUSTS. Any net Foreclosure Sale proceeds in excess of twenty-five million dollars (\$25,000,000.00), but less than the amount of VESTIN'S secured interest, which is agreed for the purposes of the allocation of Foreclosure Sales proceeds and "Litigation Net Proceeds" only to be forty-nine million nine hundred forty-four thousand dollars (\$49,944,416.67), shall be applied to the "Litigation Net Proceeds" identified below in Section 6. Any Foreclosure Sale proceeds in excess of VESTIN'S agreed secured interest shall be distributed to RIGHTSTAR'S' other creditors (the non-settling parties) pursuant to applicable law.

**5.7 TRUST Funds Allocation.** The Trustee of the TRUSTS at the time of distribution of foreclosure proceeds or litigation net proceeds shall use its best efforts to allocate the proceeds among the various TRUSTS to ameliorate the TRUSTS' shortfalls, allocating the distribution so that no TRUST beneficiary customer is denied service due to a trust shortfall. The entirety of the balances of the TRUSTS on the day that the sales proceeds are paid from closing of the foreclosure sale to the TRUSTS shall thereafter be the principal corpus of the trusts; for the purposes of trust distributions authorized by Chapter 441, H.R.S. the entirety of the balances of the TRUSTS on that day shall be the principal corpus of the TRUSTS, to be calculated as free of income, interest, dividends and net capital gain. Income, interest, dividends and net capital gains realized upon the TRUSTS' principal corpus following the sale shall only be distributed in accordance with Chapter 441, H.R.S., and applicable administrative rules. However, for tax purposes, should taxing authorities elect to utilize the trust allocation accounting existing prior to this Agreement, the Trusts may still be liable for income and/or capital gain taxes.

**5.8. No Credit Bid.** VESTIN may NOT credit bid on the properties in whole or in part in the foreclosure proceeding contemplated under the term of this Agreement. Should the foreclosure not proceed to a sale under the terms of this Agreement (for example, the Upset Price is not achieved) then in any future foreclosure proceeding VESTIN retains the option to credit bid on the properties.

**5.9.** **COMERICA** shall remain in place as the Trustee for the TRUSTS for not less than twenty four (24) months after the close of escrow on the foreclosure sale. COMERICA will serve as a trustee pursuant to applicable law including, but not limited, to Chapters 412 and 441, H.R.S.

## **6. LITIGATION “NET PROCEEDS”**

**6.1. Best Efforts.** The SETTLING PARTIES, including the Receiver only so long as he shall serve in that capacity, agree to use their best efforts to pursue all claims that any SETTLING PARTY has or may have against any third parties arising out of or related to the RIGHTSTAR entities, or the former trustees prior to COMERICA or for any damages the STATE (directly or in the Attorney General’s *parens patriae* capacity), or VESTIN has incurred including any potential deficiency in the recovery of VESTIN’s secured interests in the Foreclosure Sale, and agree that they will use their best judgment to maximize the recovery of any claim belonging to that party whether through settlement, mediation, arbitration or trial. The SETTLING PARTIES may employ contingency counsel to assist in the best efforts in pursuing claims against third parties and need not employ hourly counsel.

**6.2. Payment of “Litigation Net Proceeds.”** The SETTLING PARTIES agree that the “Litigation Net Proceeds” recovered from third parties in connection with the RIGHTSTAR Litigation and any Covered Claims will be distributed in accord with the Terms of Sale, attached as Exhibit “B.”

**6.3 Mandamus Petition Stayed.** The parties agree to jointly request that the Hawai’i Supreme Court stay further proceedings, briefing and decisions on the Petition for Writ of Mandamus currently before the Hawai’i Supreme Court, Supreme Court No. 28321, until any SETTLING PARTY requests that the Supreme Court set modified briefing dates, pending the results of the foreclosure contemplated in this Agreement and performance of the parties under this Agreement. If any steps under this Agreement are not met (for example, the Upset Price Requirement is not met), then the parties will jointly request that the stay be lifted and the litigation between the parties in the Supreme Court and Circuit Court will recommence as it was when the stay was entered. To that end, it is expressly agreed that any and all statutes of limitations or laches for any of the claims among the parties are suspended from the date of this Agreement until it is agreed among the SETTLING PARTIES that the litigations will recommence.

## **7. DISTRIBUTION OF LITIGATION NET PROCEEDS**

**7.1. Court Supervision.** The Court will oversee the following distributions of the Litigation Net Proceeds as they are received.

**7.2. First Tranche.** Provided that the upset proceeds of twenty-five million dollars (\$25,000,000.00) identified in Section 5.2 above are realized by VESTIN and the TRUSTS following the foreclosure of the RIGHTSTAR properties and payment of any expenses or other charges approved by the Court in connection with the Foreclosure Sale

or administration of the foreclosure action, including any award by the Court of the Receiver's and his attorneys' fees and costs and the consultant's fees and costs, any further sales proceeds and any further net litigation proceeds shall be disbursed and divided seventy-five percent (75%) to the TRUSTS and twenty-five percent (25%) to VESTIN until the aggregate disbursements to the TRUST (including the foreclosure sale proceeds) equals twenty million dollars (\$20,000,000.00); thereafter disbursements shall be in accordance with Paragraph 7.3.

**7.3. Second Tranche.** Following the First Tranche, any net proceeds from whatever source shall be disbursed and divided twenty-five percent (25%) to the TRUSTS and seventy-five percent (75%) to VESTIN until the aggregate disbursements to VESTIN (including the foreclosure sale and First Tranche proceeds) equals the total of the amount of VESTIN'S secured interest, which is agreed to be forty-nine million, nine hundred forty-four thousand, four hundred sixteen dollars and sixty-seven cents (\$49,944,416.67) for purposes of this Agreement.

**7.4. Third Tranche.** Following the Second Tranche, any net proceeds from whatever source shall be disbursed and divided fifty percent (50%) to the TRUSTS and fifty percent (50%) to VESTIN.

## ***8. DISPUTES***

**8.1 Retained Jurisdiction.** The Honorable Sabrina McKenna, Judge of the Circuit Court of the First Circuit, State of Hawai'i, shall retain jurisdiction over the RIGHTSTAR litigation and the interpretation and enforcement of, and any disputes concerning, this Agreement.

**8.2 Interpretation.** This Agreement shall be construed and interpreted according to the laws of the State of Hawai'i. In the event of any disagreement over the interpretation or application of the provisions of this Agreement, the dispute shall be presented to the Honorable Sabrina McKenna, or, if she is unwilling or unable to serve, any other judge of the Circuit Court of the First Circuit, State of Hawai'i, for final resolution.

**8.3. Section and Paragraph Headings.** The section and paragraph headings in this Agreement are inserted solely as a matter of convenience and for reference and in no way define, limit, describe or affect the scope or intent of any provision of this Agreement. The terms of this Agreement are contractual and not a mere recital.

**8.4. No Interpretation Against Draftsman.** The terms of this Agreement have been negotiated at arm's length among parties represented by experienced counsel. As a result, the rule of "interpretation against the draftsman" shall not apply in any dispute over interpretation of the terms of this Agreement.

**8.5. Severability.** If any part, term, or provision of this Agreement is held by the Circuit Court of the First Circuit to be illegal or in conflict with any laws of the State of Hawai'i or the United States of America, the validity of the remaining provisions shall

not be affected, and the rights and obligations stated in this Agreement shall be construed and enforced as if the Agreement did not contain the particular part, term, or provision held invalid, unless so construing the Agreement would defeat the intent of the SETTling PARTIES to (i) provide for the Foreclosure Sale upon the agreed terms; (ii) end any litigation among the SETTling PARTIES; (iii) join in pursuing claims against third parties; and (iv) agree on the division of any proceeds obtained from the Foreclosure Sale and from pursuing claims against third parties. The STATE and VESTIN are the only necessary parties whose execution of this Agreement are required to form a binding agreement; should any other proposed party to this Agreement elect not to execute this Agreement, any release of the party not signing this Agreement found in this Agreement is deemed severed, void, and of no effect.

**8.4. Attorneys' Fees and Costs for Enforcement of Agreement.** Prior to the initiation or commencement of an action to enforce this Agreement or for breach of any material term or provision of this Agreement, the party considering enforcement of this Agreement shall contact the attorney for the allegedly breaching party and the parties shall make reasonable efforts to resolve the issue. In the event that an Undersigned Party to this Agreement brings an action arising out of a breach of this Agreement or otherwise to enforce its terms, the prevailing party shall be entitled to recover all reasonable statutory costs and reasonable attorneys' fees incurred by the prevailing party.

## ***9. MISCELLANEOUS***

**9.1. Dismissal.** The SETTling PARTIES shall execute and file all appropriate pleadings dismissing with prejudice any claims against any other SETTling PARTIES in the RIGHTSTAR Litigation.

**9.2. Further Documents.** Each SETTling PARTY shall execute any further documents that any other SETTling PARTY may reasonably request in order to carry out the provisions of this Agreement.

**9.3. Modification.** A material element of consideration of this Agreement is the mutual covenant of the SETTling PARTIES that this Agreement shall not be altered, amended or modified except by a writing duly executed by all of the SETTling PARTIES or their successors in interest, which alteration, amendment or modification cannot be undertaken without the prior approval of the Circuit Court of the First Circuit, State of Hawai'i.

**9.4 Identification of Transactions.** The transactions called for in this agreement shall be identified in a manner to, in the order of priority, (i) effectuate the legal enforceability of each provision in this Agreement; (ii) minimize the tax liability to the SETTling PARTIES that may arise from this Agreement ; and (iii) maximize the economic recovery of the TRUSTS and VESTIN. Payments, disbursements and distributions of funds made pursuant to this Agreement may variously be characterized as contingent receivables, contingent payables, loans, advances, debts, recovered general damages, recovered special damages, recovered punitive damages, or any other similar

characterization in order to effectuate the intent of the SETTling PARTIES set out in this Agreement in accord with existing law.

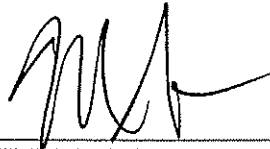
**9.6. Warranty of Authority.** Each person signing this Agreement warrants and represents that he or she has authority to sign on behalf of himself or herself or of the entity that he or she represents and that this Agreement has been validly authorized and constitutes a legally binding and enforceable obligation of each Undersigned Party.

**9.7. Entire Agreement.** This Agreement and its attached exhibits contain all of the terms agreed upon among the SETTling PARTIES and supersedes and cancels each and every other conflicting agreement, promise and/or negotiation among them.

**9.8. No Representation.** Each Undersigned Party acknowledges that no promise, agreement, fact or opinion not expressed herein has been made by or to them to induce this Agreement and that this Agreement is made with full knowledge of the facts and possibilities of the subject matters of this Agreement and with advice of counsel.

**9.9. Counterparts.** This Agreement may be executed in any number of counterparts, each counterpart of which shall be deemed and stamped as an original, and all of which together shall constitute one and the same instrument. Each SETTling PARTY shall execute and provide an original counterpart to every other party SETTling PARTY.

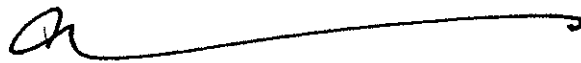
THE STATE OF HAWAI'I

By   
MARK J. BENNETT

Dated: \_\_\_\_\_


Attorney General of the State of Hawai'i,  
on behalf of the State of Hawai'i and in  
his capacity as *parens patriae*

APPROVED:



DEBORAH DAY EMERSON  
JAMES C. PAIGE  
C. BRYAN FITZGERALD  
RANDOLPH R. SLATON  
Deputies Attorney General

VESTIN ENTITIES identified in section 1.5 herein

By  Dated: 5-8-07  
As a Director of the Respective  
VESTIN ENTITIES identified in section 1.5 herein

APPROVED:

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WILLIAM E. WEGNER  
PAUL ALSTON  
KURT FRITZ  
Attorneys for the Respective  
VESTIN ENTITIES identified in section 1.5 herein



GUIDO GIACOMETTI, in his capacity as  
Receiver of RIGHTSTAR

\_\_\_\_\_  
GUIDO GIACOMETTI

Dated: \_\_\_\_\_

APPROVED:

\_\_\_\_\_  
DIANE D. HASTERT  
MICHAEL A. YOSHIDA  
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in his capacity as Receiver of  
RIGHTSTAR

COMERICA BANK & TRUST, N.A.

By \_\_\_\_\_ Dated: \_\_\_\_\_  
Its

EXHIBIT "A"

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII	
BENNETT	CIVIL NO. 04-1-002112 (SSM)
v.	
HAWAII CEMETERY AND FUNERAL TRUSTS, ET AL.	
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VESTIN MORTGAGE, INC., ET AL.	CIVIL NO. 04-1-002126 (SSM),
v.	
RIGHTSTAR AMG LLC ET AL.	
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VESTIN MORTGAGE, INC. ET AL.	CIVIL NO. 06-1-000679 (RKOL),
v.	
STATE OF HAWAII	
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ALTERNATIVE DEBT PORTFOLIOS ET AL.	CIVIL NO. 06-1-000383 (SSM),
v.	
JOHN DOOLEY ET AL.	
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VESTIN MORTGAGE, INC.	CIVIL NO. 06-1-000384 (BIA),
v.	
JOHN CERIZO ET AL.	
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VESTIN MORTGAGE, INC.	CIVIL NO. 06-1-000385 (VSM)
v.	
KEENAN O. H. CHANG	

<p>VESTIN MORTGAGE, INC.</p> <p>v.</p> <p>EDGECORE FINANCIAL, ET AL.</p>	<p>CIVIL NO. 06-1-000386 (KSSA),</p>
<p>VESTIN MORTGAGE, INC.</p> <p>v.</p> <p>LEONA DI MAURO-PENDER ET AL.</p>	<p>CIVIL NO. 06-1-000387 (RKOL),</p>
<p>VESTIN MORTGAGE, INC.</p> <p>v.</p> <p>LANCE NEWBY ET AL.</p>	<p>CIVIL NO. 06-1-000388 (VSM),</p>
<p>VESTIN MORTGAGE, INC.</p> <p>v.</p> <p>AL HAFNER</p>	<p>CIVIL NO. 06-1-000389 (BIA),</p>
<p>VESTIN MORTGAGE, INC.</p> <p>v.</p> <p>MAE MOSES</p>	<p>CIVIL NO. 06-1-000390 (KSSA),</p>
<p>VESTIN MORTGAGE, INC.</p> <p>v.</p> <p>AMERICAN MEDIA AGENCY</p>	<p>CIVIL NO. 06-1-000391 (EEH),</p>
<p>VESTIN MORTGAGE, INC.</p> <p>v.</p> <p>INVESTORS FUNDING CORP., ET AL.</p>	<p>CIVIL NO. 06-1-000392 (GWBC),</p>

INVESTORS FUND CORP

v.

HOTELS IN PARADISE INC. ET AL.

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CIVIL NO. 05-1-000712 (KSSA).

## EXHIBIT "B"

### RIGHTSTAR ASSETS TERMS OF SALE

1. Sales Price. The Court approved Foreclosure Commissioner will determine a minimum sales price for which the assets will be sold and will disclose that minimum sales price when the RIGHTSTAR assets are offered for sale. The absolute minimum sale price is twenty-five million dollars (\$25,000,000.00), net of all commissions and foreclosure costs and bids of less than twenty-five million dollars (\$25,000,000.00) net will not be accepted.
2. Trust Enhancement. Nine million dollars (\$9,000,000.00) from the sale price shall be distributed to COMERICA BANK & TRUST, N.A., trustee for the perpetual care and pre-need trusts associated with each of the RIGHTSTAR properties (the "TRUSTS") to be immediately applied to the TRUSTS and divided among them at its discretion. Sixteen million dollars (\$16,000,000.00) shall be tendered to Vestin.
3. First Tranche. Any proceeds from any source beyond twenty-five million dollars (\$25,000,000.00) net shall be disbursed and divided seventy-five percent (75%) to the TRUSTS and twenty-five percent (25%) to VESTIN until the aggregate disbursements to the TRUST (including the foreclosure sale proceeds) equals twenty million dollars (\$20,000,000.00); thereafter disbursements shall be in accordance with the Second Tranche. Any proceeds due from the foreclosure sale to the TRUSTS and any additional proceeds from the First, Second or Third Tranche shall be tendered to COMERICA to be immediately applied to the TRUSTS and divided among them at its discretion. The entirety of the balances of the TRUSTS on the day the proceeds are applied to the TRUSTS shall thereafter be the principal corpus of the trusts.<sup>1</sup>
4. Second Tranche. Following the First Tranche, any net proceeds from whatever source shall be disbursed and divided twenty-five percent (25%) to the TRUSTS and seventy-five percent (75%) to VESTIN until the aggregate disbursements to VESTIN (including the foreclosure sale and First Tranche proceeds) equals the

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<sup>1</sup> The entirety of the balances of the TRUSTS on the day that the sales proceeds are paid from closing of the foreclosure sale to the TRUSTS shall thereafter be the principal corpus of the trusts; for the purposes of trust distributions authorized by Chapter 441, H.R.S. the entirety of the balances of the TRUSTS on that day shall be the principal corpus of the TRUSTS, to be calculated as free of income, interest, dividends and net capital gain. Income, interest, dividends and net capital gains realized upon the TRUSTS' principal corpus following the sale shall only [may] be distributed in accordance with Chapter 441, H.R.S., and applicable administrative rules. However, for tax purposes, should taxing authorities elect to utilize the trust allocation accounting existing prior to this Agreement, the Trusts may still be liable for income and/or capital gain taxes.

total of the amount of VESTIN'S secured interest, which is agreed to be forty-nine million, nine hundred forty-four thousand, four hundred sixteen dollars and sixty-seven cents (\$49,944,416.67).

5. Third Tranche. Following the Second Tranche, any net proceeds from whatever source shall be disbursed and divided fifty percent (50%) to the TRUSTS and fifty percent (50%) to VESTIN.
6. TRUSTS' Receivables. To resolve existing RIGHTSTAR litigation among the State of Hawai'i, RIGHTSTAR, and Vestin, an agreement including Comerica styled the "RIGHTSTAR Resolution Agreement" was made effective as of the \_\_\_\_ day of May, 2007. The parties, including the Receiver only so long as he shall serve in that capacity, agreed to collaborate, to the fullest extent feasible and allowable by law in the prosecution of all claims against third parties responsible for any claims relating to RIGHTSTAR. All proceeds of these efforts, net of attorneys fees and costs reasonably incurred by each of the participating parties, are to be distributed pursuant to the terms of the Agreement.
7. Payment Terms. At the close of the auction, the successful bidder shall pay two hundred and fifty thousand dollars (\$250,000.00) of the highest successful bid by cashier's check, as a non-refundable deposit, into an interest bearing escrow account with the balance due in full at closing. In the event that escrow does not close, the deposit and interest thereon shall be tendered fifty percent (50%) to COMERICA to be immediately applied to the TRUSTS and divided among them at its discretion and fifty percent (50%) to Vestin. The sale price will be due in wired funds at escrow closing ("Closing").
8. Financing. Financing is not available. Funds wired to escrow is the only acceptable mode of payment.
9. Court Approval. The sale is a judicial foreclosure auction held pursuant to Chapter 667, H.R.S., subject to confirmation by the Circuit Court of the First Circuit, State of Hawai'i.
10. Closing Date. Closing shall occur within 90 days following confirmation by the Court.
11. Title to Assets. Because this is a foreclosure sale, the Buyer will take title to the assets of RIGHTSTAR as is, where is, with no representations or warranties, except for those outlined in this Term Sheet or the Court Order. Buyers may obtain a title insurance policy at their own expense.
12. Licensing. Buyer is required to obtain a pre-need funeral authority license and cemetery authority license from the Department of Commerce and Consumer Affairs (the "DCCA") of the State of Hawai'i prior to Court confirmation, which

shall be scheduled within ten (10) days of licensure or at the Court's next available hearing date thereafter.

13. Buyer Criteria. Bidders will receive prior to receipt of due diligence materials the minimum criteria for licensure.
14. Performance of Pre-need Consumers' Contracts. The Buyer shall be required to assume and perform all written consumer contracts for pre-need merchandise and services related to the RIGHTSTAR businesses, subject to the provisions below regarding defaulted, delinquent and cancelled contracts from January 2001, forward. If a contract was cancelled without notice by RIGHTSTAR, the consumer will be entitled to reinstate with no fee, and the consumer will resume payments on the contract under the terms of the contract (with no back due lump sum payments owing). If a contract was cancelled with notice but it should not have been cancelled, the above provisions also apply. A consumer whose contract was canceled after January 2001 who does not elect to reinstate the contract is entitled to a refund of any monies paid by that consumer into trust.<sup>2</sup>

The Buyer shall give each such consumer clear notice at his/her last known address of the opportunity to reinstate the contract. From the date of mailing, each consumer shall have sixty (60) days thereafter to reinstate the contract under its prior terms as though no cancellation had occurred. Consumers' rights to reinstatement shall be governed by the contract and state law, except as specifically provided above. The Buyer is permitted to use the interest income in the trusts generated after the time of sale at any time provided that the Buyer has satisfied its other obligations under these Terms of Sale and has submitted its initial audited financial and actuarial statements in accord with Chapter 441, H.R.S., and applicable administrative rules.
15. Audit. The Buyer shall file initial audited financial statements and actuarial reports for each trust for the period from the date of closing up until December 31, 2007, pursuant to Chapter 441, H.R.S., and related regulations then and thereafter.
16. Perpetual Care Trust Funds. Buyer shall provide for perpetual care of the cemetery properties as required by Chapter 441, H.R.S., even if the perpetual care trusts are not presently fully funded.
17. Consents. The buyer will obtain any and all consents (*e.g.*, a lessor's consent) needed to transfer RIGHTSTAR's interest in any property.

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<sup>2</sup> Written consumer contracts include product and service bundling certificates executed in addition to the other contracts.