

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**  
Washington, D.C. 20549  
**FORM 10-K**

(Mark One)

☒ **ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE  
SECURITIES EXCHANGE ACT OF 1934**

For the fiscal year ended December 31, 2004

or

☐ **TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE  
SECURITIES EXCHANGE ACT OF 1934**

For the transition period from \_\_\_\_\_ to \_\_\_\_\_.

Commission File Number: 001-31911

**American Equity Investment Life Holding Company**  
(Exact name of registrant as specified in its charter)

**Iowa**  
(State of Incorporation)

**42-1447959**  
(I.R.S. Employer Identification No.)

**5000 Westown Parkway, Suite 440**  
**West Des Moines, Iowa**  
(Address of principal executive offices)

**50266**  
(Zip Code)

Registrant's telephone number, including area code

**(515) 221-0002**  
(Telephone)

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Name of each exchange on which registered
Common stock, par value \$1	New York Stock Exchange

Securities registered pursuant to Section 12(g) of the Act: Common Stock, par value \$1

Indicate by check mark whether the Registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the Registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes ☒ No ☐

Indicate by check mark whether the Registrant is an accelerated filer (as defined in Rule 12b-2 of the Act). Yes ☒ No ☐

Aggregate market value of the shares of the Registrant's common equity held by non-affiliates of the Registrant was \$344,207,862 based on the closing price of \$9.95 per share, the closing price of the common stock on the New York Stock Exchange on June 30, 2004.

Shares of common stock outstanding as of February 28, 2005: 38,375,157

Documents incorporated by reference: Portions of the Registrant's definitive proxy statement for the annual meeting of shareholders to be held June 9, 2005, which will be filed within 120 days after December 31, 2004, are incorporated by reference into Part III of this report.

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of this Form 10-K or any amendment to this Form 10-K. ☐

**AMERICAN EQUITY INVESTMENT LIFE HOLDING COMPANY**  
**FORM 10-K FOR THE YEAR ENDED DECEMBER 31, 2004**  
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## PART I

### ITEM 1. BUSINESS

#### Introduction

We were formed on December 15, 1995 to develop, market, issue and administer annuities and life insurance. We are a full service underwriter of a broad array of annuity and insurance products. Our business consists primarily of the sale of fixed rate and index annuities and, accordingly, we have only one business segment. Our business strategy is to focus on our annuity business and earn predictable returns by managing investment spreads and investment risk. We are currently licensed to sell our products in 48 states and the District of Columbia.

On December 9, 2003, we completed an initial public offering of 18,700,000 shares of our common stock at a price of \$9.00 per share. Pursuant to the over-allotment option granted to the underwriters in the offering, the underwriters purchased an additional 2,000,000 shares on December 29, 2003 and an additional 805,000 shares on January 7, 2004, which fully exercised the over-allotment option. The proceeds from our initial public offering (including proceeds from shares issued pursuant to the over-allotment option), net of the underwriting discount and expenses, were approximately \$178.0 million.

Investor related information, including periodic reports filed on Forms 10-K, 10-Q and 8-K and all amendments to such reports may be found on our internet website at [www.american-equity.com](http://www.american-equity.com) as soon as reasonably practicable after such reports are filed with the SEC. In addition, the Company has available on its website its: (i) code of business conduct and ethics; (ii) audit committee charter; (iii) compensation committee charter; (iv) nominating/corporate governance committee charter and (v) corporate governance guidelines.

#### Annuity Market Overview

Our target market includes the group of individuals ages 45-75 who are seeking to accumulate tax-deferred savings. We believe that significant growth opportunities exist for annuity products because of favorable demographic and economic trends. According to the U.S. Census Bureau, there were 35 million Americans age 65 and older in 2000, representing 12% of the U.S. population. By 2030, this sector of the population is expected to increase to 20% of the total population. Our fixed rate and index annuity products are particularly attractive to this group as a result of the guarantee of principal with respect to those products, competitive rates of credited interest, tax-deferred growth and alternative payout options.

According to LIMRA International, total industry sales of individual annuities were \$224.4 billion in 2004 and \$218.8 billion in 2003. Fixed annuity sales, which include index and fixed rate annuities were \$90.9 billion in 2004 and \$89.4 billion in 2003. Sales of index annuities increased 69% to a record \$24.3 billion in 2004 from \$14.4 billion in 2003. We believe index annuities, which have a crediting rate linked to the change in various indices, appeal to policyholders interested in participating in returns linked to equity and/or bond markets without the risk of loss of principal. Our wide range of fixed rate annuity products has enabled us to enjoy favorable growth during volatile equity and bond markets.

#### Strategy

Our business strategy is to focus on our annuity business and earn predictable returns by managing investment spreads and investment risk. Key elements of this strategy include the following:

***Expand our Current Independent Agency Network.*** We believe that our successful relationships with approximately 70 national marketing organizations and, through them, 46,000 independent agents, represent a significant competitive advantage. We intend to grow and enhance our core

distribution channel by expanding our relationships with national marketing organizations and independent agents, by addressing their product needs and by providing the highest quality service possible.

***Continue to Introduce Innovative and Competitive Products.*** We intend to be at the forefront of the fixed and index annuity industry in developing and introducing innovative and new competitive products. We were the first company to introduce an index annuity which allowed policyholders to earn returns linked to the Dow Jones Index<sup>sm</sup>. We were also one of the first companies to offer an index product offering a choice among interest crediting strategies which includes both equity and bond indices as well as a traditional fixed rate strategy. We believe that our continued focus on anticipating and being responsive to the product needs of our independent agents and policyholders will lead to increased customer loyalty, revenues and profitability.

***Use our Expertise to Achieve Targeted Spreads on Annuity Products.*** We have had a successful track record in achieving the targeted spreads on our annuity products. We intend to leverage our experience and expertise in managing the investment spread during a range of interest rate environments to achieve our targeted spreads.

***Maintain our Profitability Focus and Improve Operating Efficiency.*** We are committed to improving our profitability by advancing the scope and sophistication of our investment management and spread capabilities and continuously seeking out operating efficiencies within our company. We have made substantial investments in technology improvements to our business, including the development of a password-secure website which allows our independent agents to receive proprietary sales, marketing and product materials and the implementation of software designed to enable us to operate in a completely paperless environment with respect to policy administration. Further, we have implemented competitive incentive programs for our national marketing organizations, agents and employees to stimulate performance.

***Take Advantage of the Growing Popularity of Some of Our Products.*** We believe that the growing popularity of some of our products that allow equity and bond market participation without the risk of loss of the premium deposit presents an attractive opportunity to grow our business. We intend to capitalize on our reputation as a leading marketer of index annuities in this expanding segment of the annuity market.

## Products

Our products include fixed rate annuities, index annuities, a variable annuity and life insurance.

### *Fixed Rate Annuities*

These products, which accounted for approximately 16% and 36% of our total annuity deposits collected for the years ended December 31, 2004 and 2003, respectively, include single premium deferred annuities ("SPDAs"), flexible premium deferred annuities ("FPDAs") and single premium immediate annuities ("SPIAs"). An SPDA generally involves the tax-deferred accumulation of interest on a single premium paid by the policyholder. After a number of years, as specified in the annuity contract, the annuitant may elect to take the proceeds of the annuity either in a single payment or in a series of payments for life, for a fixed number of years, or for a combination of these payment options. We also sell SPDAs, under which the annual crediting rate is guaranteed for either a three-year or a five-year period. FDPAs are similar to SPDAs in many respects, except that the FPDA allows additional deposits in varying amounts by the policyholder without a new application.

Our SPDAs and FDPAs (excluding the multi-year rate guaranteed products) generally have an interest rate (the "crediting rate") that is guaranteed by us for the first policy year. After the first policy year, we have the discretionary ability to change the crediting rate once annually to any rate at

or above a guaranteed minimum rate. The guaranteed rate on our non-multi-year rate guaranteed policies in force and new issues ranges from 2.25% to 4.00%. The guaranteed rate on our multi-year rate guaranteed policies in force ranges from 3.05% to 4.80% for the three-year rate guaranteed product and from 3.25% to 7% for the five-year rate guaranteed product. The initial crediting rate is largely a function of the interest rate we can earn on invested assets acquired with new annuity deposits and the rates offered on similar products by our competitors. For subsequent adjustments to crediting rates, we take into account the yield on our investment portfolio, annuity surrender assumptions, competitive industry pricing and crediting rate history for particular groups of annuity policies with similar characteristics.

Approximately 99% and 92% of our fixed rate annuity sales during the years ended December 31, 2004 and 2003, respectively, were "bonus" products. The initial crediting rate on these products specifies a bonus crediting rate ranging from 1% to 7% of the annuity deposit. After the first year, the bonus interest portion of the initial crediting rate is automatically discontinued, and the renewal crediting rate is established. Generally, there is a compensating adjustment in the commission paid to the agent to offset the first year interest bonus. In all situations, we obtain an acknowledgment from the policyholder, upon policy issuance, that a specified portion of the first year interest will not be paid in renewal years. As of December 31, 2004, crediting rates on our outstanding SPDAs and FPDAs generally ranged from 3.10% to 7.50%, excluding interest bonuses guaranteed for the first year. The average crediting rate on FPDAs and SPDAs including interest bonuses at December 31, 2004 was 4.42%, and the average crediting rate on those products excluding bonuses was 4.18%.

Policyholders are typically permitted to withdraw all or a part of the premium paid, plus accrued interest credited to the account (the "accumulation value"), subject to the assessment of a surrender charge for withdrawals in excess of specified limits. Most of our SPDAs and FPDAs provide for penalty-free withdrawals of up to 10% of the accumulation value each year after the first year, subject to limitations. Withdrawals in excess of allowable penalty-free amounts are assessed a surrender charge during a penalty period which generally ranges from 3 to 15 years after the date the policy is issued. This surrender charge is initially 8.25% to 25% of the accumulation value and generally decreases by approximately one to two percentage points per year during the surrender charge period. Surrender charges are set at levels aimed at protecting us from loss on early terminations and reducing the likelihood of policyholders terminating their policies during periods of increasing interest rates. This practice lengthens the effective duration of the policy liabilities and enhances our ability to maintain profitability on such policies.

Our SPIAs are designed to provide a series of periodic payments for a fixed period of time or for life, according to the policyholder's choice at the time of issue. The amounts, frequency, and length of time of the payments are fixed at the outset of the annuity contract. SPIAs are often purchased by persons at or near retirement age who desire a steady stream of payments over a future period of years. The implicit interest rate on SPIAs is based on market conditions when the policy is issued. The implicit interest rate on our outstanding SPIAs averaged 3.83% and 4.25% at December 31, 2004 and 2003, respectively.

#### *Index Annuities*

Index annuities accounted for approximately 84% and 64% of the total annuity deposits collected for the years ended December 31, 2004 and 2003, respectively. These products allow policyholders to link returns to the performance of a particular index without the risk of loss of their principal. Most of these products allow policyholders to transfer funds once a year among several different crediting strategies, including one or more index based strategies and a traditional fixed rate strategy.

The annuity contract value is equal to the premiums paid increased for returns which are based upon a percentage (the "participation rate") of the annual appreciation (based in certain situations on

monthly averages or monthly point-to-point calculations) in a recognized index or benchmark. The participation rate, which we may reset annually, generally varies among the index products from 50% to 100%. Some of the products also have an "asset fee" ranging from 1.5% to 5%, which is deducted from the interest to be credited. The asset fees may be adjusted annually by us, subject to stated limits. In addition, some products apply an overall limit (or "cap"), ranging from 5% to 13%, on the amount of annual interest the policyholder may earn in any one contract year, and the applicable cap also may be adjusted annually subject to stated minimums. The minimum guaranteed contract values are equal to 80% to 100% of the premium collected plus interest credited at an annual rate ranging from 2% to 3.5%. We purchase options on the applicable indices as an investment to provide the income needed to fund the amount of the index credits on the index products. The setting of the participation rates, asset fees and caps is a function of the interest rate we can earn on the invested assets acquired with annuity fund deposits, cost of options and features offered on similar products by competitors. Approximately 57% and 39% of our index annuity sales for the years ended December 31, 2004 and 2003, respectively, were "premium bonus" products. The initial annuity deposit on these policies is increased at issuance by the specified premium bonus ranging from 1.5% to 10%. Generally, there is a compensating adjustment in the commission paid to the agent to offset the premium bonus.

The index annuities provide for penalty-free withdrawals of up to 10% of premium or accumulation value (depending on the product) in each year after the first year of the annuity's term. Other withdrawals are subject to a surrender charge ranging initially from 5% to 20% over a surrender period ranging from 5 to 17 years. During the applicable surrender charge period, the surrender charges on some index products remain level, while on other index products, the surrender charges decline by one to two percentage points per year. After a number of years, as specified in the annuity contract, the annuitant may elect to take the proceeds of the annuity either in a single payment or in a series of payments for life, for a fixed number of years, a combination of these payment options, or re-enter into a new contract term.

#### *Variable Annuities*

Variable annuities differ from fixed rate and index annuities in that the policyholder, rather than the insurance company, bears the investment risk and the policyholder's return of principal and rate of return are dependent upon the performance of the particular investment option selected by the policyholder. Profits on variable annuities are derived from the fees charged to contract owners rather than from the investment spread.

#### *Life Insurance*

These products include traditional ordinary and term, universal life and other interest-sensitive life insurance products. We have approximately \$2.6 billion of life insurance in force as of December 31, 2004. We intend to continue offering a complete line of life insurance products for individual and group markets. Premiums related to this business accounted for 3% of the revenues in the years ended December 31, 2004 and 2003 and 5% of the revenues in the year ended December 21, 2002.

#### **Investments**

Investment activities are an integral part of our business, and net investment income is a significant component of our total revenues. Profitability of many of our products is significantly affected by spreads between interest yields on investments and rates credited on annuity liabilities. Although substantially all credited rates on non-multi-year rate guaranteed SPDAs and FPDAs may be changed annually, subject to minimum guarantees, changes in crediting rates may not be sufficient to maintain targeted investment spreads in all economic and market environments. In addition, competition and other factors, including the potential for increases in surrenders and withdrawals, may limit our ability to adjust or to maintain crediting rates at levels necessary to avoid narrowing of

spreads under certain market conditions. For the year ended December 31, 2004, the weighted average yield, computed on the average amortized cost basis of our investment portfolio, was 6.28%; the weighted average cost of our liabilities at December 31, 2004, excluding interest bonuses guaranteed for the first year of the annuity contract, was 3.90%.

We manage the indexed-based risk component of our index annuities by purchasing call options on the applicable indices to fund the annual index credits on these annuities and by adjusting the participation rates, asset fee rates and other product features to reflect the change in the cost of such options (which varies based on market conditions). All of such options are purchased to fund the index credits on our index annuities at their respective anniversary dates, and new options are purchased at each of the anniversary dates to fund the next annual index credits.

For additional information regarding the composition of our investment portfolio and our interest rate risk management, see Quantitative and Qualitative Disclosures About Market Risk and note 3 to our audited consolidated financial statements.

## **Marketing**

We market our products through a variable cost brokerage distribution network of approximately 70 national marketing organizations and 46,000 independent agents as of December 31, 2004. We emphasize high quality service to our agents and policyholders along with the prompt payment of commissions to our agents. We believe this has been significant in building excellent relationships with our existing agency force.

Our independent agents and agencies range in profile from national sales organizations to personal producing general agents. We aggressively recruit new agents and expect to continue to expand our independent agency force. In our recruitment efforts, we emphasize that agents have direct access to our executive officers, giving us an edge in recruiting over larger and foreign-owned competitors. We also have favorable relationships with our national marketing organizations, which have enabled us to efficiently sell through an expanded number of independent agents. We are currently licensed to sell our products in 48 states and the District of Columbia. We have applied for licenses to sell our products in the two remaining states.

The insurance distribution system is comprised of insurance brokers and marketing organizations. We are pursuing a strategy to increase the size of our distribution network by developing additional relationships with national and regional marketing organizations. These organizations typically recruit agents for us by advertising our products and our commission structure, through direct mail advertising, or through seminars for insurance agents and brokers. These organizations bear most of the cost incurred in marketing our products. We compensate marketing organizations by paying them a percentage of the commissions earned on new annuity policy sales generated by the agents recruited in such organizations. We also conduct incentive programs for marketing organizations and agents from time to time, including equity-based programs for our leading national marketers. For additional information regarding our equity-based programs for our leading national marketers see note 10 to our audited consolidated financial statements. We generally do not enter into exclusive arrangements with these marketing organizations.

Two of our national marketing organizations each accounted for more than 10% of the annuity deposits and insurance premiums collections during the year ended December 31, 2004. The states with the largest share of direct premiums collected during 2004 were: Florida (11.7%), California (10.7%), Texas (8.6%), Illinois (7.2%) and Michigan (5.2%).

## Competition and Ratings

We operate in a highly competitive industry. Many of our competitors are substantially larger and enjoy substantially greater financial resources, higher ratings by rating agencies, broader and more diversified product lines and more widespread agency relationships. Our annuity products compete with index, fixed rate and variable annuities sold by other insurance companies and also with mutual fund products, traditional bank investments and other investment and retirement funding alternatives offered by asset managers, banks, and broker-dealers. Our insurance products compete with other insurance companies, financial intermediaries and other institutions based on a number of features, including crediting rates, policy terms and conditions, service provided to distribution channels and policyholders, ratings, reputation and broker compensation.

The sales agents for our products use the ratings assigned to an insurer by independent rating agencies as one factor in determining which insurer's annuity to market. In recent years, the market for annuities has been dominated by those insurers with the highest ratings. American Equity Life has received a financial strength rating of "B++" (Very Good) with a stable outlook from A.M. Best Company and "BBB+" with a stable outlook from Standard & Poor's. A.M. Best Company and Standard & Poor's changed their outlook on our rating from negative to stable subsequent to the completion of our December 2003 initial public offering. In July, 2002, A.M. Best Company and Standard & Poor's adjusted our financial strength ratings from "A-" (Excellent) to "B++" (Very Good) and "A-" to "BBB+", respectively. The adjustments initially had no impact on sales of new annuity products or in lapses of existing balances. Beginning in November, 2002, our monthly sales volumes began to decline primarily as a result of certain actions by us, including reductions in crediting rates and suspension of new sales of some products. The degree to which ratings adjustments also contributed to this decline is unknown. Our ability to grow sales of new annuities and the level of surrenders of our existing annuity contracts in force during 2005 may be affected by the current ratings.

Financial strength ratings generally involve quantitative and qualitative evaluations by rating agencies of a company's financial condition and operating performance. Generally, rating agencies base their ratings upon information furnished to them by the insurer and upon their own investigations, studies and assumptions. Ratings are based upon factors of concern to policyholders, agents and intermediaries and are not directed toward the protection of investors and are not recommendations to buy, sell or hold securities.

A.M. Best Company ratings currently range from "A++" (Superior) to "F" (In Liquidation), and include 16 separate ratings categories. Within these categories, "A++" (Superior) and "A+" (Superior) are the highest, followed by "A" (Excellent) and "A-" (Excellent) then followed by "B++" (Very Good) and "B+" (Very Good). Publications of A.M. Best Company indicate that the "B++" rating is assigned to those companies that, in A.M. Best Company's opinion, have demonstrated a good ability to meet their ongoing obligations to policyholders.

Standard & Poor's insurer financial strength ratings currently range from "AAA" to "NR", and include 21 separate ratings categories. Within these categories, "AAA" and "AA" are the highest, followed by "A" and "BBB". Publications of Standard & Poor's indicate that an insurer rated "BBB" or higher is regarded as having strong financial security characteristics, but is somewhat more likely to be affected by adverse business conditions than are higher rated insurers.

A.M. Best Company and Standard & Poor's review their ratings of insurance companies from time to time. There can be no assurance that any particular rating will continue for any given period of time or that it will not be changed or withdrawn entirely if, in their judgment, circumstances so warrant. If our ratings were to be adjusted again for any reason, we could experience a material decline in the sales of our products and the persistency of our existing business.



## Reinsurance

### *Coinsurance*

American Equity Life has entered into two coinsurance agreements with EquiTrust Life Insurance Company ("EquiTrust"), an affiliate of Farm Bureau Life Insurance Company ("Farm Bureau"), covering 70% of certain of our fixed rate and index annuities issued from August 1, 2001 through December 31, 2001, 40% of those contracts issued during 2002 and 2003, and 20% of those contracts issued from January 1, 2004 to July 31, 2004, when the agreement was suspended by mutual consent of the parties. As a result of the suspension, new business will no longer be ceded to EquiTrust unless and until the parties mutually agree to resume the coinsurance of new business. The business reinsured under these agreements is not eligible for recapture before the expiration of 10 years. EquiTrust has received a financial strength rating of "A" from A.M. Best Company. As of December 31, 2004, Farm Bureau beneficially owned 14.4% of our issued and outstanding common stock.

Total annuity deposits ceded were \$202.1 million, \$649.4 million and \$837.9 million for the years ended December 31, 2004, 2003 and 2002, respectively. We received expense allowances of \$22.6 million, \$65.6 million and \$99.4 million under this agreement for the years ended December 31, 2004, 2003 and 2002, respectively. The balance due under this agreement to EquiTrust was \$32.0 million at December 31, 2004 and \$22.6 million at December 31, 2003, and represents the market value of the call options related to the ceded business held by us to fund the index credits and cash due to or from EquiTrust related to the transfer of ceded annuity deposits. At December 31, 2004 and 2003, the aggregate policy benefit reserves transferred to EquiTrust under these agreements were \$2.1 billion and \$1.9 billion, respectively. We remain liable with respect to the policy liabilities ceded to EquiTrust should it fail to meet the obligations assumed by it.

American Equity Life has also entered into a modified coinsurance agreement to cede 70% of its variable annuity business to EquiTrust. Separate account deposits ceded under this agreement during the years ended December 31, 2004, 2003 and 2002 were immaterial. Under this agreement and related administrative services agreements, we paid EquiTrust \$0.2 million for the each of years ended December 31, 2004, 2003 and 2002. The modified coinsurance agreement will continue until termination by written notice at the election of either party. Any such termination will apply to the submission or acceptance of new policies, and business reinsured under the agreement prior to any such termination is not eligible for recapture before the expiration of 10 years.

### *Financial Reinsurance*

American Equity Life has entered into two reinsurance transactions with Hannover Life Reassurance Company of America, ("Hannover"), which are treated as reinsurance under statutory accounting practices and as financial reinsurance under accounting principles generally accepted in the United States, ("GAAP"). Hannover has received a financial strength rating of "A+" from A.M. Best Company. The first transaction became effective November 1, 2002 (the "2002 Hannover Transaction") and the second transaction became effective September 30, 2003 (the "2003 Hannover Transaction"). The agreements for these transactions include a coinsurance segment and a yearly renewable term segment reinsuring a portion of death benefits payable on certain annuities issued from January 1, 2002 to December 31, 2002 (2002 Hannover Transaction) and issued from January 1, 2003 to September 30, 2003 (2003 Hannover Transaction). The coinsurance segments provide reinsurance to the extent of 6.88% (2002 Hannover Transaction) and 13.41% (2003 Hannover Transaction) of all risks associated with our annuity policies covered by these reinsurance agreements. The 2002 Hannover Transaction provided \$29.8 million in net statutory surplus benefit during 2002 and the 2003 Hannover Transaction provided \$29.7 million in net statutory surplus benefit during 2003. The statutory surplus benefits provided by these agreements were reduced by \$13.1 million in 2004 and \$6.8 million in 2003. The remaining statutory surplus benefit under these agreements will be reduced in the following years as follows: 2005—\$11.6 million; 2006—\$12.4 million; 2007—\$13.2 million; 2008—\$6.2 million. Risk charges

attributable to the 2003 and 2002 Hannover Transactions of \$2.2 million, \$1.6 million and \$0.2 million were incurred during 2004, 2003 and 2002, respectively.

The statutory surplus benefit provided by the 2003 Hannover Transaction replaced the statutory surplus benefit previously provided by a financial reinsurance agreement with a subsidiary of Swiss Reinsurance Company. We terminated this agreement and recaptured all reserves subject to this agreement effective September 30, 2003. This agreement was effective January 1, 2001, and provided an initial statutory surplus benefit of \$35.0 million in 2001. The statutory surplus benefit remaining at January 1, 2003 was \$30.9 million, all of which was eliminated during 2003. Risk charges and interest expense incurred on the cash portion of the surplus benefit provided by the agreement were \$0.2 million and \$0.6 million for the years ended December 31, 2003 and 2002, respectively.

### *Indemnity Reinsurance*

Consistent with the general practice of the life insurance industry, American Equity Life enters into agreements of indemnity reinsurance with other insurance companies in order to reinsure portions of the coverage provided by its life and accident and health insurance products. Indemnity reinsurance agreements are intended to limit a life insurer's maximum loss on a large or unusually hazardous risk or to diversify its risks. The maximum loss retained by us on all life insurance policies we have issued was \$0.1 million or less as of December 31, 2004. Indemnity reinsurance does not discharge the original insurer's primary liability to the insured. American Equity Life's reinsured business related to these blocks of business is primarily ceded to two reinsurers. Reinsurance related to life and accident and health insurance that was ceded by us primarily to two reinsurers was immaterial. We believe the assuming companies will be able to honor all contractual commitments, based on our periodic review of their financial statements, insurance industry reports and reports filed with state insurance departments.

### **Regulation**

Life insurance companies are subject to regulation and supervision by the states in which they transact business. State insurance laws establish supervisory agencies with broad regulatory authority, including the power to:

- grant and revoke licenses to transact business;
- regulate and supervise trade practices and market conduct;
- establish guaranty associations;
- license agents;
- approve policy forms;
- approve premium rates for some lines of business;
- establish reserve requirements;
- prescribe the form and content of required financial statements and reports;
- determine the reasonableness and adequacy of statutory capital and surplus;
- perform financial, market conduct and other examinations;
- define acceptable accounting principles;
- regulate the type and amount of permitted investments;
- limit the amount of dividends and surplus note payments that can be paid without obtaining regulatory approval.

Our life subsidiaries are subject to periodic examinations by state regulatory authorities. In 2002, the Iowa Insurance Division completed an examination of American Equity Life as of December 31,

2000. No adjustments to our financial statements were recommended or required as a result of this examination. The Iowa Insurance Division is currently conducting an examination of American Equity Life as of December 31, 2003. We have not been informed of any material adjustments which will be recommended or required as a result of this examination.

The payment of dividends or the distributions, including surplus note payments, by our life subsidiaries is subject to regulation by each subsidiary's state of domicile's insurance department. Currently, American Equity Life may pay dividends or make other distributions without the prior approval of its state of domicile's insurance department, unless such payments, together with all other such payments within the preceding twelve months, exceed the greater of (1) American Equity Life's statutory net gain from operations for the preceding calendar year, or (2) 10% of American Equity Life's statutory surplus at the preceding December 31. For 2005, up to approximately \$60.9 million can be distributed as dividends by American Equity Life without prior approval of its state of domicile's insurance department. In addition, dividends and surplus note payments may be made only out of earned surplus, and all surplus note payments are subject to prior approval by regulatory authorities. American Equity Life had approximately \$114.6 million of earned surplus at December 31, 2004.

Most states have also enacted regulations on the activities of insurance holding company systems, including acquisitions, extraordinary dividends, the terms of surplus notes, the terms of affiliate transactions and other related matters. We are registered pursuant to such legislation in Iowa. Recently, a number of state legislatures have considered or have enacted legislative proposals that alter and, in many cases, increase the authority of state agencies to regulate insurance companies and holding company systems.

Most states, including Iowa and New York where our life subsidiaries are domiciled, have enacted legislation or adopted administrative regulations affecting the acquisition of control of insurance companies as well as transactions between insurance companies and persons controlling them. The nature and extent of such legislation and regulations currently in effect vary from state to state. However, most states require administrative approval of the direct or indirect acquisition of 10% or more of the outstanding voting securities of an insurance company incorporated in the state. The acquisition of 10% of such securities is generally deemed to be the acquisition of "control" for the purpose of the holding company statutes and requires not only the filing of detailed information concerning the acquiring parties and the plan of acquisition, but also administrative approval prior to the acquisition. In many states, the insurance authority may find that "control" in fact does not exist in circumstances in which a person owns or controls more than 10% of the voting securities.

Although the federal government does not directly regulate the business of insurance, federal legislation and administrative policies in several areas, including pension regulation, age and sex discrimination, financial services regulation, securities regulation and federal taxation can significantly affect the insurance business. In addition, legislation has been passed which could result in the federal government assuming some role in regulating insurance companies and which allows combinations between insurance companies, banks and other entities.

In 1998, the Securities and Exchange Commission ("SEC") requested comments as to whether index annuities, such as those sold by us, should be treated as securities under the federal securities laws rather than as insurance products. Treatment of these products as securities would likely require additional registration and licensing of these products and the agents selling them, as well as cause us to seek additional marketing relationships for these products. No action has been taken by the SEC on this issue.

State insurance regulators and the National Association of Insurance Commissioners, or NAIC, are continually reexamining existing laws and regulations and developing new legislation for the passage by state legislatures and new regulations for adoption by insurance authorities. Proposed laws and

regulations or those still under development pertain to insurer solvency and market conduct and in recent years have focused on:

- insurance company investments;
- risk-based capital ("RBC") guidelines, which consist of regulatory targeted surplus levels based on the relationship of statutory capital and surplus, with prescribed adjustments, to the sum of stated percentages of each element of a specified list of company risk exposures;
- the implementation of non-statutory guidelines and the circumstances under which dividends may be paid;
- product approvals;
- agent licensing;
- underwriting practices;
- insurance and annuity sales practices.

The NAIC's RBC requirements are intended to be used by insurance regulators as an early warning tool to identify deteriorating or weakly capitalized insurance companies for the purpose of initiating regulatory action. The RBC formula defines a new minimum capital standard which supplements low, fixed minimum capital and surplus requirements previously implemented on a state-by-state basis. Such requirements are not designed as a ranking mechanism for adequately capitalized companies.

The NAIC's RBC requirements provide for four levels of regulatory attention depending on the ratio of a company's total adjusted capital to its RBC. Adjusted capital is defined as the total of statutory capital, surplus, asset valuation reserve and certain other adjustments. Calculations using the NAIC formula at December 31, 2004, indicate that the ratio of total adjusted capital to RBC for us exceeded the highest level at which regulatory action might be initiated by approximately 2.5 times.

Our life subsidiaries also may be required, under the solvency or guaranty laws of most states in which they do business, to pay assessments up to certain prescribed limits to fund policyholder losses or liabilities of insolvent insurance companies. These assessments may be deferred or forgiven under most guaranty laws if they would threaten an insurer's financial strength and, in certain instances, may be offset against future premium taxes. Assessments related to business reinsured for periods prior to the effective date of the reinsurance are the responsibility of the ceding companies.

## **Federal Income Taxation**

The annuity and life insurance products that we market generally provide the policyholder with a federal income tax advantage, as compared to certain other savings investments such as certificates of deposit and taxable bonds, in that federal income taxation on any increases in the contract values (i.e., the "inside build-up") of these products is deferred until it is received by the policyholder. With other savings investments, the increase in value is generally taxed each year as it is realized. Additionally, life insurance death benefits are generally exempt from income tax.

From time to time, various tax law changes have been proposed that could have an adverse effect on our business, including the elimination of all or a portion of the income tax advantage described above for annuities and life insurance. If legislation were enacted to eliminate the tax deferral for annuities, such a change would have an adverse effect on our ability to sell non-qualified annuities. Non-qualified annuities are annuities that are not sold to an individual retirement account or other qualified retirement plan.

In June 2001, the Economic Growth and Tax Relief Reconciliation Act of 2001 (the "2001 Act") was enacted. The 2001 Act implemented a staged decrease in individual tax rates that began in 2001 and was accelerated when the Jobs and Growth Tax Relief Reconciliation Act of 2003 (the "2003 Act")

was enacted. While the decreases in rates are temporary (the pre-2001 rates will return in 2011), the present value of the tax deferred advantage of annuities and life insurance products is less, which might hinder our ability to sell such products and/or increase the rate at which our current policyholders surrender their policies.

Our life subsidiaries are taxed under the life insurance company provisions of the Internal Revenue Code of 1986, as amended (the "Code"). Provisions in the Code require a portion of the expenses incurred in selling insurance products to be capitalized and deducted over a period of years, as opposed to being immediately deducted in the year incurred. This provision increases the current income tax expense charged to gain from operations for statutory accounting purposes which reduces statutory net income and surplus and, accordingly, may decrease the amount of cash dividends that may be paid by our life subsidiaries.

## **Employees**

As of December 31, 2004, we had approximately 230 full-time employees, of which approximately 220 are located in West Des Moines, Iowa, and 10 are located in the Pell City, Alabama office. We have experienced no work stoppages or strikes and consider our relations with our employees to be excellent. None of our employees are represented by a union.

## **ITEM 2. PROPERTIES**

We do not own any real estate. We lease space for our principal offices in West Des Moines, Iowa, pursuant to written leases for approximately 45,000 square feet. The leases expire on June 30, 2006 and have a renewal option for an additional five year term at a rental rate equal to the prevailing fair market rate. We also lease space for our office in Pell City, Alabama, pursuant to a written lease dated January 3, 2000, for approximately 5,680 square feet. This lease is currently on a month-to-month basis.

## **ITEM 3. LEGAL PROCEEDINGS**

We are occasionally involved in litigation, both as a defendant and as a plaintiff. In addition, state regulatory bodies, such as state insurance departments, the SEC, the National Association of Securities Dealers, Inc., the Department of Labor, and other regulatory bodies regularly make inquiries and conduct examinations or investigations concerning our compliance with, among other things, insurance laws, securities laws, the Employee Retirement Income Security Act of 1974, as amended and laws governing the activities of broker-dealers.

Companies in the life insurance and annuity business have faced litigation, including class action lawsuits, alleging improper product design, improper sales practices and similar claims. We are currently a defendant in several purported class action lawsuits filed in state courts alleging improper sales practices. In these lawsuits, the plaintiffs are seeking returns of premiums and other compensatory and punitive damages. We have reached a final settlement in one of these cases, the impact of which is expected to be immaterial. The class was certified as such incident to the settlement of that case. No class has been certified in any of the other pending cases at this time. Although we have denied all allegations in these lawsuits and intend to vigorously defend against them, the lawsuits are in the early stages of litigation and neither their outcomes nor a range of possible outcomes can be determined at this time. However, we do not believe that these lawsuits will have a material adverse effect on our business, financial condition or results of operations.

In addition, we are from time to time, subject to other legal proceedings and claims in the ordinary course of business, none of which we believe are likely to have a material adverse effect on our financial position, results of operations or cash flows. There can be no assurance that such litigation, or any future litigation, will not have a material adverse effect on our business, financial condition or results of operations.

## **ITEM 4. SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS**

None.

## PART II

### ITEM 5. MARKET FOR REGISTRANT'S COMMON EQUITY, RELATED STOCKHOLDER MATTERS AND ISSUER PURCHASES OF EQUITY SECURITIES

Our common stock began trading on the New York Stock Exchange ("NYSE") under the symbol "AEL" following our initial public offering ("IPO").

2004	High	Low	Close
First Quarter	\$ 13.15	\$ 10.05	\$ 12.85
Second Quarter	\$ 13.10	\$ 9.75	\$ 9.95
Third Quarter	\$ 10.22	\$ 8.79	\$ 9.49
Fourth Quarter	\$ 11.00	\$ 9.41	\$ 10.77
2003			
Fourth Quarter	\$ 10.30	\$ 8.55	\$ 9.97

As of December 31, 2004, the Company had 38,360,343 shares issued and outstanding and approximately 4,500 shareholders of record. In 2004 and 2003, we paid an annual cash dividend of \$0.02 and \$0.01, respectively, per share on our common stock. We intend to continue to pay an annual cash dividend on such shares so long as we have sufficient capital and/or future earnings to do so. However, we anticipate retaining most of our future earnings, if any, for use in our operations and the expansion of our business. Any further determination as to dividend policy will be made by our board of directors and will depend on a number of factors, including our future earnings, capital requirements, financial condition and future prospects and such other factors as our board of directors may deem relevant.

Our credit agreement limits our ability to declare or pay dividends in any fiscal year to 33% of our consolidated net income for the prior year. In addition, since we are a holding company, our ability to pay cash dividends depends in large measure on our subsidiaries' ability to make distributions of cash or property to us. Iowa insurance laws restrict the amount of distributions American Equity Life can pay to us without the approval of the Iowa Insurance Division. See Management's Discussion and Analysis of Financial Condition and Results of Operations and notes 7 and 11 to our audited consolidated financial statements.

On December 9, 2003, we completed an initial public offering of 18,700,000 shares of our common stock at a price of \$9.00 per share. The managing underwriters for the offering were Merrill Lynch, Pierce, Fenner & Smith Incorporated, Advest, Inc., Raymond James & Associates, Inc. and Sanders Morris Harris Inc. The shares of common stock sold in the offering were registered under the Securities Act of 1933, as amended, on a Registration Statement on Form S-1 (Registration No. 333-108794) that was declared effective by the Securities and Exchange Commission on December 3, 2003. Pursuant to the over-allotment option granted to the underwriters in the offering, the underwriters purchased an additional 2,000,000 shares on December 29, 2003 and an additional 805,000 shares on January 7, 2004, which fully exercised the over-allotment option. The offering did not terminate until after the sale of all of the securities registered on the Registration Statement. The aggregate gross proceeds to us from our initial public offering were approximately \$193.5 million. The aggregate net proceeds to us from the offering were approximately \$178.0 million, after deducting an aggregate of approximately \$13.5 million in underwriting discounts and commissions paid to the underwriters and an estimated \$2.0 million in other expenses incurred in connection with the offering. In connection with the IPO, we did not make any payments, directly or indirectly, to any of our directors or officers, or, to our knowledge, any of their associates, or to any person owning ten percent

or more of any class of our equity securities, or to any of our affiliates. All of the net proceeds were contributed to our life subsidiaries to fund future growth of our annuity business.

There were no sales of unregistered equity securities during 2004 not previously reported on Form 8-K.

**Issuer Purchases of Equity Securities**

We did not have any issuer purchases of equity securities for the quarter ended December 31, 2004.

## ITEM 6. SELECTED CONSOLIDATED FINANCIAL AND OTHER DATA

The summary consolidated financial and other data should be read in conjunction with Management's Discussion and Analysis of Financial Condition and Results of Operations and our consolidated financial statements and related notes appearing elsewhere in this report. The results for past periods are not necessarily indicative of results that may be expected for future periods.

	Year ended December 31,				
	2004	2003	2002	2001	2000
	(Dollars in thousands, except per share data)				
<b>Consolidated Statements of Income Data:</b>					
Revenues					
Traditional life and accident and health insurance premiums	\$ 15,115	\$ 13,686	\$ 13,664	\$ 13,141	\$ 11,034
Annuity and single premium universal life product charges	22,462	20,452	15,376	12,520	8,338
Net investment income	429,926	358,529	308,548	209,086	100,060
Realized gains (losses) on investments	943	6,946	(122)	787	(1,411)
Change in fair value of derivatives(a)	28,696	52,525	(57,753)	(55,158)	(3,406)
Total revenues	497,142	452,138	279,713	180,376	114,615
Benefits and expenses					
Insurance policy benefits and change in future policy benefits	13,423	11,824	9,317	9,762	8,728
Interest credited to account balances	305,762	248,075	183,503	100,125	57,312
Change in fair value of embedded derivatives(a)	(8,567)	66,801	(5,027)	12,921	—
Interest expense due to related party under General Agency Commission and Servicing Agreement	2,594	3,000	3,596	5,716	5,958
Interest expense on notes payable	1,749	1,486	1,901	2,881	2,339
Interest expense on subordinated debentures(b)	9,609	7,661	—	—	—
Interest expense on amounts due under repurchase agreements and other interest expense	3,148	1,278	1,777	1,504	3,267
Amortization of deferred policy acquisition costs	67,867	47,450	34,060	20,838	7,791
Other operating costs and expenses	32,016	25,618	21,635	17,176	14,602
Total benefits and expenses	427,601	413,193	250,762	170,923	99,997
Income before income taxes, minority interests and cumulative effect of change in accounting principle	69,541	38,945	28,951	9,453	14,618
Income tax expense	24,257	13,505	7,299	333	2,385
Income before minority interests and cumulative effect of change in accounting principle	45,284	25,440	21,652	9,120	12,233
Minority interests in subsidiaries:					
Earnings attributable to company-obligated mandatorily redeemable preferred securities of subsidiary trusts(b)	—	—	7,445	7,449	7,449
Income before cumulative effect of change in accounting principle	45,284	25,440	14,207	1,671	4,784
Cumulative effect of change in accounting for derivatives(a)	—	—	—	(799)	—
Net income(c)	\$ 45,284	\$ 25,440	\$ 14,207	\$ 872	\$ 4,784
<b>Per Share Data:</b>					
Earnings per common share:					
Income before cumulative effect of change in accounting principle	\$ 1.19	\$ 1.45	\$ 0.87	\$ 0.10	\$ 0.29
Cumulative effect of change in accounting for derivatives(a)	—	—	—	(0.05)	—
Earnings per common share	\$ 1.19	\$ 1.45	\$ 0.87	\$ 0.05	\$ 0.29
Earnings per common share—assuming dilution:					
Income before cumulative effect of change in accounting principle	\$ 1.08	\$ 1.21	\$ 0.76	\$ 0.09	\$ 0.26
Cumulative effect of change in accounting for derivatives(a)	—	—	—	(0.04)	—
Earnings per common share—assuming dilution	\$ 1.08	\$ 1.21	\$ 0.76	\$ 0.05	\$ 0.26
Dividends declared per common share	\$ 0.02	\$ 0.01	\$ 0.01	\$ 0.01	\$ 0.01





	2004	2003	2002	2001	2000
(Dollars in thousands, except per share data)					
<b>Consolidated Balance Sheet Data:</b>					
Total assets	\$ 11,114,066	\$ 8,989,177	\$ 7,327,789	\$ 4,819,220	\$ 2,528,126
Policy benefit reserves	9,807,969	8,315,874	6,737,888	4,420,720	2,099,915
Amounts due to related party under General Agency Commission and Servicing Agreement	35,812	40,601	40,345	46,607	76,028
Notes payable	260,000	31,833	43,333	46,667	44,000
Subordinated debentures(b)	173,576	116,425	—	—	—
Company-obligated mandatorily redeemable preferred securities issued by subsidiary trusts(b)	—	—	100,486	100,155	99,503
Total stockholders' equity	321,504	263,716	77,478	42,567	58,652
<b>Other Data:</b>					
Book value per share(d)	\$ 8.38	\$ 7.19	\$ 4.67	\$ 2.24	\$ 3.35
Return on equity(e)	15.5%	28.3%	23.7%	1.7%	10.3%
Number of agents	45,940	42,239	41,396	33,894	21,908
Life subsidiaries' statutory capital and surplus	\$ 608,930	\$ 374,587	\$ 227,199	\$ 177,868	\$ 145,048
Life subsidiaries' statutory net gain (loss) from operations before income taxes and realized capital gains (losses)	93,640	45,822	53,535	(5,675)	9,190
Life subsidiaries' statutory net income (loss)(c)	47,711	25,404	26,010	(17,187)	10,420

- (a) The accounting change resulted from the adoption of Statement of Financial Accounting Standards No. 133, *Accounting for Derivative Instruments and Hedging Activities*, which became effective on January 1, 2001.
- (b) Effective December 31, 2003, we adopted Financial Accounting Standards Board Interpretation No. 46, *Consolidation of Variable Interest Entities, an Interpretation of Accounting Research Bulletin No. 51*. See note 1 to our audited consolidated financial statements.
- (c) Our GAAP net income and statutory net loss in 2001, were affected by a decision to maintain a significant liquid investment position after the September 11, 2001 terrorist attacks.
- (d) Book value per share is calculated as total stockholders' equity less the liquidation preference of our series preferred stock dividend by the total number of shares of common stock outstanding.
- (e) We define return on equity as net income divided by average total stockholders' equity. Average total stockholders' equity is determined based upon the total stockholders' equity at the beginning and the end of the year. The computation of average stockholders' equity for 2003 has been modified to recognize the significant increase in stockholders' equity that resulted from the receipt of the net proceeds from our initial public offering in December 2003.

## ITEM 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

Management's discussion and analysis reviews our consolidated financial position at December 31, 2004 and 2003, and our consolidated results of operations for the three years in the period ended December 31, 2004, and where appropriate, factors that may affect future financial performance. This discussion should be read in conjunction with our consolidated financial statements, notes thereto and selected consolidated financial data appearing elsewhere in this report.

### Cautionary Statement Regarding Forward-Looking Information

All statements, trend analyses and other information contained in this report and elsewhere (such as in filings by us with the Securities and Exchange Commission, press releases, presentations by us or our management or oral statements) relative to markets for our products and trends in our operations or financial results, as well as other statements including words such as "anticipate", "believe", "plan", "estimate", "expect", "intend", and other similar expressions, constitute forward-looking statements. We caution that these statements may and often do vary from actual results and the differences between these statements and actual results can be material. Accordingly, we cannot assure you that actual results will not differ materially from those expressed or implied by the forward-looking statements. Factors that could contribute to these differences include, among other things:

- general economic conditions and other factors, including prevailing interest rate levels and stock and credit market performance which may affect (among other things) our ability to sell our products, our ability to access capital resources and the costs associated therewith, the market value of our investments and the lapse rate and profitability of our policies;
- customer response to new products and marketing initiatives;
- changes in the Federal income tax laws and regulations which may affect the relative income tax advantages of our products;
- increasing competition in the sale of annuities;
- regulatory changes or actions, including those relating to regulation of financial services affecting (among other things) bank sales and underwriting of insurance products and regulation of the sale, underwriting and pricing of products;
- the risk factors or uncertainties listed from time to time in our private placement memorandums or filings with the Securities and Exchange Commission.

### Overview

We specialize in the sale of individual annuities (primarily deferred annuities) and, to a lesser extent, we also sell life insurance policies. Under accounting principles generally accepted in the United States, or GAAP, premium collections for deferred annuities are reported as deposit liabilities instead of as revenues. Sources of revenues for products accounted for as deposit liabilities are net investment income, surrender charges deducted from the account balances of policyholders in connection with withdrawals, realized gains and losses on investments and changes in fair value of derivatives. Components of expenses for products accounted for as deposit liabilities are interest credited to account balances, changes in fair value of embedded derivatives, amortization of deferred policy acquisition costs and deferred sales inducements, other operating costs and expenses and income taxes.

Earnings from products accounted for as deposit liabilities are primarily generated from the excess of net investment income earned over the interest credited to the policyholder, or the "investment spread". In the case of index annuities, the investment spread consists of net investment income in

excess of the cost of the options purchased to fund the index-based component of the policyholder's return and amounts credited as a result of minimum guarantees.

Our investment spread is summarized as follows:

	Year ended December 31,		
	2004	2003	2002
Average yield on invested assets	6.28%	6.43%	6.91%
Cost of money:			
Aggregate	3.90%	4.13%	4.80%
Average net cost of money for index annuities	3.37%	3.46%	4.19%
Average crediting rate for fixed rate annuities:			
Annually adjustable	3.47%	3.69%	4.69%
Multi-year rate guaranteed	5.57%	5.70%	5.82%
Investment spread:			
Aggregate	2.38%	2.30%	2.11%
Index annuities	2.91%	2.97%	2.72%
Fixed rate annuities:			
Annually adjustable	2.81%	2.74%	2.22%
Multi-year rate guaranteed	0.71%	0.73%	1.09%

The average crediting rates and investment spreads are computed without the impact of amortization of deferred sales inducements. See Critical Accounting Policies—Deferred Policy Acquisition Costs and Deferred Sales Inducements. With respect to our index annuities, the cost of money includes the average crediting rate on amounts allocated to the fixed rate options, expenses we incur to fund the annual income credits and minimum guaranteed interest credited on the index business. Proceeds received upon expiration or early termination of call options purchased to fund annual index credits are recorded as part of the change in fair value of derivatives, and are largely offset by an expense for interest credited to annuity policyholder account balances. See Critical Accounting Policies—Derivative Instruments—Index Products.

Our profitability depends in large part upon the amount of assets under our management, investment spreads we earn on our policyholders' account balances, our ability to manage our investment portfolio to maximize returns and minimize risks such as interest rate changes, defaults or impairment of assets, our ability to manage costs of the options purchased to fund the annual index credits on our index annuities, our ability to manage the costs of acquiring new business (principally commissions to agents and first year bonuses credited to policyholders) and our ability to manage our operating expenses.

### Critical Accounting Policies

The increasing complexity of the business environment and applicable authoritative accounting guidance require us to closely monitor our accounting policies. We have identified four critical accounting policies that are complex and require significant judgment. The following summary of our critical accounting policies is intended to enhance your ability to assess our financial condition and results of operations and the potential volatility due to changes in estimates.

#### *Valuation of Investments*

Our fixed maturity securities (bonds and redeemable preferred stocks maturing more than one year after issuance) and equity securities (common and non-redeemable preferred stocks) classified as available for sale are reported at estimated fair value. Unrealized gains and losses, if any, on these

securities are included directly in a separate component of stockholders' equity, net of income taxes and certain adjustments for assumed changes in amortization of deferred policy acquisition costs and deferred sales inducements. Fair values for securities that are actively traded are determined using quoted market prices. For fixed maturity securities that are not actively traded, fair values are estimated using price matrices developed using yield data and other factors relating to instruments or securities with similar characteristics. The carrying amounts of all our investments are reviewed on an ongoing basis for credit deterioration. If this review indicates a decline in market value that is other than temporary, our carrying amount in the investment is reduced to its fair value and a specific writedown is taken. Such reductions in carrying amount are recognized as realized losses and charged to earnings.

Our periodic assessment of our ability to recover the amortized cost basis of investments that have materially lower quoted market prices requires a high degree of management judgment and involves uncertainty. Factors considered in evaluating whether a decline in value is other than temporary include:

- the length of time and the extent to which the fair value has been less than cost;
- the financial condition and near-term prospects of the issuer;
- whether the investment is rated investment grade;
- whether the issuer is current on all payments and all contractual payments have been made as agreed;
- our intent and ability to retain the investment for a period of time sufficient to allow for any anticipated recovery;
- consideration of rating agency actions;
- changes in cash flows of asset-backed and mortgage-backed securities.

In addition, for securities expected to be sold, an other than temporary impairment charge is recognized if we do not expect the fair value of a security to recover to cost or amortized cost prior to the expected date of sale. Once an impairment charge has been recorded, we then continue to review the other than temporarily impaired securities for appropriate valuation on an ongoing basis. Realized losses through a charge to earnings may be recognized in future periods should we later conclude that the decline in market value below amortized cost is other than temporary pursuant to our accounting policy described above.

At December 31, 2004 and 2003, the amortized cost and estimated fair value of fixed maturity securities and equity securities that were in an unrealized loss position were as follows:

December 31, 2004					December 31, 2003				
	Number of Positions	Amortized Cost	Unrealized Losses	Estimated Fair Value		Number of Positions	Amortized Cost	Unrealized Losses	Estimated Fair Value
	(Dollars in thousands)					(Dollars in thousands)			
Fixed maturity securities:									
Available for sale:									
United States Government and agencies	32	\$ 1,705,737	\$ (58,759)	\$ 1,646,978	42	\$ 2,274,503	\$ (57,686)	\$ 2,216,817	
Public utilities	—	—	—	—	4	27,057	(189)	26,868	
Corporate securities	11	65,488	(6,916)	58,572	14	101,027	(10,753)	90,274	
Redeemable preferred stocks	4	20,000	(584)	19,416	—	—	—	—	
Mortgage and asset-backed securities:									
United States Government and agencies	2	5,873	(72)	5,801	4	111,257	(1,258)	109,999	
Non-government	12	278,393	(15,279)	263,114	22	421,583	(37,725)	383,858	
	61	\$ 2,075,491	\$ (81,610)	\$ 1,993,881	86	\$ 2,935,427	\$ (107,611)	\$ 2,827,816	
Held for investment:									
United States Government and agencies	56	\$ 3,213,468	\$ (94,958)	\$ 3,118,510	33	\$ 1,751,532	\$ (110,065)	\$ 1,641,467	
	56	\$ 3,213,468	\$ (94,958)	\$ 3,118,510	33	\$ 1,751,532	\$ (110,065)	\$ 1,641,467	
Equity securities, available for sale:									
Non-redeemable preferred stocks	3	\$ 14,784	\$ (294)	\$ 14,490	2	\$ 13,683	\$ (132)	\$ 13,551	
Common stocks	3	2,945	(572)	2,373	2	1,995	(294)	1,701	
	6	\$ 17,729	\$ (866)	\$ 16,863	4	\$ 15,678	\$ (426)	\$ 15,252	

The amortized cost and estimated fair value of fixed maturity securities at December 31, 2004 and 2003, by contractual maturity, that were in an unrealized loss position are shown below. Actual maturities will differ from contractual maturities because borrowers may have the right to call or prepay obligations with or without call or prepayment penalties. All of our mortgage-backed and asset-

backed securities provide for periodic payments throughout their lives, and are shown below as a separate line.

	December 31, 2004				December 31, 2003			
	Available-for-sale		Held for investment		Available-for-sale		Held for investment	
	Amortized Cost	Estimated Fair Value	Amortized Cost	Estimated Fair Value	Amortized Cost	Estimated Fair Value	Amortized Cost	Estimated Fair Value
	(Dollars in thousands)				(Dollars in thousands)			
Due after one year through five years	\$ 5	\$ 5	\$ —	\$ —	\$ 5	\$ 4	\$ —	\$ —
Due after five years through ten years	224,858	213,750	—	—	200,268	188,072	—	—
Due after ten years through twenty years	681,795	653,505	745,904	740,631	838,834	816,539	35,000	34,324
Due after twenty years	884,567	857,706	2,467,564	2,377,879	1,363,480	1,329,344	1,716,532	1,607,143
	1,791,225	1,724,966	3,213,468	3,118,510	2,402,587	2,333,959	1,751,532	1,641,467
Mortgage-backed and asset-backed securities	284,266	268,915	—	—	532,840	493,857	—	—
	\$ 2,075,491	\$ 1,993,881	\$ 3,213,468	\$ 3,118,510	\$ 2,935,427	\$ 2,827,816	\$ 1,751,532	\$ 1,641,467

See Financial Condition—Investments for significant concentrations in the investment portfolio.

At December 31, 2004 and 2003, the fair value of investments we owned that were non-investment grade or not rated was \$63.9 million and \$91.5 million, respectively. Non-investment grade or not rated securities represented 0.8% and 1.7% at December 31, 2004 and 2003, respectively, of the fair value of our fixed maturity securities. The unrealized losses on investments we owned that were non-investment grade or not rated at December 31, 2004 and 2003, were \$10.2 million and \$10.8 million, respectively. The unrealized losses on such securities at December 31, 2004 and 2003 represented 5.7% and 4.9%, respectively, of gross unrealized losses on fixed maturity securities.

At December 31, 2004, we identified certain invested assets which have characteristics (i.e. significant unrealized losses compared to book value and industry trends) creating uncertainty as to our future assessment of other than temporary impairments. This list is referred to as our watch list. We have excluded from this list securities with unrealized losses which are related to market movements in interest rates and which have no factors indicating that such unrealized losses may be other than temporary. We have reviewed these investments and concluded that there were no other than temporary impairments on these investments at December 31, 2004.

At December 31, 2004, the amortized cost and estimated fair value of each fixed maturity security on the watch list are as follows:

Issuer	Amortized Cost	Unrealized Losses	Estimated Fair Value	Maturity Date	Months Below Amortized Cost
(Dollars in thousands)					
Continental Airlines 2001-001-B	\$ 7,841	\$ (1,292)	\$ 6,549	06/15/2017	48
Land O' Lakes Capital Securities 144A	8,074	(2,874)	5,200	03/15/2028	28
Northwest Airlines Pass Thru Certificates 1999-1 Class C	8,208	(2,335)	5,873	08/01/2015	45
Pegasus Aviation 1999-1A C1	5,776	(3,076)	2,700	03/25/2029	40
	\$ 29,899	\$ (9,577)	\$ 20,322		

Our analysis of these securities and their credit performance at December 31, 2004 is as follows:

Continental Airlines Pass Thru Certificates 2001-001 Class B are backed by the general credit of Continental Airlines as well as the collateral from a pool of airplanes. We determined that an other than temporary impairment charge was not necessary for the following reasons: (i) we believed that Continental Airlines' improving liquidity reduced the likelihood of bankruptcy and (ii) even if Continental Airlines were to declare bankruptcy, the chance of full recovery on this security was high due to the excess collateral coverage supplied by the aircraft collateral.

Land O' Lakes is a national, farmer-owned food and agricultural cooperative. We determined that an other than temporary impairment charge was not necessary for the following reasons: (i) Land O' Lakes operates in a cyclical industry and had successfully managed through previous cyclical lows; (ii) we calculated that Land O' Lakes had adequate EBITDA to interest coverage of bank debt and 4.51 times for bond debt and determined that Land O' Lakes had adequate liquidity; (iii) Land O' Lakes was in the process of improving its balance sheet by maintaining liquidity and selling non-strategic assets and investments; and (iv) further improvements were expected in the future.

Northwest Airlines Pass Thru Certificates 1999-1 Class C are backed by the general credit of Northwest Airlines as well as the collateral from a pool of airplanes. We determined that an other than temporary impairment charge was not necessary for the following reasons: (i) we believed that a bankruptcy was unlikely since Northwest had begun to see benefits from its attempts to return to profitability; (ii) we believed Northwest had adequate liquidity; (iii) we calculated Northwest to have unrestricted cash at the end of the third quarter of 2004 of approximately \$2.5 billion; (iv) even if Northwest declared bankruptcy, these bonds would have remained current for at least 18 months due to a liquidity coverage feature and the bonds could remain current after 18 months if Northwest affirmed the leases on the planes in the collateral pool in the unlikely event of a bankruptcy; and (v) based upon the liquidity of Northwest (\$2.5 billion at September 30, 2004).

Pegasus Aviation 1999-1A C1 is backed by leases on airplanes and is structured as a pass-through security. We took an impairment charge of \$1.9 million on this security in the fourth quarter of 2001 because we did not expect to receive further principal payments. However, due to the continued problems in the leased airplane industry, the market value of this security had declined further. We determined that no additional other than temporary impairment charge was necessary for the following reasons: (i) although we did not expect to receive principal payments on this security, we expected that interest payments would continue to be made until 2019 and (ii) the value of the expected future interest payments supported the current book value.

Each of the four securities on the watch list is current in respect to payments of principal and interest. We have concluded for each of the four securities on the watch list that we have the intent and the ability to hold these securities for a period of time sufficient to allow for a recovery in fair value.

We took writedowns on certain other investments that we concluded did have an other than temporary impairment during 2004, 2003 and 2002 of \$12.8 million, \$9.8 million and \$13.0 million, respectively. Following is a discussion of each security for which we have taken write downs during the years ended December 31, 2004, 2003 and 2002.

We owned the Class A3-A Tranche of the Juniper collateralized bond obligation. We wrote down this security by \$2.0 million to its fair value in the first quarter of 2002. Due to the structure of payments from the collateralized bond obligation, it was likely that we would continue receiving interest payments for the foreseeable future, but it was unlikely that we would receive our entire



principal at maturity. The fair value of this security continued to decline in subsequent months and we sold the bond at an additional loss of \$0.5 million in the second quarter of 2003.

Pegasus 2001-1A C2 is an asset-backed security backed by leases on 41 specific aircraft. We wrote down this security by \$3.0 million in the third quarter of 2002. The downturn in the airline industry had caused lease rates on renewing leases to be significantly below expectations and this was exacerbated by the terrorist attacks on September 11, 2001. Due to the continuing problems in the airline industry and continued lower lease rates on renewing leases, we took an additional write down of \$2.9 million on this security in the first quarter of 2003.

Jet Equipment Trust is an asset-backed security backed by collateral from a pool of planes and the general credit of United Airlines. We wrote down this security by \$6.4 million in the third quarter of 2002. The downturn in the airline industry and the possibility of United Airlines declaring bankruptcy had caused this security to trade significantly below cost at the time of the original write down. United Airlines declared bankruptcy in the fourth quarter of 2002 and discontinued making lease payments on the planes that support this trust. Due to the fact that any further payments on this security were unlikely, we took an additional write down of \$1.6 million in the fourth quarter of 2002 to reduce the book value to zero.

Oakwood Mortgage 1999-E Class M2 is an asset-backed security backed by installment sales contracts secured by manufactured homes and liens on real estate. We wrote down this security by \$4.2 million in the third quarter of 2003 due to continuing high default rates for the manufactured housing industry causing doubt about the return of the entire principal balance. We wrote this security down by an additional \$2.7 million during the fourth quarter of 2003 due to further deterioration in default rates.

Oakwood Mortgage 2000-C Class M1 is backed by installment sales contracts secured by manufactured homes and liens on real estate. We wrote this security down by \$7.6 million in the first quarter of 2004 due to an increase in default rates and realized losses above expected levels along with a downgrade to below investment grade on March 8, 2004. We took an additional writedown on this security of \$3.7 million in the third quarter of 2004 due to continued deterioration in default rates.

Diversified Asset Securities II Class B-1 is a pool of asset-backed securities that entitle the holders thereof to receive payments that depend primarily on the cash flow from a specified pool of financial assets. We wrote this security down by \$1.5 million during the second quarter of 2004 based upon the deterioration of the underlying collateral along with a downgrade to below investment grade on June 2, 2004. We sold this security for an immaterial loss during the fourth quarter of 2004.

In making the decisions to write down the securities described above, we considered whether the factors leading to those write downs impacted any other securities held in our portfolio. In cases where we determined that a decline in value was related to an industry-wide concern, we considered the impact of such concern on all securities we held within that industry classification.

Below is a list of securities which we have sold at a loss excluding losses arising from interest rate changes and losses deemed immaterial. There were no material realized losses on the sales of securities during 2004.

Issuer	Amortized Cost	Fair Value	Realized Losses	Months Below Amortized Cost
(Dollars in thousands)				
<b>Year Ended December 31, 2003</b>				
Transamerica Capital	\$ 6,765	\$ 6,437	\$ 328	9
Calpine Canada	5,023	3,613	1,410	20
American Airlines	1,750	902	848	10
Ford Motor Co.	5,003	4,567	436	24
Juniper	2,594	2,075	519	5
	<u>\$ 21,135</u>	<u>\$ 17,594</u>	<u>\$ 3,541</u>	
<b>Year Ended December 31, 2002</b>				
Qwest	\$ 9,851	\$ 6,113	\$ 3,738	5
	<u>\$ 9,851</u>	<u>\$ 6,113</u>	<u>\$ 3,738</u>	

Generally, for each of these sales there was an unexpected event resulting in a decline in credit quality which occurred shortly before the sale. This led to the decision to sell a security at a loss concurrent with the decision that an initial or additional impairment charge was required. Accordingly, in all cases, this did not contradict our previous assertion that we had the ability and intent to hold the security until recovery in value. Each of these securities and the factors resulting in the sales of such securities are discussed individually below.

Transamerica Capital was sold to reduce our exposure to European insurance companies and not as a result of deteriorating credit quality.

Calpine Canada was sold because it engaged in re-financing activities that threatened its long term profitability and exacerbated its reliance on leverage. The wholesale power market in which it was engaged was expected to be weak.

American Airlines pass thru certificates, which were collateralized by a pool of airplanes, were sold as a result of inadequate collateral coverage in a potential bankruptcy situation and recent changes regarding the airline's bank covenants regarding required minimum unrestricted cash balances.

Ford Motor Co. was determined to be an improving credit, however we decided to reduce our position in this security to \$10.0 million by selling \$5.0 million principal amount of these securities at a loss of \$0.4 million.

Juniper was a collateralized debt obligation backed by corporate debt obligations rated primarily below investment grade. In the first quarter of 2002, we wrote this security down as a result of downgrades and significant deterioration in the value of the underlying corporate debt. Continued deterioration led us to sell the security in 2003.

Qwest was sold as the result of several factors, including its rapidly deteriorating operating environment, the sale of one of its business units for a value well below expectations and continuing government investigations.

#### *Derivative Instruments—Index Products*

We offer a variety of index annuities with crediting strategies linked to several equity market indices, including the S&P 500, the Dow Jones Industrial Average and the NASDAQ 100. Several of these products also offer a bond strategy linked to the Lehman Aggregate Bond Index or the Lehman U.S. Treasury Bond Index. These products allow policyholders to earn returns linked to equity or bond

index appreciation without the risk of loss of their principal. Most of these products allow policyholders to transfer funds once a year among several different crediting strategies, including one or more of the index based strategies and a traditional fixed rate strategy. Substantially all of our index products require annual crediting of interest and an annual reset of the applicable index on the contract anniversary date. The computation of the annual index credit is based upon either a one year annual point-to-point calculation (i.e., the gain in the applicable index from one anniversary date to the next anniversary date), a monthly averaging of the index during the contract year, or a one year monthly point-to-point calculation (the net gain determined by adding the twelve monthly gains and losses in the applicable index within the one year period from one anniversary date to the next anniversary date).

The annuity contract value is equal to the premiums paid plus annual index credits based upon a percentage, known as the "participation rate", of the annual appreciation (based in some instances on monthly averages or monthly point-to-point calculations) in a recognized index or benchmark. The participation rate, which we may reset annually, generally varies among the index products from 50% to 100%. Some of the products have an "asset fee" ranging from 1.5 to 5%, which is deducted from the interest to be credited. The asset fees may be adjusted annually by us, subject to stated limits. In addition, some products apply an overall limit, or "cap", ranging from 5% to 13%, on the amount of annual interest the policyholder may earn in any one contract year, and the applicable cap also may be adjusted annually subject to stated minimums. The minimum guaranteed contract values range from 80% to 100% of the premium collected plus interest credited on the minimum guaranteed contract value at an annual rate of 2% to 3.5%.

We purchase one-year call options on the applicable indices as an investment to provide the income needed to fund the amount of the annual index credits on the index products. New one-year options are purchased at the outset of each contract year. We budget an amount to purchase the specific options needed to fund the annual index credits, and the cost of the options represents our cost of providing the credits. The amount we budget for the purchase of index call options is based on our interest spread targets and is comparable to the credited rates of interest we offer on fixed rate annuities. For example, if the yield on our invested assets is 6.25% and our targeted spread is 2.50%, we allocate up to 3.75% of the premium in the first year or account balance after the first year to the purchase of one-year call options. Participation rates, which define the policyholder's level of participation in index gains each year, are determined by option costs. For example, if, based on current market conditions, the amount allocated to the purchase of options is sufficient to purchase an option that will provide a return equal to 70% of the annual gain in the applicable index, we will set the policyholder's participation rate at 70%. We have the ability to modify participation rates each year when a new option is purchased. In general, if option costs increase, participation rates may be decreased, and if option costs decrease, participation rates may be increased. We purchase call options weekly based upon new and renewing index account values during the applicable week, and the purchases are made by category according to the particular products and indices applicable to the new or renewing account values. Any proceeds received on the options at the expiration of the one-year term fund the related index credits to the policyholders. If there is no gain in an index, the policyholder receives a zero index credit on the policy, and we incur no costs beyond the option cost, except in cases where the minimum guaranteed value of a contract exceeds its index value.

Market value changes associated with the call options are reported as an increase or decrease in revenues in our consolidated statements of income in accordance with Statement of Financial Accounting Standards ("SFAS") No. 133, "*Accounting for Derivative Instruments and Hedging Activities*". The risk associated with prospective purchases of future one-year options is the uncertainty of the cost, which will determine whether we are able to earn our spread on our index business. All our index products permit us to modify participation rates, asset fees or annual income caps at least once a year. This feature is comparable to our fixed rate annuities, which allow us to adjust crediting rates annually. By modifying our participation rates or other features, we can limit our costs of purchasing the related one-year call options, except in cases where contractual features would prevent further modifications. Based upon actuarial testing which we conduct as a part of the design of our index products and on an ongoing basis, we believe the risk that contractual features would prevent us from controlling option costs is not material.

After the purchase of the one-year call options and payment of acquisition costs, we invest the balance of index premiums as a part of our general account invested assets. With respect to the index products, our investment spread is measured as the difference between the aggregate yield on the relevant portion of our invested assets, less the aggregate option costs and the costs associated with minimum guarantees. If the minimum guaranteed value of an index product exceeds the index value (computed on a cumulative basis over the life of the contract) then the general account earnings are available to satisfy the minimum guarantees. If there were little or no gains in the entire series of one-year options purchased over the expected life of an index annuity (typically 10 to 15 years), then we would incur expenses for credited interest over and above our option costs, causing our spread to tighten and reducing our profits or potentially resulting in losses on these products.

Under SFAS No. 133, all derivative instruments (including certain derivative instruments embedded in other contracts) are recognized in the balance sheet at their fair values and changes in fair value are recognized immediately in earnings. This impacts the items of revenue and expense we report on our index business as follows:

- We must mark to market the purchased call options we use to fund the annual index credits on our index annuities based upon quoted market prices from related counterparties. We record the change in fair value of these options as a component of our revenues. Included within the change in fair value of the options is an element reflecting the time value of the options, which initially is their purchase cost declining to zero at the end of their one-year lives. The change in fair value of derivatives also includes proceeds received at the expiration of the one year option terms and gains or losses recognized upon early termination.
- Under SFAS No. 133, the future annual index credits on our index annuities are treated as a "series of embedded derivatives" over the expected life of the applicable contracts. We are required to estimate the fair value of policy liabilities for index annuities, including the embedded derivatives, by valuing the "host" (or guaranteed) component of the liabilities and projecting (i) the expected index credits on the next policy anniversary dates and (ii) the net cost of annual options we will purchase in the future to fund index credits. Our estimates of the fair value of these embedded derivatives are based on assumptions related to underlying policy terms (including annual participation rates, asset fees, cap rates and minimum guarantees), index values, notional amounts, strike prices and expected lives of the policies. The change in fair value of embedded derivatives increases with increases in volatility in the indices and interest rates. The change in fair value of the embedded derivatives will not correspond to the change in fair value of the purchased options because the purchased options are one-year options while the options valued in the fair value of embedded derivatives cover the expected life of the contracts which typically exceed 10 years.

- We adjust the amortization of deferred policy acquisition costs and deferred sales inducements to reflect the impact of the items discussed above.

The amounts reported with respect to our index business for SFAS No. 133 are summarized as follows:

	Year Ended December 31,		
	2004	2003	2002
	(Dollars in thousands)		
Change in fair value of derivatives:			
Proceeds received at expiration or gains recognized upon early termination	\$ 87,619	\$ 45,827	\$ 9,735
Cost of money for index annuities	(59,432)	(55,889)	(68,861)
Change in difference between fair value and remaining option cost at beginning and end of period	509	62,587	1,373
	<u>\$ 28,696</u>	<u>\$ 52,525</u>	<u>\$ (57,753)</u>
Change in fair value of embedded derivatives	\$ (8,567)	\$ 66,801	\$ (5,027)
Related increase (decrease) in amortization of deferred policy acquisition costs and deferred sales inducements	\$ 6,408	\$ (1,692)	\$ 1,447

#### *Deferred Policy Acquisition Costs and Deferred Sales Inducements*

Commissions and certain other costs relating to the production of new business are not expensed when incurred but instead are capitalized as deferred policy acquisition costs or deferred sales inducements. Only costs which are expected to be recovered from future policy revenues and gross profits may be deferred. Deferred policy acquisition costs consist principally of commissions and certain costs of policy issuance. Deferred sales inducements consist of first-year premium and interest bonuses credited to policyholder account balances.

Deferred policy acquisition costs totaled \$713.0 million and \$608.2 million at December 31, 2004 and 2003, respectively. Deferred sales inducements totaled \$159.5 million and \$95.5 million at December 31, 2004 and 2003, respectively. For annuity and single premium universal life products, these costs are being amortized generally in proportion to expected gross profits from investments and, to a lesser extent, from surrender charges and mortality and expense margins. Current period amortization must be adjusted retrospectively if changes occur in estimates of future gross profits/margins (including the impact of realized investment gains and losses). Our estimates of future gross profits/margins are based on actuarial assumptions related to the underlying policies terms, lives of the policies, yield on investments supporting the liabilities and level of expenses necessary to maintain the policies over their entire lives.

We adopted the Accounting Standards Executive Committee of the American Institute of Certified Public Accountants Statement of Position (SOP) 03-1, "Accounting and Reporting by Insurance Enterprises for Certain Nontraditional Long-Duration Contracts and for Separate Accounts" on January 1, 2004. As it applies to us, SOP 03-1 established guidance for the accounting and presentation of costs related to sales inducements. There was no change to our method of accounting for sales inducements; however, the capitalized costs are now separately disclosed in the consolidated balance sheets and the related amortization expense is included in interest credited to account balances in the consolidated statements of income. Prior to 2004, the capitalized costs were included in deferred policy acquisition costs and the amortization expense was included in the amortization of deferred policy acquisition costs. The 2003 and 2002 amounts have been reclassified to conform with the 2004 presentation.

## Deferred Income Tax Assets

As of December 31, 2004 and 2003, we had \$70.6 million and \$58.8 million, respectively, of net deferred income tax assets. The realization of these assets is based upon estimates of future taxable income, which requires management judgement. Based upon projections of future taxable income, and considering all other available evidence, we have not recorded a valuation allowance against these assets.

## Results of Operations for the Three Years Ended December 31, 2004

Annuity deposits by product type collected during 2004, 2003 and 2002, were as follows:

Product Type	Year Ended December 31,		
	2004	2003	2002
	(Dollars in thousands)		
<b>Index Annuities:</b>			
Index Strategies	\$ 1,119,398	\$ 768,105	\$ 867,880
Fixed Strategy	545,630	330,539	614,549
	1,665,028	1,098,644	1,482,429
<b>Fixed Rate Annuities:</b>			
Single-Year Rate Guaranteed	287,619	564,256	629,945
Multi-Year Rate Guaranteed	21,324	64,108	322,856
	308,943	628,364	952,801
Total before coinsurance ceded	1,973,971	1,727,008	2,435,230
Coinurance ceded	202,064	649,434	837,882
Net after coinsurance ceded	\$ 1,771,907	\$ 1,077,574	\$ 1,597,348

For information related to our coinsurance agreements, see note 5 to our audited consolidated financial statements.

Gross annuity deposits for 2004 increased 14% in comparison to 2003 resulting from increased marketing efforts following the completion of our initial public offering ("IPO"). Gross annuity deposits decreased 29% in 2003 compared to 2002 resulting from actions taken by us during 2003 prior to our IPO and during the fourth quarter of 2002 to manage our capital position, including reductions in our interest crediting rates on both new and existing annuities, reductions in sales commissions and suspension of sales of one of our higher commission annuity products and our most popular multi-year rate guaranteed product.

Net annuity deposits after coinsurance ceded increased 64% during 2004 compared to 2003 because we reduced the coinsurance percent in our coinsurance agreement with EquiTrust Life Insurance Company ("EquiTrust"), a subsidiary of FBL Financial Group, Inc. ("FBL"), from 40% in 2003 to 20% in 2004, and effective August 1, 2004, we suspended the EquiTrust coinsurance agreement. Net annuity deposits decreased 33% in 2003 compared to 2002 due to the decrease in gross annuity deposits discussed above.

**Net income** increased 78% to \$45.3 million in 2004, and 79% to \$25.4 million in 2003, from \$14.2 million in 2002. The increases in net income were principally due to growth in the volume of business in force and increases in the investment spread earned on our annuity liabilities. Our net annuity liabilities (after coinsurance ceded) increased from \$4.0 billion at the beginning of 2002 to \$7.7 billion at the end of 2004. As set forth in a table included earlier in this item, we increased our aggregate investment spread to 2.38% in 2004 compared to 2.30% in 2003 and 2.11% in 2002. The increases in net income also benefitted from increasing amounts of income generated by the spread on

our securities repurchase agreements due to increasing amounts of average borrowings outstanding under such agreements. Net income in each year was also impacted by the application of SFAS No. 133 to our index annuity business which we estimate increased net income in 2004 and 2002 by \$2.6 million and \$3.2 million, respectively, and decreased net income in 2003 by \$1.6 million. Net income in 2003 was also favorably impacted by realized gains on sales of investments of \$2.5 million on an after tax basis.

**Annuity and single premium universal life product charges** (surrender charges assessed against policy withdrawals and mortality and expense charges assessed against single premium universal life policyholder account balances) increased 10% to \$22.5 million in 2004, and 33% to \$20.5 million in 2003, from \$15.4 million in 2002. Withdrawals from annuity and single premium universal life policies subject to surrender charges were \$147.0 million, \$166.9 million and \$129.1 million for 2004, 2003 and 2002, respectively. The average surrender charge collected on withdrawals subject to surrender charges was 15.2%, 12.2% and 11.2% for 2004, 2003 and 2002, respectively. The increase in average surrender charges collected in 2004 compared to 2003 was principally due to a higher amount of surrenders in 2003 related to products which had a market value adjustment feature which reduced the amount of surrender charges collected on these surrenders.

**Net investment income** increased 20% to \$429.9 million in 2004 and 16% to \$358.5 million in 2003 from \$308.5 million in 2002. These increases are principally attributable to the growth in our annuity business and corresponding increases in our invested assets, offset by decreases in the average yield earned on our investments. Invested assets (on an amortized cost basis) increased 29% to \$8.0 billion at December 31, 2004 and 18% to \$6.2 billion at December 31, 2003 compared to \$5.2 billion at December 31, 2002, while the yield earned on average invested assets was 6.28%, 6.43% and 6.91% for 2004, 2003 and 2002, respectively. The declines in the yield earned on average invested assets are attributable to a general decline in interest rates and the reinvestment of net redemption proceeds from called securities at lower yields. See Quantitative and Qualitative Disclosures About Market Risk.

**Realized gains (losses) on investments** fluctuate from year to year due to changes in the interest rate and economic environment and the timing of the sale of investments. Realized gains and losses on investments include gains and losses on the sale of securities as well as losses recognized when the fair value of a security is written down in recognition of an "other than temporary" impairment. The components of realized gains (losses) on investments for the year ended December 31, 2004, 2003 and 2002 are summarized as follows:

	Year Ended December 31,		
	2004	2003	2002
	(Dollars in thousands)		
Available for sale fixed maturity securities:			
Gross realized gains	\$ 13,720	\$ 19,922	\$ 19,943
Gross realized losses	(220)	(4,216)	(6,773)
Writedowns (other than temporary impairments)	(12,828)	(9,821)	(13,030)
	672	5,885	140
Equity securities	271	1,061	(262)
	\$ 943	\$ 6,946	\$ (122)

**Change in fair value of derivatives** (call options purchased to fund annual index credits on index annuities) was an increase of \$28.7 million in 2004, an increase of \$52.5 million in 2003 and a decrease of \$57.8 million in 2002. See Critical Accounting Policies—Derivative Instruments—Index Products for the components of the change in fair value of derivatives.

The difference between the change in fair value of derivatives between the periods is primarily due to the performance of the indices upon which our options are based. A substantial portion of our options are based upon the S&P 500 Index with the remainder based upon other equity and bond market indices. The range of index appreciation for options expiring during the years ended December 31, 2004, 2003 and 2002 is as follows:

	Year Ended December 31,		
	2004	2003	2002
<b>S&amp;P 500 Index</b>			
Point-to-point strategy	5.4%-31.3%	0.0%-24.5%	—
Monthly average strategy	2.3%-29.2%	0.0%-17.8%	0.0%-6.1%
Lehman Brothers U.S. Aggregate and U.S. Treasury indices	1.8%- 6.8%	0.0%-14.2%	5.8%-9.3%

Actual amounts credited to policyholder account balances may be less than the index appreciation due to contractual features in the index annuity policies (participation rates and caps) which allow us to manage the cost of the options purchased to fund the annual index credits.

The change in fair value of derivatives is also influenced by the aggregate cost of options purchased which is related to the amount of policyholder funds allocated to the various indices, market volatility which affects option pricing and the policy terms and historical experience which affects the strikes and caps of the options we purchase. The aggregate cost of option purchases began declining in the second quarter of 2003 when we refined our hedging process to purchase options that were out of the money to the extent of anticipated minimum guaranteed interest on the index policies. Prior to that, all options were purchased at the money at a higher cost. The aggregate cost of option purchases increased during 2004 because more options were purchased at the money and option pricing increased due to greater market volatility. More options have been purchased at the money (or less out of the money than in preceding periods) because index returns have increased, thereby reducing the impact of minimum guaranteed interest on policy values and option purchases. See Critical Accounting Policies—Derivative Instruments—Index Products.

**Interest credited to account balances** increased 23% to \$305.8 million in 2004 and 35% to \$248.1 million in 2003 from \$183.5 million in 2002. These increases were principally attributable to index credits on index policies which increased to \$122.7 million and \$44.2 million in 2004 and 2003 as a result of increases in the underlying indices (see discussion above under change in fair value of derivatives). These increases were also attributable to a 19% increase in the average amount of annuity liabilities outstanding (net of annuity liabilities ceded under coinsurance agreements) during 2004 to \$7.0 billion from \$5.9 billion during 2003 and an increase of 25% from \$4.7 million during 2002. These increases were offset in part by the decrease in weighted average cost of money, which we implemented in connection with our spread management process, of 23 basis points during 2004, 67 basis points during 2003, and 28 basis points during 2002.

A component of interest credited to account balances is the amortization of deferred sales inducements. The amortization of deferred sales inducements was \$10.6 million, \$5.5 million and \$4.1 million for the year December 31, 2004, 2003 and 2002, respectively. The increases in amortization during 2004 and 2003 were principally attributable to growth in the sales of our premium and interest bonus products. The application of SFAS No. 133 to the amortization of deferred sales inducements resulted in a \$1.4 million increase in amortization in 2004, a decrease in amortization of \$0.2 million in 2003 and an increase in amortization of \$0.1 million in 2002. Bonus products made up 64% and 58% of our total annuity deposits during 2004 and 2003, respectively. See Critical Accounting Policies—Deferred Policy Acquisition Costs and Deferred Sales Inducements.



**Change in fair value of embedded derivatives** was a decrease of \$8.6 million during the year ended December 31, 2004 compared to an increase of \$66.8 million in 2003 and a decrease of \$5 million in 2002. The change in the amount of expense recognized during 2004, 2003 and 2002 primarily resulted from the increase or decrease in expected index credits on the next policy anniversary dates, which are related to the change in the fair value of the options acquired to fund these index credits discussed above in the "Change in fair value of derivatives". In addition, the host value of the index reserve liabilities increased primarily as a result of increases in index annuity premium deposits. See Critical Accounting Policies—Derivative Instruments—Index Products.

**Interest expense on subordinated debentures** for 2004 increased to \$9.6 million from \$7.7 million in 2003. The comparable amount for 2002 was \$7.4 million and is reported as minority interests in subsidiaries. The increase during 2004 compared to 2003 was due to the issuance of additional floating rate subordinated debentures during 2004 of \$59.2 million and \$12.4 million issued in December 2003. The amount of subordinated debentures outstanding at December 31, 2004 was \$173.6 million compared to \$116.4 million at December 31, 2003. See Financial Condition—Liabilities.

**Interest expense on amounts due under repurchase agreements and other interest expense** increased to \$3.1 million in 2004 from \$1.3 million in 2003 and \$1.8 million in 2002. The amounts include other interest expense of \$0.1 million in 2003 and \$1.1 million in 2002. The increase in 2004 is due to an increase in interest expense on amounts due under repurchase agreements. The decrease in 2003 is due to the reduction in other interest expense, offset in part by an increase in interest expense on amounts due under repurchase agreements. The increases in interest expense on amounts due under repurchase agreements are principally due to increases in the borrowings outstanding which averaged \$196.3 million, \$84.6 million and \$46.0 million during 2004, 2003 and 2002, respectively and changes in the weighted average interest rates on amounts borrowed which were 1.60%, 1.35% and 1.59% for 2004, 2003 and 2002, respectively. Other interest expense in 2003 was attributable to a financial reinsurance agreement that was terminated in 2003. Other interest expense in 2002 was attributable to the aforementioned financial reinsurance agreement and the short-sale of U.S. Treasury securities for tax planning purposes.

**Amortization of deferred policy acquisition costs** increased 43% to \$67.9 million in 2004 and 40% to \$47.5 million in 2003 from \$34.1 million in 2002. These increases are primarily due to additional annuity deposits as discussed above. Additional amortization associated with net realized gains on investments for the year ended December 31, 2003 was \$3.1 million. The application of SFAS No. 133 resulted in a \$5.0 million increase in amortization in 2004, a decrease in amortization of \$1.5 million in 2003, and an increase in amortization of \$1.4 million in 2002.

**Other operating costs and expenses** increased 25% to \$32.0 million in 2004 and 18% to \$25.6 million in 2003 from \$21.6 million in 2002. The increase during 2004 compared to 2003 was principally attributable to \$1.8 million of paid and accrued guaranty fund assessments related to the insolvency of London Pacific Life and Annuity Company, an increase of \$1.4 million in salaries and related costs of employment due to the growth in our annuity business, \$0.8 million in marketing and advertising costs, and \$1.1 million in printing and postage costs related to existing policies and marketing of new policies. The increase during 2003 compared to 2002 was principally attributable to an increase of \$0.8 million in professional fees related to litigation, \$1.5 million in salaries and related costs of employment due to growth in our annuity business and \$1.4 million in risk charges related to the reinsurance agreement entered into with Hannover Life Reassurance Company of America on November 1, 2002. This agreement is more fully described in note 5 to our audited consolidated financial statements.

**Income tax expense** increased 80% to \$24.3 million in 2004 from \$13.5 million in 2003. Income tax expense increased to \$13.5 million in 2003 from \$7.3 million in 2002. These increases were principally due to an increase in pre-tax income. Our effective tax rates for 2004, 2003 and 2002 were 35%, 35%

and 34%, respectively, after taking into consideration the impact of earnings attributable to company-obligated mandatorily redeemable preferred securities of subsidiary trusts in 2002. See note 6 to our audited consolidated financial statements.

## **Financial Condition**

### *Investments*

Our investment strategy is to maintain a predominantly investment grade fixed income portfolio, provide adequate liquidity to meet our cash obligations to policyholders and others and maximize current income and total investment return through active investment management. Consistent with this strategy, our investments principally consist of fixed maturity securities and short-term investments.

Insurance statutes regulate the type of investments that our life subsidiaries are permitted to make and limit the amount of funds that may be used for any one type of investment. In light of these statutes and regulations and our business and investment strategy, we generally seek to invest in United States government and government-agency securities and corporate securities rated investment grade by established nationally recognized rating organizations or in securities of comparable investment quality, if not rated.

We have classified a portion of our fixed maturity investments as available for sale. Available for sale securities are reported at market value and unrealized gains and losses, if any, on these securities (net of income taxes and certain adjustments for changes in amortization of deferred policy acquisition costs and deferred sales inducements) are included directly in a separate component of stockholders' equity, thereby exposing stockholders' equity to volatility due to changes in market interest rates and the accompanying changes in the reported value of securities classified as available-for-sale, with stockholders' equity increasing as interest rates decline and, conversely, decreasing as interest rates rise.

Cash and investments increased to \$8.01 billion at December 31, 2004 compared to \$6.23 billion at December 31, 2003 as a result of the growth in our annuity business discussed above. At December 31, 2004, the fair value of our available for sale fixed maturity and equity securities was \$65.0 million less than the amortized cost of those investments, compared to \$86.1 million at December 31, 2003. At December 31, 2004, the amortized cost of our fixed maturity securities held for investment exceeded the market value by \$92.7 million, compared to \$110.1 million at December 31, 2003. The decrease in net unrealized investment losses at December 31, 2004 compared to December 31, 2003 was generally related to a decrease in market interest rates.

The composition of our investment portfolio is summarized in the table below:

December 31,					
2004			2003		
Carrying Amount	Percent		Carrying Amount	Percent	
(Dollars in thousands)					
Fixed maturity securities:					
United States Government and agencies	\$ 5,730,894	71.5%	\$ 4,289,857	68.9%	
Public utilities	44,849	0.6%	51,835	0.8%	
Corporate securities	338,407	4.2%	409,482	6.6%	
Redeemable preferred stocks	35,369	0.4%	10,079	0.2%	
Mortgage and asset-backed securities:					
Government	257,004	3.2%	264,102	4.2%	
Non-Government	397,293	5.0%	419,959	6.7%	
Total fixed maturity securities	6,803,816	84.9%	5,445,314	87.4%	
Equity securities	38,303	0.5%	21,409	0.4%	
Mortgage loans on real estate	959,779	12.0%	608,715	9.8%	
Derivative instruments	148,006	1.8%	119,833	1.9%	
Policy loans	362	—	324	—	
Cash and cash equivalents	62,664	0.8%	32,598	0.5%	
Total cash and investments	\$ 8,012,930	100.0%	\$ 6,228,193	100.0%	

The table below presents our total fixed maturity securities by NAIC designation and the equivalent ratings of a nationally recognized securities rating organization.

December 31,					
2004			2003		
NAIC	Rating Agency	Carrying Amount	Percent	Carrying Amount	Percent
(Dollars in thousands)					
1	Aaa/Aa/A	\$ 6,585,322	96.8%	\$ 5,191,006	95.3%
2	Baa	162,298	2.4%	174,519	3.2%
3	Ba	20,555	0.3%	47,904	0.9%
4	B	14,124	0.2%	21,109	0.4%
5	Caa and lower	13,298	0.2%	10,773	0.2%
6	In or near default	8,219	0.1%	3	—
Total fixed maturity securities		\$ 6,803,816	100.0%	\$ 5,445,314	100.0%

At December 31, 2004 and 2003, we held \$959.8 million and \$608.7 million, respectively, of mortgage loans with commitments outstanding of \$58.8 million at December 31, 2004. These mortgage loans are diversified as to property type, location, and loan size, and are collateralized by the related properties. Our mortgage lending policies establish limits on the amount that can be loaned to one borrower and require diversification by geographic location and collateral type.

As of December 31, 2004, there were no delinquencies in our mortgage portfolio. The commercial mortgage loan portfolio is diversified by geographic region and specific collateral property type as follows:

	December 31,			
	2004		2003	
	Carrying Amount	Percent	Carrying Amount	Percent
(Dollars in thousands)				
<b>Geographic distribution</b>				
East	\$ 196,805	20.5%	\$ 115,817	19.0%
Middle Atlantic	80,098	8.3%	56,563	9.3%
Mountain	148,608	15.5%	79,777	13.1%
New England	50,624	5.3%	38,539	6.3%
Pacific	84,860	8.8%	42,327	7.0%
South Atlantic	166,606	17.4%	105,635	17.4%
West North Central	165,041	17.2%	125,163	20.5%
West South Central	67,137	7.0%	44,894	7.4%
Total mortgage loans	\$ 959,779	100.0%	\$ 608,715	100.0%
<b>Property type distribution</b>				
Office	\$ 296,995	30.9%	\$ 145,490	23.9%
Medical Office	65,396	6.8%	55,314	9.1%
Retail	218,133	22.7%	163,434	26.8%
Industrial/Warehouse	236,835	24.7%	162,943	26.8%
Hotel	25,652	2.7%	20,819	3.4%
Apartments	44,984	4.7%	29,565	4.9%
Mixed use/other	71,784	7.5%	31,150	5.1%
Total mortgage loans	\$ 959,779	100.0%	\$ 608,715	100.0%

#### Liabilities

Our liability for policy benefit reserves increased to \$9.81 billion at December 31, 2004 compared to \$8.32 billion at December 31, 2003, primarily due to additional annuity sales as discussed above. Substantially all of our annuity products have a surrender charge feature designed to reduce the risk of early withdrawal or surrender of the policies and to compensate us for our costs if policies are withdrawn early. Notwithstanding these policy features, the withdrawal rates of policyholder funds may be affected by changes in interest rates and other factors.

As part of our investment strategy, we enter into securities repurchase agreements (short-term collateralized borrowings). These borrowings are collateralized by investment securities with fair market values approximately equal to the amount due. We earn investment income on the securities purchased with these borrowings at a rate in excess of the cost of these borrowings. Such borrowings averaged \$196.3 million, \$84.6 million and \$46.0 million for the years ended December 31, 2004, 2003 and 2002, respectively. The weighted average interest rate on amounts due under repurchase agreements was 1.60%, 1.35% and 1.59% for the years ended December 31, 2004, 2003 and 2002, respectively.

In December 2004, we issued \$260.0 million of contingent convertible senior notes due December 6, 2024 through a private placement under Rule 144A of the Securities Act of 1933. The notes are unsecured and bear interest at a fixed rate of 5.25% per annum. Interest is payable semi-annually in arrears on June 6 and December 6 of each year, beginning June 6, 2005. In addition to regular interest on the notes, beginning with the six-month interest period ending June 6, 2012, we

will also pay contingent interest under certain conditions at a rate of 0.5% per annum based on the average trading price of the notes during a specified period.

The notes are convertible at the holders' option prior to the maturity date into cash and shares of our common stock under certain conditions. The initial conversion price per share is \$14.47 which represents a conversion rate of 69.1085 shares of our common stock per \$1,000 in principal amount of notes. Upon conversion, we will deliver to the holder cash equal to the aggregate principal amount of the notes to be converted and will deliver shares of our common stock for the amount by which the conversion value exceeds the aggregate principal amount of the notes to be converted (commonly referred to as "net share settlement"). See note 7 to our audited consolidated financial statements for additional details concerning the conversion features of the notes and the dilutive effect of the notes in our diluted earnings per share calculation.

We may redeem the notes at any time on or after December 15, 2011. The holders of the notes may require us to repurchase their notes on December 15, 2011, 2014, and 2019 and for a certain period of time following a change in control. The redemption price or the repurchase price shall be payable in cash and equal to 100% of the principal amount of the notes, plus accrued and unpaid interest (including contingent interest and liquidated damages, if any) up to but not including the date of redemption or repurchase.

The notes are senior unsecured obligations and rank equally in the right of payment with all existing and future senior indebtedness and senior to any existing and future subordinated indebtedness. The notes effectively rank junior in the right of payment to any existing and future secured indebtedness to the extent of the value of the assets securing such secured indebtedness. The notes are structurally subordinated to all liabilities of our subsidiaries.

Our subsidiary trusts have issued fixed rate and floating rate trust preferred securities and the trusts have used the proceeds from these offerings to purchase subordinated debentures from us. We also issued subordinated debentures to the trusts in exchange for all of the common securities of each trust. The sole assets of the trusts are the subordinated debentures and any interest accrued thereon. The terms of the preferred securities issued by each trust parallel the terms of the subordinated debentures. Our obligations under the subordinated debentures and related agreements provide a full and unconditional guarantee of payments due under the trust preferred securities. In accordance with Financial Accounting Standards Board Interpretation No. 46, "*Consolidation of Variable Interest Entities, an Interpretation of Accounting Research Bulletin No. 51*", we do not consolidate our subsidiary trusts and record our subordinated debt obligations to the trusts and our equity investments in the trusts. See notes 1 and 9 to our audited consolidated financial statements for additional information concerning our subordinated debentures payable to and the preferred securities issued by the subsidiary trusts. Following is a summary of subordinated debt obligations to the trusts at December 31, 2004 and 2003:

	December 31,		Interest Rate	Due Date
	2004	2003		
(Dollars in thousands)				
American Equity Capital Trust I	\$ 24,073	\$ 26,713	8%	September 30, 2029
American Equity Capital Trust II	77,861	77,340	5%	June 1, 2047
American Equity Capital Trust III	27,840	—	Floating	April 29, 2034
American Equity Capital Trust IV	12,372	12,372	Floating	January 8, 2034
American Equity Capital Trust VII	10,830	—	Floating	September 14, 2034
American Equity Capital Trust VIII	20,600	—	Floating	December 22, 2034
	\$ 173,576	\$ 116,425		

The interest rate for the floating rate subordinated debentures is based upon the three month London Interbank Offered rate plus 4.00% for Trust III and IV and 3.75% for Trust VII and VIII.

American Equity Capital Trust I issued 865,671 shares of trust preferred securities, of which 2,000 shares are held by one of our subsidiaries. During 2004, 88,000 shares of these trust preferred securities converted into 325,923 shares of our common stock. The remaining 777,671 shares of these trust preferred securities are convertible into 2,872,794 shares of our common stock.

American Equity Capital Trust II issued \$97.0 million (97,000 shares) of 5% trust preferred securities and we issued \$100 million of our 5% subordinated debentures. The consideration received by American Equity Capital Trust II in connection with the issue of its trust preferred securities consisted of fixed income trust preferred securities of equal value issued by FBL.

During the third quarter of 2004, we entered into a \$50 million revolving line of credit with three banks. There is no amount outstanding under this revolving line of credit at December 31, 2004. See note 7 to our audited consolidated financial statements for additional details concerning the terms of the revolving line of credit. At December 31, 2003, we had \$31.8 million outstanding under a credit agreement. All amounts outstanding under this agreement were repaid during 2004.

#### *Stockholders' Equity*

In 1997, in connection with a rights offering of shares of our common stock, we issued subscription rights to purchase an aggregate of 2,157,375 shares of our common stock to certain officers and directors. The subscription rights have an exercise price of \$5.33 per share. During 2002, the board of directors extended the expiration date of the subscription rights from December 1, 2002 to December 1, 2005 and in conjunction therewith, we recognized compensation expense of \$0.3 million.

During 1998, we issued 625,000 shares of 1998 Series A Participating Preferred Stock (aggregate liquidation preference of \$10.0 million). During 2004, all of these shares converted into 1,875,000 shares of our common stock. Prior to conversion, these shares had participating dividend rights with the shares of our common stock, when and as such dividends were declared.

During 2003, we purchased 1,435,500 shares of our common stock at a total cost of \$9.3 million (\$6.49 per share). We issued these shares and 155,583 shares held as treasury stock to a rabbi trust established for the benefit of agents who have earned shares of our common stock under the American Equity Investment NMO Deferred Compensation Plan. See note 10 to our audited consolidated financial statements.

On December 9, 2003, we completed an initial public offering of 18,700,000 shares of our common stock at a price of \$9.00 per share. Pursuant to the over-allotment option granted to the underwriters in this offering, the underwriters purchased an additional 2,000,000 shares on December 29, 2003 and an additional 805,000 shares on January 7, 2004, which fully exercised the over-allotment option. The proceeds from our initial public offering (including proceeds from shares issued pursuant to the over-allotment option), net of the underwriting discount and expenses, were approximately \$178.0 million.

During 2004, we issued 54,385 shares of our common stock to an agent's beneficiaries in relation to shares earned under the American Equity Investment NMO Deferred Compensation Plan. See note 10 to our audited consolidated financial statements.

#### *Liquidity for Insurance Operations*

Our life subsidiaries generally receive adequate cash flow from premium collections and investment income to meet their obligations. Annuity and life insurance liabilities are generally long-term in nature. Policyholders may, however, withdraw funds or surrender their policies, subject to surrender

and withdrawal penalty provisions. At December 31, 2004, approximately 99% of our annuity liabilities were subject to penalty upon surrender, with a weighted average remaining surrender charge period of 8.8 years and a weighted average surrender charge rate of 12%.

We believe that the diversity of our investment portfolio and the concentration of investments in high-quality securities provides sufficient liquidity to meet foreseeable cash requirements. The investment portfolio at December 31, 2004 included \$2.6 billion (amortized cost basis) of publicly traded available for sale investment grade bonds. Although there is no present need or intent to dispose of such investments, our life subsidiaries could readily liquidate portions of their investments, if such a need arose. See Quantitative and Qualitative Disclosures about Market Risk for further discussion of the related interest rate risk exposure. In addition, investments could be used to facilitate borrowings under repurchase agreements. As indicated above, such borrowings have been used by American Equity Life from time to time to increase our return on investments.

#### *Liquidity of Parent Company*

We, as the parent company, are a legal entity separate and distinct from our subsidiaries, and have no business operations. We need liquidity primarily to service our debt, including the convertible senior notes and subordinated debentures issued to subsidiary trusts, pay operating expenses and pay dividends to stockholders. The primary sources of funds for these payments are: (i) investment advisory fees from our life subsidiaries; (ii) dividends on capital stock and surplus note interest payments from American Equity Life; (iii) investment income on our investments; and (iv) principal and interest payments received on our notes receivable from American Equity Investment Service Company (see discussion that follows). These sources provide adequate cash flow to us to meet our current and reasonably foreseeable future obligations. We may also obtain cash by drawing down our \$50 million revolving line of credit or by issuing debt or equity securities.

The payment of dividends or distributions, including surplus note payments, by our life subsidiaries is subject to regulation by each subsidiary's state of domicile's insurance department. Currently, American Equity Life may pay dividends or make other distributions without the prior approval of its state of domicile's insurance department, unless such payments, together with all other such payments within the preceding twelve months, exceed the greater of (1) American Equity Life's net gain from operations for the preceding calendar year, or (2) 10% of American Equity Life's statutory surplus at the preceding December 31. For 2005, up to approximately \$60.9 million can be distributed as dividends by American Equity Life without prior approval of the Iowa Insurance Division. In addition, dividends and surplus note payments may be made only out of earned surplus, and all surplus note payments are subject to prior approval by regulatory authorities in the life subsidiary's state of domicile. American Equity Life had approximately \$114.6 million of earned surplus at December 31, 2004.

The maximum distribution permitted by law or contract is not necessarily indicative of an insurer's actual ability to pay such distributions, which may be constrained by business and regulatory considerations, such as the impact of such distributions on surplus, which could affect the insurer's ratings or competitive position, the amount of premiums that can be written and the ability to pay future dividends or make other distributions. Further, state insurance laws and regulations require that the statutory surplus of our life subsidiaries following any dividend or distribution must be reasonable in relation to their outstanding liabilities and adequate for their financial needs.

The transfer of funds by American Equity Life is also restricted by a covenant in our revolving line of credit agreement which requires American Equity Life to maintain a minimum risk-based capital ratio of 200%.

Statutory accounting practices prescribed or permitted for our life subsidiaries differ in many respects from those governing the preparation of financial statements under GAAP. Accordingly,

statutory operating results and statutory capital and surplus may differ substantially from amounts reported in the GAAP basis financial statements for comparable items. Information as to statutory capital and surplus and statutory net income for our life subsidiaries as of December 31, 2004 and 2003 and for the years ended December 31, 2004, 2003 and 2002 is included in note 11 to our audited consolidated financial statements.

American Equity Life has entered into a general agency commission and servicing agreement with American Equity Investment Service Company, or the Service Company, an affiliated company wholly-owned by our chairman, chief executive officer and president, whereby the affiliate acts as a national supervisory agent with responsibility for paying commissions to our agents. This agreement initially benefits American Equity Life's statutory surplus by extending the payment of a portion of the first year commissions on new annuity business written by American Equity Life over a longer period of time, and thereby enabling American Equity Life to conduct a comparatively greater volume of business. In subsequent periods, American Equity Life's statutory surplus is reduced through the payment of renewal commissions to the affiliate on this business based upon the account balances of the annuities remaining in force (see note 8 to our audited consolidated financial statements). During the years ended December 31, 2004, 2003 and 2002, the Service Company paid \$20.0 million, \$14.4 million and \$11.8 million, respectively, to agents of American Equity Life. American Equity Life paid renewal commissions to the Service Company of \$28.1 million, \$22.1 million and \$21.7 million, respectively, during the years ended December 31, 2004, 2003 and 2002. Future payments by American Equity Life on business in force at December 31, 2004 are dependent upon the account balances of the annuities remaining in force on each remaining quarterly renewal commission payment date.

From time to time the Service Company has borrowed money from us as a source of funds for the commissions it paid to American Equity Life's agents. During 2003, the Service Company borrowed \$14.5 million from us. At December 31, 2004 and 2003, the amount receivable from the Service Company was \$16.2 million and \$27.9 million, respectively. Principal and interest are payable quarterly over five years from the date of the advance.

In the normal course of business, we enter into financing transactions, lease agreements, or other commitments. These commitments may obligate us to certain cash flows during future periods. The following table summarizes such obligations as of December 31, 2004.

	Payments Due by Period				
	Total	Less Than 1 year	1 - 3 Years	4 - 5 Years	After 5 Years
	(Dollars in thousands)				
Annuity and single premium universal life products(1)	\$ 9,111,554	\$ 681,149	\$ 2,157,377	\$ 1,452,691	\$ 4,820,337
Amounts due to related party under General Agency Commission and Servicing Agreement	35,812	19,148	7,565	9,099	—
Senior convertible notes, including interest payments	533,000	13,650	27,300	27,300	464,750
Subordinated debentures, including interest payments(2)	557,232	11,242	22,483	22,483	501,024
Operating leases	1,806	1,030	703	73	—
Mortgage loan funding	58,820	58,820	—	—	—
<b>Total</b>	<b>\$ 10,298,224</b>	<b>\$ 785,039</b>	<b>\$ 2,215,428</b>	<b>\$ 1,511,646</b>	<b>\$ 5,786,111</b>

- (1) Amounts shown in this table are projected payments through the year 2023 which we are contractually obligated to pay to our annuity policyholders. The payments are derived from actuarial models which assume a level interest rate scenario and incorporate assumptions regarding



mortality and persistency, when applicable. These assumptions are based on our historical experience. Amount shown are net of expected reinsurance recoveries.

- (2) Projected interest payments related to variable interest rate subordinated debentures assumes level interest rates. Amount shown is net of \$2.1 million equity investments in the trusts due to the contractual right of offset upon repayment of the notes. See Financial Condition—Liabilities.

### **Pending Accounting Changes**

In March 2004, the FASB's Emerging Issues Task Force (EITF) reached a consensus on EITF Issue No. 03-1, "The Meaning of Other-Than-Temporary Impairment and Its Application to Certain Investments" (EITF 03-1). EITF 03-1 provides guidance regarding the meaning of other-than-temporary impairment and its application to investments classified as either available for sale or held to maturity under FASB Statement No. 115, "Accounting for Certain Investments in Debt and Equity Securities," and to equity securities accounted for under the cost method. Included in EITF 03-1 is guidance on how to account for impairments that are solely due to interest rate changes, including changes resulting from increases in sector credit spreads. This guidance was to become effective for reporting periods beginning after June 15, 2004. However, on September 30, 2004, the FASB issued a Staff Position that delays the effective date for the recognition and measurement guidance of EITF 03-1 until additional clarifying guidance is issued. The issuance of this guidance was delayed during the fourth quarter of 2004, with additional discussion of this issue by the FASB planned for 2005. We are not able to assess the impact of the adoption of EITF 03-1 until final guidance is issued.

In December 2004, the FASB issued Statement of Financial Accounting Standards ("SFAS") No. 123 (Revised 2004), "Share-Based Payment" ("SFAS 123R"). This standard requires expensing stock options and other share-based payments and supersedes SFAS No. 123, which had allowed companies to choose between expensing stock options or showing proforma disclosure only. This standard is effective for us as of July 1, 2005 and will apply to all awards granted, modified, cancelled or purchased after that date as well as the unvested portion of prior awards. We will adopt the standard as of the effective date and do not believe it will have a material effect on our financial statements.

### **Inflation**

Inflation does not have a significant effect on our balance sheet. We have minimal investments in property, equipment or inventories. To the extent that interest rates may change to reflect inflation or inflation expectations, there would be an effect on our balance sheet and operations. Higher interest rates experienced in recent periods have decreased the value of our fixed maturity investments. It is likely that declining interest rates would have the opposite effect. It is not possible to calculate the effect such changes in interest rates, if any, have had on our operating results.

### **ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK**

We seek to invest our available funds in a manner that will maximize shareholder value and fund future obligations to policyholders and debtors, subject to appropriate risk considerations. We seek to meet this objective through investments that: (i) consist predominately of investment grade fixed maturity securities; (ii) have projected returns which satisfy our spread targets; and (iii) have characteristics which support the underlying liabilities. Many of our products incorporate surrender charges, market interest rate adjustments or other features to encourage persistency.

We seek to maximize the total return on our available for sale investments through active investment management. Accordingly, we have determined that our available for sale portfolio of fixed maturity securities is available to be sold in response to: (i) changes in market interest rates; (ii) changes in relative values of individual securities and asset sectors; (iii) changes in prepayment risks; (iv) changes in credit quality outlook for certain securities; (v) liquidity needs; and (vi) other factors. We have a portfolio of held for investment securities which consists principally of long duration bonds issued by U.S. government agencies. These securities are purchased to secure long-term yields which meet our spread targets and support the underlying liabilities.

Interest rate risk is our primary market risk exposure. Substantial and sustained increases and decreases in market interest rates can affect the profitability of our products, the amount of interest we pay on our subordinated debentures payable, and the market value of our investments. Our floating rate trust preferred securities issued by Trusts III, IV, VII, and VIII bear interest at the three month LIBOR plus 3.75% - 4.00%. Our outstanding balance of floating rate trust preferred securities at December 31, 2004 was \$69.5 million. The profitability of most of our products depends on the spreads between interest yield on investments and rates credited on insurance liabilities. We have the ability to adjust crediting rates (participation or asset fee rates for index annuities) on substantially all of our annuity policies at least annually (subject to minimum guaranteed values). In addition, substantially all of our annuity products have surrender and withdrawal penalty provisions designed to encourage persistency and to help ensure targeted spreads are earned. However, competitive factors, including the impact of the level of surrenders and withdrawals, may limit our ability to adjust or maintain crediting rates at levels necessary to avoid narrowing of spreads under certain market conditions.

A major component of our interest rate risk management program is structuring the investment portfolio with cash flow characteristics consistent with the cash flow characteristics of our insurance liabilities. We use computer models to simulate cash flows expected from our existing business under various interest rate scenarios. These simulations enable us to measure the potential gain or loss in fair value of our interest rate-sensitive financial instruments, to evaluate the adequacy of expected cash flows from our assets to meet the expected cash requirements of our liabilities and to determine if it is necessary to lengthen or shorten the average life and duration of our investment portfolio. The "duration" of a security is the time weighted present value of the security's expected cash flows and is used to measure a security's sensitivity to changes in interest rates. When the durations of assets and liabilities are similar, exposure to interest rate risk is minimized because a change in value of assets should be largely offset by a change in the value of liabilities.

If interest rates were to increase 10% (48 basis points) from levels at December 31, 2004, we estimate that the fair value of our fixed maturity securities would decrease by approximately \$328.0 million. The impact on stockholders' equity of such decrease (net of income taxes and certain adjustments for changes in amortization of deferred policy acquisition costs and deferred sales inducements) would be an increase of \$34.5 million in the accumulated other comprehensive loss. The computer models used to estimate the impact of a 10% change in market interest rates incorporate numerous assumptions, require significant estimates and assume an immediate and parallel change in interest rates without any management of the investment portfolio in reaction to such change. Consequently, potential changes in value of our financial instruments indicated by the simulations will likely be different from the actual changes experienced under given interest rate scenarios, and the differences may be material. Because we actively manage our investments and liabilities, our net exposure to interest rates can vary over time. However, any such decreases in the fair value of our fixed maturity securities (unless related to credit concerns of the issuer requiring recognition of an other than temporary impairment) would generally be realized only if we were required to sell such securities at losses prior to their maturity to meet our liquidity needs, which we manage using the surrender and withdrawal provisions of our annuity contracts and through other means as discussed earlier. See Financial Condition—Liquidity for Insurance Operations for a further discussion of the liquidity risk.

At December 31, 2004, 85% of our fixed income securities have call features and 9% were subject to call redemption. Another 70% will become subject to call redemption through December 31, 2005. During the years ended December 31, 2004 and 2003, we received \$2.18 billion and \$2.52 billion, respectively, in net redemption proceeds related to the exercise of such call options. We have reinvestment risk related to these redemptions to the extent we cannot reinvest the net proceeds in assets with credit quality and yield characteristics similar to the redeemed bonds. Such reinvestment risk typically occurs in a declining rate environment. Should rates decline to levels which tighten the spread between our average portfolio yield and average cost of interest credited on our annuity liabilities, we have the ability to reduce crediting rates on most of our annuity liabilities to maintain the spread at our targeted level. At December 31, 2004, approximately 82% of our annuity liabilities are subject to annual adjustment of the applicable crediting rates at our discretion, limited by minimum guaranteed crediting rates of 2% to 4%.

With respect to our index annuities, we purchase call options on the applicable indices to fund the annual index credits on such annuities. These options are primarily one-year instruments purchased to match the funding requirements of the underlying policies. Proceeds received at expiration of the call options are substantially offset by an increase in the amounts added to policyholder account balances for index products. For the years ended December 31, 2004 and 2003, index credits to policyholders on their anniversaries were \$122.7 million and \$44.2 million, respectively. Proceeds received at expiration of these options related to such credits were \$87.2 million and \$41.1 million, respectively. The difference between proceeds received at expiration of these options and index credits for 2004 is primarily due to credits attributable to minimum guaranteed interest self funded by us. During 2003, we refined our hedging process to purchase options out of the money to the extent of anticipated minimum guaranteed interest on index policies. On the anniversary dates of the index policies, we purchase new one-year call options to fund the next annual index credits. The risk associated with these prospective purchases is the uncertainty of the cost, which will determine whether we are able to earn our spread on our index business. This is a risk we attempt to manage through the terms of our index annuities, which permit us to change annual participation rates, asset fees, and caps, subject to contractual features. By modifying participation rates, asset fees or caps, we can limit option costs to budgeted amounts, except in cases where the contractual features would prevent further modifications. Based upon actuarial testing which we conduct as a part of the design of our index products and on an ongoing basis, we believe the risk that contractual features would prevent us from controlling option costs is not material.

#### **ITEM 8. CONSOLIDATED FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA.**

The consolidated financial statements are included as a part of this report on Form 10-K on pages F-1 through F-34.

#### **ITEM 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE**

None.

#### **ITEM 9A. CONTROLS AND PROCEDURES**

##### *Evaluation of Disclosure Controls and Procedures.*

In accordance with Rule 13a-15(b) of the Securities Exchange Act of 1934 (the "Exchange Act"), as of the end of the period covered by this *Annual Report on Form 10-K*, the Company's management evaluated, with the participation of the Company's Chief Executive Officer and Chief Financial Officer, the effectiveness of the design and operation of the Company's disclosure controls and procedures (as defined in Rule 13a-15(e) under the Exchange Act). Based on their evaluation of these disclosure controls and procedures, the Company's Chief Executive Officer and Chief Financial Officer have

concluded that, except for the material weakness in the Company's internal control over financial reporting discussed below, the disclosure controls and procedures were effective in recording, processing, summarizing and reporting, on a timely basis, information required to be disclosed by the Company in the reports the Company files or submits under the Exchange Act.

#### *Management's Report on Internal Control over Financial Reporting.*

The management of the Company is responsible for establishing and maintaining adequate internal control over financial reporting, as defined in the Exchange Act Rule 13a-15(f). The Company's internal control system is designed to provide reasonable assurance to the Company's management and the board of directors regarding the preparation and fair presentation of published financial statements. All internal control systems, no matter how well designed, have inherent limitations. Therefore, even those systems determined effective can provide only reasonable assurance with respect to financial statement preparation and presentation. Also, projections of any evaluation of effectiveness to future periods are subject to risk that controls may become inadequate because of changes in conditions, or that the degree of compliance with the policies or procedures may deteriorate.

The Company's management is in the process of conducting an evaluation of the Company's internal control over financial reporting as of December 31, 2004 based upon criteria established in Internal Control—Integrated Framework issued by the Committee of Sponsoring Organizations of the Treadway Commission. The Company has not yet completed this evaluation and so it has not included in this Annual Report on Form 10-K its "Management's Annual Report on Internal Control Over Financial Reporting" required by Item 308(a) of Regulation S-K (the "Management's Report") or the related "Attestation Report of our Independent Registered Public Accounting Firm" required by Item 308(b) of Regulation S-K (the "Attestation Report"). Securities Exchange Act Release No. 34-50754, which was issued on November 30, 2004, provides that, subject to certain conditions, issuers may defer filing of these reports this year for up to 45 days after the due date of the related Annual Report on Form 10-K. In accordance with the terms of this Release, the Company has not included the Management's Report or the Attestation Report in its Annual Report on Form 10-K. The Company expects to file an amendment to its Annual Report on Form 10-K no later than April 29, 2005 which will include both of these reports and the related officer certifications, auditor consent and revised disclosure under Item 9A of the Annual Report on Form 10-K.

In connection with the pending evaluation, management determined a lack of formal documentation exists surrounding the Company's review of its deferred policy acquisition costs and deferred sales inducements, its unlocking analysis and the related assumptions and estimates used in connection with these items. In addition management concluded that the review of inputs into the models for estimating deferred policy acquisition costs and deferred sales inducements was inadequate. As a result, management has concluded that a material weakness exists and thus will not be able to conclude that its internal control over financial reporting was effective as of the end of the period covered by the Company's Annual Report on Form 10-K. However, this weakness in the Company's internal control over financial reporting did not result in any material misstatement of the Company's financial statements for 2004. Although it is possible that, as a result of the ongoing evaluation of the Company's internal control over financial reporting, one or more deficiencies could be identified which, either alone or in combination with each other, could constitute an additional material weakness or weaknesses, it is management's opinion that based on the extent of the work performed to date, this is not likely.

#### *Remediation*

The Company's remediation of this material weakness includes the implementation of additional review procedures for the inputs into the models for deferred policy acquisition costs and deferred sales inducements and a more formal documentation process of the review and approval at each reporting period of the amounts recorded for deferred policy acquisition costs and deferred sales

inducements and the assumptions and estimates used in this process. This remediation is expected to be in place prior to the filing of the Company's first quarterly report in 2005.

*Changes in Internal Control over Financial Reporting.*

There were no changes in the Company's internal control over financial reporting that occurred during the quarter ended December 31, 2004 that have materially affected, or are reasonable likely to materially affect, the Company's internal control over financial reporting.

**ITEM 9B. OTHER INFORMATION**

There is no information required to be disclosed on Form 8-K for the quarter ended December 31, 2004 which has not been previously reported.

### **PART III**

The information required by Part III is incorporated by reference from our definitive proxy statement for our annual meeting of shareholders to be held June 9, 2005 to be filed with the Commission pursuant to Regulation 14A within 120 days after December 31, 2004.

### **PART IV**

#### **ITEM 15. EXHIBITS, FINANCIAL STATEMENT SCHEDULES, AND REPORTS ON FORM 8-K**

*Financial Statements and Financial Statement Schedules.* See Index to Consolidated Financial Statements and Schedules on page F-1 for a list of financial statements and financial statement schedules included in this report.

All other schedules to the consolidated financial statements required by Article 7 of Regulation S-X are omitted because they are not applicable, not required, or because the information is included elsewhere in the consolidated financial statements or notes thereto.

*Exhibits.* See Exhibit Index immediately preceding the Exhibits for a list of Exhibits filed with this report.

## SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned, thereunto duly authorized, this 10th day of March, 2005.

AMERICAN EQUITY INVESTMENT LIFE  
HOLDING COMPANY

By: /s/ D.J. NOBLE

D.J. Noble, *President*

Pursuant to the requirements of the Securities Exchange Act of 1934, this registration statement has been signed below by the following persons on behalf of the Registrant and in the capacities and on the dates indicated:

Signature	Title (Capacity)	Date
<u>/s/ D.J. NOBLE</u> D.J. Noble	Chairman of the Board and President, (Principal Executive Officer)	March 10, 2005
<u>/s/ WENDY L. CARLSON</u> Wendy L. Carlson	Chief Financial Officer and General Counsel (Principal Financial Officer)	March 10, 2005
<u>/s/ TED M. JOHNSON</u> Ted M. Johnson	Vice President—Accounting (Principal Accounting Officer)	March 10, 2005
<u>/s/ JOHN C. ANDERSON</u> John C. Anderson	Director	March 10, 2005
<u>/s/ JAMES M. GERLACH</u> James M. Gerlach	Director	March 10, 2005
<u>/s/ ROBERT L. HILTON</u> Robert L. Hilton	Director	March 10, 2005
<u>/s/ JOHN M. MATOVINA</u> John M. Matovina	Director	March 10, 2005
<u>/s/ BEN T. MORRIS</u> Ben T. Morris	Director	March 10, 2005
<u>/s/ DAVID S. MULCAHY</u> David S. Mulcahy	Director	March 10, 2005
<u>/s/ A.J. STRICKLAND, III</u> A.J. Strickland, III	Director	March 10, 2005
<u>/s/ HARLEY A. WHITFIELD</u> Harley A. Whitfield	Director	March 10, 2005
<u>/s/ KEVIN R. WINGERT</u> Kevin R. Wingert	Director	March 10, 2005

**AMERICAN EQUITY INVESTMENT LIFE HOLDING COMPANY**  
**INDEX TO CONSOLIDATED FINANCIAL STATEMENTS AND SCHEDULES**  
**YEARS ENDED DECEMBER 31, 2004, 2003, AND 2002**

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## REPORT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

The Board of Directors and Stockholders  
American Equity Investment Life Holding Company

We have audited the accompanying consolidated balance sheets of American Equity Investment Life Holding Company as of December 31, 2004 and 2003, and the related consolidated statements of income, changes in stockholders' equity, and cash flows for each of the three years in the period ended December 31, 2004. Our audits also included the financial statement schedules listed in the Index on page F-1. These financial statements and schedules are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements and schedules based on our audits.

We conducted our audits in accordance with the standards of the Public Company Accounting Oversight Board (United States). Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the consolidated financial position of American Equity Investment Life Holding Company at December 31, 2004 and 2003, and the consolidated results of its operations and its cash flows for each of the three years in the period ended December 31, 2004, in conformity with U.S. generally accepted accounting principles. Also, in our opinion, the related financial statement schedules, when considered in relation to the financial statements taken as a whole, present fairly in all material respects the information set forth therein.

As discussed in Note 1 to the consolidated financial statements, the Company changed its method of reporting certain variable interest entities, in response to a new accounting standard that became effective December 31, 2003.

/s/ ERNST & YOUNG LLP

Des Moines, Iowa  
March 14, 2005

## CONSOLIDATED BALANCE SHEETS

(Dollars in thousands, except per share data)

	December 31,	
	2004	2003
<b>Assets</b>		
Cash and investments:		
Fixed maturity securities:		
Available for sale, at market (amortized cost: 2004—\$2,769,804; 2003—\$3,703,756)	\$ 2,705,323	\$ 3,618,025
Held for investment, at amortized cost (market: 2004—\$4,005,775; 2003—\$1,717,224)	4,098,493	1,827,289
Equity securities, available for sale, at market (cost: 2004—\$38,838; 2003—\$21,794)	38,303	21,409
Mortgage loans on real estate	959,779	608,715
Derivative instruments	148,006	119,833
Policy loans	362	324
Cash and cash equivalents	62,664	32,598
Total cash and investments	8,012,930	6,228,193
Coinsurance deposits—related party	2,068,700	1,926,603
Accrued investment income	44,871	29,386
Receivables from related parties	16,596	28,015
Deferred policy acquisition costs	713,021	608,197
Deferred sales inducements	159,467	95,467
Deferred income tax asset	70,562	58,833
Federal income taxes recoverable	—	1,737
Other assets	27,919	12,746
Total assets	\$ 11,114,066	\$ 8,989,177

**AMERICAN EQUITY INVESTMENT LIFE HOLDING COMPANY**

**CONSOLIDATED BALANCE SHEETS (Continued)**

**(Dollars in thousands, except per share data)**

	December 31,	
	2004	2003
<b>Liabilities and Stockholders' Equity</b>		
Liabilities:		
Policy benefit reserves:		
Traditional life and accident and health insurance products	\$ 62,073	\$ 44,497
Annuity and single premium universal life products	9,745,896	8,271,377
Other policy funds and contract claims	94,410	60,995
Amounts due to related party under General Agency Commission and Servicing Agreement	35,812	40,601
Other amounts due to related parties	31,955	22,551
Notes payable	260,000	31,833
Subordinated debentures	173,576	116,425
Amounts due under repurchase agreements	264,875	108,790
Federal income taxes payable	6,620	—
Other liabilities	117,345	28,392
Total liabilities	10,792,562	8,725,461
Stockholders' equity:		
Series Preferred Stock, par value \$1 per share, 2,000,000 shares authorized; 1998 Series A Participating Preferred Stock issued and outstanding: 2003—625,000 shares	—	625
Common Stock, par value \$1 per share, 75,000,000 shares authorized; issued and outstanding 2004—38,360,343 shares; 2003—35,294,035 shares	38,360	35,294
Additional paid-in capital	215,793	208,436
Accumulated other comprehensive loss	(19,269)	(22,742)
Retained earnings	86,620	42,103
Total stockholders' equity	321,504	263,716
Total liabilities and stockholders' equity	\$ 11,114,066	\$ 8,989,177

See accompanying notes.

**AMERICAN EQUITY INVESTMENT LIFE HOLDING COMPANY**

**CONSOLIDATED STATEMENTS OF INCOME**

**(Dollars in thousands, except per share data)**

	Year ended December 31,		
	2004	2003	2002
<b>Revenues:</b>			
Traditional life and accident and health insurance premiums	\$ 15,115	\$ 13,686	\$ 13,664
Annuity and single premium universal life product charges	22,462	20,452	15,376
Net investment income	429,926	358,529	308,548
Realized gains (losses) on investments	943	6,946	(122)
Change in fair value of derivatives	28,696	52,525	(57,753)
<b>Total revenues</b>	<b>497,142</b>	<b>452,138</b>	<b>279,713</b>
<b>Benefits and expenses:</b>			
Insurance policy benefits and change in future policy benefits	13,423	11,824	9,317
Interest credited to account balances	305,762	248,075	183,503
Change in fair value of embedded derivatives	(8,567)	66,801	(5,027)
Interest expense on amounts due to related party under General Agency Commission and Servicing Agreement	2,594	3,000	3,596
Interest expense on notes payable	1,749	1,486	1,901
Interest expense on subordinated debentures	9,609	7,661	—
Interest expense on amounts due under repurchase agreements and other interest expense	3,148	1,278	1,777
Amortization of deferred policy acquisition costs	67,867	47,450	34,060
Other operating costs and expenses	32,016	25,618	21,635
<b>Total benefits and expenses</b>	<b>427,601</b>	<b>413,193</b>	<b>250,762</b>
<b>Income before income taxes and minority interests</b>	<b>69,541</b>	<b>38,945</b>	<b>28,951</b>
<b>Income tax expense</b>	<b>24,257</b>	<b>13,505</b>	<b>7,299</b>
<b>Income before minority interests</b>	<b>45,284</b>	<b>25,440</b>	<b>21,652</b>
<b>Minority interests in subsidiaries:</b>			
Earnings attributable to company-obligated mandatorily redeemable preferred securities of subsidiary trusts	—	—	7,445
<b>Net income</b>	<b>\$ 45,284</b>	<b>\$ 25,440</b>	<b>\$ 14,207</b>
<b>Earnings per common share</b>	<b>\$ 1.19</b>	<b>\$ 1.45</b>	<b>\$ 0.87</b>
<b>Earnings per common share—assuming dilution</b>	<b>\$ 1.08</b>	<b>\$ 1.21</b>	<b>\$ 0.76</b>

See accompanying notes.

**AMERICAN EQUITY INVESTMENT LIFE HOLDING COMPANY**

**CONSOLIDATED STATEMENTS OF CHANGES IN STOCKHOLDERS' EQUITY**

**(Dollars in thousands, except per share data)**

	<b>Preferred Stock</b>	<b>Common Stock</b>	<b>Additional Paid-in Capital</b>	<b>Accumulated Other Comprehensive Loss</b>	<b>Retained Earnings</b>	<b>Total Stockholders' Equity</b>
Balance at January 1, 2002	\$ 625	\$ 14,517	\$ 57,452	\$ (33,531)	\$ 3,504	\$ 42,567
Comprehensive income:						
Net income for year	—	—	—	—	14,207	14,207
Change in net unrealized investment gains/losses	—	—	—	21,587	—	21,587
Total comprehensive income						35,794
Issuance of 34,228 shares of common stock	—	34	103	—	—	137
Acquisition of 112,750 shares of common stock	—	(113)	(744)	—	—	(857)
Dividends on preferred stock (\$0.03 per share)	—	—	—	—	(19)	(19)
Dividends on common stock (\$0.01 per share)	—	—	—	—	(144)	(144)
Balance at December 31, 2002	625	14,438	56,811	(11,944)	17,548	77,478
Comprehensive income:						
Net income for year	—	—	—	—	25,440	25,440
Change in net unrealized investment gains/losses	—	—	—	(10,798)	—	(10,798)
Total comprehensive income:						14,642
Issuance of 20,700,000 shares of common stock less issuance expenses of \$15,035	—	20,700	150,565	—	—	171,265
Issuance of 1,591,083 shares of common stock to the NMO	—	—	—	—	—	—
Deferred Compensation Trust	—	1,591	8,939	—	(533)	9,997
Acquisition of 1,435,500 shares of common stock	—	(1,435)	(7,879)	—	—	(9,314)
Dividends on preferred stock (\$0.03 per share)	—	—	—	—	(19)	(19)
Dividends on common stock (\$0.01 per share)	—	—	—	—	(333)	(333)
Balance at December 31, 2003	625	35,294	208,436	(22,742)	42,103	263,716
Comprehensive income:						
Net income for year	—	—	—	—	45,284	45,284
Change in net unrealized investment gains/losses	—	—	—	3,473	—	3,473
Total comprehensive income						48,757
Issuance of 805,000 shares of common stock less issuance expenses of \$507	—	805	5,933	—	—	6,738
Exercise of 6,000 management subscription rights	—	6	26	—	—	32
Conversion of \$2,640 of subordinated debentures	—	326	2,159	—	—	2,485
Conversion of 625,000 shares of Series Preferred Stock	(625)	1,875	(1,250)	—	—	—
Issuance of 54,385 shares of common stock	—	54	489	—	—	543
Dividends on common stock (\$0.02 per share)	—	—	—	—	(767)	(767)
Balance at December 31, 2004	\$ —	\$ 38,360	\$ 215,793	\$ (19,269)	\$ 86,620	\$ 321,504

See accompanying notes.

**AMERICAN EQUITY INVESTMENT LIFE HOLDING COMPANY**

**CONSOLIDATED STATEMENTS OF CASH FLOWS**

(Dollars in thousands)

	Year ended December 31,		
	2004	2003	2002
<b>Operating activities</b>			
Net income	\$ 45,284	\$ 25,440	\$ 14,207
Adjustments to reconcile net income to net cash provided by (used in) operating activities:			
Adjustments related to interest sensitive products:			
Interest credited to account balances	305,762	248,075	183,503
Annuity and single premium universal life product charges	(22,462)	(20,452)	(15,376)
Change in fair value of embedded derivatives	(8,567)	66,801	(5,027)
Increase in traditional life and accident and health insurance reserves	17,576	11,408	7,599
Policy acquisition costs deferred	(168,248)	(89,979)	(152,144)
Amortization of deferred policy acquisition costs	67,867	47,450	34,060
Provision for depreciation and other amortization	1,434	1,277	981
Amortization of discounts and premiums on fixed maturity securities	(139,025)	(153,226)	(134,590)
Realized losses (gains) on investments	(943)	(6,946)	122
Change in fair value of derivatives	(28,696)	(52,525)	57,753
Deferred income taxes	(13,600)	(2,307)	(11,091)
Reduction of amounts due to related party under General Agency Commission and Servicing Agreement	(24,789)	(14,173)	(18,058)
Changes in other operating assets and liabilities:			
Accrued investment income	(15,485)	7,330	(14,616)
Receivables from related parties	11,419	(7,066)	9,029
Federal income taxes recoverable/payable	8,357	(9,924)	12,411
Other policy funds and contract claims	33,415	25,351	13,598
Other amounts due to related parties	12,730	23,241	(4,412)
Other liabilities	26,108	8,243	(8,275)
Other	181	(126)	1,544
Net cash provided by (used in) operating activities	108,318	107,892	(28,782)
<b>Investing activities</b>			
Sales, maturities, or repayments of investments:			
Fixed maturity securities—available for sale	1,399,886	2,209,090	3,527,658
Fixed maturity securities—held for investment	1,157,382	869,205	—
Equity securities, available for sale	23,697	49,904	10,352
Mortgage loans on real estate	61,553	12,768	3,160
Derivative instruments	109,373	47,993	9,735
	2,751,891	3,188,960	3,550,905
Acquisitions of investments:			
Fixed maturity securities—available for sale	(1,381,314)	(2,035,255)	(4,634,925)
Fixed maturity securities—held for investment	(2,315,130)	(1,469,922)	(215,161)
Equity securities, available for sale	(38,645)	(49,170)	(10,055)
Mortgage loans on real estate	(412,283)	(287,144)	(229,318)
Derivative instruments	(111,689)	(66,062)	(93,963)
Policy loans	(38)	(29)	(4)
	(4,259,099)	(3,907,582)	(5,183,426)
Purchases of property, furniture and equipment	(2,901)	(829)	(914)
Net cash used in investing activities	(1,510,109)	(719,451)	(1,633,435)

See accompanying notes.

	2004	2003	2002
<b>Financing activities</b>			
Receipts credited to annuity and single premium universal life policyholder account balances	1,973,971	1,727,008	2,435,230
Coinsurance deposits—related parties	(202,064)	(649,434)	(837,882)
Return of annuity and single premium universal life policyholder account balances	(778,750)	(472,220)	(332,042)
Financing fees incurred and deferred	(9,598)	(610)	(100)
Proceeds from notes payable	260,000	—	10,000
Repayments of notes payable	(31,833)	(11,500)	(13,334)
Increase (decrease) in amounts due under repurchase agreements	156,085	(132,941)	241,731
Amounts due to reinsurer	—	(10,908)	(3,410)
Proceeds from issuance of subordinated debentures	57,500	12,000	—
Net proceeds from issuance of common stock	7,313	171,265	137
Acquisitions of common stock	—	(9,314)	(857)
Acquisition of 8% Trust Preferred Securities	—	—	(60)
Dividends paid	(767)	(352)	(163)
<b>Net cash provided by financing activities</b>	<b>1,431,857</b>	<b>622,994</b>	<b>1,499,250</b>
<b>Increase (decrease) in cash and cash equivalents</b>	<b>30,066</b>	<b>11,435</b>	<b>(162,967)</b>
<b>Cash and cash equivalents at beginning of year</b>	<b>32,598</b>	<b>21,163</b>	<b>184,130</b>
<b>Cash and cash equivalents at end of year</b>	<b>\$ 62,664</b>	<b>\$ 32,598</b>	<b>\$ 21,163</b>

**Supplemental disclosures of cash flow information:**

Cash paid during the year for:

Interest on notes payable and repurchase agreements	\$ 3,978	\$ 2,629	\$ 3,897
Interest on subordinated debentures	8,518	7,139	—
Income taxes	29,500	25,735	5,979

Non-cash financing and investing activities:

Premium and interest bonuses deferred as sales inducements	75,162	31,249	28,153
Advances by related party under General Agency Commission and Servicing Agreement deferred as policy acquisition costs	20,000	14,429	11,796
Issuance of 1,591,083 shares of common stock to NMO Deferred Compensation Trust	—	9,997	—
Conversion of subordinated debentures	2,485	—	—
Subordinated debentures issued to subsidiary trusts for common equity securities of the subsidiary trust	1,770	372	—

See accompanying notes.



# AMERICAN EQUITY INVESTMENT LIFE HOLDING COMPANY

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS

DECEMBER 31, 2004

### 1. Organization and Significant Accounting Policies

#### Organization

American Equity Investment Life Holding Company (the Company), through its wholly-owned subsidiaries, American Equity Investment Life Insurance Company and American Equity Investment Life Insurance Company of New York, is licensed to sell insurance products in 48 states and the District of Columbia at December 31, 2004. The Company offers a broad array of annuity and insurance products. The Company's business consists primarily of the sale of index and fixed rate annuities. The Company operates solely in the life insurance business.

#### Consolidation and Basis of Presentation

The consolidated financial statements include the accounts of the Company and its wholly-owned subsidiaries: American Equity Investment Life Insurance Company ("American Equity Life"), American Equity Investment Life Insurance Company of New York, American Equity Investment Capital, Inc., and American Equity Investment Properties, L.C. All significant intercompany accounts and transactions have been eliminated.

The Company adopted the Accounting Standards Executive Committee of the American Institute of Certified Public Accountants Statement of Position (SOP) 03-1, *"Accounting and Reporting by Insurance Enterprises for Certain Nontraditional Long-Duration Contracts and for Separate Accounts"* on January 1, 2004. As it applies to the Company, SOP 03-1 established guidance for the accounting and presentation of costs related to sales inducements (first year premium and interest bonuses credited to policyholder account balances). There was no change to the Company's method of accounting for sales inducements; however, the capitalized costs are now separately disclosed in the consolidated balance sheets and the related amortization expense is included in interest credited to account balances in the consolidated statements of income. Prior to 2004, the capitalized costs were included in deferred policy acquisition costs and the amortization expense was included in the amortization of deferred policy acquisition costs. The 2003 and 2002 amounts have been reclassified to conform with the 2004 presentation. The adoption of SOP 03-1 had no effect on net income or stockholders' equity.

The Company adopted Financial Accounting Standards Board ("FASB") Interpretation No. 46 ("FIN 46"), *"Consolidation of Variable Interest Entities, an Interpretation of Accounting Research Bulletin No. 51"* on December 31, 2003, retroactive to January 1, 2003. Prior to the adoption of FIN 46, the Company's subsidiary trusts, American Equity Capital Trust I and American Equity Capital Trust II were included in the Company's consolidated financial statements. The subsidiary trusts are no longer consolidated upon adoption of FIN 46, and the effect of such deconsolidation is that the obligations of the trusts to the preferred security holders, previously reported as minority interests, have been replaced with the Company's subordinated debt obligations to the trusts and the Company's equity investments in the trusts. Interest payments on the subordinated debentures are no longer eliminated in consolidation but rather are reported as interest expense. The adoption of FIN 46 had no impact on net income, stockholders' equity or previously reported quarterly net income for 2003.

The preparation of consolidated financial statements in conformity with accounting principles generally accepted in the United States requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent assets and liabilities at the date of the consolidated financial statements and the reported amounts of revenues and expenses during the reporting period. Significant estimates and assumptions are utilized in the calculation of

deferred policy acquisition costs, deferred sales inducements, policyholder liabilities and accruals, valuation of embedded derivatives on index reserves and valuation allowances on deferred tax assets and investments. It is reasonably possible that actual experience could differ from the estimates and assumptions utilized.

## **Reclassifications**

Certain items appearing in the 2003 and 2002 consolidated financial statements have been reclassified to conform with the current year presentation.

## **Investments**

Fixed maturity securities (bonds and redeemable preferred stocks maturing more than one year after issuance) that may be sold prior to maturity are classified as available for sale. Available for sale securities are reported at estimated fair value and unrealized gains and losses, if any, on these securities are included directly in a separate component of stockholders' equity, net of income taxes and certain adjustments, for assumed changes in amortization of deferred policy acquisition costs and deferred sales inducements. Premiums and discounts are amortized/accrued using methods which result in a constant yield over the securities' expected lives. Amortization/accrual of premiums and discounts on mortgage and asset-backed securities incorporate prepayment assumptions to estimate the securities' expected lives.

Fixed maturity securities that the Company has the positive intent and ability to hold to maturity are classified as held for investment. Held for investment securities are reported at cost adjusted for amortization of premiums and discounts. Changes in the market value of these securities, except for declines that are other than temporary, are not reflected in the Company's financial statements. Premiums and discounts are amortized/accrued using methods which result in a constant yield over the securities' expected lives.

Equity securities, comprised of common and non-redeemable preferred stocks, are classified as available for sale and are reported at market value. Unrealized gains and losses are included directly in a separate component of stockholders' equity, net of income taxes.

Mortgage loans on real estate are reported at cost, adjusted for amortization of premiums and accrual of discounts. If the Company determines that the value of any mortgage loan is impaired, the carrying amount of the mortgage loan will be reduced to its fair value, based upon the present value of expected future cash flows from the loan discounted at the loan's effective interest rate, or the fair value of the underlying collateral.

Policy loans are reported at unpaid principal.

The carrying amounts of all the Company's investments are reviewed on an ongoing basis for credit deterioration. If this review indicates a decline in market value that is other than temporary, the Company's carrying amount in the investment is reduced to its estimated fair value and a specific writedown is taken. Such reductions in carrying amount are recognized as realized losses and charged to income. Realized gains and losses on sales are determined on the basis of specific identification of investments.

Market values, as reported herein, of fixed maturity and equity securities are based on the latest quoted market prices, or for those fixed maturity securities not readily marketable, at values which are representative of the market values of issues of comparable yield and quality.

## Derivative Instruments

Pursuant to Statement of Financial Accounting Standards ("SFAS") No. 133, *Accounting for Derivative Instruments and Hedging Activities*, all derivative instruments (including certain derivative instruments embedded in other contracts) are recognized in the balance sheet at their fair values and changes in fair value are recognized immediately in earnings, unless the derivatives qualify as hedges of future cash flows. For derivatives qualifying as hedges of future cash flows, the effective portion of the changes in fair value is recorded temporarily in equity, then recognized in earnings along with the related effects of the hedged items. Any "ineffective" portion of a hedge is reported in earnings as it occurs.

The Company has index annuity products that guarantee the return of principal to the policyholder and credit interest based on a percentage of the gain in a specified market index. A portion of the premium from each policyholder is invested in investment grade fixed income securities to cover the minimum guaranteed value due the policyholder at the end of the contract term. A portion of the premium is used to purchase derivatives consisting of call options on the applicable market indices to fund the index credits due to index annuity policyholders. Substantially all such call options are one year options purchased to match the funding requirements of the underlying policies. The call options are marked to market with the change in fair value included as a component of our revenues. On the respective anniversary dates of the index policies, the index used to compute the annual index credit is reset and the Company purchases new one-year call options to fund the next annual index credit. The Company manages the cost of these purchases through the terms of its index annuities, which permits the Company to change annual participation rates, asset fees, and/or caps, subject to guaranteed minimums. By reducing participation rates, asset fees or caps, the Company can limit option costs to budgeted amounts except in cases where the contractual features would prevent further modifications.

The Company's strategy attempts to mitigate any potential risk of loss under these agreements through a regular monitoring process which evaluates the program's effectiveness. The Company is exposed to risk of loss in the event of nonperformance by the counterparties and, accordingly, the Company purchases its option contracts from multiple counterparties and evaluates the creditworthiness of all counterparties prior to purchase of the contracts. At December 31, 2004, all of these options had been purchased from nationally recognized investment banking institutions with a Standard and Poor's credit rating of BBB+ or higher.

Under SFAS No. 133, the future annual index credits on the Company's index annuities are treated as a "series of embedded derivatives" over the expected life of the applicable contract. The Company does not purchase call options to fund the index liabilities which may arise after the next policy anniversary date. The Company must value both the call options and the related forward embedded options in the policies at fair value. The change in fair value for the call options is included in change in fair value of derivatives and the change in fair value adjustment of the embedded options is included in change in fair value of embedded derivatives in the Consolidated Statements of Income.

Amortization of deferred policy acquisition costs and deferred sales inducements increased by \$6.4 million in 2004, decreased by \$1.7 million in 2003 and increased by \$1.4 million in 2002 as a result of the impact of SFAS No. 133.

## Cash and Cash Equivalents

For purposes of the consolidated statements of cash flows, the Company considers all highly liquid debt instruments purchased with a maturity of three months or less to be cash equivalents.

## **Deferred Policy Acquisition Costs and Deferred Sales Inducements**

To the extent recoverable from future policy revenues and gross profits, certain costs of producing new business, principally commissions, first-year premium and interest bonuses credited to policyholder account balances and certain costs of policy issuance (including policy issue costs of \$6.3 million, \$3.8 million and \$4.1 million in 2004, 2003 and 2002, respectively) have been deferred and capitalized as deferred policy acquisition costs or deferred sales inducements. For annuity and single premium universal life products, these capitalized costs are being amortized generally in proportion to expected gross profits from surrender charges and investment, mortality, and expense margins. That amortization is adjusted retrospectively when estimates of future gross profits/margins (including the impact of realized investment gains and losses) to be realized from a group of products are revised. Deferred policy acquisition costs and deferred sales inducements are also adjusted for the change in amortization that would have occurred if available-for-sale fixed maturity securities had been sold at their aggregate market value and the proceeds reinvested at current yields. The impact of this adjustment is included in accumulated other comprehensive income (loss) within stockholders' equity.

For traditional life and accident and health insurance, deferred policy acquisition costs are being amortized over the premium-paying period of the related policies in proportion to premium revenues recognized, principally using the same assumptions for interest, mortality and withdrawals that are used for computing liabilities for future policy benefits subject to traditional "lock-in" concepts.

## **Future Policy Benefits**

Future policy benefit reserves for annuity and single premium universal life products are computed under a retrospective deposit method and represent policy account balances before applicable surrender charges. Policy benefits and claims that are charged to expense include benefit claims incurred in the period in excess of related policy account balances. Interest crediting rates (including first year interest bonuses capitalized as deferred sales inducements) for these products ranged from 3.0% to 11.5% in 2004 and 2003 and from 3.0% to 12.0% in 2002. These rates include first-year interest bonuses capitalized as deferred sales inducements.

The liability for future policy benefits for traditional life insurance is based on net level premium reserves, including assumptions as to interest, mortality, and other assumptions underlying the guaranteed policy cash values. Reserve interest assumptions are level and range from 3.0% to 6.0%. The liabilities for future policy benefits for accident and health insurance are computed using a net level premium method, including assumptions as to morbidity and other assumptions based on the Company's experience, modified as necessary to give effect to anticipated trends and to include provisions for possible unfavorable deviations. Policy benefit claims are charged to expense in the period that the claims are incurred.

Unpaid claims include amounts for losses and related adjustment expenses and are determined using individual claim evaluations and statistical analysis. Unpaid claims represent estimates of the ultimate net costs of all losses, reported and unreported, which remain unpaid at December 31 of each year. These estimates are necessarily subject to the impact of future changes in claim severity, frequency and other factors. In spite of the variability inherent in such situations, management believes that the unpaid claim amounts are adequate. The estimates are continuously reviewed and as adjustments to these amounts become necessary, such adjustments are reflected in current operations.

Certain group policies include provisions for annual experience refunds of premiums equal to net premiums received less a 16% administrative fee and less claims incurred. Such amounts (2004—\$0.0 million; 2003—\$0.1 million; and 2002—\$0.3 million) are reported as a reduction of traditional life and accident and health insurance premiums in the consolidated statements of income.

### **Deferred Income Taxes**

Deferred income tax assets or liabilities are computed based on the temporary differences between the financial statement and income tax bases of assets and liabilities using the enacted marginal tax rate. Deferred income tax expenses or credits are based on the changes in the asset or liability from period to period. Deferred income tax assets are subject to ongoing evaluation of whether such assets will be realized. The ultimate realization of deferred income tax assets depends on generating future taxable income during the periods in which temporary differences become deductible. If future income is not generated as expected, deferred income tax assets may need to be written off.

### **Stockholders' Equity**

On December 9, 2003, the Company completed an initial public offering of 18,700,000 shares of its common stock at a price of \$9.00 per share. Pursuant to the over-allotment option granted to the underwriters in the offering, the underwriters purchased an additional 2,000,000 shares on December 29, 2003 and an additional 805,000 shares on January 7, 2004, which fully exercised the over-allotment option. The proceeds from the initial public offering (including proceeds from shares issued pursuant to the over-allotment option), net of the underwriting discount and expenses, were approximately \$178.0 million.

The Company issued 625,000 shares of 1998 Series A Participating Preferred Stock (aggregate liquidation preference of \$10.0 million). During 2004, all of these shares converted into 1,875,000 shares of the Company's common stock. Prior to conversion, these preferred shares had participating dividend rights with shares of the Company's common stock, when and as such dividends were declared.

### **Recognition of Premium Revenues and Costs**

Revenues for annuity and single premium universal life products include surrender charges assessed against policyholder account balances and mortality and expense charges (single premium universal life products only) during the period. Expenses related to these products include interest credited to policyholder account balances and benefit claims incurred in excess of policyholder account balances (single premium universal life products only).

Traditional life and accident and health insurance premiums are recognized as revenues over the premium-paying period. Future policy benefits are recognized as expenses over the life of the policy by means of the provision for future policy benefits.

All insurance-related revenues, benefits, losses and expenses are reported net of reinsurance ceded.

### **Premiums and Deposits by Product Type**

The Company markets index annuities, fixed rate annuities, a variable annuity and life insurance. In connection with its reinsured group life business, the Company also collects renewal premiums on

certain accident and health insurance policies. Premiums and deposits (net of coinsurance) collected in 2004, 2003 and 2002, by product category were as follows:

Product Type	Year ended December 31,		
	2004	2003	2002
	(Dollars in thousands)		
Index Annuities:			
Index Strategies	\$ 1,008,801	\$ 468,716	\$ 523,224
Fixed Strategy	491,721	201,702	370,496
	1,500,522	670,418	893,720
Fixed Rate Annuities	271,385	407,156	703,628
Life Insurance	14,566	13,001	12,958
Accident and Health	549	685	706
Variable Annuities	279	26	83
	\$ 1,787,301	\$ 1,091,286	\$ 1,611,095

Two national marketing organizations through which the Company markets its products each accounted for more than 10% of the annuity deposits and insurance premium collections during 2004 and 2003. One national marketing organization accounted for more than 10% of the annuity deposits and insurance premium collections during 2002.

### Stock-Based Compensation

The Company has elected to follow Accounting Principles Board Opinion No. 25, *Accounting for Stock Issued to Employees* (APB 25) and related Interpretations in accounting for its employee stock options. Under APB 25, because the exercise price of the company's employee stock options equals the fair value of the underlying stock on the date of grant, no compensation expense is recognized.

Pro forma information regarding net income is required by SFAS No. 123, *Accounting for Stock-Based Compensation*, as amended by SFAS No. 148, *Accounting for Stock-Based Compensation—Transition and Disclosure*, and has been determined as if the Company had accounted for its employee stock options and subscription rights under the fair value method of these statements. The fair value for these options was estimated at the date of grant using a Black-Scholes option valuation model (which is primarily used for public companies) for 2004 and 2003 and a minimum value option pricing model (which is used for non-public companies) for 2002 with the following weighted-average assumptions:

	Year Ended December 31,		
	2004	2003	2002
Risk-free interest rate	3.10%	1.46%	1.45%
Dividend yield	0%	0%	0%
Weighted-average expected life	10 years	10 years	3 years
Expected volatility	24.5%	3.2%	N/A

The minimum value option pricing model is similar to the Black-Scholes option valuation model (which is primarily used for public companies) except that it excludes an assumption for the expected volatility of market price.

For purposes of pro forma disclosures, the estimated fair value of the options is amortized to expense over the options' vesting period.

The Company's pro forma net earnings and earnings per common share were as follows:

	Year ended December 31,		
	2004	2003	2002
	(Dollars in thousands, except per share data)		
Net income, as reported—numerator for earnings per common share	\$ 45,284	\$ 25,440	\$ 14,207
Deduct: Total stock-based employee compensation expense determined under fair value based method for all awards, net of related tax effect	(1,125)	(242)	(491)
Net income, pro forma—numerator for earnings per common share, pro forma	44,159	25,198	13,716
Interest (dividends in 2002 related to convertible trust preferred securities) related to convertible subordinated debentures (net of income tax benefit)	1,255	1,347	1,348
Numerator for earnings per common share—assuming dilution, pro forma	\$ 45,414	\$ 26,545	\$ 15,064
Earnings per common share, as reported	\$ 1.19	\$ 1.45	\$ 0.87
Earnings per common share, pro forma	\$ 1.16	\$ 1.43	\$ 0.84
Earnings per common share—assuming dilution, as reported	\$ 1.08	\$ 1.21	\$ 0.76
Earnings per common share—assuming dilution, pro forma	\$ 1.05	\$ 1.20	\$ 0.74

### Comprehensive Income (Loss)

Comprehensive income (loss) includes all changes in stockholders' equity during a period except those resulting from investments by and distributions to stockholders. Other comprehensive income (loss) excludes net realized investment gains (losses) included in net income which merely represent transfers from unrealized to realized gains and losses. These amounts totaled \$0.9 million, \$6.9 million and \$(0.1) million in 2004, 2003 and 2002, respectively. Such amounts, which have been measured through the date of sale, are net of adjustments to deferred policy acquisition costs, deferred sales inducements and income taxes totaling \$0.5 million in 2004, \$3.6 million in 2003 and \$(0.1) million in 2002.

### Pending Accounting Changes

In March 2004, the FASB's Emerging Issues Task Force (EITF) reached a consensus on EITF Issue No. 03-1, "The Meaning of Other-Than-Temporary Impairment and Its Application to Certain Investments" (EITF 03-1). EITF 03-1 provides guidance regarding the meaning of other-than-temporary impairment and its application to investments classified as either available for sale or held to maturity under FASB Statement No. 115, "Accounting for Certain Investments in Debt and Equity Securities," and to equity securities accounted for under the cost method. Included in EITF 03-1 is guidance on how to account for impairments that are solely due to interest rate changes, including changes resulting from increases in sector credit spreads. This guidance was to become effective for reporting periods beginning after June 15, 2004. However, on September 30, 2004, the FASB issued a Staff Position that delays the effective date for the recognition and measurement guidance of EITF 03-1 until additional clarifying guidance is issued. The issuance of this guidance was delayed during the fourth quarter of 2004, with additional discussion of this issue by the FASB planned

for 2005. We are not able to assess the impact of the adoption of EITF 03-1 until final guidance is issued.

In December 2004, the FASB issued Statement of Financial Accounting Standards ("SFAS") No. 123 (Revised 2004), "Share-Based Payment" ("SFAS 123R"). This standard requires expensing stock options and other share-based payments and supersedes SFAS No. 123, which had allowed companies to choose between expensing stock options or showing proforma disclosure only. This standard is effective for the Company as of July 1, 2005 and will apply to all awards granted, modified, cancelled or purchased after that date as well as the unvested portion of prior awards. The Company will adopt the standard as of the effective date and does not believe it will have a material effect on the financial statements.

## **2. Fair Values of Financial Instruments**

The following methods and assumptions were used by the Company in estimating the fair values of financial instruments:

*Fixed maturity securities:* Quoted market prices, when available, or price matrices for securities which are not actively traded, developed using yield data and other factors relating to instruments or securities with similar characteristics.

*Equity securities:* Quoted market prices.

*Mortgage loans on real estate:* Discounted expected cash flows using interest rates currently being offered for similar loans.

*Derivative instruments:* Quoted market prices from related counterparties.

*Policy loans:* The Company has not attempted to determine the fair values associated with its policy loans, as management believes any differences between the Company's carrying value and the fair values afforded these instruments are immaterial to the Company's financial position and, accordingly, the cost to provide such disclosure is not worth the benefit to be derived.

*Cash and cash equivalents:* Amounts reported in the consolidated balance sheets for these instruments approximate their fair values.

*Annuity and single premium universal life policy benefit reserves and coinsurance deposits—related party:* Fair values of the Company's liabilities under contracts not involving significant mortality or morbidity risks (principally deferred annuities), are stated at the cost the Company would incur to extinguish the liability (i.e., the cash surrender value) adjusted as required under SFAS No. 133. The coinsurance deposits related to the annuity benefit reserves have fair values determined in a similar fashion. The Company is not required to and has not estimated the fair value of its liabilities under other contracts.

*Notes payable and amounts due under repurchase agreements:* The fair value of the contingent convertible senior notes is based upon quoted market prices. The amounts reported in the consolidated balance sheets for other notes payable and short term indebtedness under repurchase agreements with variable interest rates approximate their fair values.



*Subordinated debentures:* The carrying amount of subordinated debentures with variable interest rates reported in the consolidated balance sheets approximates fair value. Fair values for subordinated debentures with fixed interest rates are estimated by discounting expected cash flows using interest rates currently being offered for similar securities.

*Amounts due to related party under General Agency Commission and Servicing Agreement:* Fair values are estimated by discounting expected cash flows using interest rates currently being offered for similar instruments.

The following sets forth a comparison of the fair values and carrying amounts of the Company's financial instruments:

	December 31,			
	2004		2003	
	Carrying Amount	Estimated Fair Value	Carrying Amount	Estimated Fair Value
(Dollars in thousands)				
<b>Assets</b>				
Fixed maturity securities:				
Available for sale	\$ 2,705,323	\$ 2,705,323	\$ 3,618,025	\$ 3,618,025
Held for investment	4,098,493	4,005,775	1,827,289	1,717,224
Equity securities, available for sale	38,303	38,303	21,409	21,409
Mortgage loans on real estate	959,779	999,380	608,715	667,341
Derivative instruments	148,006	148,006	119,833	119,833
Policy loans	362	362	324	324
Cash and cash equivalents	62,664	62,664	32,598	32,598
Coinurance deposits—related party	2,068,700	1,780,862	1,926,603	1,640,639
<b>Liabilities</b>				
Annuity and single premium universal life policy benefit reserves	9,745,896	8,573,784	8,271,377	7,278,813
Amounts due to related party under General Agency Commission and Servicing Agreement	35,812	35,812	40,601	40,601
Notes payable	260,000	287,625	31,833	31,833
Subordinated debentures	173,576	148,833	116,425	87,761
Amounts due under repurchase agreements	264,875	264,875	108,790	108,790

### 3. Investments

At December 31, 2004 and 2003, the amortized cost and estimated fair value of fixed maturity securities and equity securities were as follows:

December 31, 2004	Amortized Cost	Gross Unrealized Gains	Gross Unrealized Losses	Estimated Fair Value
(Dollars in thousands)				
Fixed maturity securities:				
Available for sale:				
United States Government and agencies	\$ 1,766,796	\$ 211	\$ (58,759)	\$ 1,708,248
Public utilities	43,297	1,552	—	44,849
Corporate securities	262,253	7,223	(6,916)	262,560
Redeemable preferred stocks	34,848	1,105	(584)	35,369
Mortgage and asset-backed securities:				
United States Government and agencies	254,640	2,436	(72)	257,004
Non-government	407,970	4,602	(15,279)	397,293
	<u>\$ 2,769,804</u>	<u>\$ 17,129</u>	<u>\$ (81,610)</u>	<u>\$ 2,705,323</u>
Held for investment:				
United States Government and agencies	\$ 4,022,646	\$ 2,240	\$ (94,958)	\$ 3,929,928
Corporate securities	75,847	—	—	75,847
	<u>\$ 4,098,493</u>	<u>\$ 2,240</u>	<u>\$ (94,958)</u>	<u>\$ 4,005,775</u>
Equity securities, available for sale:				
Non-redeemable preferred stocks	\$ 30,472	\$ 331	\$ (294)	\$ 30,509
Common stocks	8,366	—	(572)	7,794
	<u>\$ 38,838</u>	<u>\$ 331</u>	<u>\$ (866)</u>	<u>\$ 38,303</u>
December 31, 2003				
Fixed maturity securities:				
Available for sale:				
United States Government and agencies	\$ 2,594,861	\$ 1,150	\$ (57,686)	\$ 2,538,325
Public utilities	51,300	724	(189)	51,835
Corporate securities	330,993	13,485	(10,753)	333,725
Redeemable preferred stocks	8,923	1,156	—	10,079
Mortgage and asset-backed securities:				
United State Government and agencies	263,040	2,320	(1,258)	264,102
Non-government	454,639	3,045	(37,725)	419,959
	<u>\$ 3,703,756</u>	<u>\$ 21,880</u>	<u>\$ (107,611)</u>	<u>\$ 3,618,025</u>
Held for investment:				
United States Government and agencies	\$ 1,751,532	\$ —	\$ (110,065)	\$ 1,641,467
Corporate securities	75,757	—	—	75,757
	<u>\$ 1,827,289</u>	<u>\$ —</u>	<u>\$ (110,065)</u>	<u>\$ 1,717,224</u>
Equity securities, available for sale:				
Non-redeemable preferred stocks	\$ 16,182	\$ 41	\$ (132)	\$ 16,091
Common stocks	5,612	—	(294)	5,318
	<u>\$ 21,794</u>	<u>\$ 41</u>	<u>\$ (426)</u>	<u>\$ 21,409</u>

The amortized cost and estimated fair value of fixed maturity securities at December 31, 2004, by contractual maturity, are shown below. Actual maturities will differ from contractual maturities because borrowers may have the right to call or prepay obligations with or without call or prepayment penalties. All of the Company's mortgage-backed and asset-backed securities provide for periodic payments throughout their lives, and are shown below as a separate line.

	Available for sale		Held for investment	
	Amortized Cost	Estimated Fair Value	Amortized Cost	Estimated Fair Value
(Dollars in thousands)				
Due after one year through five years	\$ 12,969	\$ 13,833	\$ —	\$ —
Due after five years through ten years	271,365	262,760	—	—
Due after ten years through twenty years	837,916	812,259	815,914	810,652
Due after twenty years	984,944	962,174	3,282,579	3,195,123
	<u>2,107,194</u>	<u>2,051,026</u>	<u>4,098,493</u>	<u>4,005,775</u>
Mortgage-backed and asset-backed securities	662,610	654,297	—	—
	<u>\$ 2,769,804</u>	<u>\$ 2,705,323</u>	<u>\$ 4,098,493</u>	<u>\$ 4,005,775</u>

Net unrealized losses on available for sale fixed maturity securities and equity securities reported as a separate component of stockholders' equity were comprised of the following at December 31, 2004 and 2003:

	December 31,	
	2004	2003
(Dollars in thousands)		
Net unrealized losses on available for sale fixed maturity securities and equity securities	\$ (65,016)	\$ (86,116)
Adjustments for assumed changes in amortization of deferred policy acquisition costs and deferred sales inducements	35,041	51,128
Net unrealized gain and amortization on fixed maturity securities transferred from available for sale to held for investment	330	—
Deferred income tax benefit	10,376	12,246
	<u>\$ (19,269)</u>	<u>\$ (22,742)</u>

**AMERICAN EQUITY INVESTMENT LIFE HOLDING COMPANY**

**CONSOLIDATED STATEMENTS OF CASH FLOWS (Continued)**

**(Dollars in thousands)**

The following table shows our investments' gross unrealized losses and fair value, aggregated by investment category and length of time that individual securities have been in a continuous unrealized loss position, at December 31, 2004:

	Less than 12 months		12 months or more		Total	
	Estimated Fair Value	Unrealized Losses	Estimated Fair Value	Unrealized Losses	Estimated Fair Value	Unrealized Losses
<b>Fixed maturity securities:</b>						
Available for sale:						
United States Government and agencies	\$ 1,206,169	\$ (39,591)	\$ 440,809	\$ (19,168)	\$ 1,646,978	\$ (58,759)
Corporate securities	53,367	(4,042)	5,205	(2,874)	58,572	(6,916)
Redeemable preferred stocks	19,416	(584)	—	—	19,416	(584)
Mortgage and asset-backed securities	51,593	(2,032)	217,322	(13,319)	268,915	(15,351)
	<u>\$ 1,330,545</u>	<u>\$ (46,249)</u>	<u>\$ 663,336</u>	<u>\$ (35,361)</u>	<u>\$ 1,993,881</u>	<u>\$ (81,610)</u>
Held for investment:						
United States Government and agencies	\$ 1,781,894	\$ (34,576)	\$ 1,336,616	\$ (60,382)	\$ 3,118,510	\$ (94,958)
	<u>\$ 1,781,894</u>	<u>\$ (34,576)</u>	<u>\$ 1,336,616</u>	<u>\$ (60,382)</u>	<u>\$ 3,118,510</u>	<u>\$ (94,958)</u>
Equity securities, available for sale:						
Non-redeemable preferred stocks	\$ 8,424	\$ (178)	\$ 6,066	\$ (116)	\$ 14,490	\$ (294)
Common stocks	—	—	2,373	(572)	2,373	(572)
	<u>\$ 8,424</u>	<u>\$ (178)</u>	<u>\$ 8,439</u>	<u>\$ (688)</u>	<u>\$ 16,863</u>	<u>\$ (866)</u>

Approximately 93% of the unrealized losses on fixed maturity securities shown in the above table are on securities that are rated investment grade. These unrealized losses are primarily from the Company's investments in United States Government agencies and United States Government agency mortgage-backed securities. These securities are relatively long in duration and are callable, making the value of such securities very sensitive to changes in market interest rates. Approximately 7% of the unrealized losses on fixed maturity securities shown in the above table are on securities rated below investment grade. The Company reviews all investments on an ongoing basis for credit deterioration. Factors considered in evaluating whether a decline in value is other than temporary include:

- the length of time and the extent to which the fair value has been less than cost;
- the financial condition and near-term prospects of the issuer;
- whether the investment is rated investment grade;
- whether the issuer is current on all payments and all contractual payments have been made as agreed;
- the Company's intent and ability to retain the investment for a period of time sufficient to allow for any anticipated recovery;
- consideration of rating agency actions;
- changes in cash flows of asset-backed and mortgage-backed securities.

The securities in an unrealized loss position are current in respect to payments of interest and principal and the Company has the ability to hold these securities until they recover in fair value.

Components of net investment income are as follows:

	Year ended December 31,		
	2004	2003	2002
	(Dollars in thousands)		
Fixed maturity securities	\$ 376,319	\$ 322,247	\$ 288,087
Equity securities	1,668	1,951	1,194
Mortgage loans on real estate	52,697	33,241	15,025
Policy loans	26	25	19
Cash and cash equivalents	580	1,327	3,500
Other	2,187	2,429	2,892
	433,477	361,220	310,717
Less investment expenses	(3,551)	(2,691)	(2,169)
Net investment income	\$ 429,926	\$ 358,529	\$ 308,548

Proceeds from sales of available for sale fixed maturity securities for the years ended December 31, 2004, 2003 and 2002 were \$272.7 million, \$507.3 million and \$1,821.1 million, respectively. Scheduled principal repayments, calls and tenders for available for sale fixed maturity securities for the years ended December 31, 2004, 2003 and 2002 were \$1.1 billion, \$1.7 billion and \$1.7 billion, respectively. Calls of held for investment fixed maturity securities for the years ended December 31, 2004 and 2003 were \$1,157.4 million and \$869.2 million, respectively. There were no calls of held for investment fixed maturity securities for the years ended December 31, 2002.

Net realized gains (losses) included in revenues for the years ended December 31, 2004, 2003 and 2002 are as follows:

	Year ended December 31,		
	2004	2003	2002
	(Dollars in thousands)		
Available for sale fixed maturity securities:			
Gross realized gains	\$ 13,720	\$ 19,922	\$ 19,943
Gross realized losses	(220)	(4,216)	(6,773)
Writedowns (other than temporary impairments)	(12,828)	(9,821)	(13,030)
	672	5,885	140
Equity securities	271	1,061	(262)
	\$ 943	\$ 6,946	\$ (122)

Changes in unrealized appreciation (depreciation) on investments for the years ended December 31, 2004, 2003 and 2002 are as follows:

	Year ended December 31,		
	2004	2003	2002
	(Dollars in thousands)		
Fixed maturity securities held for investment carried at amortized cost	\$ 17,347	\$ (111,892)	\$ 44,054
Investments carried at estimated fair value:			
Fixed maturity securities, available for sale	\$ 21,250	\$ (41,961)	\$ 82,509
Equity securities, available for sale	(150)	660	(681)
	21,100	(41,301)	81,828
Adjustment for effect on other balance sheet accounts:			
Deferred policy acquisition costs and deferred sales inducements	(16,087)	25,541	(49,470)
Deferred income tax asset	(1,870)	5,815	(11,624)
Net unrealized gain and amortization on fixed maturity securities transferred from available to sale to held for investment	330	(853)	853
	(17,627)	30,503	(60,241)
Change is unrealized appreciation (depreciation) on investments carried at estimated fair value	\$ 3,473	\$ (10,798)	\$ 21,587

The Company transferred fixed maturity securities at fair value of \$1.2 billion during 2004 and \$436.7 million during 2002 from available for sale to held for investment to match its investment objectives, which are to hold these investments to maturity. The unrealized gain on these securities on the date of transfer is included as a separate component of accumulated other comprehensive loss and is being amortized over the lives of the securities. The unrealized gains on the securities transferred during 2004 and 2002 were \$1.7 million and \$1.0 million, respectively, at the date of transfer. A portion of the securities transferred during 2004 were called for redemption subsequent to the transfer, and all of the securities transferred during 2002 were called for redemption during 2003.

The Company's mortgage loan portfolio totaled \$959.8 million and \$608.7 million at December 31, 2004 and 2003, respectively, with commitments outstanding of \$58.8 million at December 31, 2004. The portfolio consists of commercial mortgage loans diversified as to property type, location and loan size. The loans are collateralized by the related properties.

The Company's mortgage lending policies establish limits on the amount that can be loaned to one borrower and require diversification by geographic location and collateral type. The commercial

mortgage loan portfolio is diversified by geographic region and specific collateral property type as follows:

	December 31,			
	2004		2003	
	Carrying Amount	Percent	Carrying Amount	Percent
(Dollars in thousands)				
<b>Geographic distribution</b>				
East	\$ 196,805	20.5%	\$ 115,817	19.0%
Middle Atlantic	80,098	8.3%	56,563	9.3%
Mountain	148,608	15.5%	79,777	13.1%
New England	50,624	5.3%	38,539	6.3%
Pacific	84,860	8.8%	42,327	7.0%
South Atlantic	166,606	17.4%	105,635	17.4%
West North Central	165,041	17.2%	125,163	20.5%
West South Central	67,137	7.0%	44,894	7.4%
Total	\$ 959,779	100.0%	\$ 608,715	100.0%
<b>Property type distribution</b>				
Office	\$ 296,995	30.9%	\$ 145,490	23.9%
Medical Office	65,396	6.8%	55,314	9.1%
Retail	218,133	22.7%	163,434	26.8%
Industrial/Warehouse	236,835	24.7%	162,943	26.8%
Hotel	25,652	2.7%	20,819	3.4%
Apartment	44,984	4.7%	29,565	4.9%
Mixed use/other	71,784	7.5%	31,150	5.1%
Total	\$ 959,779	100.0%	\$ 608,715	100.0%

At December 31, 2004, fixed maturity securities and short-term investments with an amortized cost of \$2.0 million were on deposit with state agencies to meet regulatory requirements. There are no restrictions on these assets.

At December 31, 2004, the only investment in any person or its affiliates (other than bonds issued by agencies of the United States Government) that exceeded 10% of stockholders' equity was FBL Capital Trust I with an estimated fair value and amortized cost of \$75.8 million.

#### 4. Deferred Policy Acquisition Costs and Deferred Sales Inducements

An analysis of deferred policy acquisition costs is presented below for the years ended December 31, 2004 and 2003:

	2004	2003
	(Dollars in thousands)	
Balance at beginning of year	\$ 608,197	\$ 532,656
Costs deferred during the year	188,248	104,408
Amortized to expense during the year	(67,867)	(47,450)
Effect of net unrealized losses	(15,557)	18,583
Balance at end of year	\$ 713,021	\$ 608,197

An analysis of deferred sales inducements is presented below for the years ended December 31, 2004 and 2003:

	2004	2003
	(Dollars in thousands)	
Balance at beginning of year	\$ 95,467	\$ 62,794
Costs deferred during the year	75,162	31,249
Amortized to expense during the year	(10,632)	(5,532)
Effect of net unrealized losses	(530)	6,956
Balance at end of year	\$ 159,467	\$ 95,467

#### 5. Reinsurance and Policy Provisions

##### *Coinsurance*

The Company has entered into two coinsurance agreements with EquiTrust Life Insurance Company ("EquiTrust"), an affiliate of Farm Bureau Life Insurance Company ("Farm Bureau") covering 70% of certain of the Company's fixed rate and index annuities issued from August 1, 2001 through December 31, 2001, 40% of those contracts issued during 2002 and 2003 and 20% of those contracts issued from January 1, 2004 to July 31, 2004, when the agreement was suspended by mutual consent of the parties. As a result of the suspension, new business will no longer be ceded to EquiTrust until the parties mutually agree to resume the coinsurance of new business. The business reinsured under these agreements is not eligible for recapture before the expiration of 10 years. As of December 31, 2004, Farm Bureau beneficially owned 14.4% of the Company's common stock.

Total annuity deposits ceded were \$202.1 million, \$649.4 million and \$837.9 million for the years ended December 31, 2004, 2003 and 2002, respectively. Expense allowances received were \$22.6 million, \$65.6 million and \$99.4 million for the years ended December 31, 2004, 2003 and 2002, respectively. Coinsurance deposits (aggregate policy benefit reserves transferred to EquiTrust under these agreements) with EquiTrust were \$2.1 billion and \$1.9 billion at December 31, 2004 and 2003, respectively. The Company remains liable with respect to the policy liabilities ceded to EquiTrust should EquiTrust fail to meet the obligations it has assumed. None of the coinsurance deposits with EquiTrust are deemed by management to be uncollectible. The balance due under these agreements to EquiTrust was \$32.0 million at December 31, 2004 and \$22.6 million at December 31, 2003, and



represents the market value of the call options related to the ceded business held by the Company to fund the index credits and cash due to or from EquiTrust related to the transfer of annuity deposits.

During 1998, the Company entered into a modified coinsurance agreement to cede 70% of its variable annuity business to EquiTrust. Under this agreement, the Company paid EquiTrust \$0.2 million for each of the years ended December 31, 2004, 2003 and 2002. The modified coinsurance agreement will continue until termination by written notice at the election of either party. Any such termination will apply to the submission or acceptance of new policies, and business reinsured under the agreement prior to any such termination is not eligible for recapture before the expiration of 10 years. EquiTrust (or one of its affiliates) provides the administrative support necessary to manage this business.

#### *Financial Reinsurance*

The Company has entered into two reinsurance transactions with Hannover Life Reassurance Company of America ("Hannover"), which are treated as reinsurance under statutory accounting practices and as financial reinsurance under accounting principles generally accepted in the United States ("GAAP"). The first transaction became effective November 1, 2002 (the "2002 Hannover Transaction") and the second transaction became effective September 30, 2003 (the "2003 Hannover Transaction"). The agreements for these transactions include a coinsurance segment and a yearly renewable term segment reinsuring a portion of death benefits payable on certain annuities issued from January 1, 2002 to December 31, 2002 (2002 Hannover Transaction) and issued from January 1, 2003 to September 30, 2003 (2003 Hannover Transaction). The coinsurance segments provide reinsurance to the extent of 6.88% (2002 Hannover Transaction) and 13.41% (2003 Hannover Transaction) of all risks associated with the Company's annuity policies covered by these reinsurance agreements. The 2002 Hannover Transaction provided \$29.8 million in net statutory surplus benefit during 2002 and the 2003 Hannover Transaction provided \$29.7 million in net statutory surplus benefit during 2003. The statutory surplus benefits provided by these agreements were reduced by \$13.1 million in 2004 and \$6.8 million in 2003. The remaining statutory surplus benefit under these agreements will be reduced in the following years as follows: 2005—\$11.6 million; 2006—\$12.4 million; 2007—\$13.2 million; 2008—\$6.2 million. Risk charges attributable to the 2003 and 2002 Hannover Transactions of \$2.2 million, \$1.6 million and \$0.2 million were incurred during 2004, 2003 and 2002, respectively.

The statutory surplus benefit provided by the 2003 Hannover Transaction replaced the statutory surplus benefit previously provided by a financial reinsurance agreement entered into during 2001 with a subsidiary of Swiss Reinsurance Company ("Swiss Re"). The Company terminated this agreement and recaptured all reserves subject to this agreement effective September 30, 2003. The Swiss Re agreement was treated as reinsurance under statutory accounting requirements and as financial reinsurance under GAAP. An amount due to reinsurer (\$10.9 million at December 31, 2002) was recorded under GAAP equal to the amount of the expense allowance received and was being repaid ratably over a five-year period. The termination of this agreement resulted in the full repayment of the amount due to reinsurer. The agreement bore interest at the ninety day London Interbank Offered Rate ("LIBOR") plus 140 basis points. Risk charges and interest expense incurred on the cash portion of the surplus benefit provided by the agreement were \$0.2 million and \$0.6 million for the years ended December 31, 2003 and 2002, respectively. This agreement provided an initial statutory surplus benefit of \$35.0 million in 2001. The statutory surplus benefit remaining at January 1, 2003 was \$30.9 million, all of which was eliminated upon termination of the agreement.

In the normal course of business, the Company seeks to limit its exposure to loss on any single insured and to recover a portion of benefits paid under its life and accident and health insurance products by ceding reinsurance to other insurance enterprises or reinsurers. Reinsurance coverages for life insurance vary according to the age and risk classification of the insured. Reinsurance contracts do not relieve the Company of its obligations to its policyholders. To the extent that reinsuring companies are later unable to meet obligations under reinsurance agreements, the Company's life insurance subsidiaries would be liable for these obligations, and payment of these obligations could result in losses to the Company. To limit the possibility of such losses, the Company evaluates the financial condition of its reinsurers, and monitors concentrations of credit risk. No allowance for uncollectible amounts has been established against the Company's asset for amounts receivable from other insurance companies since none of the receivables are deemed by management to be uncollectible.

## 6. Income Taxes

The Company files a consolidated federal income tax return with all its subsidiaries.

The Company's income tax expense is as follows:

	Year ended December 31,		
	2004	2003	2002
	(Dollars in thousands)		
Consolidated statement of income			
Current income taxes	\$ 37,857	\$ 15,812	\$ 18,390
Deferred income taxes	(13,600)	(2,307)	(11,091)
Total income tax expense included in consolidated statement of income	24,257	13,505	7,299
Stockholders equity			
Expense (benefit) relating to change in net unrealized investment gains/losses	1,870	(5,815)	11,624
Total income tax expense included in consolidated financial statements	\$ 26,127	\$ 7,690	\$ 18,923

Income tax expense in the consolidated statements of income differed from the amount computed at the applicable statutory federal income tax rate (35%) as follows:

	Year ended December 31,		
	2004	2003	2002
	(Dollars in thousands)		
Income before income taxes and minority interests	\$ 69,541	\$ 38,945	\$ 28,951
Income tax expense on income before income taxes and minority interests	\$ 24,339	\$ 13,631	\$ 10,133
Tax effect of:			
Earnings attributable to company-obligated mandatorily redeemable preferred securities of subsidiary trusts (see note 9)	—	—	(2,606)
State income taxes, net of federal benefit or expense	120	(67)	(233)
Dividends received deduction	(23)	(11)	(41)
Other	(179)	(48)	46
Income tax expense	\$ 24,257	\$ 13,505	\$ 7,299
Effective tax rate	34.9%	34.7%	25.2%

Deferred income tax assets or liabilities are established for temporary differences between the financial reporting amounts and tax bases of assets and liabilities that will result in deductible or taxable amounts, respectfully, in future years.

The tax effects of temporary differences that give rise to the deferred tax assets and liabilities at December 31, 2004 and 2003, is as follows:

	December 31,	
	2004	2003
	(Dollars in thousands)	
Deferred income tax assets:		
Policy benefit reserves	\$ 325,285	\$ 252,950
Unrealized depreciation on available for sale fixed maturity securities and equity securities	10,376	12,246
Deferred compensation	2,428	859
Net operating loss carryforwards	4,919	5,769
Other	194	951
	343,202	272,775
Deferred income tax liabilities:		
Accrued discount on fixed maturity securities	(7,418)	(15,645)
Deferred policy acquisition costs	(259,303)	(195,986)
Value of insurance in force acquired	(36)	(73)
Amounts due to reinsurers	(5,303)	(1,907)
Other	(580)	(331)
	(272,640)	(213,942)
Net deferred income tax asset	\$ 70,562	\$ 58,833

In the opinion of the Company's management, realization of its deferred income tax assets is more likely than not based on expectations as to the Company's future taxable income and considering all other available evidence, both positive and negative. Therefore, no valuation allowance against deferred tax assets has been established.

At December 31, 2004, the Company has non-life net operating loss carryforwards for Federal tax purposes of \$11.3 million which expire in 2012 through 2023.

## 7. Notes Payable and Amounts Due Under Repurchase Agreements

In December 2004, the Company issued \$260.0 million of contingent convertible senior notes due December 6, 2024 through a private placement under Rule 144A of the Securities Act of 1933. The notes are unsecured and bear interest at a fixed rate of 5.25% per annum. Interest is payable semi-annually in arrears on June 6 and December 6 of each year, beginning June 6, 2005. In addition to regular interest on the notes, beginning with the six-month interest period ending June 6, 2012, the Company will also pay contingent interest under certain conditions at a rate of 0.5% per annum based on the average trading price of the notes during a specified period.

The notes are convertible at the holders' option prior to the maturity date into cash and shares of the Company's common stock under the following conditions:

- during any fiscal quarter, if the closing sale price of the Company's common stock for at least 20 trading days in the period of 30 consecutive trading days ending on the last trading day of the

fiscal quarter preceding the quarter in which the conversion occurs is more than 120% of the conversion price of the notes in effect on that 30<sup>th</sup> trading day;

- the Company has called the notes for redemption and the redemption has not yet occurred; or
- upon the occurrence of specified corporate transactions.

Holders may convert any outstanding notes into cash and shares of the Company's common stock at an initial conversion price per share of \$14.47. This represents a conversion rate of approximately 69.1085 shares of common stock per \$1,000 in principal amount of notes (the "Conversion Rate"). Subject to certain exceptions described in the indenture covering these notes, at the time the notes are tendered for conversion, the value (the "Conversion Value") of the cash and shares of the Company's common stock, if any, to be received by a holder converting \$1,000 principal amount of the notes will be determined by multiplying the Conversion Rate by the "Ten Day Average Closing Stock Price", which equals the average of the closing per share prices of the Company's common stock on the New York Stock Exchange on the ten consecutive trading days beginning on the second trading day following the day the notes are submitted for conversion. The Company will deliver the Conversion Value to holders as follows: (1) an amount in cash (the "Principal Return") equal to the lesser of (a) the aggregate Conversion Value of the notes to be converted and (b) the aggregate principal amount of the notes to be converted, and (2) if the aggregate Conversion Value of the notes to be converted is greater than the Principal Return, an amount in shares (the "Net Shares") equal to such aggregate Conversion Value less the Principal Return (the "Net Share Amount") and (3) an amount in cash in lieu of fractional shares of common stock. The number of Net Shares to be paid will be determined by dividing the Net Share Amount by the Ten Day Average Closing Stock Price.

The Company may redeem some or all of the notes at any time on or after December 15, 2011. In addition, the holders may require the Company to repurchase all or a portion of their notes on December 15, 2011, 2014, and 2019 and upon a change in control, as defined in the indenture governing the notes, holders may require the Company to repurchase all or a portion of their notes for a period of time after the change in control. The redemption price or repurchase price shall be payable in cash and equal to 100% of the principal amount of the notes plus accrued and unpaid interest (contingent interest and liquidated damages, if any) up to but not including the date of redemption or repurchase.

The notes are senior unsecured obligations and rank equally in right of payment with all existing and future senior indebtedness and senior to any existing and future subordinated indebtedness. The notes effectively rank junior in right of payment to any existing and future secured indebtedness to the extent of the value of the assets securing such secured indebtedness. The notes are structurally subordinated to all liabilities of the Company's subsidiaries.

Pursuant to EITF Issue No. 04-8, "The Effect of Contingently Convertible Debt on Diluted Earnings Per Share", the Company will be required to include the dilutive effect of the contingent convertible senior notes in its diluted earnings per share calculation, regardless of whether the market price trigger has been met. Because the notes include a mandatory cash settlement feature for the principal amount, incremental dilutive shares will only exist when the average fair value of the Company's common stock for a reporting period exceeds the initial conversion price per share of \$14.47.

The Company has agreed to file a registration statement pursuant to which it will register the resale of the notes and the shares issuable upon conversion of the notes. If such registration statement

is not filed or declared effective within certain time periods specified in a registration rights agreement between the Company and the initial purchasers of the notes, the Company will be required to pay liquidated damages to the holders of the notes.

On September 22, 2004, the Company entered into a \$50 million revolving line of credit agreement with three banks. The revolving period of the facility will be three years followed by a two-year term out option. The applicable interest rate will be floating at LIBOR plus 1.75% or prime rate, as elected by the Company. There is no amount outstanding under the revolving line of credit at December 31, 2004. Under this agreement, without obtaining a waiver from the lenders, the Company is required to maintain a minimum risk-based capital ratio at American Equity Investment Life Insurance Company, a maximum ratio of senior debt to total capital, and is prohibited from paying dividends on its capital stock in excess of 33% of consolidated net income for the prior year.

At December 31, 2003, the Company had \$31.8 million outstanding under a credit agreement with principal and interest payments paid quarterly. The notes bore interest at (3.57% at December 31, 2003) prime or LIBOR plus a specified margin of up to 2.25%. The Company repaid all outstanding amounts under this agreement during 2004.

As part of its investment strategy, the Company enters into securities repurchase agreements (short-term collateralized borrowings). These borrowings are collateralized by investment securities with fair market values approximately equal to the amount due. Such borrowings averaged \$196.3 million, \$84.6 million, \$46.0 million for the years ended December 31, 2004, 2003 and 2002, respectively. The weighted average interest rate on amounts due under repurchase agreements was 1.60%, 1.35% and 1.59% for the years ended December 31, 2004, 2003 and 2002, respectively.

## **8. General Agency Commission and Servicing Agreement**

The Company has a General Agency Commission and Servicing Agreement ("Servicing Agreement") with American Equity Investment Service Company (the Service Company), wholly-owned by David J. Noble, Chairman, Chief Executive Officer and President of the Company, whereby the Service Company acts as a national supervisory agent with responsibility for paying commissions to agents of the Company. Under the terms of the Servicing Agreement, as amended, the Service Company has paid a portion (ranging from 13.5% to 100%) of the agents' commissions for certain annuity policies issued during 1997-1999 and 2002-2004. In return, the Company has paid and agreed to pay quarterly renewal commissions to the Service Company ranging from .0975% to .375% based upon the account values of the applicable annuity policies issued during those years. No renewal commission is paid unless the underlying policy is in force on the date renewal commissions are calculated pursuant to the terms of the Servicing Agreement.

The Company records a liability to the Service Company for the amounts paid by the Service Company to the Company's agents and capitalizes such amounts as deferred policy acquisition costs. For all years except 2004, renewal commissions are capped and interest expense computed at a 9% imputed interest rate. The liability to the Service Company for policies issued during 2004 was created on December 31, 2004 and quarterly renewal commissions are payable for five years. The effective interest rate based upon the estimated future renewal commissions for these policies as of December 31, 2004 is 14.8%. Actual renewal commission payments may vary from expected based upon the persistency and account value growth of the covered policies.

During the years ended December 31, 2004, 2003 and 2002, the Service Company paid \$20.0 million, \$14.4 million and \$11.8 million, respectively, to agents of the Company and the Company paid renewal commissions to the Service Company of \$28.1 million, \$22.1 million and \$21.7 million, respectively. Estimated future payments under the Servicing Agreement at December 31, 2004 are as follows (Dollars in thousands):

Year ending December 31:		
2005	\$	22,732
2006		5,891
2007		5,659
2008		5,436
2009		5,221
		<u>44,939</u>
Amounts representing interest		(9,127)
		<u>35,812</u>
Net amount	\$	35,812

As a source of funding its portion of producing agents' commission payments, the Service Company borrowed funds from Mr. Noble and a third party. The amount payable to Mr. Noble by the Service Company at December 31, 2004 and 2003 was \$3.0 million and \$14.3 million, respectively. As an alternate source of funds for such first year commissions, the Service Company borrowed funds from the Company. Notes receivable from the Service Company under this arrangement are summarized as follows (Dollars in thousands):

	December 31,	
	2004	2003
Interest at 8.75%	\$ —	\$ 3,619
Interest at 9.00%	419	2,003
Interest at 9.50%	3,444	7,799
Interest at Prime	12,325	14,500
	<u>\$ 16,188</u>	<u>\$ 27,921</u>

Principal and interest on all loans to the Service Company are payable quarterly over five years from the date of the advance. The Service Company repays the above described indebtedness from the renewal commissions paid to it under the General Agency Commission and Servicing Agreement.

## 9. Subordinated Debentures

The Company's wholly-owned subsidiary trusts (not consolidated under FIN 46) have issued fixed rate and floating rate trust preferred securities and have used the proceeds from these offerings to purchase subordinated debentures from the Company. The Company also issued subordinated debentures to the trusts in exchange for all of the common securities of each trust. The sole assets of the trusts are the subordinated debentures and any interest accrued thereon. The interest payment dates on the subordinated debentures correspond to the distribution dates on the trust preferred securities issued by the trusts. The trust preferred securities mature simultaneously with the subordinated debentures. The Company's obligations under the subordinated debentures and related agreements provide a full and unconditional guarantee of payments due under the trust preferred

securities. Following is a summary of subordinated debt obligations to the trusts at December 31, 2004 and 2003:

	December 31,		Interest Rate	Due Date
	2004	2003		
(Dollars in thousands)				
American Equity Capital Trust I	\$ 24,073	\$ 26,713	8%	September 30, 2029
American Equity Capital Trust II	77,861	77,340	5%	June 1, 2047
American Equity Capital Trust III	27,840	—	Floating	April 29, 2034
American Equity Capital Trust IV	12,372	12,372	Floating	January 8, 2034
American Equity Capital Trust VII	10,830	—	Floating	September 14, 2034
American Equity Capital Trust VIII	20,600	—	Floating	December 22, 2034
	<u>\$ 173,576</u>	<u>\$ 116,425</u>		

The interest rate for the floating rate subordinated debentures are based upon the three month London Interbank Offered rate plus 4.00% for Trust III and IV and 3.75% for Trust VII and VIII.

American Equity Capital Trust I issued 865,671 shares of trust preferred securities, of which 2,000 shares are held by one of the Company's subsidiaries. During 2004, 88,000 shares of these trust preferred securities converted into 325,923 shares of the Company's common stock. The remaining 777,761 shares of these trust preferred securities are convertible into 2,872,794 shares of the Company's common stock.

The principal amount of the subordinated debentures issued by the Company to American Equity Capital Trust II ("Trust II") is \$100.0 million. These debentures were assigned a fair value of \$74.7 million at the date of issue (based upon an effective yield-to-maturity of 7%). The difference between the fair value at the date of issue and the principal amount is being accreted over the life of the debentures. The trust preferred securities issued by Trust II were issued to Iowa Farm Bureau Federation, which owns more than 50% of the voting capital stock of FBL Financial Group, Inc. ("FBL"), parent company of Farm Bureau. The consideration received by Trust II in connection with the issuance of its trust preferred securities consisted of fixed income securities of equal value which were issued by FBL.

## 10. Retirement and Stock Compensation Plans

The Company has adopted a contributory defined contribution plan which is qualified under Section 401(k) of the Internal Revenue Code. The plan covers substantially all full-time employees of the Company, subject to minimum eligibility requirements. Employees can contribute up to 15% of their annual salary (with a maximum contribution of \$13,000 in 2004, \$12,000 in 2003 and \$11,000 in 2002) to the plan. The Company contributes an additional amount, subject to limitations, based on the voluntary contribution of the employee. Further, the plan provides for additional employer contributions based on the discretion of the Board of Directors. Plan contributions charged to expense were \$0.2 million for the year ended December 31, 2004 and \$0.1 million for each of the years ended December 31, 2003 and 2002.

The Company has entered into deferred compensation arrangements with certain officers, directors, and consultants, whereby these individuals agreed to take common stock of the Company at a future date in lieu of cash payments at the time of service. The common stock is to be issued in



conjunction with a "trigger event", as that term is defined in the individual agreements. At December 31, 2004 and 2003, these individuals have earned, and the Company has reserved for future issuance, 377,853 and 345,829 shares of common stock, respectively, pursuant to these arrangements. The Company has accrued liabilities of \$1.9 million and \$1.5 million at December 31, 2004 and 2003, respectively, representing the value associated with the shares earned.

During 1997, the Company established the American Equity Investment NMO Deferred Compensation Plan ("NMO Deferred Compensation Plan") whereby agents can earn common stock in addition to their normal commissions. Awards are calculated using formulas determined annually by the Company's Board of Directors and are generally based upon new annuity deposits. For the years ended December 31, 2004, 2003 and 2002, agents earned the right to receive 414,117 shares, 325,370 shares, and 692,439 shares, respectively. These shares will be distributed at the end of the vesting and deferral period of 9 years. A portion of the awards may be subject to forfeiture if certain production levels are not met over the remaining vesting period. The Company recognizes commission expense as the awards vest. For the years ended December 31, 2004, 2003 and 2002, agents vested in 449,869 shares, 405,796 shares and 476,918 shares of common stock, respectively, and the Company recorded commission expense (which was subsequently capitalized as deferred policy acquisition costs) of \$4.9 million, \$2.6 million and \$2.6 million, respectively, under these plans. Amounts accrued are reported as other liabilities until the shares have been issued. At December 31, 2004, the Company has reserved 2,411,445 shares for future issuance under the plans.

During 2003, the Company created a Rabbi Trust, the NMO Deferred Compensation Trust (the "Trust") and issued 1,591,083 shares of its common stock to the Trust to fund the vested share liability established under the NMO Deferred Compensation Plan. In accordance with FASB's Emerging Issues Task Force Issue No. 97-14, *"Accounting for Deferred Compensation Arrangements where Amounts Earned are Held in a Rabbi Trust and Invested"*, the stock held in the Trust is included as part of common stock issued and outstanding. In the December 31, 2004 consolidated balance sheet, the common shares held in the Rabbi Trust and the related Trust obligation funded by such shares are included in the common stock and additional paid-in-capital components as a respective deduction and addition, with no impact on the reported amount of total stockholders' equity, as the Plan does not permit diversification and must be settled by the delivery of a fixed number of shares of the Company's stock.

Prior to the Company's initial public offering, the Company performed an internal valuation which involved estimates by management to determine a market value as there was no publicly quoted market value for the Company's stock. Those estimates were based upon various factors including past stock transactions with third parties, growth in the Company's revenues, comparison of the Company's growth pattern to other companies and annual valuations completed by investment bankers familiar with the operations of the Company. The results of the internal valuation affected the amount of commission expense recognized (which was capitalized as deferred policy acquisition costs) in connection with the NMO Deferred Compensation Plan as described in the preceding paragraph. The results of the internal valuation of the Company's stock also affected the calculation of earnings per common share—assuming dilution by affecting the number of dilutive securities used in the calculation (see Note 13).

The Company has a Stock Option and Warrant Agreement with Mr. Noble (owner of 4% of its outstanding common stock at December 31, 2004) which allows the purchase of 1,200,000 shares of the Company's common stock. Included in this amount are warrants to purchase 240,000 shares of common

stock at \$3.33 per share that were exercised in 2000 and options expiring in 2007 to purchase 600,000 shares of common stock at \$3.33 per share and 360,000 shares of common stock at \$7.33 per share.

During 2000, as a separate deferred compensation agreement, the Company loaned Mr. Noble \$0.8 million pursuant to a forgivable loan agreement. The forgivable loan agreement is with full recourse, and although the proceeds of the loan were used for the exercise of warrants described in the preceding paragraph, the loan is not collateralized by the shares issued in connection with the exercise of these warrants. This loan is repayable in five equal annual installments of principal and interest, each of which may be forgiven if Mr. Noble remains continuously employed by the Company in his present capacity, subject to specified exceptions.

The Company's 1996 Stock Option Plan authorized grants of options to officers, directors and employees for up to 1,200,000 shares of the Company's common stock. In 2000, the Company adopted the 2000 Employee Stock Option Plan which authorizes grants of options to officers and employees on up to 1,800,000 shares of the Company's common stock and the Company adopted the 2000 Directors Stock Option Plan which authorizes grants of options to directors on up to 225,000 shares. All options granted under the 2000 plans have 10 year terms and a six month vesting period after which they become fully exercisable immediately. All options granted under the 1996 plan have 10 year terms and are vested and exercisable.

Changes in the number of stock options outstanding during the years ended December 31, 2004, 2003 and 2002 are as follows:

	Number of Shares	Weighted- Average Exercise Price per Share	Total Exercise Price
	(Dollars in thousands, except per share data)		
Outstanding at January 1, 2002	2,644,952	\$ 5.66	\$ 14,978
Granted	—	—	—
Cancelled	(15,547)	9.13	(142)
Exercised	(103)	9.68	(1)
Outstanding at December 31, 2002	2,629,302	5.65	14,835
Granted	300,000	9.00	2,700
Cancelled	(21,640)	6.69	(145)
Exercised	—	—	—
Outstanding at December 31, 2003	2,907,662	5.98	17,390
Granted	570,000	10.80	6,156
Cancelled	(17,500)	9.71	(170)
Exercised	—	—	—
Outstanding at December 31, 2004	3,460,162	6.76	\$ 23,376

Stock options outstanding at December 31, 2004 (all of which are currently exercisable except for options on 288,000 shares granted in December 2004) are as follows:

	Number of Shares	Weighted- Average Remaining Life
Exercise price:		
\$3.33	1,060,500	2.19
\$4.00	346,350	2.56
\$5.33	114,000	3.64
\$7.33	568,770	3.16
\$8.67	18,000	4.92
\$9.00	291,000	8.94
\$9.16	22,500	9.67
\$9.49	4,500	9.75
\$9.67	495,042	6.14
\$9.95	3,500	9.50
\$10.77	288,000	10.00
\$11.00	245,500	9.44
\$12.85	2,500	9.25
	<hr/>	
	3,460,162	
	<hr/>	

At December 31, 2004, the Company had no shares of common stock available for future grant under the 1996 Stock Option Plan, 613,708 shares of common stock available for future grant under the 2000 Employee Stock Option Plan, and 213,000 shares of common stock available for future grant under the 2000 Directors Stock Option Plan.

On December 1, 1997, in connection with a rights offering of shares of the Company's common stock, the Company issued subscription rights to purchase an aggregate of 2,157,375 shares of the Company's common stock to certain officers and directors. The subscription rights have an exercise price of \$5.33 per share, were exercisable immediately, and expire on December 1, 2005. During 2002, the expiration date was extended from December 1, 2002 to December 1, 2005 and the Company recognized compensation expense of \$0.2 million. During 2004, rights with respect to 6,000 shares of the Company's common stock were exercised.

## 11. Life Insurance Subsidiaries

Prior approval of regulatory authorities is required for the payment of dividends to the Company by its life insurance subsidiaries which exceed an annual limitation. During 2005, American Equity Life could pay dividends to its parent of \$60.9 million, without prior approval from regulatory authorities.

Statutory accounting practices prescribed or permitted by regulatory authorities for the Company's life insurance subsidiaries differ from generally accepted accounting principles. Combined net income for the Company's life insurance subsidiaries as determined in accordance with statutory accounting practices was \$47.7 million, \$25.4 million and \$26.0 million in 2004, 2003 and 2002, respectively, and total statutory capital and surplus of the Company's life insurance subsidiaries was \$608.9 million and \$374.6 million at December 31, 2004 and 2003, respectively.

## 12. Commitments and Contingencies

The Company leases its home office space and certain equipment under operating leases which expire through December 2008. During the years ended December 31, 2004, 2003 and 2002, rent expense totaled \$1.0 million in each of these years. At December 31, 2004, minimum rental payments due under all noncancellable operating leases with initial terms of one year or more are (dollars in thousands):

Year ending December 31:	
2005	\$ 1,030
2006	577
2007	126
2008	68
2009	5
	<hr/>
	\$ 1,806
	<hr/>

Assessments are, from time to time, levied on the Company by life and health guaranty associations in most states in which the Company is licensed to cover losses to policyholders of insolvent or rehabilitated companies. During 2004, the Company paid \$0.6 million in assessments related to the insolvency of London Pacific Life and Annuity Company and established a reserve for future assessments related to this insolvency of \$1.2 million. The Company believes the reserve for guaranty fund assessments is sufficient to provide for future assessments based upon known insolvencies.

In recent years, companies in the life insurance and annuity business have faced litigation, including class action lawsuits alleging improper product design, improper sales practices and similar claims. The Company is currently a defendant in several purported class action lawsuits filed in state courts alleging improper sales practices. In these lawsuits, the plaintiffs are seeking returns of premiums and other compensatory and punitive damages. We have reached a final settlement in one of these cases, the impact of which is expected to be immaterial. The class was certified as such incident to the settlement in that case. No class has been certified in any of the other pending cases as this time. Although the Company has denied all allegations in these lawsuits and intends to vigorously defend against them, the lawsuits are in the early stages of litigation and neither their outcomes nor a range of possible outcomes can be determined at this time. However, the Company does not believe that these lawsuits will have a material adverse effect on its business, financial condition or results of operations.

In addition, the Company is from time to time subject to other legal proceedings and claims in the ordinary course of business, none of which management believe are likely to have a material adverse effect on our financial position, results of operations or cash flows. There can be no assurance that such litigation, or any future litigation, will not have a material adverse effect on the Company's financial position, results of operations or cash flows.

### 13. Earnings Per Share

The following table sets forth the computation of earnings per common share and earnings per common share—assuming dilution:

	Year ended December 31,		
	2004	2003	2002
(Dollars in thousands, except per share data)			
<b>Numerator:</b>			
Net income—numerator for earnings per common share	\$ 45,284	\$ 25,440	\$ 14,207
Interest (dividends in 2002 related to convertible rust preferred securities) on convertible subordinated debentures (net of income tax benefit)	1,255	1,347	1,348
Numerator for earnings per common share—assuming dilution	\$ 46,539	\$ 26,787	\$ 15,555
<b>Denominator:</b>			
Weighted average common shares outstanding	37,518,141	15,684,932	14,528,387
Participating preferred stock	640,369	1,875,000	1,875,000
Denominator for earnings per common share	38,158,510	17,559,932	16,403,387
Effect of dilutive securities:			
Convertible subordinated debentures (convertible trust preferred securities in 2002)	3,005,902	3,198,717	2,592,514
Stock options and management subscription rights	1,500,158	683,548	381,024
Deferred compensation agreements	431,575	727,653	1,015,924
Denominator for earnings per common share—assuming dilution	43,096,145	22,169,850	20,392,849
Earnings per common share	\$ 1.19	\$ 1.45	\$ 0.87
Earnings per common share—assuming dilution	\$ 1.08	\$ 1.21	\$ 0.76

#### 14. Quarterly Financial Information (Unaudited)

Unaudited quarterly results of operations are summarized below.

<u>Quarter ended</u>	<u>March 31</u>	<u>June 30</u>	<u>September 30</u>	<u>December 31</u>
(Dollars in thousands, except per share data)				
<b>2004</b>				
Premiums and product charges	\$ 9,357	\$ 9,058	\$ 8,936	\$ 10,226
Net investment income	99,361	106,586	109,783	114,196
Realized gains on investments	379	10	422	132
Change in fair value of derivatives	5,815	(4,934)	(19,696)	47,511
Total revenues	114,912	110,720	99,445	172,065
Net income	10,437	10,378	10,689	13,780
Earnings per common share	\$ 0.28	\$ 0.27	\$ 0.28	\$ 0.36
Earnings per common share—assuming dilution	\$ 0.25	\$ 0.25	\$ 0.26	\$ 0.33
<b>2003</b>				
Premiums and product charges	\$ 9,333	\$ 8,750	\$ 8,509	\$ 7,546
Net investment income	90,696	84,235	89,299	94,299
Realized gains (losses) on investments	196	7,592	(907)	65
Change in fair value of derivatives	(13,962)	33,053	6,050	27,384
Total revenues	86,263	133,630	102,951	129,294
Net income	4,477	6,383	6,368	8,212
Earnings per common share	\$ 0.27	\$ 0.39	\$ 0.39	\$ 0.39
Earnings per common share—assuming dilution	\$ 0.23	\$ 0.34	\$ 0.34	\$ 0.32

The differences between the change in fair value of derivatives by quarter primarily corresponds to the performance of the indices upon which the Company's call options are based. Earnings per common share for each quarter is computed independently of earnings per common share for the year. As a result, the sum of the quarterly earnings per common share amounts may not equal the earnings per common share for the year.

**Schedule I—Summary of Investments—Other**

**Than Investments in Related Parties**

**AMERICAN EQUITY INVESTMENT LIFE HOLDING COMPANY**

**December 31, 2004**

Column A	Column B	Column C	Column D
Type of Investment	Amortized Cost(1)	Fair Value	Amount at which shown in the balance sheet(2)
(Dollars in thousands)			
<b>Fixed maturity securities:</b>			
Available for sale			
United States Government and agencies	\$ 1,766,796	\$ 1,708,249	\$ 1,708,249
Public utilities	43,297	44,849	44,849
Corporate securities	262,253	262,560	262,560
Redeemable preferred stocks	34,848	35,368	35,368
Mortgage and asset-backed securities	662,610	654,297	654,297
	<u>2,769,804</u>	<u>2,705,323</u>	<u>2,705,323</u>
Held for investment			
United States Government and agencies	4,022,646	3,929,928	4,022,646
Corporate securities	75,847	75,847	75,847
	<u>4,098,493</u>	<u>4,005,775</u>	<u>4,098,493</u>
<b>Total fixed maturity securities</b>	<b>6,868,297</b>	<b>\$ 6,711,098</b>	<b>6,803,816</b>
<b>Equity securities, available for sale:</b>			
Non-redeemable preferred stocks	30,472	\$ 30,509	30,509
Common stocks	8,366	7,794	7,794
<b>Total equity securities</b>	<b>38,838</b>	<b>\$ 38,303</b>	<b>38,303</b>
Mortgage loans on real estate	959,779		959,779
Derivative instruments	148,006		148,006
Policy loans	362		362
Cash and cash equivalents	62,664		62,664
<b>Total investments</b>	<b>\$ 8,077,946</b>		<b>\$ 8,012,930</b>

(1) On the basis of cost adjusted for repayments and amortization of premiums and accrual of discounts for fixed maturity securities, derivative instruments, and short-term investments, and unpaid principal balance for mortgage loans.

(2) Derivative instruments are carried at estimated fair value.

## Schedule II—Condensed Financial Information of Registrant

## AMERICAN EQUITY INVESTMENT LIFE HOLDING COMPANY (PARENT COMPANY)

## Condensed Balance Sheets

(Dollars in thousands)

	December 31,	
	2004	2003
<b>Assets</b>		
Cash and cash equivalents	\$ 49,366	\$ 1,947
Fixed maturity securities, available for sale, at market (amortized cost: 2004—\$100,000; 2003—\$40,000)	99,617	40,024
Equity securities of subsidiary trusts (not eliminated in consolidation)	5,220	3,417
Receivable from subsidiary (eliminated in consolidation)	345	1,420
Receivables from related party	16,468	27,921
Federal income tax recoverable	1,319	1,020
Deferred income tax asset	5,404	6,175
Other assets	12,372	3,149
	190,111	85,073
Investment in and advances to subsidiaries	568,769	329,481
	758,880	414,554
Total assets	\$ 758,880	\$ 414,554
<b>Liabilities and Stockholders' Equity</b>		
Liabilities:		
Notes payable	\$ 260,000	\$ 31,833
Subordinated debentures payable to subsidiary trusts	173,636	116,485
Other liabilities	3,740	2,520
	437,376	150,838
Total liabilities	437,376	150,838
Stockholders' equity:		
Series preferred stock	—	625
Common stock	38,360	35,294
Additional paid-in capital	215,793	208,436
Accumulated other comprehensive loss	(19,269)	(22,742)
Retained earnings	86,620	42,103
	321,504	263,716
Total stockholders' equity	321,504	263,716
Total liabilities and stockholders' equity	\$ 758,880	\$ 414,554

See accompanying note to condensed financial statements.



## Schedule II—Condensed Financial Information of Registrant (Continued)

## AMERICAN EQUITY INVESTMENT LIFE HOLDING COMPANY (PARENT COMPANY)

## Condensed Statements of Income

(Dollars in thousands)

	Year ended December 31,		
	2004	2003	2002
<b>Revenues:</b>			
Net investment income	\$ 2,198	\$ 31	\$ 20
Dividends from subsidiary (eliminated in consolidation)	—	4,000	5,000
Dividends from subsidiary trusts (eliminated in consolidation prior to 2003)	307	214	214
Investment advisory fees (eliminated in consolidation)	10,096	5,246	1,994
Surplus note interest from subsidiary (eliminated in consolidation)	4,080	4,080	2,780
Interest on notes receivable from related party	1,597	1,291	2,379
Change in fair value of derivatives	60	—	—
<b>Total revenues</b>	<b>18,338</b>	<b>14,862</b>	<b>12,387</b>
<b>Expenses:</b>			
Interest expense on notes payable	1,749	1,486	1,901
Interest expense on subordinated debentures issued to subsidiary trusts (eliminated in consolidation prior to 2003)	9,609	7,661	7,660
Other operating costs and expenses	4,504	3,013	2,453
<b>Total expenses</b>	<b>15,862</b>	<b>12,160</b>	<b>12,014</b>
<b>Income before income tax (expense) benefit, equity in undistributed income of subsidiaries and minority interests</b>	<b>2,476</b>	<b>2,702</b>	<b>373</b>
Income tax (expense) benefit	(615)	703	1,912
<b>Income before equity in undistributed income of subsidiaries and minority interests</b>	<b>1,861</b>	<b>3,405</b>	<b>2,285</b>
Equity in undistributed income of subsidiaries (eliminated in consolidation)	43,423	22,035	19,367
<b>Income before minority interests in subsidiaries</b>	<b>45,284</b>	<b>25,440</b>	<b>21,652</b>
<b>Minority interests in subsidiaries:</b>			
Earnings attributable to company-obligated mandatorily redeemable preferred securities of subsidiary trusts	—	—	(7,445)
<b>Net income</b>	<b>\$ 45,284</b>	<b>\$ 25,440</b>	<b>\$ 14,207</b>

See accompanying note to condensed financial statements.

## Schedule II—Condensed Financial Information of Registrant (Continued)

## AMERICAN EQUITY INVESTMENT LIFE HOLDING COMPANY (PARENT COMPANY)

## Condensed Statements of Cash Flows

(Dollars in thousands)

	Year ended December 31,		
	2004	2003	2002
<b>Operating activities</b>			
Net income	\$ 45,284	\$ 25,440	\$ 14,207
Adjustments to reconcile net income to net cash provided by (used in) operating activities:			
Provision for depreciation and amortization	247	285	159
Accrual of discount on equity security	(33)	—	—
Equity in undistributed income of subsidiaries	(43,423)	(22,035)	(19,367)
Minority interests in subsidiaries—earnings attributable to company-obligated mandatorily redeemable preferred securities of subsidiary trusts	—	—	7,445
Accrual of discount on debenture issued to subsidiary trust	522	522	521
Deferred income tax benefit	912	(241)	(1,353)
Changes in operating assets and liabilities:			
Receivable from subsidiary	1,075	(940)	20
Receivable from related party	11,453	(7,459)	8,677
Federal income tax recoverable	(299)	(462)	(558)
Other assets	(28)	(433)	343
Amounts due to related parties	(21)	(73)	100
Other liabilities	1,240	793	352
Net cash provided by (used in) operating activities	16,929	(4,603)	10,546
<b>Investing activities</b>			
Capital contributions to subsidiaries	(152,125)	(125,025)	(50)
Acquisition of fixed maturity securities—available for sale	(100,000)	(40,000)	—
Purchases of property, plant and equipment	—	(19)	—
Purchase of surplus notes from subsidiary	—	—	(10,000)
Net cash used in investing activities	(252,125)	(165,044)	(10,050)

See accompanying note to condensed financial statements.

## Schedule II—Condensed Financial Information of Registrant (Continued)

## AMERICAN EQUITY INVESTMENT LIFE HOLDING COMPANY (PARENT COMPANY)

## Condensed Statements of Cash Flows (Continued)

(Dollars in thousands)

	Year ended December 31,		
	2004	2003	2002
<b>Financing activities</b>			
Financing fees incurred and deferred	\$ (9,598)	\$ (610)	\$ (100)
Proceeds from notes payable	260,000	—	10,000
Repayments of notes payable	(31,833)	(11,500)	(13,334)
Proceeds from issuance of subordinated debentures	57,500	12,000	—
Net proceeds from issuance of common stock	7,313	171,265	137
Dividends paid	(767)	(352)	(163)
Net cash provided by (used in) financing activities	282,615	170,803	(3,460)
Increase (decrease) in cash and cash equivalents	47,419	1,156	(2,964)
Cash and cash equivalents at beginning of year	1,947	791	3,755
Cash and cash equivalents at end of year	\$ 49,366	\$ 1,947	\$ 791

**Supplemental disclosures of cash flow information**

## Cash paid during the year for interest:

Notes payable	\$ 6,922	\$ 2,629	\$ 1,763
Subordinated debentures	8,518	7,139	7,139

## Non-cash investing and financing activities:

Fixed maturity security contributed to subsidiary	39,562	—	—
Subordinated debentures issued to subsidiary trust for common equity securities of the subsidiary trust	1,770	372	—

See accompanying note to condensed financial statements.

**AMERICAN EQUITY INVESTMENT LIFE HOLDING COMPANY (PARENT COMPANY)**

**Note to Condensed Financial Statements**

**December 31, 2004**

**1. Basis of Presentation**

The accompanying condensed financial statements should be read in conjunction with the consolidated financial statements and notes thereto of American Equity Investment Life Holding Company.

In the parent company financial statements, the Company's investment in and advances to subsidiaries (which includes surplus notes issued by American Equity Life) are stated at cost plus equity in undistributed income (losses) of subsidiaries since the date of acquisition and net unrealized gains/losses on the subsidiaries' fixed maturity securities classified as "available for sale" and equity securities in accordance with SFAS 115, Accounting for Certain Investments in Debt and Equity Securities.

See note 7 to the consolidated financial statements for a description of the parent company's notes payable.

**Schedule III—Supplementary Insurance Information**

**AMERICAN EQUITY INVESTMENT LIFE HOLDING COMPANY**

Column A	Column B	Column C	Column D	Column E	
	Deferred policy acquisition costs	Future policy benefits, losses, claims and loss expenses	Unearned premiums	Other policy claims and benefits payable	
	(Dollars in thousands)				
As of December 31, 2004:					
Life insurance	\$ 713,021	\$ 9,807,969	\$ —	\$ 94,410	
As of December 31, 2003:					
Life insurance	\$ 608,197	\$ 8,315,874	\$ —	\$ 60,995	
As of December 31, 2002:					
Life insurance	\$ 532,656	\$ 6,737,888	\$ —	\$ 35,644	
Column A	Column F	Column G	Column H	Column I	Column J
	Premium revenue	Net investment income	Benefits, claims, losses and settlement expenses	Amortization of deferred policy acquisition costs(1)	Other operating expenses
	(Dollars in thousands)				
Year ended December 31, 2004:					
Life insurance	\$ 37,577	\$ 429,926	\$ 310,618	\$ 67,867	\$ 49,116
Year ended December 31, 2003:					
Life insurance	\$ 34,138	\$ 358,529	\$ 326,700	\$ 47,450	\$ 39,043
Year ended December 31, 2002:					
Life insurance	\$ 29,040	\$ 308,548	\$ 187,793	\$ 34,060	\$ 28,909

- (1) Beginning in 2004, deferred sales inducements are reported separately on the consolidated balance sheet and the amortization of deferred sales inducements is included as a component of interest credited. Prior to 2004, deferred sales inducements and the related amortization were recorded with deferred policy acquisition costs. The amounts for 2003 and 2002 have been reclassified to conform to the 2004 presentation.

## Schedule IV—Reinsurance

## AMERICAN EQUITY INVESTMENT LIFE HOLDING COMPANY

Column A	Column B	Column C	Column D	Column E	Column F
	Gross amount	Ceded to other companies	Assumed from other companies	Net amount	Percent of amount assumed to net
(Dollars in thousands)					
Year ended December 31, 2004:					
Life insurance in force, at end of year	\$ 2,500,878	\$ 1,258	\$ 125,443	\$ 2,625,063	4.78%
Insurance premiums and other considerations:					
Annuity and single premium universal life product charges	\$ 29,929	\$ 7,467	\$ —	\$ 22,462	—%
Traditional life and accident and health insurance premiums	13,399	52	1,768	15,115	11.70%
	\$ 43,328	\$ 7,519	\$ 1,768	\$ 37,577	4.71%
Year ended December 31, 2003:					
Life insurance in force, at end of year	\$ 2,580,812	\$ 1,034	\$ 141,817	\$ 2,721,595	5.21%
Insurance premiums and other considerations:					
Annuity and single premium universal life product charges	\$ 26,025	\$ 5,573	\$ —	\$ 20,452	—%
Traditional life and accident and health insurance premiums	11,941	156	1,901	13,686	13.89%
	\$ 37,966	\$ 5,729	\$ 1,901	\$ 34,138	5.57%
Year ended December 31, 2002:					
Life insurance in force, at end of year	\$ 2,084,417	\$ 807	\$ 133,745	\$ 2,217,355	6.03%
Insurance premiums and other considerations:					
Annuity and single premium universal life product charges	\$ 17,091	\$ 1,715	\$ —	\$ 15,376	—%
Traditional life and accident and health insurance premiums	10,421	362	3,605	13,664	26.38%
	\$ 27,512	\$ 2,077	\$ 3,605	\$ 29,040	12.41%

**Item 15. Exhibits and Financial Statement Schedules.****(a) Exhibits:**

Exhibit No.	Description
3.1	Articles of Incorporation, including Articles of Amendment**++
3.2	Articles of Amendment to Articles of Incorporation filed on September 23, 2003#
3.3	Amended and Restated Bylaws†
4.1	Agreement dated December 4, 1997 between American Equity Investment Life Holding Company and Farm Bureau Life Insurance Company re Right of First Refusal*
4.2	Stockholders' Agreement dated April 30, 1997 among American Equity Investment Life Holding Company and stockholders*
4.3	Registration Rights Agreement dated April 30, 1997 between American Equity Investment Life Holding Company and stockholders*
4.4	Amended and Restated Declaration of Trust of American Equity Capital Trust I dated September 7, 1999†
4.5	Indenture dated September 7, 1999 between American Equity Investment Life Holding Company and West Des Moines State Bank, as trustee#
4.6	Trust Preferred Securities Guarantee Agreement dated September 7, 1999 between American Equity Investment Life Holding Company and West Des Moines State Bank, as trustee#
4.7	Trust Common Securities Guarantee Agreement dated September 7, 1999 between American Equity Investment Life Holding Company and West Des Moines State Bank, as trustee#
4.8	Indenture dated October 29, 1999 between American Equity Investment Life Holding Company and West Des Moines State Bank, as trustee)#
4.9	Trust Preferred Securities Guarantee Agreement dated October 29, 1999 between American Equity Investment Life Holding Company and West Des Moines, State Bank, as trustee#
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10.1	Restated and Amended General Agency Commission and Servicing Agreement dated June 30, 1997 between American Equity Investment Life Insurance Company and American Equity Investment Service Company*
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10.6	Forgivable Loan Agreement dated April 30, 2000 between American Equity Investment Life Holding Company and D.J. Noble††

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10.7	2000 Employee Stock Option Plan††
10.8	2000 Director Stock Option Plan††
10.9	Coinsurance and Yearly Renewable Term Reinsurance Agreement dated January 1, 2001 between American Equity Investment Life Holding Company and Atlantic International Reinsurance Company LTD.††††
10.10	Coinsurance Agreement dated December 19, 2001 between American Equity Investment Life Holding Company and EquiTrust Life Insurance Company†††††
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10.12	2002 Coinsurance and Yearly Renewable Term Reinsurance Agreement dated November 1, 2002 between American Equity Investment Life Holding Company and Hannover Life Reassurance Company of America††††††††
10.13	2003 Coinsurance and yearly Renewable Term Reinsurance Agreement dated September 30, 2003 between American Equity Investment Life Holding Company and Hannover Life Reassurance Company of America#
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10.15	Form of Change in Control Agreement between American Equity Investment Life Holding Company and each James M. Gerlach and Terry A. Reimer#
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10.18	Third Amendment dated December 31, 2003, to Amended and Restated Credit Agreement dated December 30, 2002 among American Equity Investment Life Holding Company, West Des Moines State Bank, as co-agent, Fleet National Bank, as documentation agent and U.S. Bank National Association, as agent†††††††††

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10.19	Fourth Amendment dated June 30, 2004 to Amended and Restated Credit Agreement dated December 30, 2002 among American Equity Investment Life Holding Company, West Des Moines State Bank, as co-agent, Fleet National Bank, as documentation agent and U.S. Bank National Association, as agent††††††††††
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32.2	Certification of Chief Financial Officer pursuant to 18 U.S.C. Section 1350, as Adopted Pursuant to Section 906 of the Sarbanes-Oxley Act of 2002

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*	Incorporated by reference to American Equity Investment Life Holding Company's Registration Statement on Form 10 dated April 29, 1999
**	Incorporated by reference to the Registration Statement on Form 10 dated April 29, 1999 and Post-Effective Amendment No. 1 to the Registration Statement on Form 10 dated July 20, 1999
†	Incorporated by reference to Form 10-K for the period ended December 31, 1999
††	Incorporated by reference to Form 10-Q for the period ended June 30, 2000
†††	Incorporated by reference to Form 10-K for the period ended December 31, 2000
††††	Incorporated by reference to Form 10-Q for the period ended September 30, 2001
†††††	Incorporated by reference to Form 10-K for the period ended December 31, 2001
††††††	Incorporated by reference to Form 10-K for the period ended December 31, 2002
†††††††	Incorporated by reference to Form 10-Q for the period ended June 30, 2003
††††††††	Incorporated by reference to Form 10-K for the period ended December 31, 2003
†††††††††	Incorporated by reference to Form 10-Q for the period ended June 30, 2004
††††††††††	Incorporated by reference to Form 10-Q for the period ended September 30, 2004
#	Incorporated by reference to the Registration Statement on Form S-1 dated September 15, 2003, including all pre-effective amendments thereto

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**JUNIOR SUBORDINATED INDENTURE**

between

**AMERICAN EQUITY INVESTMENT LIFE HOLDING COMPANY**

and

**JPMORGAN CHASE BANK, N.A.,**  
*as Trustee*

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Dated as of December 22, 2004

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## RECITALS OF THE COMPANY

WHEREAS, the Company has duly authorized the execution and delivery of this Indenture to provide for the issuance of its unsecured junior subordinated deferrable interest notes (the "*Securities*") issued to evidence loans made to the Company of the proceeds from the issuance by American Equity Capital Trust VIII, a Delaware statutory trust (the "*Trust*"), of undivided preferred beneficial interests in the assets of the Trust (the "*Preferred Securities*") and undivided common beneficial interests in the assets of the Trust (the "*Common Securities*" and, collectively with the Preferred Securities, the "*Trust Securities*"), and to provide the terms and conditions upon which the Securities are to be authenticated, issued and delivered; and

WHEREAS, all things necessary to make this Indenture a valid agreement of the Company, in accordance with its terms, have been done.

NOW, THEREFORE, this Indenture Witnesseth:

For and in consideration of the premises and the purchase of the Securities by the Holders thereof, it is mutually covenanted and agreed, for the equal and proportionate benefit of all Holders of the Securities, as follows:

## ARTICLE I

### DEFINITIONS AND OTHER PROVISIONS OF GENERAL APPLICATION

#### SECTION 1.1. *Definitions.*

For all purposes of this Indenture, except as otherwise expressly provided or unless the context otherwise requires:

- (a) the terms defined in this *Article I* have the meanings assigned to them in this *Article I*;
- (b) the words "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation";
- (c) all accounting terms not otherwise defined herein have the meanings assigned to them in accordance with GAAP;
- (d) unless the context otherwise requires, any reference to an "Article" or a "Section" refers to an Article or a Section, as the case may be, of this Indenture;
- (e) the words "hereby", "herein", "hereof" and "hereunder" and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or other subdivision;
- (f) a reference to the singular includes the plural and vice versa; and
- (g) the masculine, feminine or neuter genders used herein shall include the masculine, feminine and neuter genders.

"*Act*" when used with respect to any Holder, has the meaning specified in *Section 1.4*.

"*Administrative Trustee*" means, with respect to the Trust, each Person identified as an "Administrative Trustee" in the Trust Agreement, solely in its capacity as Administrative Trustee of the Trust under the Trust Agreement and not in its individual capacity, or its successor in interest in such capacity, or any successor Administrative Trustee appointed as therein provided.

"*Additional Interest*" means the interest, if any, that shall accrue on any amounts payable on the Securities, the payment of which has not been made on the applicable Interest Payment Date and which shall accrue at the rate per annum specified or determined as specified in such Security, in each case to the extent legally enforceable.

"*Additional Tax Sums*" has the meaning specified in *Section 10.5*.



"*Additional Taxes*" means taxes, duties or other governmental charges imposed on the Trust as a result of a Tax Event (which, for the sake of clarity, does not include amounts required to be deducted or withheld by the Trust from payments made by the Trust to or for the benefit of the Holder of, or any Person that acquires a beneficial interest in, the Securities).

"*Affiliate*" of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For the purposes of this definition, "control," when used with respect to any specified Person, means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"*Applicable Accounting Principles*" means accounting practices prescribed or permitted by the National Association of Insurance Commissioners and, with respect to the Company's subsidiary insurance companies, the applicable insurance department of the state of domicile of such insurance subsidiary, and in each case, applied consistently throughout the periods involved.

"*Applicable Depository Procedures*" means, with respect to any transfer or transaction involving a Global Security or beneficial interest therein, the rules and procedures of the Depository for such Security, in each case to the extent applicable to such transaction and as in effect from time to time.

"*Applicable Insurance Regulatory Authority*" means the Iowa Insurance Division or, if at any time after the execution of this Indenture any such entity is not existing and performing the duties now assigned to it, any successor body performing similar duties or functions.

"*Authenticating Agent*" means any Person authorized by the Trustee pursuant to *Section 6.11* to act on behalf of the Trustee to authenticate the Securities.

"*Bankruptcy Code*" means Title 11 of the United States Code or any successor statute(s) thereto, or any similar federal or state law for the relief of debtors, in each case as amended from time to time.

"*Board of Directors*" means the board of directors of the Company or any duly authorized committee of that board.

"*Board Resolution*" means a copy of a resolution certified by the Secretary or an Assistant Secretary of the Company to have been duly adopted by the Board of Directors and to be in full force and effect on the date of such certification.

"*Business Day*" means any day other than (i) a Saturday or Sunday, (ii) a day on which banking institutions in the City of New York are authorized or required by law or executive order to remain closed or (iii) a day on which the Corporate Trust Office of the Trustee is closed for business.

"*Calculation Agent*" has the meaning specified in *Section 10.4*.

"*Common Securities*" has the meaning specified in the first recital of this Indenture.

"*Common Stock*" means the common stock, par value \$1.00 per share, of the Company.

"*Company*" means the Person named as the "*Company*" in the first paragraph of this Indenture until a successor corporation shall have become such pursuant to the applicable provisions of this Indenture, and thereafter "*Company*" shall mean such successor corporation.

"*Company Request*" and "*Company Order*" mean, respectively, the written request or order signed in the name of the Company by its Chairman of the Board of Directors, its Vice Chairman of the Board of Directors, its Chief Executive Officer, President or a Vice President, and by its Chief Financial Officer, its Treasurer, an Assistant Treasurer, its Secretary or an Assistant Secretary, and delivered to the Trustee.

"*Corporate Trust Office*" means the principal office of the Trustee at which at any particular time its corporate trust business shall be administered, which office at the date of this Indenture is located at 600 Travis, 50<sup>th</sup> Floor, Houston, Texas 77002, Attn: Institutional Trust Services, American Equity Capital Trust VIII.

"*Debt*" means, with respect to any Person, whether recourse is to all or a portion of the assets of such Person, whether currently existing or hereafter incurred and whether or not contingent and without duplication, (i) every obligation of such Person for money borrowed; (ii) every obligation of such Person evidenced by bonds, debentures, notes or other similar instruments, including obligations incurred in connection with the acquisition of property, assets or businesses; (iii) every reimbursement obligation of such Person with respect to letters of credit,

bankers' acceptances or similar facilities issued for the account of such Person; (iv) every obligation of such Person issued or assumed as the deferred purchase price of property or services (but excluding trade accounts payable or other accrued liabilities arising in the ordinary course of business); (v) every capital lease obligation of such Person; (vi) all indebtedness of such Person, whether incurred on or prior to the date of this Indenture or thereafter incurred, for claims in respect of derivative products, including interest rate, foreign exchange rate and commodity forward contracts, options and swaps and similar arrangements; (vii) every obligation of the type referred to in clauses (i) through (vi) of another Person and all dividends of another Person the payment of which, in either case, such Person has guaranteed or is responsible or liable for, directly or indirectly, as obligor or otherwise; and (viii) any renewals, extensions, refundings, amendments or modifications of any obligation of the type referred to in clauses (i) through (vii).

"*Defaulted Interest*" has the meaning specified in *Section 3.1*.

"*Delaware Trustee*" means, with respect to the Trust, the Person identified as the "Delaware Trustee" in the Trust Agreement, solely in its capacity as Delaware Trustee of the Trust under the Trust Agreement and not in its individual capacity, or its successor in interest in such capacity, or any successor Delaware Trustee appointed as therein provided.

"*Depository*" means an organization registered as a clearing agency under the Exchange Act that is designated as Depository by the Company or any successor thereto.

"*Depository Participant*" means a broker, dealer, bank, other financial institution or other Person for whom from time to time a Depository effects book-entry transfers and pledges of securities deposited with the Depository.

"*Distributions*" means amounts payable in respect of the Trust Securities as provided in the Trust Agreement and referred to therein as "Distributions."

"*Dollar*" or "\$" means the currency of the United States of America that, as at the time of payment, is legal tender for the payment of public and private debts.

"*DTC*" means The Depository Trust Company, a New York corporation, or any successor thereto.

"*Event of Default*" has the meaning specified in *Section 5.1*.

"*Exchange Act*" means the Securities Exchange Act of 1934 or any statute successor thereto, in each case as amended from time to time.

"*Expiration Date*" has the meaning specified in *Section 1.4*.

"*Extension Period*" has the meaning specified in *Section 3.9*.

"*GAAP*" means United States generally accepted accounting principles, consistently applied, from time to time in effect.

"*Global Security*" means a Security that evidences all or part of the Securities, the ownership and transfers of which shall be made through book entries by a Depository.

"*Government Obligation*" means (a) any security that is (i) a direct obligation of the United States of America of which the full faith and credit of the United States of America is pledged or (ii) an obligation of a Person controlled or supervised by and acting as an agency or instrumentality of the United States of America or the payment of which is unconditionally guaranteed as a full faith and credit obligation by the United States of America, which, in either case (i) or (ii), is not callable or redeemable at the option of the issuer thereof, and (b) any depositary receipt issued by a bank (as defined in Section 3(a)(2) of the Securities Act) as custodian with respect to any Government Obligation that is specified in clause (a) above and held by such bank for the account of the holder of such depositary receipt, or with respect to any specific payment of principal of or interest on any Government Obligation that is so specified and held, *provided*, that (except as required by law) such custodian is not authorized to make any deduction from the amount payable to the holder of such depositary receipt from any amount received by the custodian in respect of the Government Obligation or the specific payment of principal or interest evidenced by such depositary receipt.

"*Guarantee Agreement*" means the Guarantee Agreement executed by the Company and JPMorgan Chase Bank, N.A., as Guarantee Trustee, contemporaneously with the execution and delivery of this Indenture, for the benefit of the holders of the Preferred Securities, as modified, amended or supplemented from time to time.

"Holder" means a Person in whose name a Security is registered in the Securities Register.

"Indenture" means this instrument as originally executed or as it may from time to time be amended or supplemented by one or more amendments or indentures supplemental hereto entered into pursuant to the applicable provisions hereof.

"Interest Payment Date" means March 15, June 15, September 15, and December 15 of each year, commencing on March 15, 2005, during the term of this Indenture.

"Investment Company Act" means the Investment Company Act of 1940 or any successor statute thereto, in each case as amended from time to time.

"Investment Company Event" means the receipt by the Company of an Opinion of Counsel experienced in such matters to the effect that, as a result of the occurrence of a change in law or regulation (including any announced prospective change) or a written change in interpretation or application of law or regulation by any legislative body, court, governmental agency or regulatory authority, there is more than an insubstantial risk that the Trust is or, within ninety (90) days of the date of such opinion will be, considered an "investment company" that is required to be registered under the Investment Company Act, which change or prospective change becomes effective or would become effective, as the case may be, on or after the date of the issuance of the Securities.

"LIBOR" has the meaning specified in *Schedule A*.

"LIBOR Business Day" has the meaning specified in *Schedule A*.

"LIBOR Determination Date" has the meaning specified in *Schedule A*.

"Liquidation Amount" has the meaning specified in the Trust Agreement.

"Maturity," when used with respect to any Security, means the date on which the principal of such Security or any installment of principal becomes due and payable as therein or herein provided, whether at the Stated Maturity or by declaration of acceleration, call for redemption or otherwise.

"Notice of Default" means a written notice of the kind specified in *Section 5.1(c)*.

"Officers' Certificate" means a certificate signed by the Chairman of the Board, a Vice Chairman of the Board, the Chief Executive Officer, the President or a Vice President, and by the Chief Financial Officer, the Treasurer, an Assistant Treasurer, the Secretary or an Assistant Secretary, of the Company and delivered to the Trustee.

"Operative Documents" means the Trust Agreement, the Indenture, the Purchase Agreement, the Guarantee Agreement and the Securities.

"Opinion of Counsel" means a written opinion of counsel, who may be counsel for or an employee of the Company or any Affiliate of the Company.

"Optional Redemption Price" has the meaning set forth in *Section 11.1*.

"Original Issue Date" means the date of original issuance of each Security.

"Outstanding" means, when used in reference to any Securities, as of the date of determination, all Securities theretofore authenticated and delivered under this Indenture, except:

(i) Securities theretofore canceled by the Trustee or delivered to the Trustee for cancellation;

(ii) Securities for whose payment or redemption money in the necessary amount has been theretofore deposited with the Trustee or any Paying Agent (other than the Company) in trust or set aside and segregated in trust by the Company (if the Company shall act as its own Paying Agent) for the Holders of such Securities; *provided*, that, if such Securities are to be redeemed, notice of such redemption has been duly given pursuant to this Indenture or provision therefor satisfactory to the Trustee has been made; and

(iii) Securities that have been paid or in substitution for or in lieu of which other Securities have been authenticated and delivered pursuant to the provisions of this Indenture, unless proof satisfactory to the Trustee is presented that any such Securities are held by Holders in whose hands such Securities are valid, binding and legal obligations of the Company;

*provided*, that, in determining whether the Holders of the requisite principal amount of Outstanding Securities have given any request, demand, authorization, direction, notice, consent or waiver hereunder, Securities owned by

the Company or any other obligor upon the Securities or any Affiliate of the Company or such other obligor shall be disregarded and deemed not to be Outstanding, except that, in determining whether the Trustee shall be protected in relying upon any such request, demand, authorization, direction, notice, consent or waiver, only Securities that a Responsible Officer of the Trustee actually knows to be so owned shall be so disregarded. Securities so owned that have been pledged in good faith may be regarded as Outstanding if the pledgee establishes to the satisfaction of the Trustee the pledgee's right so to act with respect to such Securities and that the pledgee is not the Company or any other obligor upon the Securities or any Affiliate of the Company or such other obligor. Notwithstanding anything herein to the contrary, Securities initially issued to the Trust that are owned by the Trust shall be deemed to be Outstanding notwithstanding the ownership by the Company or an Affiliate of any beneficial interest in the Trust.

"*Paying Agent*" means the Trustee or any Person authorized by the Company to pay the principal of or any premium or interest on, or other amounts in respect of, any Securities on behalf of the Company.

"*Person*" means a legal person, including any individual, corporation, estate, partnership, joint venture, association, joint stock company, limited liability company, trust, unincorporated association, government or any agency or political subdivision thereof, or any other entity of whatever nature.

"*Place of Payment*" means, with respect to the Securities, the Corporate Trust Office of the Trustee.

"*Preferred Securities*" has the meaning specified in the first recital of this Indenture.

"*Predecessor Security*" of any particular Security means every previous Security evidencing all or a portion of the same debt as that evidenced by such particular Security. For the purposes of this definition, any security authenticated and delivered under *Section 3.6* in lieu of a mutilated, destroyed, lost or stolen Security shall be deemed to evidence the same debt as the mutilated, destroyed, lost or stolen Security.

"*Proceeding*" has the meaning specified in *Section 12.2*.

"*Property Trustee*" means the Person identified as the "Property Trustee" in the Trust Agreement, solely in its capacity as Property Trustee of the Trust under the Trust Agreement and not in its individual capacity, or its successor in interest in such capacity, or any successor Property Trustee appointed as therein provided.

"*Purchase Agreement*" means the agreement, dated as of the date hereof, between the Company and the Trust and ALESCO Preferred Funding VI, Ltd.

"*Redemption Date*" means, when used with respect to any Security to be redeemed, the date fixed for such redemption by or pursuant to this Indenture.

"*Redemption Price*" means, when used with respect to any Security to be redeemed, in whole or in part, the Special Redemption Price or the Optional Redemption Price, as applicable, at which such Security or portion thereof is to be redeemed as fixed by or pursuant to this Indenture.

"*Reference Banks*" has the meaning specified in *Schedule A*.

"*Regular Record Date*" for the interest payable on any Interest Payment Date with respect to the Securities means the date that is fifteen (15) days preceding such Interest Payment Date (whether or not a Business Day).

"*Responsible Officer*" means, when used with respect to the Trustee, the officer in the Institutional Trust Services department of the Trustee having direct responsibility for the administration of this Indenture.

"*Rights Plan*" means a plan of the Company providing for the issuance by the Company to all holders of its Common Stock of rights entitling the holders thereof to subscribe for or purchase shares of any class or series of capital stock of the Company which rights (i) are deemed to be transferred with such shares of such Common Stock and (ii) are also issued in respect of future issuances of such Common Stock, in each case until the occurrence of a specified event or events.

"*Securities*" or "*Security*" means any debt securities or debt security, as the case may be, authenticated and delivered under this Indenture.

"*Securities Act*" means the Securities Act of 1933 or any successor statute thereto, in each case as amended from time to time.

"*Securities Register*" and "*Securities Registrar*" have the respective meanings specified in *Section 3.5*.

"*Senior Debt*" means the principal of and any premium and interest on (including interest accruing on or after the filing of any petition in bankruptcy or for reorganization relating to the Company, whether or not such claim for post-petition interest is allowed in such proceeding) all Debt of the Company, whether incurred on or prior to the date of this Indenture or thereafter incurred, unless it is provided in the instrument creating or evidencing the same or pursuant to which the same is outstanding, that such obligations are not superior in right of payment to the Securities issued under this Indenture; *provided, however*, that if the Company is subject to the regulation and supervision of any Applicable Insurance Regulatory Authority, the Company shall have received the approval of each appropriate Applicable Insurance Regulatory Authority prior to issuing any such obligation if then required; *and provided, further*, that Senior Debt shall not be deemed to include any other debt securities and guarantees in respect of such debt securities issued to any trust other than the Trust (or a trustee of any such trust), partnership or other entity affiliated with the Company that is a financing vehicle of the Company (a "financing entity") in connection with the issuance by such financing entity of equity securities or other securities that are treated as equity capital for regulatory capital purposes guaranteed by the Company pursuant to an instrument that ranks *pari passu* with or junior in right of payment to this Indenture, including, without limitation, securities issued by American Equity Capital Trust I, American Equity Capital Trust II, American Equity Capital Trust III, American Equity Capital Trust IV, American Equity Capital Trust V, American Equity Capital Trust VI, American Equity Capital and American Equity Capital Trust VII.

"*Special Event*" means the occurrence of an Investment Company Event or a Tax Event.

"*Special Record Date*" for the payment of any Defaulted Interest means a date fixed by the Trustee pursuant to *Section 3.1*.

"*Special Redemption Price*" has the meaning set forth in *Section 11.2*.

"*Stated Maturity*" means December 15, 2034.

"*Statutory Financial Statements*" means all financial statements of the Company's subsidiary insurance companies for each relevant period, each prepared in accordance with Applicable Accounting Principles.

"*Subsidiary*" means a Person more than fifty percent (50%) of the outstanding voting stock or other voting interests of which is owned, directly or indirectly, by the Company or by one or more other Subsidiaries, or by the Company and one or more other Subsidiaries. For purposes of this definition, "*voting stock*" means stock that ordinarily has voting power for the election of directors, whether at all times or only so long as no senior class of stock has such voting power by reason of any contingency.

"*Tax Event*" means the receipt by the Company of an Opinion of Counsel experienced in such matters to the effect that, as a result of (a) any amendment to or change (including any announced prospective change) in the laws or any regulations thereunder of the United States or any political subdivision or taxing authority thereof or therein or (b) any judicial decision or any official administrative pronouncement (including any private letter ruling, technical advice memorandum or field service advice) or regulatory procedure, including any notice or announcement of intent to adopt any such pronouncement or procedure (an "*Administrative Action*"), regardless of whether such judicial decision or Administrative Action is issued to or in connection with a proceeding involving the Company or the Trust and whether or not subject to review or appeal, which amendment, change, judicial decision or Administrative Action is enacted, promulgated or announced, in each case, on or after the date of issuance of the Securities, there is more than an insubstantial risk that (i) the Trust is, or will be within ninety (90) days of the date of such opinion, subject to United States federal income tax with respect to income received or accrued on the Securities, (ii) interest payable by the Company on the Securities is not, or within ninety (90) days of the date of such opinion, will not be, deductible by the Company, in whole or in part, for United States federal income tax purposes, or (iii) the Trust is, or will be within ninety (90) days of the date of such opinion, subject to more than a *de minimis* amount of other taxes, duties or other governmental charges.

"*Trust*" has the meaning specified in the first recital of this Indenture.

"*Trust Agreement*" means the Amended and Restated Trust Agreement executed and delivered by the Company, the Property Trustee, Chase Manhattan Bank USA, National Association, as Delaware Trustee and the Administrative Trustees named therein, contemporaneously with the execution and delivery of this Indenture, for the benefit of the holders of the Trust Securities, as amended or supplemented from time to time.

"*Trustee*" means the Person named as the "*Trustee*" in the first paragraph of this instrument, solely in its capacity as such and not in its individual capacity, until a successor Trustee shall have become such pursuant to

the applicable provisions of this Indenture, and, thereafter, "Trustee" shall mean or include each Person who is then a Trustee hereunder.

"Trust Indenture Act" means the Trust Indenture Act of 1939, as amended and as in effect on the date as of this Indenture.

"Trust Securities" has the meaning specified in the first recital of this Indenture.

#### SECTION 1.2. *Compliance Certificate and Opinions.*

(a) Upon any application or request by the Company to the Trustee to take any action under any provision of this Indenture, the Company shall, if requested by the Trustee, furnish to the Trustee an Officers' Certificate stating that all conditions precedent (including covenants compliance with which constitutes a condition precedent), if any, provided for in this Indenture relating to the proposed action have been complied with and an Opinion of Counsel stating that in the opinion of such counsel all such conditions precedent (including covenants compliance with which constitutes a condition precedent), if any, have been complied with.

(b) Every certificate or opinion with respect to compliance with a condition or covenant provided for in this Indenture (other than the certificate provided pursuant to *Section 10.3*) shall include:

(i) a statement by each individual signing such certificate or opinion that such individual has read such covenant or condition and the definitions herein relating thereto;

(ii) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions of such individual contained in such certificate or opinion are based;

(iii) a statement that, in the opinion of such individual, he or she has made such examination or investigation as is necessary to enable him or her to express an informed opinion as to whether or not such covenant or condition has been complied with; and

(iv) a statement as to whether, in the opinion of such individual, such condition or covenant has been complied with.

#### SECTION 1.3. *Forms of Documents Delivered to Trustee.*

(a) In any case where several matters are required to be certified by, or covered by an opinion of, any specified Person, it is not necessary that all such matters be certified by, or covered by the opinion of, only one such Person, or that they be so certified or covered by only one document, but one such Person may certify or give an opinion with respect to some matters and one or more other such Persons as to other matters, and any such Person may certify or give an opinion as to such matters in one or several documents.

(b) Any certificate or opinion of an officer of the Company may be based, insofar as it relates to legal matters, upon a certificate or opinion of, or representations by, counsel, unless such officer knows, or after reasonable inquiry should know, that the certificate or opinion or representations with respect to matters upon which his or her certificate or opinion is based are erroneous. Any such certificate or Opinion of Counsel may be based, insofar as it relates to factual matters, upon a certificate or opinion of, or representations by, an officer or officers of the Company stating that the information with respect to such factual matters is in the possession of the Company, unless such counsel knows, or after reasonable inquiry should know, that the certificate or opinion or representations with respect to such matters are erroneous.

(c) Where any Person is required to make, give or execute two or more applications, requests, consents, certificates, statements, opinions or other instruments under this Indenture, they may, but need not, be consolidated and form one instrument.

(d) Whenever, subsequent to the receipt by the Trustee of any Board Resolution, Officers' Certificate, Opinion of Counsel or other document or instrument, a clerical, typographical or other inadvertent or unintentional error or omission shall be discovered therein, a new document or instrument may be substituted therefor in corrected form with the same force and effect as if originally received in the corrected form and, irrespective of the date or dates of the actual execution and/or delivery thereof, such substitute document or instrument shall be deemed to have been executed and/or delivered as of the date or dates required with respect to the document or instrument for which it is substituted. Without limiting the generality of the foregoing, any Securities issued under the authority of such defective document or instrument shall nevertheless be the valid obligations of the Company entitled to the benefits of this Indenture equally and ratably with all other Outstanding Securities.

#### SECTION 1.4. *Acts of Holders.*

(a) Any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Indenture to be given to or taken by Holders may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such Holders in person or by an agent thereof duly appointed in writing; and, except as herein otherwise expressly provided, such action shall become effective when such instrument or instruments (including any appointment of an agent) is or are delivered to the Trustee, and, where it is hereby expressly required, to the Company. Such instrument or instruments (and the action embodied therein and evidenced thereby) are herein sometimes referred to as the "*Act*" of the Holders signing such instrument or instruments. Proof of execution of any such instrument or of a writing appointing any such agent shall be sufficient for any purpose of this Indenture and conclusive in favor of the Trustee and the Company, if made in the manner provided in this *Section 1.4*.

(b) The fact and date of the execution by any Person of any such instrument or writing may be proved by the affidavit of a witness of such execution or by the certificate of any notary public or other officer authorized by law to take acknowledgments of deeds, certifying that the individual signing such instrument or writing acknowledged to him or her the execution thereof. Where such execution is by a Person acting in other than his or her individual capacity, such certificate or affidavit shall also constitute sufficient proof of his or her authority. The fact and date of the execution by any Person of any such instrument or writing, or the authority of the Person executing the same, may also be proved in any other manner that the Trustee deems sufficient and in accordance with such reasonable rules as the Trustee may determine.

(c) The ownership of Securities shall be proved by the Securities Register.

(d) Any request, demand, authorization, direction, notice, consent, waiver or other action by the Holder of any Security shall bind every future Holder of the same Security and the Holder of every Security issued upon the registration of transfer thereof or in exchange therefor or in lieu thereof in respect of anything done or suffered to be done by the Trustee or the Company in reliance thereon, whether or not notation of such action is made upon such Security.

(e) Without limiting the foregoing, a Holder entitled to take any action hereunder with regard to any particular Security may do so with regard to all or any part of the principal amount of such Security or by one or more duly appointed agents each of which may do so pursuant to such appointment with regard to all or any part of such principal amount.

(f) Except as set forth in paragraph (g) of this *Section 1.4*, the Company may set any day as a record date for the purpose of determining the Holders of Outstanding Securities entitled to give, make or take any request, demand, authorization, direction, notice, consent, waiver or other action provided or permitted by this Indenture to be given, made or taken by Holders of Securities. If any record date is set pursuant to this paragraph, the Holders of Outstanding Securities on such record date, and no other Holders, shall be entitled to take the relevant action, whether or not such Holders remain Holders after such record date; *provided*, that no such action shall be effective hereunder unless taken on or prior to the applicable Expiration Date (as defined in *Section 1.4(h)*) by Holders of the requisite principal amount of Outstanding Securities on such record date. Nothing in this paragraph shall be construed to prevent the Company from setting a new record date for any action for which a record date has previously been set pursuant to this paragraph (whereupon the record date previously set shall automatically and with no action by any Person be canceled and of no effect). Promptly after any record date is set pursuant to this paragraph, the Company, at its own expense, shall cause notice of such record date, the proposed action by Holders and the applicable Expiration Date to be given to the Trustee in writing and to each Holder of Securities in the manner set forth in *Section 1.6*.

(g) The Trustee may set any day as a record date for the purpose of determining the Holders of Outstanding Securities entitled to join in the giving or making of (i) any Notice of Default, (ii) any declaration of acceleration or rescission or annulment thereof referred to in *Section 5.2*, (iii) any request to institute proceedings referred to in *Section 5.7(b)* or (iv) any direction referred to in *Section 5.12*. If any record date is set pursuant to this paragraph, the Holders of Outstanding Securities on such record date, and no other Holders, shall be entitled to join in such notice, declaration, request or direction, whether or not such Holders remain Holders after such record date; *provided*, that no such action shall be effective hereunder unless taken on or prior to the applicable Expiration Date by Holders of the requisite principal amount of Outstanding Securities on such record date. Nothing in this paragraph shall be construed to prevent the Trustee from setting a new record date for any action for which a record date has previously been set pursuant to this paragraph (whereupon the record date previously

set shall automatically and with no action by any Person be canceled and of no effect). Promptly after any record date is set pursuant to this paragraph, the Trustee, at the Company's expense, shall cause notice of such record date, the proposed action by Holders and the applicable Expiration Date to be given to the Company in writing and to each Holder of Securities in the manner set forth in *Section 1.6*.

(h) With respect to any record date set pursuant to paragraph (f) or (g) of this *Section 1.4*, the party hereto that sets such record date may designate any day as the "*Expiration Date*" and from time to time may change the Expiration Date to any earlier or later day; *provided*, that no such change shall be effective unless notice of the proposed new Expiration Date is given to the other party hereto in writing, and to each Holder of Securities in the manner set forth in *Section 1.6*, on or prior to the existing Expiration Date. If an Expiration Date is not designated with respect to any record date set pursuant to this *Section 1.4*, the party hereto that set such record date shall be deemed to have initially designated the ninetieth (90<sup>th</sup>) day after such record date as the Expiration Date with respect thereto, subject to its right to change the Expiration Date as provided in this paragraph. Notwithstanding the foregoing, no Expiration Date shall be later than the one hundred eightieth (180<sup>th</sup>) day after the applicable record date.

#### SECTION 1.5. *Notices, Etc. to Trustee and Company.*

Any request, demand, authorization, direction, notice, consent, waiver, Act of Holders, or other document provided or permitted by this Indenture to be made upon, given or furnished to, or filed with:

(a) the Trustee by any Holder, any holder of Preferred Securities or the Company shall be sufficient for every purpose hereunder if made, given, furnished or filed in writing to or with and received by the Trustee at its Corporate Trust Office, or

(b) the Company by the Trustee, any Holder or any holder of Preferred Securities shall be sufficient for every purpose hereunder if in writing and mailed, first class, postage prepaid, to the Company addressed to it at American Equity Investment Life Holding Company, 5000 Westown Parkway, Suite 440, West Des Moines, IA 50266, Attention: Wendy Carlson, Chief Financial Officer or at any other address previously furnished in writing to the Trustee by the Company.

#### SECTION 1.6. *Notice to Holders; Waiver.*

Where this Indenture provides for notice to Holders of any event, such notice shall be sufficiently given (unless otherwise herein expressly provided) if in writing and mailed, first class, postage prepaid, to each Holder affected by such event to the address of such Holder as it appears in the Securities Register, not later than the latest date, and not earlier than the earliest date, prescribed for the giving of such notice. If, by reason of the suspension of or irregularities in regular mail service or for any other reason, it shall be impossible or impracticable to mail notice of any event to Holders when said notice is required to be given pursuant to any provision of this Indenture, then any manner of giving such notice as shall be satisfactory to the Trustee shall be deemed to be a sufficient giving of such notice. In any case where notice to Holders is given by mail, neither the failure to mail such notice, nor any defect in any notice so mailed, to any particular Holder shall affect the sufficiency of such notice with respect to other Holders. Where this Indenture provides for notice in any manner, such notice may be waived in writing by the Person entitled to receive such notice, either before or after the event, and such waiver shall be the equivalent of such notice. Waivers of notice by Holders shall be filed with the Trustee, but such filing shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

#### SECTION 1.7. *Effect of Headings and Table of Contents.*

The Article and Section headings herein and the Table of Contents are for convenience only and shall not affect the construction of this Indenture.

#### SECTION 1.8. *Successors and Assigns.*

This Indenture shall be binding upon and shall inure to the benefit of any successor to the Company and the Trustee, including any successor by operation of law. Except in connection with a transaction involving the Company that is permitted under *Article VIII* and pursuant to which the assignee agrees in writing to perform the Company's obligations hereunder, the Company shall not assign its obligations hereunder.



SECTION 1.9. *Separability Clause.*

If any provision in this Indenture or in the Securities shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby, and there shall be deemed substituted for the provision at issue a valid, legal and enforceable provision as similar as possible to the provision at issue.

SECTION 1.10. *Benefits of Indenture.*

Nothing in this Indenture or in the Securities, express or implied, shall give to any Person, other than the parties hereto and their successors and assigns, the holders of Senior Debt, the Holders of the Securities and, to the extent expressly provided in *Sections 5.2, 5.8, 5.9, 5.11, 5.13, 9.2 and 10.7*, the holders of Preferred Securities, any benefit or any legal or equitable right, remedy or claim under this Indenture.

SECTION 1.11. *Governing Law.*

**This Indenture and the rights and obligations of each of the Holders, the Company and the Trustee shall be construed and enforced in accordance with and governed by the laws of the State of New York without reference to its conflict of laws provisions (other than Section 5-1401 of the General Obligations Law).**

SECTION 1.12. *Submission to Jurisdiction.*

ANY LEGAL ACTION OR PROCEEDING BY OR AGAINST ANY PARTY HERETO OR WITH RESPECT TO OR ARISING OUT OF THIS INDENTURE MAY BE BROUGHT IN OR REMOVED TO THE COURTS OF THE STATE OF NEW YORK, IN AND FOR THE COUNTY OF NEW YORK, OR OF THE UNITED STATES OF AMERICA FOR THE SOUTHERN DISTRICT OF NEW YORK (IN EACH CASE SITTING IN THE BOROUGH OF MANHATTAN). BY EXECUTION AND DELIVERY OF THIS INDENTURE, EACH PARTY ACCEPTS, FOR ITSELF AND IN RESPECT OF ITS PROPERTY, GENERALLY AND UNCONDITIONALLY, THE JURISDICTION OF THE AFORESAID COURTS (AND COURTS OF APPEALS THEREFROM) FOR LEGAL PROCEEDINGS ARISING OUT OF OR IN CONNECTION WITH THIS INDENTURE.

SECTION 1.13. *Non-Business Days.*

If any Interest Payment Date, Redemption Date or Stated Maturity of any Security shall not be a Business Day, then (notwithstanding any other provision of this Indenture or the Securities) payment of interest, premium, if any, or principal or other amounts in respect of such Security shall not be made on such date, but shall be made on the next succeeding Business Day (and no interest shall accrue in respect of the amounts whose payment is so delayed for the period from and after such Interest Payment Date, Redemption Date or Stated Maturity, as the case may be, until such next succeeding Business Day) except that, if such Business Day falls in the next succeeding calendar year, such payment shall be made on the immediately preceding Business Day, in each case with the same force and effect as if made on the Interest Payment Date or Redemption Date or at the Stated Maturity.

## SECURITY FORMS

SECTION 2.1. *Form of Security.*

Any Security issued hereunder shall be in substantially the following form:

## AMERICAN EQUITY INVESTMENT LIFE HOLDING COMPANY

## Floating Rate Junior Subordinated Note due 2034

No.

\$20,620,000

American Equity Investment Life Holding Company, a corporation organized and existing under the laws of Iowa (hereinafter called the "*Company*," which term includes any successor Person under the Indenture hereinafter referred to), for value received, hereby promises to pay to \_\_\_\_\_, or registered assigns, the principal sum of Twenty Million Six Hundred Twenty Thousand Dollars (\$20,620,000) or such other principal amount represented hereby as may be set forth in the records of the Securities Registrar hereinafter referred to in accordance with the Indenture on December 15, 2034. The Company further promises to pay interest on said principal sum from December 22, 2004, or from the most recent Interest Payment Date to which interest has been paid or duly provided for, quarterly (subject to deferral as set forth herein) in arrears on March 15, June 15, September 15, and December 15 of each year, commencing March 15, 2005, or if any such day is not a Business Day, on the next succeeding Business Day (and no interest shall accrue in respect of the amounts whose payment is so delayed for the period from and after such Interest Payment Date until such next succeeding Business Day), except that, if such Business Day falls in the next succeeding calendar year, such payment shall be made on the immediately preceding Business Day, in each case, with the same force and effect as if made on the Interest Payment Date, at a variable rate equal to LIBOR plus 3.75% per annum, together with Additional Tax Sums, if any, as provided in *Section 10.5* of the Indenture, until the principal hereof is paid or duly provided for or made available for payment; *provided, further*, that any overdue principal, premium, if any, or Additional Tax Sums and any overdue installment of interest shall bear Additional Interest at a variable rate equal to LIBOR plus 3.75% per annum (to the extent that the payment of such interest shall be legally enforceable), compounded quarterly, from the dates such amounts are due until they are paid or made available for payment, and such interest shall be payable on demand.

The amount of interest payable shall be computed on the basis of a 360-day year and the actual number of days elapsed in the relevant interest period. The interest so payable, and punctually paid or duly provided for, on any Interest Payment Date shall, as provided in the Indenture, be paid to the Person in whose name this Security (or one or more Predecessor Securities) is registered at the close of business on the Regular Record Date for such interest installment. Any such interest not so punctually paid or duly provided for shall forthwith cease to be payable to the Holder on such Regular Record Date and may either be paid to the Person in whose name this Security (or one or more Predecessor Securities) is registered at the close of business on a Special Record Date for the payment of such Defaulted Interest to be fixed by the Trustee, notice whereof shall be given to Holders of Securities not less than ten (10) days prior to such Special Record Date, or be paid at any time in any other lawful manner not inconsistent with the requirements of any securities exchange on which the Securities may be listed, and upon such notice as may be required by such exchange, all as more fully provided in the Indenture.

So long as no Event of Default has occurred and is continuing, the Company shall have the right, at any time and from time to time during the term of this Security, to defer the payment of interest on this Security for a period of up to twenty (20) consecutive quarterly interest payment periods (each such period, an "*Extension Period*"), during which Extension Period(s), no interest shall be due and payable (except any Additional Tax Sums that may be due and payable). No Extension Period shall end on a date other than an Interest Payment Date, and no Extension Period shall extend beyond the Stated Maturity of the principal of this Security. No interest shall be due and payable during an Extension Period (except any Additional Tax Sums that may be due and payable), except at the end thereof, but each installment of interest that would otherwise have been due and payable during such Extension Period shall bear Additional Interest (to the extent payment of such interest would be legally enforceable) at a variable rate equal to LIBOR plus 3.75% per annum, compounded quarterly, from the dates on which amounts would have otherwise been due and payable until paid or made available for payment. At the end of any such Extension Period, the Company shall pay all interest then accrued and unpaid on this Security, together with such Additional Interest. Prior to the termination of any such Extension Period, the Company may

further defer the payment of interest; *provided*, that (i) all such previous and further extensions comprising such Extension Period do not exceed twenty (20) quarterly interest payment periods, (ii) no Extension Period shall end on a date other than an Interest Payment Date and (iii) no Extension Period shall extend beyond the Stated Maturity of the principal of this Security. Upon the termination of any such Extension Period and upon the payment of all accrued and unpaid interest and any Additional Interest then due on any Interest Payment Date, the Company may elect to begin a new Extension Period; *provided*, that (i) such Extension Period does not exceed twenty (20) quarterly interest payment periods, (ii) no Extension Period shall end on a date other than an Interest Payment Date and (iii) no Extension Period shall extend beyond the Stated Maturity of the principal of this Security. The Company shall give the Holder of this Security and the Trustee written notice of its election to begin any such Extension Period at least one Business Day prior to the next succeeding Interest Payment Date on which interest on this Security would be payable but for such deferral or, so long as this Security is held by the Trust, at least one Business Day prior to the earlier of (i) the next succeeding date on which Distributions on the Preferred Securities of American Equity Capital Trust VIII would be payable but for such deferral and (ii) the date on which the Property Trustee of such Trust is required to give notice to any securities exchange or other applicable self-regulatory organization or to holders of such Preferred Securities of the record date for the payment of such Distributions.

During any such Extension Period, the Company shall not (i) declare or pay any dividends or distributions on, or redeem, purchase, acquire or make a liquidation payment with respect to, any of the Company's capital stock or (ii) make any payment of principal of or any interest or premium, if any, on or repay, repurchase or redeem any debt securities of the Company that rank *pari passu* in all respects with or junior in interest to this Security (other than (a) repurchases, redemptions or other acquisitions of shares of capital stock of the Company in connection with (1) any employment contract, benefit plan or other similar arrangement with or for the benefit of any one or more employees, officers, directors or consultants, (2) a dividend reinvestment or stockholder stock purchase plan and (3) the issuance of capital stock of the Company (or securities convertible into or exercisable for such capital stock) as consideration in an acquisition transaction entered into prior to the applicable Extension Period, (b) as a result of an exchange or conversion of any class or series of the Company's capital stock (or any capital stock of a Subsidiary of the Company) for any class or series of the Company's capital stock or of any class or series of the Company's indebtedness for any class or series of the Company's capital stock, (c) the purchase of fractional interests in shares of the Company's capital stock pursuant to the conversion or exchange provisions of such capital stock or the security being converted or exchanged, (d) any declaration of a dividend in connection with any Rights Plan, the issuance of rights, stock or other property under any Rights Plan, or the redemption or repurchase of rights pursuant thereto or (e) any dividend in the form of stock, warrants, options or other rights where the dividend stock or the stock issuable upon exercise of such warrants, options or other rights is the same stock as that on which the dividend is being paid or ranks *pari passu* with or junior to such stock).

Payment of principal of, premium, if any, and interest on this Security shall be made in such coin or currency of the United States of America as at the time of payment is legal tender for payment of public and private debts. Payments of principal, premium, if any, and interest due at the Maturity of this Security shall be made at the Place of Payment upon surrender of such Securities to the Paying Agent, and payments of interest shall be made, subject to such surrender where applicable, by wire transfer at such place and to such account at a banking institution in the United States as may be designated in writing to the Paying Agent at least ten (10) Business Days prior to the date for payment by the Person entitled thereto unless proper written transfer instructions have not been received by the relevant record date, in which case such payments shall be made by check mailed to the address of such Person as such address shall appear in the Security Register. Notwithstanding the foregoing, so long as the Holder of this Security is the Property Trustee, the payment of the principal of (and premium, if any) and interest (including any overdue installment of interest and Additional Tax Sums, if any) on this Security will be made at such place and to such account as may be designated by the Property Trustee.

The indebtedness evidenced by this Security is, to the extent provided in the Indenture, subordinate and junior in right of payment to the prior payment in full of all Senior Debt, and this Security is issued subject to the provisions of the Indenture with respect thereto. Each Holder of this Security, by accepting the same, (a) agrees to and shall be bound by such provisions, (b) authorizes and directs the Trustee on his or her behalf to take such actions as may be necessary or appropriate to effectuate the subordination so provided and (c) appoints the Trustee his or her attorney-in-fact for any and all such purposes. Each Holder hereof, by his or her acceptance hereof, waives all notice of the acceptance of the subordination provisions contained herein and in the Indenture by each holder of Senior Debt, whether now outstanding or hereafter incurred, and waives reliance by each such holder upon said provisions.

Unless the certificate of authentication hereon has been executed by the Trustee by manual signature, this Security shall not be entitled to any benefit under the Indenture or be valid or obligatory for any purpose.

#### [FORM OF REVERSE OF SECURITY]

This Security is one of a duly authorized issue of securities of the Company (the "*Securities*") issued under the Junior Subordinated Indenture, dated as of December 22, 2004 (the "*Indenture*"), between the Company and JPMorgan Chase Bank, N.A., as Trustee (in such capacity, the "*Trustee*," which term includes any successor trustee under the Indenture), to which Indenture and all indentures supplemental thereto reference is hereby made for a statement of the rights, limitations of rights, duties and immunities thereunder of the Company, the Trustee, the holders of Senior Debt, the Holders of the Securities and the holders of the Preferred Securities, and of the terms upon which the Securities are, and are to be, authenticated and delivered.

All terms used in this Security that are defined in the Indenture or in the Amended and Restated Trust Agreement, dated as of December 22, 2004 (as modified, amended or supplemented from time to time, the "*Trust Agreement*"), relating to the American Equity Capital Trust VIII (the "*Trust*") among the Company, as Depositor, the Trustees named therein and the Holders from time to time of the Trust Securities issued pursuant thereto, shall have the meanings assigned to them in the Indenture or the Trust Agreement, as the case may be.

The Company may, on any Interest Payment Date, at its option, upon not less than thirty (30) days' nor more than sixty (60) days' written notice to the Holders of the Securities (unless a shorter notice period shall be satisfactory to the Trustee) on or after December 15, 2009 and subject to the terms and conditions of *Article XI* of the Indenture, redeem this Security in whole at any time or in part from time to time at a Redemption Price equal to one hundred percent (100%) of the principal amount hereof, together, in the case of any such redemption, with accrued interest, including any Additional Interest, through but excluding the date fixed as the Redemption Date; *provided*, that the Company shall have received the prior approval of any Applicable Insurance Regulatory Authority then required.

In addition, upon the occurrence and during the continuation of a Special Event, the Company may, at its option, upon not less than thirty (30) days' nor more than sixty (60) days' written notice to the Holders of the Securities (unless a shorter notice period shall be satisfactory to the Trustee), redeem this Security, in whole but not in part, subject to the terms and conditions of *Article XI* of the Indenture at a Redemption Price equal to one hundred seven and one half percent (107.5%) of the principal amount hereof, together, in the case of any such redemption, with accrued interest, including any Additional Interest, through but excluding the date fixed as the Redemption Date; *provided*, that the Company shall have received the prior approval of any Applicable Insurance Regulatory Authority then required.

In the event of redemption of this Security in part only, a new Security or Securities for the unredeemed portion hereof will be issued in the name of the Holder hereof upon the cancellation hereof. If less than all the Securities are to be redeemed, the particular Securities to be redeemed shall be selected not more than sixty (60) days prior to the Redemption Date by the Trustee from the Outstanding Securities not previously called for redemption, by such method as the Trustee shall deem fair and appropriate and which may provide for the selection for redemption of a portion of the principal amount of any Security.

The Indenture permits, with certain exceptions as therein provided, the Company and the Trustee at any time to enter into a supplemental indenture or indentures for the purpose of modifying in any manner the rights and obligations of the Company and of the Holders of the Securities, with the consent of the Holders of not less than a majority in principal amount of the Outstanding Securities. The Indenture also contains provisions permitting Holders of specified percentages in principal amount of the Securities, on behalf of the Holders of all Securities, to waive compliance by the Company with certain provisions of the Indenture and certain past defaults under the Indenture and their consequences. Any such consent or waiver by the Holder of this Security shall be conclusive and binding upon such Holder and upon all future Holders of this Security and of any Security issued upon the registration of transfer hereof or in exchange herefor or in lieu hereof, whether or not notation of such consent or waiver is made upon this Security.

No reference herein to the Indenture and no provision of this Security or of the Indenture shall alter or impair the obligation of the Company, which is absolute and unconditional, to pay the principal of and any premium, if any, and interest, including any Additional Interest, on this Security at the times, place and rate, and in the coin or currency, herein prescribed.

As provided in the Indenture and subject to certain limitations therein set forth, the transfer of this Security is registrable in the Securities Register, upon surrender of this Security for registration of transfer at the office or agency of the Company maintained for such purpose, duly endorsed by, or accompanied by a written instrument of transfer in form satisfactory to the Company and the Securities Registrar and duly executed by, the Holder hereof or such Holder's attorney duly authorized in writing, and thereupon one or more new Securities, of like tenor, of authorized denominations and for the same aggregate principal amount, will be issued to the designated transferee or transferees.

The Securities are issuable only in registered form without coupons in minimum denominations of \$100,000 and any integral multiple of \$1,000 in excess thereof. As provided in the Indenture and subject to certain limitations therein set forth, Securities are exchangeable for a like aggregate principal amount of Securities and of like tenor of a different authorized denomination, as requested by the Holder surrendering the same.

No service charge shall be made for any such registration of transfer or exchange, but the Company may require payment of a sum sufficient to cover any tax or other governmental charge payable in connection therewith.

The Company, the Trustee and any agent of the Company or the Trustee may treat the Person in whose name this Security is registered as the owner hereof for all purposes, whether or not this Security be overdue, and neither the Company, the Trustee nor any such agent shall be affected by notice to the contrary.

The Company and, by its acceptance of this Security or a beneficial interest therein, the Holder of, and any Person that acquires a beneficial interest in, this Security agree that, for United States federal, state and local tax purposes, it is intended that this Security constitute indebtedness.

**This Security shall be construed and enforced in accordance with and governed by the laws of the State of New York, without reference to its conflict of laws provisions (other than Section 5-1401 of the General Obligations Law).**

IN WITNESS WHEREOF, the Company has caused this instrument to be duly executed on this                      day of                      , 20                      .

**AMERICAN EQUITY INVESTMENT LIFE HOLDING COMPANY**

By: \_\_\_\_\_  
Name:  
Title:

**SECTION 2.2. *Restricted Legend.***

(a) Any Security issued hereunder shall bear a legend in substantially the following form:

**"[IF THE SECURITY IS A GLOBAL SECURITY INSERT: THIS SECURITY IS A GLOBAL SECURITY WITHIN THE MEANING OF THE INDENTURE HEREINAFTER REFERRED TO AND IS REGISTERED IN THE NAME OF THE DEPOSITORY TRUST COMPANY ("DTC") OR A NOMINEE OF DTC. THIS SECURITY IS EXCHANGEABLE FOR SECURITIES REGISTERED IN THE NAME OF A PERSON OTHER THAN DTC OR ITS NOMINEE ONLY IN THE LIMITED CIRCUMSTANCES DESCRIBED IN THE INDENTURE, AND NO TRANSFER OF THIS SECURITY (OTHER THAN A TRANSFER OF THIS SECURITY AS A WHOLE BY DTC TO A NOMINEE OF DTC OR BY A NOMINEE OF DTC TO DTC OR ANOTHER NOMINEE OF DTC) MAY BE REGISTERED EXCEPT IN LIMITED CIRCUMSTANCES.**

UNLESS THIS SECURITY IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF DTC TO THE ISSUER OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY SECURITY ISSUED IS REGISTERED IN THE NAME OF SIGLER & CO. OR IN SUCH OTHER NAME AS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT HEREON IS MADE TO SIGLER & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL

INASMUCH AS THE REGISTERED OWNER HEREOF, SIGLER & CO., HAS AN INTEREST HEREIN.]

THE SECURITIES REPRESENTED BY THIS CERTIFICATE WERE ORIGINALLY ISSUED IN A TRANSACTION EXEMPT FROM REGISTRATION UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND SUCH SECURITIES, AND ANY INTEREST THEREIN, MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED IN THE ABSENCE OF SUCH REGISTRATION OR AN APPLICABLE EXEMPTION THEREFROM. EACH PURCHASER OF ANY SECURITIES IS HEREBY NOTIFIED THAT THE SELLER OF THE SECURITIES MAY BE RELYING ON THE EXEMPTION FROM THE PROVISIONS OF SECTION 5 OF THE SECURITIES ACT PROVIDED BY RULE 144A UNDER THE SECURITIES ACT.

THE HOLDER OF THE SECURITIES REPRESENTED BY THIS CERTIFICATE AGREES FOR THE BENEFIT OF THE COMPANY THAT (A) SUCH SECURITIES MAY BE OFFERED, RESOLD OR OTHERWISE TRANSFERRED ONLY (I) TO THE COMPANY, (II) TO A PERSON WHOM THE SELLER REASONABLY BELIEVES IS A "QUALIFIED INSTITUTIONAL BUYER" (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT) IN A TRANSACTION MEETING THE REQUIREMENTS OF RULE 144A, (III) TO AN INSTITUTIONAL "ACCREDITED INVESTOR" WITHIN THE MEANING OF SUBPARAGRAPH (a) (1), (2), (3) OR (7) OF RULE 501 UNDER THE SECURITIES ACT THAT IS ACQUIRING THE SECURITY FOR ITS OWN ACCOUNT, OR FOR THE ACCOUNT OF AN "ACCREDITED INVESTOR," FOR INVESTMENT PURPOSES AND NOT WITH A VIEW TO, OR FOR OFFER OR SALE IN CONNECTION WITH, ANY DISTRIBUTION IN VIOLATION OF THE SECURITIES ACT, (IV) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR (V) PURSUANT TO AN EXEMPTION FROM THE SECURITIES ACT, IN EACH CASE IN ACCORDANCE WITH ANY APPLICABLE SECURITIES LAWS OF ANY STATE OF THE UNITED STATES OR ANY OTHER APPLICABLE JURISDICTION AND, IN THE CASE OF (III) OR (V), SUBJECT TO THE RIGHT OF THE COMPANY TO REQUIRE AN OPINION OF COUNSEL AND OTHER INFORMATION SATISFACTORY TO IT AND (B) THE HOLDER WILL NOTIFY ANY PURCHASER OF ANY SECURITIES FROM IT OF THE RESALE RESTRICTIONS REFERRED TO IN (A) ABOVE.

THE SECURITIES WILL BE ISSUED AND MAY BE TRANSFERRED ONLY IN BLOCKS HAVING AN AGGREGATE PRINCIPAL AMOUNT OF NOT LESS THAN \$100,000. TO THE FULLEST EXTENT PERMITTED BY LAW, ANY ATTEMPTED TRANSFER OF SECURITIES, OR ANY INTEREST THEREIN, IN A BLOCK HAVING AN AGGREGATE PRINCIPAL AMOUNT OF LESS THAN \$100,000 AND MULTIPLES OF \$1,000 IN EXCESS THEREOF SHALL BE DEEMED TO BE VOID AND OF NO LEGAL EFFECT WHATSOEVER. TO THE FULLEST EXTENT PERMITTED BY LAW, ANY SUCH PURPORTED TRANSFEREE SHALL BE DEEMED NOT TO BE THE HOLDER OF SUCH SECURITIES FOR ANY PURPOSE, INCLUDING, BUT NOT LIMITED TO, THE RECEIPT OF PRINCIPAL OF OR INTEREST ON SUCH SECURITIES, OR ANY INTEREST THEREIN, AND SUCH PURPORTED TRANSFEREE SHALL BE DEEMED TO HAVE NO INTEREST WHATSOEVER IN SUCH SECURITIES.

THE HOLDER OF THIS SECURITY, OR ANY INTEREST THEREIN, BY ITS ACCEPTANCE HEREOF OR THEREOF ALSO AGREES, REPRESENTS AND WARRANTS THAT IT IS NOT AN EMPLOYEE BENEFIT, INDIVIDUAL RETIREMENT ACCOUNT OR OTHER PLAN OR ARRANGEMENT SUBJECT TO TITLE I OF THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974, AS AMENDED ("ERISA"), OR SECTION 4975 OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED (THE "CODE") (EACH A "PLAN"), OR AN ENTITY WHOSE UNDERLYING ASSETS INCLUDE "PLAN ASSETS" BY REASON OF ANY PLAN'S INVESTMENT IN THE ENTITY, AND NO PERSON INVESTING "PLAN ASSETS" OF ANY PLAN MAY ACQUIRE OR HOLD THIS SECURITY OR ANY INTEREST THEREIN. ANY PURCHASER OR HOLDER OF THE SECURITIES OR ANY INTEREST THEREIN WILL BE DEEMED TO HAVE REPRESENTED BY ITS PURCHASE AND HOLDING THEREOF THAT IT IS NOT AN EMPLOYEE BENEFIT PLAN WITHIN THE MEANING OF SECTION 3(3) OF ERISA, OR A PLAN TO WHICH SECTION 4975 OF THE CODE IS APPLICABLE, A TRUSTEE OR OTHER PERSON ACTING ON BEHALF OF AN EMPLOYEE BENEFIT PLAN OR PLAN, OR ANY OTHER PERSON OR ENTITY USING THE ASSETS OF ANY EMPLOYEE BENEFIT PLAN OR PLAN TO FINANCE SUCH PURCHASE."

(b) The above legends shall not be removed from any Security unless there is delivered to the Company satisfactory evidence, which may include an Opinion of Counsel, as may be reasonably required to ensure that any future transfers thereof may be made without restriction under or violation of the provisions of the Securities Act and other applicable law. Upon provision of such satisfactory evidence, the Company shall execute and deliver to the Trustee, and the Trustee shall deliver, upon receipt of a Company Order directing it to do so, a Security that does not bear the legend.

SECTION 2.3. *Form of Trustee's Certificate of Authentication.*

The Trustee's certificate of authentication shall be in substantially the following form:

This is one of the Securities referred to in the within-mentioned Indenture.

Dated:

JPMORGAN CHASE BANK, N.A., as Trustee

By: \_\_\_\_\_  
*Authorized signatory*

SECTION 2.4. *Temporary Securities.*

(a) Pending the preparation of definitive Securities, the Company may execute, and upon Company Order the Trustee shall authenticate and deliver, temporary Securities that are printed, lithographed, typewritten, mimeographed or otherwise produced, in any denomination, substantially of the tenor of the definitive Securities in lieu of which they are issued and with such appropriate insertions, omissions, substitutions and other variations as the officers executing such Securities may determine, as evidenced by their execution of such Securities.

(b) If temporary Securities are issued, the Company will cause definitive Securities to be prepared without unreasonable delay. After the preparation of definitive Securities, the temporary Securities shall be exchangeable for definitive Securities upon surrender of the temporary Securities at the office or agency of the Company designated for that purpose without charge to the Holder. Upon surrender for cancellation of any one or more temporary Securities, the Company shall execute and the Trustee shall authenticate and deliver in exchange therefor one or more definitive Securities of any authorized denominations having the same Original Issue Date and Stated Maturity and having the same terms as such temporary Securities. Until so exchanged, the temporary Securities shall in all respects be entitled to the same benefits under this Indenture as definitive Securities.

SECTION 2.5. *Definitive Securities.*

The Securities issued on the Original Issue Date shall be in definitive form. The definitive Securities shall be printed, lithographed or engraved, or produced by any combination of these methods, if required by any securities exchange on which the Securities may be listed, on a steel engraved border or steel engraved borders or may be produced in any other manner permitted by the rules of any securities exchange on which the Securities may be listed, all as determined by the officers executing such Securities, as evidenced by their execution of such Securities.

## THE SECURITIES

SECTION 3.1. *Payment of Principal and Interest.*

(a) The unpaid principal amount of the Securities shall bear interest at a variable rate of LIBOR plus 3.75% per annum until paid or duly provided for, such interest to accrue from the Original Issue Date or from the most recent Interest Payment Date to which interest has been paid or duly provided for, and any overdue principal, premium, if any, or Additional Tax Sums and any overdue installment of interest shall bear Additional Interest at the rate equal to a variable rate of LIBOR plus 3.75% per annum, compounded quarterly from the dates such amounts are due until they are paid or funds for the payment thereof are made available for payment.

(b) Interest and Additional Interest on any Security that is payable, and is punctually paid or duly provided for, on any Interest Payment Date shall be paid to the Person in whose name that Security (or one or more Predecessor Securities) is registered at the close of business on the Regular Record Date for such interest, except that interest and any Additional Interest payable on the Stated Maturity (or any date of principal repayment upon early maturity) of the principal of a Security or on a Redemption Date shall be paid to the Person to whom principal is paid. The initial payment of interest on any Security that is issued between a Regular Record Date and the related Interest Payment Date shall be payable as provided in such Security.

(c) Any interest on any Security that is due and payable, but is not timely paid or duly provided for, on any Interest Payment Date for Securities (herein called "*Defaulted Interest*") shall forthwith cease to be payable to the registered Holder on the relevant Regular Record Date by virtue of having been such Holder, and such Defaulted Interest may be paid by the Company, at its election in each case, as provided in paragraph (i) or (ii) below:

(i) The Company may elect to make payment of any Defaulted Interest to the Persons in whose names the Securities (or their respective Predecessor Securities) are registered at the close of business on a Special Record Date for the payment of such Defaulted Interest (a "*Special Record Date*"), which shall be fixed in the following manner. At least thirty (30) days prior to the date of the proposed payment, the Company shall notify the Trustee in writing of the amount of Defaulted Interest proposed to be paid on each Security and the date of the proposed payment, and at the same time the Company shall deposit with the Trustee an amount of money equal to the aggregate amount proposed to be paid in respect of such Defaulted Interest or shall make arrangements satisfactory to the Trustee for such deposit prior to the date of the proposed payment, such money when deposited to be held in trust for the benefit of the Persons entitled to such Defaulted Interest. Thereupon the Trustee shall fix a Special Record Date for the payment of such Defaulted Interest, which shall be not more than fifteen (15) days and not less than ten (10) days prior to the date of the proposed payment and not less than ten (10) days after the receipt by the Trustee of the notice of the proposed payment. The Trustee shall promptly notify the Company of such Special Record Date and, in the name and at the expense of the Company, shall cause notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor to be mailed, first class, postage prepaid, to each Holder of a Security at the address of such Holder as it appears in the Securities Register not less than ten (10) days prior to such Special Record Date. Notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor having been so mailed, such Defaulted Interest shall be paid to the Persons in whose names the Securities (or their respective Predecessor Securities) are registered on such Special Record Date; or

(ii) The Company may make payment of any Defaulted Interest in any other lawful manner not inconsistent with the requirements of any securities exchange on which the Securities may be listed and, upon such notice as may be required by such exchange (or by the Trustee if the Securities are not listed), if, after notice given by the Company to the Trustee of the proposed payment pursuant to this clause, such payment shall be deemed practicable by the Trustee.

(d) Payments of interest on the Securities shall include interest accrued to but excluding the respective Interest Payment Dates. Interest payments for the Securities shall be computed and paid on the basis of a 360-day year and the actual number of days elapsed in the relevant interest period.

(e) Payment of principal of, premium, if any, and interest on the Securities shall be made in such coin or currency of the United States of America as at the time of payment is legal tender for payment of public and private debts. Payments of principal, premium, if any, and interest due at the Maturity of such Securities shall be made at the Place of Payment upon surrender of such Securities to the Paying Agent and payments of interest



shall be made subject to such surrender where applicable, by wire transfer at such place and to such account at a banking institution in the United States as may be designated in writing to the Paying Agent at least ten (10) Business Days prior to the date for payment by the Person entitled thereto unless proper written transfer instructions have not been received by the relevant record date, in which case such payments shall be made by check mailed to the address of such Person as such address shall appear in the Security Register. Notwithstanding the foregoing, so long as the holder of this Security is the Property Trustee, the payment of the principal of (and premium, if any) and interest (including any overdue installment of interest and Additional Tax Sums, if any) on this Security will be made at such place and to such account as may be designated by the Property Trustee.

(f) Subject to the foregoing provisions of this *Section 3.1*, each Security delivered under this Indenture upon transfer of or in exchange for or in lieu of any other Security shall carry the rights to interest accrued and unpaid, and to accrue, that were carried by such other Security.

### SECTION 3.2. *Denominations.*

The Securities shall be in registered form without coupons and shall be issuable in minimum denominations of \$100,000 and any integral multiple of \$1,000 in excess thereof.

### SECTION 3.3. *Execution, Authentication, Delivery and Dating.*

(a) At any time and from time to time after the execution and delivery of this Indenture, the Company may deliver Securities in an aggregate principal amount (including all then Outstanding Securities) not in excess of Twenty Million One Hundred Ten Thousand Dollars (\$20,110,000) executed by the Company to the Trustee for authentication, together with a Company Order for the authentication and delivery of such Securities, and the Trustee in accordance with the Company Order shall authenticate and deliver such Securities. In authenticating such Securities, and accepting the additional responsibilities under this Indenture in relation to such Securities, the Trustee shall be entitled to receive, and shall be fully protected in relying upon:

(i) a copy of any Board Resolution relating thereto; and

(ii) an Opinion of Counsel stating that: (1) such Securities, when authenticated and delivered by the Trustee and issued by the Company in the manner and subject to any conditions specified in such Opinion of Counsel, will constitute, and the Indenture constitutes, valid and legally binding obligations of the Company, each enforceable in accordance with its terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar laws of general applicability relating to or affecting creditors' rights and to general equity principles; (2) the Securities have been duly authorized and executed by the Company and have been delivered to the Trustee for authentication in accordance with this Indenture; (3) the Securities are not required to be registered under the Securities Act; and (4) the Indenture is not required to be qualified under the Trust Indenture Act.

(b) The Securities shall be executed on behalf of the Company by its Chairman of the Board, its Vice Chairman of the Board, its Chief Executive Officer, its President or one of its Vice Presidents. The signature of any of these officers on the Securities may be manual or facsimile. Securities bearing the manual or facsimile signatures of individuals who were at any time the proper officers of the Company shall bind the Company, notwithstanding that such individuals or any of them have ceased to hold such offices prior to the authentication and delivery of such Securities or did not hold such offices at the date of such Securities.

(c) No Security shall be entitled to any benefit under this Indenture or be valid or obligatory for any purpose, unless there appears on such Security a certificate of authentication substantially in the form provided for herein executed by the Trustee by the manual signature of one of its authorized signatories, and such certificate upon any Security shall be conclusive evidence, and the only evidence, that such Security has been duly authenticated and delivered hereunder. Notwithstanding the foregoing, if any Security shall have been authenticated and delivered hereunder but never issued and sold by the Company, and the Company shall deliver such Security to the Trustee for cancellation as provided in *Section 3.8*, for all purposes of this Indenture such Security shall be deemed never to have been authenticated and delivered hereunder and shall never be entitled to the benefits of this Indenture.

(d) Each Security shall be dated the date of its authentication.

### SECTION 3.4. *Global Securities.*

(a) Upon the election of the Holder after the Original Issue Date, which election need not be in writing, the Securities owned by such Holder shall be issued in the form of one or more Global Securities registered in the

name of the Depositary or its nominee. Each Global Security issued under this Indenture shall be registered in the name of the Depositary designated by the Company for such Global Security or a nominee thereof and delivered to such Depositary or a nominee thereof or custodian therefor, and each such Global Security shall constitute a single Security for all purposes of this Indenture.

(b) Notwithstanding any other provision in this Indenture, no Global Security may be exchanged in whole or in part for Securities registered, and no transfer of a Global Security in whole or in part may be registered, in the name of any Person other than the Depositary for such Global Security or a nominee thereof unless (i) such Depositary advises the Trustee and the Company in writing that such Depositary is no longer willing or able to properly discharge its responsibilities as Depositary with respect to such Global Security, and no qualified successor is appointed by the Company within ninety (90) days of receipt by the Company of such notice, (ii) such Depositary ceases to be a clearing agency registered under the Exchange Act and no successor is appointed by the Company within ninety (90) days after obtaining knowledge of such event, (iii) the Company executes and delivers to the Trustee a Company Order stating that the Company elects to terminate the book-entry system through the Depositary or (iv) an Event of Default shall have occurred and be continuing. Upon the occurrence of any event specified in clause (i), (ii), (iii) or (iv) above, the Trustee shall notify the Depositary and instruct the Depositary to notify all owners of beneficial interests in such Global Security of the occurrence of such event and of the availability of Securities to such owners of beneficial interests requesting the same. The Trustee may conclusively rely, and be protected in relying, upon the written identification of the owners of beneficial interests furnished by the Depositary, and shall not be liable for any delay resulting from a delay by the Depositary. Upon the issuance of such Securities and the registration in the Securities Register of such Securities in the names of the Holders of the beneficial interests therein, the Trustees shall recognize such holders of beneficial interests as Holders.

(c) If any Global Security is to be exchanged for other Securities or canceled in part, or if another Security is to be exchanged in whole or in part for a beneficial interest in any Global Security, then either (i) such Global Security shall be so surrendered for exchange or cancellation as provided in this *Article III* or (ii) the principal amount thereof shall be reduced or increased by an amount equal to the portion thereof to be so exchanged or canceled, or equal to the principal amount of such other Security to be so exchanged for a beneficial interest therein, as the case may be, by means of an appropriate adjustment made on the records of the Securities Registrar, whereupon the Trustee, in accordance with the Applicable Depositary Procedures, shall instruct the Depositary or its authorized representative to make a corresponding adjustment to its records. Upon any such surrender or adjustment of a Global Security by the Depositary, accompanied by registration instructions, the Company shall execute and the Trustee shall authenticate and deliver any Securities issuable in exchange for such Global Security (or any portion thereof) in accordance with the instructions of the Depositary. The Trustee shall not be liable for any delay in delivery of such instructions and may conclusively rely on, and shall be fully protected in relying on, such instructions.

(d) Every Security authenticated and delivered upon registration of transfer of, or in exchange for or in lieu of, a Global Security or any portion thereof shall be authenticated and delivered in the form of, and shall be, a Global Security, unless such Security is registered in the name of a Person other than the Depositary for such Global Security or a nominee thereof.

(e) Securities distributed to holders of Book-Entry Preferred Securities (as defined in the applicable Trust Agreement) upon the dissolution of the Trust shall be distributed in the form of one or more Global Securities registered in the name of a Depositary or its nominee, and deposited with the Securities Registrar, as custodian for such Depositary, or with such Depositary, for credit by the Depositary to the respective accounts of the beneficial owners of the Securities represented thereby (or such other accounts as they may direct). Securities distributed to holders of Preferred Securities other than Book-Entry Preferred Securities upon the dissolution of the Trust shall not be issued in the form of a Global Security or any other form intended to facilitate book-entry trading in beneficial interests in such Securities.

(f) The Depositary or its nominee, as the registered owner of a Global Security, shall be the Holder of such Global Security for all purposes under this Indenture and the Securities, and owners of beneficial interests in a Global Security shall hold such interests pursuant to the Applicable Depositary Procedures. Accordingly, any such owner's beneficial interest in a Global Security shall be shown only on, and the transfer of such interest shall be effected only through, records maintained by the Depositary or its nominee or its Depositary Participants. The Securities Registrar and the Trustee shall be entitled to deal with the Depositary for all purposes of this Indenture relating to a Global Security (including the payment of principal and interest thereon and the giving of instructions or directions by owners of beneficial interests therein and the giving of notices) as the sole Holder of

the Security and shall have no obligations to the owners of beneficial interests therein. Neither the Trustee nor the Securities Registrar shall have any liability in respect of any transfers effected by the Depositary.

(g) The rights of owners of beneficial interests in a Global Security shall be exercised only through the Depositary and shall be limited to those established by law and agreements between such owners and the Depositary and/or its Depositary Participants.

(h) No holder of any beneficial interest in any Global Security held on its behalf by a Depositary shall have any rights under this Indenture with respect to such Global Security, and such Depositary may be treated by the Company, the Trustee and any agent of the Company or the Trustee as the owner of such Global Security for all purposes whatsoever. None of the Company, the Trustee nor any agent of the Company or the Trustee will have any responsibility or liability for any aspect of the records relating to or payments made on account of beneficial ownership interests of a Global Security or maintaining, supervising or reviewing any records relating to such beneficial ownership interests. Notwithstanding the foregoing, nothing herein shall prevent the Company, the Trustee or any agent of the Company or the Trustee from giving effect to any written certification, proxy or other authorization furnished by a Depositary or impair, as between a Depositary and such holders of beneficial interests, the operation of customary practices governing the exercise of the rights of the Depositary (or its nominee) as Holder of any Security.

### SECTION 3.5. *Registration, Transfer and Exchange Generally.*

(a) The Trustee shall cause to be kept at the Corporate Trust Office a register (the "*Securities Register*") in which the registrar and transfer agent with respect to the Securities (the "*Securities Registrar*"), subject to such reasonable regulations as it may prescribe, shall provide for the registration of Securities and of transfers and exchanges of Securities. The Trustee shall at all times also be the Securities Registrar. The provisions of *Article VI* shall apply to the Trustee in its role as Securities Registrar.

(b) Subject to compliance with *Section 2.2(b)*, upon surrender for registration of transfer of any Security at the offices or agencies of the Company designated for that purpose the Company shall execute, and the Trustee shall authenticate and deliver, in the name of the designated transferee or transferees, one or more new Securities of any authorized denominations of like tenor and aggregate principal amount.

(c) At the option of the Holder, Securities may be exchanged for other Securities of any authorized denominations, of like tenor and aggregate principal amount, upon surrender of the Securities to be exchanged at such office or agency. Whenever any Securities are so surrendered for exchange, the Company shall execute, and the Trustee shall authenticate and deliver, the Securities that the Holder making the exchange is entitled to receive.

(d) All Securities issued upon any transfer or exchange of Securities shall be the valid obligations of the Company, evidencing the same debt, and entitled to the same benefits under this Indenture, as the Securities surrendered upon such transfer or exchange.

(e) Every Security presented or surrendered for transfer or exchange shall (if so required by the Company or the Trustee) be duly endorsed, or be accompanied by a written instrument of transfer in form satisfactory to the Company and the Securities Registrar, duly executed by the Holder thereof or such Holder's attorney duly authorized in writing.

(f) No service charge shall be made to a Holder for any transfer or exchange of Securities, but the Company may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with any transfer or exchange of Securities.

(g) Neither the Company nor the Trustee shall be required pursuant to the provisions of this *Section 3.5 (g)*: (i) to issue, register the transfer of or exchange any Security during a period beginning at the opening of business fifteen (15) days before the day of selection for redemption of Securities pursuant to *Article XI* and ending at the close of business on the day of mailing of the notice of redemption or (ii) to register the transfer of or exchange any Security so selected for redemption in whole or in part, except, in the case of any such Security to be redeemed in part, any portion thereof not to be redeemed.

(h) The Company shall designate an office or offices or agency or agencies where Securities may be surrendered for registration or transfer or exchange. The Company initially designates the Corporate Trust Office as its office and agency for such purposes. The Company shall give prompt written notice to the Trustee and to the Holders of any change in the location of any such office or agency.

### SECTION 3.6. *Mutilated, Destroyed, Lost and Stolen Securities.*

(a) If any mutilated Security is surrendered to the Trustee together with such security or indemnity as may be required by the Trustee to save the Company and the Trustee harmless, the Company shall execute and the Trustee shall authenticate and deliver in exchange therefor a new Security of like tenor and aggregate principal amount and bearing a number not contemporaneously outstanding.

(b) If there shall be delivered to the Trustee (i) evidence to its satisfaction of the destruction, loss or theft of any Security and (ii) such security or indemnity as may be required by it to save each of the Company and the Trustee harmless, then, in the absence of notice to the Company or the Trustee that such Security has been acquired by a *bona fide* purchaser, the Company shall execute and upon its written request the Trustee shall authenticate and deliver, in lieu of any such destroyed, lost or stolen Security, a new Security of like tenor and aggregate principal amount as such destroyed, lost or stolen Security, and bearing a number not contemporaneously outstanding.

(c) If any such mutilated, destroyed, lost or stolen Security has become or is about to become due and payable, the Company in its discretion may, instead of issuing a new Security, pay such Security.

(d) Upon the issuance of any new Security under this *Section 3.6*, the Company may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses (including the fees and expenses of the Trustee) connected therewith.

(e) Every new Security issued pursuant to this *Section 3.6* in lieu of any mutilated, destroyed, lost or stolen Security shall constitute an original additional contractual obligation of the Company, whether or not the mutilated, destroyed, lost or stolen Security shall be at any time enforceable by anyone, and shall be entitled to all the benefits of this Indenture equally and proportionately with any and all other Securities duly issued hereunder.

(f) The provisions of this *Section 3.6* are exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement or payment of mutilated, destroyed, lost or stolen Securities.

### SECTION 3.7. *Persons Deemed Owners.*

The Company, the Trustee and any agent of the Company or the Trustee shall treat the Person in whose name any Security is registered as the owner of such Security for the purpose of receiving payment of principal of and any interest on such Security and for all other purposes whatsoever, and neither the Company, the Trustee nor any agent of the Company or the Trustee shall be affected by notice to the contrary.

### SECTION 3.8. *Cancellation.*

All Securities surrendered for payment, redemption, transfer or exchange shall, if surrendered to any Person other than the Trustee, be delivered to the Trustee, and any such Securities and Securities surrendered directly to the Trustee for any such purpose shall be promptly canceled by it. The Company may at any time deliver to the Trustee for cancellation any Securities previously authenticated and delivered hereunder that the Company may have acquired in any manner whatsoever, and all Securities so delivered shall be promptly canceled by the Trustee. No Securities shall be authenticated in lieu of or in exchange for any Securities canceled as provided in this *Section 3.8*, except as expressly permitted by this Indenture. All canceled Securities shall be retained by the Trustee in accordance with its customary practices.

### SECTION 3.9. *Deferrals of Interest Payment Dates.*

(a) So long as no Event of Default has occurred and is continuing, the Company shall have the right, at any time and from time to time during the term of the Security, to defer the payment of interest on the Securities for a period of up to twenty (20) consecutive quarterly interest payment periods (each such period, an "*Extension Period*"), during which Extension Period(s), the Company shall have the right to make no payments or partial payments of interest on any Interest Payment Date (except any Additional Tax Sums that otherwise may be due and payable). No Extension Period shall end on a date other than an Interest Payment Date and no Extension Period shall extend beyond the Stated Maturity of the principal of the Securities. No interest shall be due and payable during an Extension Period, except at the end thereof, but each installment of interest that would otherwise have been due and payable during such Extension Period shall bear Additional Interest (to the extent payment of such interest would be legally enforceable) at the rate equal to a variable rate equal to LIBOR plus 3.75% per annum, compounded quarterly, from the dates on which amounts would have otherwise been due and payable until paid or until funds for the payment thereof have been made available for payment. At the end of any such Extension Period, the Company shall pay all interest then accrued and unpaid on the Securities together

with such Additional Interest. Prior to the termination of any such Extension Period, the Company may extend such Extension Period and further defer the payment of interest; *provided*, that (i) all such previous and further extensions comprising such Extension Period do not exceed twenty (20) quarterly interest payment periods, (ii) no Extension Period shall end on a date other than an Interest Payment Date and (iii) no Extension Period shall extend beyond the Stated Maturity of the principal of the Securities. Upon the termination of any such Extension Period and upon the payment of all accrued and unpaid interest and any Additional Interest then due on any Interest Payment Date, the Company may elect to begin a new Extension Period; *provided*, that (i) such Extension Period does not exceed twenty (20) quarterly interest payment periods, (ii) no Extension Period shall end on a date other than an Interest Payment Date and (iii) no Extension Period shall extend beyond the Stated Maturity of the principal of the Securities. The Company shall give the Holders of the Securities and the Trustee written notice of its election to begin any such Extension Period at least one Business Day prior to the next succeeding Interest Payment Date on which interest on the Securities would be payable but for such deferral or, so long as any Securities are held by the Trust, at least one Business Day prior to the earlier of (i) the next succeeding date on which Distributions on the Preferred Securities of such Trust would be payable but for such deferral and (ii) the date on which the Property Trustee of such Trust is required to give notice to any securities exchange or other applicable self-regulatory organization or to holders of such Preferred Securities of the record date for the payment of such Distributions.

(b) In connection with any such Extension Period, the Company shall be subject to the restrictions set forth in *Section 10.6(a)*.

#### SECTION 3.10. *Right of Set-Off.*

Notwithstanding anything to the contrary herein, the Company shall have the right to set off any payment it is otherwise required to make in respect of any Security to the extent the Company has theretofore made, or is concurrently on the date of such payment making, a payment under the Guarantee Agreement relating to such Security or to a holder of Preferred Securities pursuant to an action undertaken under *Section 5.8* of this Indenture.

#### SECTION 3.11. *Agreed Tax Treatment.*

Each Security issued hereunder shall provide that the Company and, by its acceptance or acquisition of a Security or a beneficial interest therein, the Holder of, and any Person that acquires a direct or indirect beneficial interest in, such Security, intend and agree to treat such Security as indebtedness of the Company for United States Federal, state and local tax purposes and to treat the Preferred Securities (including but not limited to all payments and proceeds with respect to the Preferred Securities) as an undivided beneficial ownership interest in the Securities (and any other Trust property) (and payments and proceeds therefrom, respectively) for United States Federal, state and local tax purposes. The provisions of this Indenture shall be interpreted to further this intention and agreement of the parties.

#### SECTION 3.12. *CUSIP Numbers.*

The Company in issuing the Securities may use "CUSIP" numbers (if then generally in use), and, if so, the Trustee shall use "CUSIP" numbers in notices of redemption and other similar or related materials as a convenience to Holders; *provided*, that any such notice or other materials may state that no representation is made as to the correctness of such numbers either as printed on the Securities or as contained in any notice of redemption or other materials and that reliance may be placed only on the other identification numbers printed on the Securities, and any such redemption shall not be affected by any defect in or omission of such numbers.

### ARTICLE IV

#### SATISFACTION AND DISCHARGE

##### SECTION 4.1. *Satisfaction and Discharge of Indenture.*

This Indenture shall, upon Company Request, cease to be of further effect (except as to any surviving rights of registration of transfer or exchange of Securities herein expressly provided for and as otherwise provided in this *Section 4.1*) and the Trustee, on demand of and at the expense of the Company, shall execute proper instruments acknowledging satisfaction and discharge of this Indenture, when

(a) either

(i) all Securities theretofore authenticated and delivered (other than (A) Securities that have been mutilated, destroyed, lost or stolen and that have been replaced or paid as provided in *Section 3.6* and (B) Securities for whose payment money has theretofore been deposited in trust or segregated and held in trust by the Company and thereafter repaid to the Company or discharged from such trust as provided in *Section 10.2*) have been delivered to the Trustee for cancellation; or

(ii) all such Securities not theretofore delivered to the Trustee for cancellation

(A) have become due and payable, or

(B) will become due and payable at their Stated Maturity within one year of the date of deposit, or

(C) are to be called for redemption within one year under arrangements satisfactory to the Trustee for the giving of notice of redemption by the Trustee in the name, and at the expense, of the Company,

and the Company, in the case of subclause (ii)(A), (B) or (C) above, has deposited or caused to be deposited with the Trustee as trust funds in trust for such purpose (x) an amount in the currency or currencies in which the Securities are payable, (y) Government Obligations which through the scheduled payment of principal and interest in respect thereof in accordance with their terms will provide, not later than the due date of any payment, money in an amount or (z) a combination thereof, in each case sufficient, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee, to pay and discharge the entire indebtedness on such Securities not theretofore delivered to the Trustee for cancellation, for principal and any premium and interest (including any Additional Interest) to the date of such deposit (in the case of Securities that have become due and payable) or to the Stated Maturity (or any date of principal repayment upon early maturity) or Redemption Date, as the case may be;

(b) the Company has paid or caused to be paid all other sums payable hereunder by the Company; and

(c) the Company has delivered to the Trustee an Officers' Certificate and an Opinion of Counsel each stating that all conditions precedent herein provided for relating to the satisfaction and discharge of this Indenture have been complied with.

Notwithstanding the satisfaction and discharge of this Indenture, the obligations of the Company to the Trustee under *Section 6.6*, the obligations of the Company to any Authenticating Agent under *Section 6.11* and, if money shall have been deposited with the Trustee pursuant to subclause (a)(ii) of this *Section 4.1*, the obligations of the Trustee under *Section 4.2* and *Section 10.2(e)* shall survive.

#### SECTION 4.2. *Application of Trust Money.*

Subject to the provisions of *Section 10.2(e)*, all money deposited with the Trustee pursuant to *Section 4.1* shall be held in trust and applied by the Trustee, in accordance with the provisions of the Securities and this Indenture, to the payment in accordance with *Section 3.1*, either directly or through any Paying Agent (including the Company acting as its own Paying Agent) as the Trustee may determine, to the Persons entitled thereto, of the principal and any premium and interest (including any Additional Interest) for the payment of which such money or obligations have been deposited with or received by the Trustee. Moneys held by the Trustee under this *Section 4.2* shall not be subject to the claims of holders of Senior Debt under *Article XII*.

## REMEDIES

SECTION 5.1. *Events of Default.*

"Event of Default" means, wherever used herein with respect to the Securities, any one of the following events (whatever the reason for such Event of Default and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

- (a) default in the payment of any interest upon any Security, including any Additional Interest in respect thereof, when it becomes due and payable, and continuance of such default for a period of thirty (30) days (subject to the deferral of any due date in the case of an Extension Period); or
- (b) default in the payment of the principal of or any premium on any Security at its Maturity; or
- (c) default in the performance, or breach, of any covenant or warranty of the Company in this Indenture and continuance of such default or breach for a period of thirty (30) days after there has been given, by registered or certified mail, to the Company by the Trustee or to the Company and the Trustee by the Holders of at least twenty five percent (25%) in aggregate principal amount of the Outstanding Securities a written notice specifying such default or breach and requiring it to be remedied and stating that such notice is a "Notice of Default" hereunder;
- (d) the entry by a court having jurisdiction in the premises of a decree or order adjudging the Company a bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjustment or composition of or in respect of the Company under any applicable Federal or state bankruptcy, insolvency, reorganization or other similar law, or appointing a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official of the Company or of any substantial part of its property, or ordering the winding up or liquidation of its affairs, and the continuance of any such decree or order for relief or any such other decree or order unstayed and in effect for a period of sixty (60) consecutive days;
- (e) the institution by the Company of proceedings to be adjudicated a bankrupt or insolvent, or the consent by the Company to the institution of bankruptcy or insolvency proceedings against it, or the filing by the Company of a petition or answer or consent seeking reorganization or relief under any applicable Federal or state bankruptcy, insolvency, reorganization or other similar law, or the consent by it to the filing of such petition or to the appointment of or taking possession by a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official of the Company or of any substantial part of its property, or the making by it of an assignment for the benefit of creditors, or the admission by it in writing of its inability to pay its debts generally as they become due and its willingness to be adjudicated a bankrupt or insolvent, or the taking of corporate action by the Company in furtherance of any such action; or
- (f) the Trust shall have voluntarily or involuntarily liquidated, dissolved, wound-up its business or otherwise terminated its existence, except in connection with (1) the distribution of the Securities to holders of the Preferred Securities in liquidation of their interests in the Trust, (2) the redemption of all of the outstanding Preferred Securities or (3) certain mergers, consolidations or amalgamations, each as and to the extent permitted by the Trust Agreement.

SECTION 5.2. *Acceleration of Maturity; Rescission and Annulment.*

- (a) If an Event of Default occurs and is continuing, then and in every such case the Trustee or the Holders of not less than twenty five percent (25%) in aggregate principal amount of the Outstanding Securities may declare the principal amount of all the Securities to be due and payable immediately, by a notice in writing to the Company (and to the Trustee if given by Holders), provided, that if, upon an Event of Default, the Trustee or the Holders of not less than twenty five percent (25%) in principal amount of the Outstanding Securities fail to declare the principal of all the Outstanding Securities to be immediately due and payable, the holders of at least twenty five percent (25%) in aggregate Liquidation Amount of the Preferred Securities then outstanding shall have the right to make such declaration by a notice in writing to the Property Trustee, the Company and the Trustee; and upon any such declaration the principal amount of and the accrued interest (including any Additional Interest) on all the Securities shall become immediately due and payable.
- (b) At any time after such a declaration of acceleration with respect to Securities has been made and before a judgment or decree for payment of the money due has been obtained by the Trustee as hereinafter provided in

this *Article V*, the Holders of a majority in aggregate principal amount of the Outstanding Securities, by written notice to the Indenture Trustee, or the holders of a majority in aggregate Liquidation Amount of the Preferred Securities, by written notice to the Property Trustee, the Company and the Trustee, may rescind and annul such declaration and its consequences if:

(i) the Company has paid or deposited with the Trustee a sum sufficient to pay:

(A) all overdue installments of interest on all Securities,

(B) any accrued Additional Interest on all Securities,

(C) the principal of and any premium on any Securities that have become due otherwise than by such declaration of acceleration and interest (including any Additional Interest) thereon at the rate borne by the Securities, and

(D) all sums paid or advanced by the Trustee hereunder and the reasonable compensation, expenses, disbursements and advances of the Trustee, the Property Trustee and their agents and counsel; and

(ii) all Events of Default with respect to Securities, other than the non-payment of the principal of Securities that has become due solely by such acceleration, have been cured or waived as provided in *Section 5.13*;

*provided*, that if the Holders of such Securities fail to annul such declaration and waive such default, the holders of not less than a majority in aggregate Liquidation Amount of the Preferred Securities then outstanding shall also have the right to rescind and annul such declaration and its consequences by written notice to the Property Trustee, the Company and the Trustee, subject to the satisfaction of the conditions set forth in paragraph (b) of this *Section 5.2*. No such rescission shall affect any subsequent default or impair any right consequent thereon.

#### SECTION 5.3. *Collection of Indebtedness and Suits for Enforcement by Trustee.*

(a) The Company covenants that if:

(i) default is made in the payment of any installment of interest (including any Additional Interest) on any Security when such interest becomes due and payable and such default continues for a period of thirty (30) days, or

(ii) default is made in the payment of the principal of and any premium on any Security at the Maturity thereof,

the Company will, upon demand of the Trustee, pay to the Trustee, for the benefit of the Holders of such Securities, the whole amount then due and payable on such Securities for principal and any premium and interest (including any Additional Interest) and, in addition thereto, all amounts owing the Trustee under *Section 6.6*.

(b) If the Company fails to pay such amounts forthwith upon such demand, the Trustee, in its own name and as trustee of an express trust, may institute a judicial proceeding for the collection of the sums so due and unpaid, and may prosecute such proceeding to judgment or final decree, and may enforce the same against the Company or any other obligor upon such Securities and collect the moneys adjudged or decreed to be payable in the manner provided by law out of the property of the Company or any other obligor upon the Securities, wherever situated.

(c) If an Event of Default with respect to Securities occurs and is continuing, the Trustee may in its discretion proceed to protect and enforce its rights and the rights of the Holders of Securities by such appropriate judicial proceedings as the Trustee shall deem most effectual to protect and enforce any such rights, whether for the specific enforcement of any covenant or agreement in this Indenture or in aid of the exercise of any power granted herein, or to enforce any other proper remedy.

#### SECTION 5.4. *Trustee May File Proofs of Claim.*

In case of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or similar judicial proceeding relative to the Company (or any other obligor upon the Securities), its property or its creditors, the Trustee shall be entitled and empowered, by intervention in such proceeding or otherwise, to take any and all actions authorized hereunder in order to have claims of the Holders and the Trustee allowed in any such proceeding. In particular, the Trustee shall be authorized to collect and receive any moneys or other property payable or deliverable on any such claims and to distribute the same; and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby



authorized by each Holder to make such payments to the Trustee and, in the event that the Trustee shall consent to the making of such payments directly to the Holders, to first pay to the Trustee any amount due it for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts owing the Trustee, any predecessor Trustee and other Persons under *Section 6.6*.

*SECTION 5.5. Trustee May Enforce Claim Without Possession of Securities.*

All rights of action and claims under this Indenture or the Securities may be prosecuted and enforced by the Trustee without the possession of any of the Securities or the production thereof in any proceeding relating thereto, and any such proceeding instituted by the Trustee shall be brought in its own name as trustee of an express trust, and any recovery of judgment shall, subject to *Article XII* and after provision for the payment of all the amounts owing the Trustee, any predecessor Trustee and other Persons under *Section 6.6*, be for the ratable benefit of the Holders of the Securities in respect of which such judgment has been recovered.

*SECTION 5.6. Application of Money Collected.*

Any money or property collected or to be applied by the Trustee with respect to the Securities pursuant to this *Article V* shall be applied in the following order, at the date or dates fixed by the Trustee and, in case of the distribution of such money or property on account of principal or any premium or interest (including any Additional Interest), upon presentation of the Securities and the notation thereon of the payment if only partially paid and upon surrender thereof if fully paid:

FIRST: To the payment of all amounts due the Trustee, any predecessor Trustee and other Persons under *Section 6.6*;

SECOND: To the payment of all Senior Debt of the Company if and to the extent required by *Article XII*;

THIRD: Subject to *Article XII*, to the payment of the amounts then due and unpaid upon the Securities for principal and any premium and interest (including any Additional Interest) in respect of which or for the benefit of which such money has been collected, ratably, without preference or priority of any kind, according to the amounts due and payable on the Securities for principal and any premium and interest (including any Additional Interest), respectively; and

FOURTH: The balance, if any, to the Person or Persons entitled thereto.

*SECTION 5.7. Limitation on Suits.*

Subject to *Section 5.8*, no Holder of any Securities shall have any right to institute any proceeding, judicial or otherwise, with respect to this Indenture or for the appointment of a custodian, receiver, assignee, trustee, liquidator, sequestrator (or other similar official) or for any other remedy hereunder, unless:

- (a) such Holder has previously given written notice to the Trustee of a continuing Event of Default with respect to the Securities;
- (b) the Holders of not less than a majority in aggregate principal amount of the Outstanding Securities shall have made written request to the Trustee to institute proceedings in respect of such Event of Default in its own name as Trustee hereunder;
- (c) such Holder or Holders have offered to the Trustee reasonable indemnity against the costs, expenses and liabilities to be incurred in compliance with such request;
- (d) the Trustee after its receipt of such notice, request and offer of indemnity has failed to institute any such proceeding for sixty (60) days; and
- (e) no direction inconsistent with such written request has been given to the Trustee during such sixty (60)-day period by the Holders of a majority in aggregate principal amount of the Outstanding Securities;

it being understood and intended that no one or more of such Holders shall have any right in any manner whatever by virtue of, or by availing itself of, any provision of this Indenture to affect, disturb or prejudice the rights of any other Holders of Securities, or to obtain or to seek to obtain priority or preference over any other of such Holders or to enforce any right under this Indenture, except in the manner herein provided and for the equal and ratable benefit of all such Holders.

SECTION 5.8. *Unconditional Right of Holders to Receive Principal, Premium, if any, and Interest; Direct Action by Holders of Preferred Securities.*

Notwithstanding any other provision in this Indenture, the Holder of any Security shall have the right, which is absolute and unconditional, to receive payment of the principal of and any premium on such Security at its Maturity and payment of interest (including any Additional Interest) on such Security when due and payable and to institute suit for the enforcement of any such payment, and such right shall not be impaired without the consent of such Holder. Any registered holder of the Preferred Securities shall have the right, upon the occurrence of an Event of Default described in *Section 5.1(a)* or *Section 5.1(b)*, to institute a suit directly against the Company for enforcement of payment to such holder of principal of and any premium and interest (including any Additional Interest) on the Securities having a principal amount equal to the aggregate Liquidation Amount of the Preferred Securities held by such holder.

SECTION 5.9. *Restoration of Rights and Remedies.*

If the Trustee, any Holder or any holder of Preferred Securities has instituted any proceeding to enforce any right or remedy under this Indenture and such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the Trustee, such Holder or such holder of Preferred Securities, then and in every such case the Company, the Trustee, such Holders and such holder of Preferred Securities shall, subject to any determination in such proceeding, be restored severally and respectively to their former positions hereunder, and thereafter all rights and remedies of the Trustee, such Holder and such holder of Preferred Securities shall continue as though no such proceeding had been instituted.

SECTION 5.10. *Rights and Remedies Cumulative.*

Except as otherwise provided in *Section 3.6(f)*, no right or remedy herein conferred upon or reserved to the Trustee or the Holders is intended to be exclusive of any other right or remedy, and every right and remedy shall, to the extent permitted by law, be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right or remedy.

SECTION 5.11. *Delay or Omission Not Waiver.*

No delay or omission of the Trustee, any Holder of any Securities or any holder of any Preferred Security to exercise any right or remedy accruing upon any Event of Default shall impair any such right or remedy or constitute a waiver of any such Event of Default or an acquiescence therein. Every right and remedy given by this *Article V* or by law to the Trustee or to the Holders and the right and remedy given to the holders of Preferred Securities by *Section 5.8* may be exercised from time to time, and as often as may be deemed expedient, by the Trustee, the Holders or the holders of Preferred Securities, as the case may be.

SECTION 5.12. *Control by Holders.*

The Holders of not less than a majority in aggregate principal amount of the Outstanding Securities (or, as the case may be, the holders of a majority in aggregate Liquidation Amount of Preferred Securities) shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or exercising any trust or power conferred on the Trustee; *provided*, that:

- (a) such direction shall not be in conflict with any rule of law or with this Indenture,
- (b) the Trustee may take any other action deemed proper by the Trustee that is not inconsistent with such direction, and

(c) subject to the provisions of *Section 6.2*, the Trustee shall have the right to decline to follow such direction if a Responsible Officer or Officers of the Trustee shall, in good faith, reasonably determine that the proceeding so directed would be unjustly prejudicial to the Holders not joining in any such direction or would involve the Trustee in personal liability.

#### SECTION 5.13. *Waiver of Past Defaults.*

(a) The Holders of not less than a majority in aggregate principal amount of the Outstanding Securities or the holders of not less than a majority in aggregate Liquidation Amount of the Preferred Securities may waive any past Event of Default hereunder and its consequences except an Event of Default:

(i) in the payment of the principal of or any premium or interest (including any Additional Interest) on any Security (unless such Event of Default has been cured and the Company has paid to or deposited with the Trustee a sum sufficient to pay all installments of interest (including any Additional Interest) due and past due and all principal of and any premium on all Securities due otherwise than by acceleration), or

(ii) in respect of a covenant or provision hereof that under *Article IX* cannot be modified or amended without the consent of each Holder of any Outstanding Security.

(b) Any such waiver shall be deemed to be on behalf of the Holders of all the Securities or, in the case of a waiver by holders of Preferred Securities issued by such Trust, by all holders of Preferred Securities.

(c) Upon any such waiver, such Event of Default shall cease to exist and any Event of Default arising therefrom shall be deemed to have been cured for every purpose of this Indenture; but no such waiver shall extend to any subsequent or other Event of Default or impair any right consequent thereon.

#### SECTION 5.14. *Undertaking for Costs.*

All parties to this Indenture agree, and each Holder of any Security by his or her acceptance thereof shall be deemed to have agreed, that any court may in its discretion require, in any suit for the enforcement of any right or remedy under this Indenture, or in any suit against the Trustee for any action taken or omitted by it as Trustee, the filing by any party litigant in such suit of an undertaking to pay the costs of such suit, and that such court may in its discretion assess reasonable costs, including reasonable attorneys' fees and expenses, against any party litigant in such suit, having due regard to the merits and good faith of the claims or defenses made by such party litigant; but the provisions of this *Section 5.14* shall not apply to any suit instituted by the Trustee, to any suit instituted by any Holder, or group of Holders, holding in the aggregate more than ten percent (10%) in aggregate principal amount of the Outstanding Securities, or to any suit instituted by any Holder for the enforcement of the payment of the principal of or any premium on the Security after the Stated Maturity or any interest (including any Additional Interest) on any Security after it is due and payable.

#### SECTION 5.15. *Waiver of Usury, Stay or Extension Laws.*

The Company covenants (to the extent that it may lawfully do so) that it will not at any time insist upon, or plead, or in any manner whatsoever claim or take the benefit or advantage of, any usury, stay or extension law wherever enacted, now or at any time hereafter in force, which may affect the covenants or the performance of this Indenture; and the Company (to the extent that it may lawfully do so) hereby expressly waives all benefit or advantage of any such law, and covenants that it will not hinder, delay or impede the execution of any power herein granted to the Trustee, but will suffer and permit the execution of every such power as though no such law had been enacted.

### ARTICLE VI

#### THE TRUSTEE

##### SECTION 6.1. *Corporate Trustee Required.*

There shall at all times be a Trustee hereunder with respect to the Securities. The Trustee shall be a corporation organized and doing business under the laws of the United States or of any state thereof, authorized to exercise corporate trust powers, having a combined capital and surplus of at least \$50,000,000, subject to supervision or examination by Federal or state authority and having an office within the United States. If such corporation publishes reports of condition at least annually, pursuant to law or to the requirements of such supervising or examining authority, then, for the purposes of this *Section 6.1*, the combined capital and surplus of such corporation shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time the Trustee shall cease to be eligible in accordance with the provisions of this *Section 6.1*, it shall resign immediately in the manner and with the effect hereinafter specified in this *Article VI*.

SECTION 6.2. *Certain Duties and Responsibilities.*

Except during the continuance of an Event of Default:

(i) the Trustee undertakes to perform such duties and only such duties as are specifically set forth in this Indenture, and no implied covenants or obligations shall be read into this Indenture against the Trustee; and

(ii) in the absence of bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture; *provided*, that in the case of any such certificates or opinions that by any provision hereof are specifically required to be furnished to the Trustee, the Trustee shall be under a duty to examine the same to determine whether or not they substantially conform on their face to the requirements of this Indenture.

(b) If an Event of Default known to the Trustee has occurred and is continuing, the Trustee shall, prior to the receipt of directions, if any, from the Holders of at least a majority in aggregate principal amount of the Outstanding Securities (or, if applicable, from the holders of at least a majority in aggregate Liquidation Amount of Preferred Securities), exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in its exercise, as a prudent person would exercise or use under the circumstances in the conduct of such person's own affairs.

(c) Notwithstanding the foregoing, no provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it. Whether or not therein expressly so provided, every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the provisions of this Section 6.2. To the extent that, at law or in equity, the Trustee has duties and liabilities relating to the Holders, the Trustee shall not be liable to any Holder or any holder of Preferred Securities for the Trustee's good faith reliance on the provisions of this Indenture. The provisions of this Indenture, to the extent that they restrict the duties and liabilities of the Trustee otherwise existing at law or in equity, are agreed by the Company and the Holders and the holders of Preferred Securities to replace such other duties and liabilities of the Trustee.

(d) No provisions of this Indenture shall be construed to relieve the Trustee from liability with respect to matters that are within the authority of the Trustee under this Indenture for its own negligent action, negligent failure to act or willful misconduct, except that:

(i) the Trustee shall not be liable for any error or judgment made in good faith by an authorized officer of the Trustee, unless it shall be proved that the Trustee was negligent in ascertaining the pertinent facts;

(ii) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Holders of at least a majority in aggregate principal amount of the Outstanding Securities (or, as the case may be, the holders of a majority in aggregate Liquidation Amount of Preferred Securities) relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee under this Indenture; and

(iii) the Trustee shall be under no liability for interest on any money received by it hereunder except as otherwise agreed in writing with the Company and money held by the Trustee in trust hereunder need not be segregated from other funds except to the extent required by law.

(e) If at any time the Trustee hereunder is not the same Person as the Property Trustee under the Trust Agreement:

(i) whenever a reference is made herein to the dissolution, termination or liquidation of the Trust, the Trustee shall be entitled to assume that no such dissolution, termination, or liquidation has occurred so long as the Securities are or continue to be registered in the name of such Property Trustee, and the Trustee shall be charged with notice or knowledge of such dissolution, termination or liquidation only upon written notice thereof given to the Trustee by the Depositor under the Trust Agreement; and

(ii) the Trustee shall not be charged with notice or knowledge that any Person is a holder of Preferred Securities or Common Securities issued by the Trust or whether any group of holders of Preferred Securities constitutes any specified percentage of all outstanding Preferred Securities for any purpose under this

Indenture, unless and until the Trustee is furnished with a list of holders by such Property Trustee and the aggregate Liquidation Amount of the Preferred Securities then outstanding. The Trustee may conclusively rely and shall be protected in relying on such list.

(f) Notwithstanding *Section 1.10*, the Trustee shall not, and shall not be deemed to, owe any fiduciary duty to the holders of any of the Trust Securities issued by the Trust and shall not be liable to any such holder (other than for the willful misconduct or negligence of the Trustee) if the Trustee in good faith (i) pays over or distributes to a registered Holder of the Securities or to the Company or to any other Person, cash, property or securities to which such holders of such Trust Securities shall be entitled or (ii) takes any action or omits to take any action at the request of the Holder of such Securities. Nothing in this paragraph shall affect the obligation of any other such Person to hold such payment for the benefit of, and to pay such amount over to, such holders of Preferred Securities or Common Securities or their representatives.

#### SECTION 6.3. *Notice of Defaults.*

Within ninety (90) days after the occurrence of any default actually known to the Trustee, the Trustee shall give the Holders notice of such default unless such default shall have been cured or waived; *provided*, that in the case of any default of the character specified in *Section 5.1(c)*, no such notice to Holders shall be given until at least thirty (30) days after the occurrence thereof. For the purpose of this *Section 6.3*, the term "default" means any event which is, or after notice or lapse of time or both would become, an Event of Default.

#### SECTION 6.4. *Certain Rights of Trustee.*

Subject to the provisions of *Section 6.2*:

(a) the Trustee may conclusively rely and shall be fully protected in acting or refraining from acting in good faith and in accordance with the terms hereof upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties;

(b) if (i) in performing its duties under this Indenture the Trustee is required to decide between alternative courses of action, (ii) in construing any of the provisions of this Indenture the Trustee finds ambiguous or inconsistent with any other provisions contained herein or (iii) the Trustee is unsure of the application of any provision of this Indenture, then, except as to any matter as to which the Holders are entitled to decide under the terms of this Indenture, the Trustee shall deliver a notice to the Company requesting the Company's written instruction as to the course of action to be taken and the Trustee shall take such action, or refrain from taking such action, as the Trustee shall be instructed in writing to take, or to refrain from taking, by the Company; *provided*, that if the Trustee does not receive such instructions from the Company within ten Business Days after it has delivered such notice or such reasonably shorter period of time set forth in such notice the Trustee may, but shall be under no duty to, take such action, or refrain from taking such action, as the Trustee shall deem advisable and in the best interests of the Holders, in which event the Trustee shall have no liability except for its own negligence, bad faith or willful misconduct;

(c) any request or direction of the Company shall be sufficiently evidenced by a Company Request or Company Order and any resolution of the Board of Directors may be sufficiently evidenced by a Board Resolution;

(d) the Trustee may consult with counsel (which counsel may be counsel to the Trustee, the Company or any of its Affiliates, and may include any of its employees) and the advice of such counsel or any Opinion of Counsel shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon;

(e) the Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request or direction of any of the Holders or any holder of Preferred Securities pursuant to this Indenture, unless such Holders (or such holders of Preferred Securities) shall have offered to the Trustee security or indemnity reasonably satisfactory to it against the costs, expenses (including reasonable attorneys' fees and expenses) and liabilities that might be incurred by it in compliance with such request or direction, including reasonable advances as may be requested by the Trustee;

(f) the Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, indenture, note or other paper or document, but the Trustee in its discretion may make such inquiry or

investigation into such facts or matters as it may see fit, and, if the Trustee shall determine to make such inquiry or investigation, it shall be entitled to examine the books, records and premises of the Company, personally or by agent or attorney;

(g) the Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents, attorneys, custodians or nominees and the Trustee shall not be responsible for any misconduct or negligence on the part of any such agent, attorney, custodian or nominee appointed with due care by it hereunder;

(h) whenever in the administration of this Indenture the Trustee shall deem it desirable to receive instructions with respect to enforcing any remedy or right or taking any other action with respect to enforcing any remedy or right hereunder, the Trustees (i) may request instructions from the Holders (which instructions may only be given by the Holders of the same aggregate principal amount of Outstanding Securities as would be entitled to direct the Trustee under this Indenture in respect of such remedy, right or action), (ii) may refrain from enforcing such remedy or right or taking such action until such instructions are received and (iii) shall be protected in acting in accordance with such instructions;

(i) except as otherwise expressly provided by this Indenture, the Trustee shall not be under any obligation to take any action that is discretionary under the provisions of this Indenture;

(j) without prejudice to any other rights available to the Trustee under applicable law, when the Trustee incurs expenses or renders services in connection with any bankruptcy, insolvency or other proceeding referred to in clauses (d) or (e) of the definition of Event of Default, such expenses (including legal fees and expenses of its agents and counsel) and the compensation for such services are intended to constitute expenses of administration under any bankruptcy laws or law relating to creditors rights generally;

(k) whenever in the administration of this Indenture the Trustee shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Trustee (unless other evidence be herein specifically prescribed) may, in the absence of bad faith on its part, conclusively rely upon an Officers' Certificate addressing such matter, which, upon receipt of such request, shall be promptly delivered by the Company;

(l) the Trustee shall not be charged with knowledge of any Event of Default unless either (i) a Responsible Officer of the Trustee shall have actual knowledge or (ii) the Trustee shall have received written notice thereof from the Company or a Holder; and

(m) in the event that the Trustee is also acting as Paying Agent, Authenticating Agent or Securities Registrar hereunder, the rights and protections afforded to the Trustee pursuant to this *Article VI* shall also be afforded such Paying Agent, Authenticating Agent, or Securities Registrar.

#### SECTION 6.5. *May Hold Securities.*

The Trustee, any Authenticating Agent, any Paying Agent, any Securities Registrar or any other agent of the Company, in its individual or any other capacity, may become the owner or pledgee of Securities and may otherwise deal with the Company with the same rights it would have if it were not Trustee, Authenticating Agent, Paying Agent, Securities Registrar or such other agent.

#### SECTION 6.6. *Compensation; Reimbursement; Indemnity.*

(a) The Company agrees

(i) to pay to the Trustee from time to time reasonable compensation for all services rendered by it hereunder in such amounts as the Company and the Trustee shall agree from time to time (which compensation shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust);

(ii) to reimburse the Trustee upon its request for all reasonable expenses, disbursements and advances incurred or made by the Trustee in accordance with any provision of this Indenture (including the reasonable compensation and the expenses and disbursements of its agents and counsel), except any such expense, disbursement or advance as may be attributable to its negligence, bad faith or willful misconduct; and

(iii) to the fullest extent permitted by applicable law, to indemnify the Trustee and its Affiliates, and their officers, directors, shareholders, agents, representatives and employees for, and to hold them

harmless against, any loss, damage, liability, tax (other than income, franchise or other taxes imposed on amounts paid pursuant to (i) or (ii) hereof), penalty, expense or claim of any kind or nature whatsoever incurred without negligence, bad faith or willful misconduct on its part arising out of or in connection with the acceptance or administration of this trust or the performance of the Trustee's duties hereunder, including the costs and expenses of defending itself against any claim or liability in connection with the exercise or performance of any of its powers or duties hereunder.

(b) To secure the Company's payment obligations in this *Section 6.6*, the Company hereby grants and pledges to the Trustee and the Trustee shall have a lien prior to the Securities on all money or property held or collected by the Trustee, other than money or property held in trust to pay principal and interest on particular Securities. Such lien shall survive the satisfaction and discharge of this Indenture or the resignation or removal of the Trustee.

(c) The obligations of the Company under this *Section 6.6* shall survive the satisfaction and discharge of this Indenture and the earlier resignation or removal of the Trustee.

(d) In no event shall the Trustee be liable for any indirect, special, punitive or consequential loss or damage of any kind whatsoever, including, but not limited to, lost profits, even if the Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action.

(e) In no event shall the Trustee be liable for any failure or delay in the performance of its obligations hereunder because of circumstances beyond its control, including, but not limited to, acts of God, flood, war (whether declared or undeclared), terrorism, fire, riot, embargo, government action, including any laws, ordinances, regulations, governmental action or the like which delay, restrict or prohibit the providing of the services contemplated by this Indenture.

#### SECTION 6.7. *Resignation and Removal; Appointment of Successor.*

(a) No resignation or removal of the Trustee and no appointment of a successor Trustee pursuant to this *Article VI* shall become effective until the acceptance of appointment by the successor Trustee under *Section 6.8*.

(b) The Trustee may resign at any time by giving written notice thereof to the Company.

(c) Unless an Event of Default shall have occurred and be continuing, the Trustee may be removed at any time by the Company by a Board Resolution. If an Event of Default shall have occurred and be continuing, the Trustee may be removed by Act of the Holders of a majority in aggregate principal amount of the Outstanding Securities, delivered to the Trustee and to the Company.

(d) If the Trustee shall resign, be removed or become incapable of acting, or if a vacancy shall occur in the office of Trustee for any reason, at a time when no Event of Default shall have occurred and be continuing, the Company, by a Board Resolution, shall promptly appoint a successor Trustee, and such successor Trustee and the retiring Trustee shall comply with the applicable requirements of *Section 6.8*. If the Trustee shall resign, be removed or become incapable of acting, or if a vacancy shall occur in the office of Trustee for any reason, at a time when an Event of Default shall have occurred and be continuing, the Holders, by Act of the Holders of a majority in aggregate principal amount of the Outstanding Securities, shall promptly appoint a successor Trustee, and such successor Trustee and the retiring Trustee shall comply with the applicable requirements of *Section 6.8*. If no successor Trustee shall have been so appointed by the Company or the Holders and accepted appointment within sixty (60) days after the giving of a notice of resignation by the Trustee or the removal of the Trustee in the manner required by *Section 6.8*, any Holder who has been a bona fide Holder of a Security for at least six months may, on behalf of such Holder and all others similarly situated, and any resigning Trustee may, at the expense of the Company, petition any court of competent jurisdiction for the appointment of a successor Trustee.

(e) The Company shall give notice to all Holders in the manner provided in *Section 1.6* of each resignation and each removal of the Trustee and each appointment of a successor Trustee. Each notice shall include the name of the successor Trustee and the address of its Corporate Trust Office.

#### SECTION 6.8. *Acceptance of Appointment by Successor.*

(a) In case of the appointment hereunder of a successor Trustee, each successor Trustee so appointed shall execute, acknowledge and deliver to the Company and to the retiring Trustee an instrument accepting such appointment, and thereupon the resignation or removal of the retiring Trustee shall become effective and such successor Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts and duties of the retiring Trustee; but, on the request of the Company or the successor Trustee, such

retiring Trustee shall, upon payment of its charges, execute and deliver an instrument transferring to such successor Trustee all the rights, powers and trusts of the retiring Trustee and shall duly assign, transfer and deliver to such successor Trustee all property and money held by such retiring Trustee hereunder.

(b) Upon request of any such successor Trustee, the Company shall execute any and all instruments for more fully and certainly vesting in and confirming to such successor Trustee all rights, powers and trusts referred to in paragraph (a) of this *Section 6.8*.

(c) No successor Trustee shall accept its appointment unless at the time of such acceptance such successor Trustee shall be qualified and eligible under this *Article VI*.

#### SECTION 6.9. *Merger, Conversion, Consolidation or Succession to Business.*

Any Person into which the Trustee may be merged or converted or with which it may be consolidated, or any Person resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any Person succeeding to all or substantially all of the corporate trust business of the Trustee, shall be the successor of the Trustee hereunder, without the execution or filing of any paper or any further act on the part of any of the parties hereto, *provided*, that such Person shall be otherwise qualified and eligible under this *Article VI*. In case any Securities shall have been authenticated, but not delivered, by the Trustee then in office, any successor by merger, conversion or consolidation or as otherwise provided above in this *Section 6.9* to such authenticating Trustee may adopt such authentication and deliver the Securities so authenticated, and in case any Securities shall not have been authenticated, any successor to the Trustee may authenticate such Securities either in the name of any predecessor Trustee or in the name of such successor Trustee, and in all cases the certificate of authentication shall have the full force which it is provided anywhere in the Securities or in this Indenture that the certificate of the Trustee shall have.

#### SECTION 6.10. *Not Responsible for Recitals or Issuance of Securities.*

The recitals contained herein and in the Securities, except the Trustee's certificates of authentication, shall be taken as the statements of the Company, and neither the Trustee nor any Authenticating Agent assumes any responsibility for their correctness. The Trustee makes no representations as to the validity or sufficiency of this Indenture or of the Securities. Neither the Trustee nor any Authenticating Agent shall be accountable for the use or application by the Company of the Securities or the proceeds thereof.

#### SECTION 6.11. *Appointment of Authenticating Agent.*

(a) The Trustee may appoint an Authenticating Agent or Agents with respect to the Securities, which shall be authorized to act on behalf of the Trustee to authenticate Securities issued upon original issue and upon exchange, registration of transfer or partial redemption thereof or pursuant to *Section 3.6*, and Securities so authenticated shall be entitled to the benefits of this Indenture and shall be valid and obligatory for all purposes as if authenticated by the Trustee hereunder. Wherever reference is made in this Indenture to the authentication and delivery of Securities by the Trustee or the Trustee's certificate of authentication, such reference shall be deemed to include authentication and delivery on behalf of the Trustee by an Authenticating Agent. Each Authenticating Agent shall be acceptable to the Company and shall at all times be a corporation organized and doing business under the laws of the United States of America, or of any State or Territory thereof or the District of Columbia, authorized under such laws to act as Authenticating Agent, having a combined capital and surplus of not less than \$50,000,000 and subject to supervision or examination by Federal or state authority. If such Authenticating Agent publishes reports of condition at least annually pursuant to law or to the requirements of said supervising or examining authority, then for the purposes of this *Section 6.11* the combined capital and surplus of such Authenticating Agent shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time an Authenticating Agent shall cease to be eligible in accordance with the provisions of this *Section 6.11*, such Authenticating Agent shall resign immediately in the manner and with the effect specified in this *Section 6.11*.

(b) Any Person into which an Authenticating Agent may be merged or converted or with which it may be consolidated, or any Person resulting from any merger, conversion or consolidation to which such Authenticating Agent shall be a party, or any Person succeeding to all or substantially all of the corporate trust business of an Authenticating Agent shall be the successor Authenticating Agent hereunder, provided such Person shall be otherwise eligible under this *Section 6.11*, without the execution or filing of any paper or any further act on the part of the Trustee or the Authenticating Agent.



(c) An Authenticating Agent may resign at any time by giving written notice thereof to the Trustee and to the Company. The Trustee may at any time terminate the agency of an Authenticating Agent by giving written notice thereof to such Authenticating Agent and to the Company. Upon receiving such a notice of resignation or upon such a termination, or in case at any time such Authenticating Agent shall cease to be eligible in accordance with the provisions of this *Section 6.11*, the Trustee may appoint a successor Authenticating Agent eligible under the provisions of this *Section 6.11*, which shall be acceptable to the Company, and shall give notice of such appointment to all Holders. Any successor Authenticating Agent upon acceptance of its appointment hereunder shall become vested with all the rights, powers and duties of its predecessor hereunder, with like effect as if originally named as an Authenticating Agent.

(d) The Company agrees to pay to each Authenticating Agent from time to time reasonable compensation for its services under this *Section 6.11* in such amounts as the Company and the Authenticating Agent shall agree from time to time.

(e) If an appointment of an Authenticating Agent is made pursuant to this *Section 6.11*, the Securities may have endorsed thereon, in addition to the Trustee's certificate of authentication, an alternative certificate of authentication in the following form:

This is one of the Securities referred to in the within mentioned Indenture.

Dated:

JPMORGAN CHASE BANK, N.A., not in its individual  
capacity, but solely as Trustee

By: \_\_\_\_\_  
*Authenticating Agent*

By: \_\_\_\_\_  
*Authorized signatory*

## ARTICLE VII

### HOLDER'S LISTS AND REPORTS BY COMPANY

#### SECTION 7.1. *Company to Furnish Trustee Names and Addresses of Holders.*

The Company will furnish or cause to be furnished to the Trustee:

(a) semiannually, on or before June 30 and December 31 of each year, a list, in such form as the Trustee may reasonably require, of the names and addresses of the Holders as of a date not more than fifteen (15) days prior to the delivery thereof, and

(b) at such other times as the Trustee may request in writing, within thirty (30) days after the receipt by the Company of any such request, a list of similar form and content as of a date not more than fifteen (15) days prior to the time such list is furnished,

in each case to the extent such information is in the possession or control of the Company and has not otherwise been received by the Trustee in its capacity as Securities Registrar.

#### SECTION 7.2. *Preservation of Information, Communications to Holders.*

(a) The Trustee shall preserve, in as current a form as is reasonably practicable, the names and addresses of Holders contained in the most recent list furnished to the Trustee as provided in *Section 7.1* and the names and addresses of Holders received by the Trustee in its capacity as Securities Registrar. The Trustee may destroy any list furnished to it as provided in *Section 7.1* upon receipt of a new list so furnished.

(b) The rights of Holders to communicate with other Holders with respect to their rights under this Indenture or under the Securities, and the corresponding rights and privileges of the Trustee, shall be as provided in the Trust Indenture Act.

(c) Every Holder of Securities, by receiving and holding the same, agrees with the Company and the Trustee that neither the Company nor the Trustee nor any agent of either of them shall be held accountable by reason of the disclosure of information as to the names and addresses of the Holders made pursuant to the Trust Indenture Act.

SECTION 7.3. *Reports by Company.*

(a) The Company shall furnish to the Holders and to prospective purchasers of Securities, upon their request, the information required to be furnished pursuant to Rule 144A(d)(4) under the Securities Act. The Company shall furnish to the Trustee and, so long as the Property Trustee holds any of the Securities, the Company shall furnish to the Property Trustee, Statutory Financial Statements promptly following their filing with the Applicable Insurance Regulatory Authority. The delivery requirement set forth in the preceding sentence may be satisfied by compliance with *Section 7.3(b)* hereof.

(b) The Company shall furnish to each of (i) the Trustee, (ii) the Holders and to subsequent holders of Securities, (iii) Cohen Bros. Financial Management LLC, 1818 Market Street, 28<sup>th</sup> Street, Philadelphia, Pennsylvania 13103), or such other address as designated by Cohen Bros. Financial Management LLC) and (iv) any beneficial owner of the Securities reasonably identified to the Company (which identification may be made either by such beneficial owner or by Cohen Bros. Financial Management LLC), a duly completed and executed certificate substantially and substantively in the form attached hereto as *Exhibit A*, including the financial statements referenced in such Exhibit, which certificate and financial statements shall be so furnished by the Company not later than forty-five (45) days after the end of each of the first three fiscal quarters of each fiscal year of the Company and not later than ninety (90) days after the end of each fiscal year of the Company. The delivery requirements under this Section 7.3(b) may be satisfied by compliance with Section 8.16(b) of the Trust Agreement.

(c) If the Company intends to file its annual and quarterly information with the Securities and Exchange Commission (the "*Commission*") in electronic form pursuant to Regulation S-T of the Commission using the Commission's Electronic Data Gathering, Analysis and Retrieval ("*EDGAR*") system, the Company shall notify the Trustee in the manner prescribed herein of each such annual and quarterly filing. The Trustee is hereby authorized and directed to access the EDGAR system for purposes of retrieving the financial information so filed. Compliance with the foregoing shall constitute delivery by the Company of its financial statements to the Trustee in compliance with the provisions of Section 314(a) of the Trust Indenture Act, if applicable. The Trustee shall have no duty to search for or obtain any electronic or other filings that the Company makes with the Commission, regardless of whether such filings are periodic, supplemental or otherwise. Delivery of reports, information and documents to the Trustee pursuant to this *Section 7.3(c)* shall be solely for purposes of compliance with this *Section 7.3(c)* and, if applicable, with Section 314(a) of the Trust Indenture Act. The Trustee's receipt of such reports, information and documents shall not constitute notice to it of the content thereof or any matter determinable from the content thereof, including the Company's compliance with any of its covenants hereunder, as to which the Trustee is entitled to rely upon Officers' Certificates.

## CONSOLIDATION, MERGER, CONVEYANCE, TRANSFER OR LEASE

SECTION 8.1. *Company May Consolidate, Etc., Only on Certain Terms.*

The Company shall not consolidate with or merge into any other Person or convey, transfer or lease its properties and assets substantially as an entirety to any Person, and no Person shall consolidate with or merge into the Company or convey, transfer or lease its properties and assets substantially as an entirety to the Company, unless:

- (a) if the Company shall consolidate with or merge into another Person or convey, transfer or lease its properties and assets substantially as an entirety to any Person, the entity formed by such consolidation or into which the Company is merged or the Person that acquires by conveyance or transfer, or that leases, the properties and assets of the Company substantially as an entirety shall be an entity organized and existing under the laws of the United States of America or any State or Territory thereof or the District of Columbia and shall expressly assume, by an indenture supplemental hereto, executed and delivered to the Trustee, in form reasonably satisfactory to the Trustee, the due and punctual payment of the principal of and any premium and interest (including any Additional Interest) on all the Securities and the performance of every covenant of this Indenture on the part of the Company to be performed or observed;
- (b) immediately after giving effect to such transaction, no Event of Default, and no event that, after notice or lapse of time, or both, would constitute an Event of Default, shall have happened and be continuing; and
- (c) the Company has delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that such consolidation, merger, conveyance, transfer or lease and, if a supplemental indenture is required in connection with such transaction, any such supplemental indenture comply with this *Article VIII* and that all conditions precedent herein provided for relating to such transaction have been complied with; and the Trustee may rely upon such Officers' Certificate and Opinion of Counsel as conclusive evidence that such transaction complies with this *Section 8.1*.

SECTION 8.2. *Successor Company Substituted.*

- (a) Upon any consolidation or merger by the Company with or into any other Person, or any conveyance, transfer or lease by the Company of its properties and assets substantially as an entirety to any Person in accordance with *Section 8.1* and the execution and delivery to the Trustee of the supplemental indenture described in *Section 8.1(a)*, the successor entity formed by such consolidation or into which the Company is merged or to which such conveyance, transfer or lease is made shall succeed to, and be substituted for, and may exercise every right and power of, the Company under this Indenture with the same effect as if such successor Person had been named as the Company herein; and in the event of any such conveyance or transfer, following the execution and delivery of such supplemental indenture, the Company shall be discharged from all obligations and covenants under the Indenture and the Securities.
- (b) Such successor Person may cause to be executed, and may issue either in its own name or in the name of the Company, any or all of the Securities issuable hereunder that theretofore shall not have been signed by the Company and delivered to the Trustee; and, upon the order of such successor Person instead of the Company and subject to all the terms, conditions and limitations in this Indenture prescribed, the Trustee shall authenticate and shall deliver any Securities that previously shall have been signed and delivered by the officers of the Company to the Trustee for authentication, and any Securities that such successor Person thereafter shall cause to be executed and delivered to the Trustee on its behalf. All the Securities so issued shall in all respects have the same legal rank and benefit under this Indenture as the Securities theretofore or thereafter issued in accordance with the terms of this Indenture.
- (c) In case of any such consolidation, merger, sale, conveyance or lease, such changes in phraseology and form may be made in the Securities thereafter to be issued as may be appropriate to reflect such occurrence.

## ARTICLE IX

### SUPPLEMENTAL INDENTURES

#### SECTION 9.1. *Supplemental Indentures without Consent of Holders.*

Without the consent of any Holders, the Company, when authorized by a Board Resolution, and the Trustee, at any time and from time to time, may enter into one or more indentures supplemental hereto, in form reasonably satisfactory to the Trustee, for any of the following purposes:

- (a) to evidence the succession of another Person to the Company, and the assumption by any such successor of the covenants of the Company herein and in the Securities; or
- (b) to cure any ambiguity, to correct or supplement any provision herein that may be defective or inconsistent with any other provision herein, or to make or amend any other provisions with respect to matters or questions arising under this Indenture, which shall not be inconsistent with the other provisions of this Indenture, *provided*, that such action pursuant to this clause (b) shall not adversely affect in any material respect the interests of any Holders or the holders of the Preferred Securities; or
- (c) to add to the covenants, restrictions or obligations of the Company or to add to the Events of Default, *provided*, that such action pursuant to this clause (c) shall not adversely affect in any material respect the interests of any Holders or the holders of the Preferred Securities; or
- (d) to modify, eliminate or add to any provisions of the Indenture or the Securities to such extent as shall be necessary to ensure that the Securities are treated as indebtedness of the Company for United States Federal income tax purposes, *provided*, that such action pursuant to this clause (d) shall not adversely affect in any material respect the interests of any Holders or the holders of the Preferred Securities.

#### SECTION 9.2. *Supplemental Indentures with Consent of Holders.*

(a) With the consent of the Holders of not less than a majority in aggregate principal amount of the Outstanding Securities, by Act of said Holders delivered to the Company and the Trustee, the Company, when authorized by a Board Resolution, and the Trustee may enter into an indenture or indentures supplemental hereto for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Indenture or of modifying in any manner the rights of the Holders of Securities under this Indenture; *provided*, that no such supplemental indenture shall, without the consent of the Holder of each Outstanding Security,

(i) change the Stated Maturity of the principal or any premium of any Security or change the date of payment of any installment of interest (including any Additional Interest) on any Security, or reduce the principal amount thereof or the rate of interest thereon or any premium payable upon the redemption thereof or change the place of payment where, or the coin or currency in which, any Security or interest thereon is payable, or restrict or impair the right to institute suit for the enforcement of any such payment on or after such date, or

(ii) reduce the percentage in aggregate principal amount of the Outstanding Securities, the consent of whose Holders is required for any such supplemental indenture, or the consent of whose Holders is required for any waiver of compliance with any provision of this Indenture or of defaults hereunder and their consequences provided for in this Indenture, or

(iii) modify any of the provisions of this *Section 9.2*, *Section 5.13* or *Section 10.7*, except to increase any percentage in aggregate principal amount of the Outstanding Securities, the consent of whose Holders is required for any reason, or to provide that certain other provisions of this Indenture cannot be modified or waived without the consent of the Holder of each Security;

*provided, further*, that, so long as any Preferred Securities remain outstanding, no amendment under this *Section 9.2* shall be effective until the holders of a majority in Liquidation Amount of the Preferred Securities shall have consented to such amendment; *provided, further*, that if the consent of the Holder of each Outstanding Security is required for any amendment under this Indenture, such amendment shall not be effective until the holder of each Outstanding Preferred Security shall have consented to such amendment.

(b) It shall not be necessary for any Act of Holders under this *Section 9.2* to approve the particular form of any proposed supplemental indenture, but it shall be sufficient if such Act shall approve the substance thereof.

### SECTION 9.3. *Execution of Supplemental Indentures.*

In executing or accepting the additional trusts created by any supplemental indenture permitted by this *Article IX* or the modifications thereby of the trusts created by this Indenture, the Trustee shall be entitled to receive, and shall be fully protected in conclusively relying upon, an Officers' Certificate and an Opinion of Counsel stating that the execution of such supplemental indenture is authorized or permitted by this Indenture, and that all conditions precedent herein provided for relating to such action have been complied with. The Trustee may, but shall not be obligated to, enter into any such supplemental indenture that affects the Trustee's own rights, duties, indemnities or immunities under this Indenture or otherwise. Copies of the final form of each supplemental indenture shall be delivered by the Trustee at the expense of the Company to each Holder, and, if the Trustee is the Property Trustee, to each holder of Preferred Securities, promptly after the execution thereof.

### SECTION 9.4. *Effect of Supplemental Indentures.*

Upon the execution of any supplemental indenture under this *Article IX*, this Indenture shall be modified in accordance therewith, and such supplemental indenture shall form a part of this Indenture for all purposes; and every Holder of Securities and every holder of Preferred Securities theretofore or thereafter authenticated and delivered hereunder shall be bound thereby.

### SECTION 9.5. *Reference in Securities to Supplemental Indentures.*

Securities authenticated and delivered after the execution of any supplemental indenture pursuant to this *Article IX* may, and shall if required by the Company, bear a notation in form approved by the Company as to any matter provided for in such supplemental indenture. If the Company shall so determine, new Securities so modified as to conform, in the opinion of the Company, to any such supplemental indenture may be prepared and executed by the Company and authenticated and delivered by the Trustee in exchange for Outstanding Securities.

## ARTICLE X

### COVENANTS

#### SECTION 10.1. *Payment of Principal, Premium, if any, and Interest.*

The Company covenants and agrees for the benefit of the Holders of the Securities that it will duly and punctually pay the principal of and any premium and interest (including any Additional Interest) on the Securities in accordance with the terms of the Securities and this Indenture. As of the date of this Indenture, the Company represents that it has no present intention to exercise its right under *Section 2.11* to defer payments of interest on the Securities.

#### SECTION 10.2. *Money for Security Payments to be Held in Trust.*

(a) If the Company shall at any time act as its own Paying Agent with respect to the Securities, it will, on or before each due date of the principal of and any premium or interest (including any Additional Interest) on the Securities, segregate and hold in trust for the benefit of the Persons entitled thereto a sum sufficient to pay the principal and any premium or interest (including Additional Interest) so becoming due until such sums shall be paid to such Persons or otherwise disposed of as herein provided, and will promptly notify the Trustee in writing of its failure so to act.

(b) Whenever the Company shall have one or more Paying Agents, it will, prior to 10:00 a.m., New York City time, on each due date of the principal of or any premium or interest (including any Additional Interest) on any Securities, deposit with a Paying Agent a sum sufficient to pay such amount, such sum to be held as provided in the Trust Indenture Act and (unless such Paying Agent is the Trustee) the Company will promptly notify the Trustee of its failure so to act.

(c) The Company will cause each Paying Agent for the Securities other than the Trustee to execute and deliver to the Trustee an instrument in which such Paying Agent shall agree with the Trustee, subject to the provisions of this *Section 10.2*, that such Paying Agent will (i) comply with the provisions of this Indenture and the Trust Indenture Act applicable to it as a Paying Agent and (ii) during the continuance of any default by the Company (or any other obligor upon the Securities) in the making of any payment in respect of the Securities, upon the written request of the Trustee, forthwith pay to the Trustee all sums held in trust by such Paying Agent for payment in respect of the Securities.

(d) The Company may at any time, for the purpose of obtaining the satisfaction and discharge of this Indenture or for any other purpose, pay, or by Company Order direct any Paying Agent to pay, to the Trustee all sums held in trust by the Company or such Paying Agent, such sums to be held by the Trustee upon the same trusts as those upon which such sums were held by the Company or such Paying Agent; and, upon such payment by any Paying Agent to the Trustee, such Paying Agent shall be released from all further liability with respect to such money.

(e) Any money deposited with the Trustee or any Paying Agent, or then held by the Company in trust for the payment of the principal of and any premium or interest (including any Additional Interest) on any Security and remaining unclaimed for two years after such principal and any premium or interest has become due and payable shall (unless otherwise required by mandatory provision of applicable escheat or abandoned or unclaimed property law) be paid on Company Request to the Company, or (if then held by the Company) shall (unless otherwise required by mandatory provision of applicable escheat or abandoned or unclaimed property law) be discharged from such trust; and the Holder of such Security shall thereafter, as an unsecured general creditor, look only to the Company for payment thereof, and all liability of the Trustee or such Paying Agent with respect to such trust money, and all liability of the Company as trustee thereof, shall thereupon cease; *provided*, that the Trustee or such Paying Agent, before being required to make any such repayment, may at the expense of the Company cause to be published once, in a newspaper published in the English language, customarily published on each Business Day and of general circulation in the Borough of Manhattan, The City of New York, notice that such money remains unclaimed and that, after a date specified therein, which shall not be less than thirty (30) days from the date of such publication, any unclaimed balance of such money then remaining will be repaid to the Company.

#### SECTION 10.3. *Statement as to Compliance.*

The Company shall deliver to the Trustee, within one hundred and twenty (120) days after the end of each fiscal year of the Company ending after the date hereof, an Officers' Certificate covering the preceding calendar year, stating whether or not to the knowledge of the signers thereof the Company is in default in the performance or observance of any of the terms, provisions and conditions of this Indenture (without regard to any period of grace or requirement of notice provided hereunder), and if the Company shall be in default, specifying all such defaults and the nature and status thereof of which they may have knowledge. The delivery requirements of this Section 10.3 may be satisfied by compliance with Section 8.16(a) of the Trust Agreement.

#### SECTION 10.4. *Calculation Agent.*

(a) The Company hereby agrees that for so long as any of the Securities remain Outstanding, there will at all times be an agent appointed to calculate LIBOR in respect of each Interest Payment Date in accordance with the terms of *Schedule A* (the "*Calculation Agent*"). The Company has initially appointed the Property Trustee as Calculation Agent for purposes of determining LIBOR for each Interest Payment Date. The Calculation Agent may be removed by the Company at any time. So long as the Property Trustee holds any of the Securities, the Calculation Agent shall be the Property Trustee, except as described in the immediately preceding sentence. If the Calculation Agent is unable or unwilling to act as such or is removed by the Company, the Company will promptly appoint as a replacement Calculation Agent the London office of a leading bank which is engaged in transactions in Eurodollar deposits in the international Eurodollar market and which does not control or is not controlled by or under common control with the Company or its Affiliates. The Calculation Agent may not resign its duties without a successor having been duly appointed.

(b) The Calculation Agent shall be required to agree that, as soon as possible after 11:00 a.m. (London time) on each LIBOR Determination Date (as defined in *Schedule A*), but in no event later than 11:00 a.m. (London time) on the Business Day immediately following each LIBOR Determination Date, the Calculation Agent will calculate the interest rate (the Interest Payment shall be rounded to the nearest cent, with half a cent being rounded upwards) for the related Interest Payment Date, and will communicate such rate and amount to the Company, the Trustee, each Paying Agent and the Depositary. The Calculation Agent will also specify to the Company the quotations upon which the foregoing rates and amounts are based and, in any event, the Calculation Agent shall notify the Company before 5:00 p.m. (London time) on each LIBOR Determination Date that either: (i) it has determined or is in the process of determining the foregoing rates and amounts or (ii) it has not determined and is not in the process of determining the foregoing rates and amounts, together with its reasons therefor. The Calculation Agent's determination of the foregoing rates and amounts for any Interest Payment Date will (in the absence of manifest error) be final and binding upon all

parties. For the sole purpose of calculating the interest rate for the Securities, "Business Day" shall be defined as any day on which dealings in deposits in Dollars are transacted in the London interbank market.

#### SECTION 10.5. *Additional Tax Sums.*

So long as no Event of Default has occurred and is continuing, if (a) the Trust is the Holder of all of the Outstanding Securities and (b) a Tax Event described in clause (i) or (iii) in the definition of Tax Event in *Section 1.1* hereof has occurred and is continuing, the Company shall pay to the Trust (and its permitted successors or assigns under the related Trust Agreement) for so long as the Trust (or its permitted successor or assignee) is the registered holder of the Outstanding Securities, such amounts as may be necessary in order that the amount of Distributions (including any Additional Interest Amount (as defined in the Trust Agreement)) then due and payable by the Trust on the Preferred Securities and Common Securities that at any time remain outstanding in accordance with the terms thereof shall not be reduced as a result of any Additional Taxes arising from such Tax Event (additional such amounts payable by the Company to the Trust, the "Additional Tax Sums"). Whenever in this Indenture or the Securities there is a reference in any context to the payment of principal of or interest on the Securities, such mention shall be deemed to include mention of the payments of the Additional Tax Sums provided for in this *Section 10.5* to the extent that, in such context, Additional Tax Sums are, were or would be payable in respect thereof pursuant to the provisions of this *Section 10.5* and express mention of the payment of Additional Tax Sums (if applicable) in any provisions hereof shall not be construed as excluding Additional Tax Sums in those provisions hereof where such express mention is not made; *provided*, that the deferral of the payment of interest pursuant to *Section 3.9* on the Securities shall not defer the payment of any Additional Tax Sums that may be due and payable.

#### SECTION 10.6. *Additional Covenants.*

(a) The Company covenants and agrees with each Holder of Securities that if an Event of Default shall have occurred and be continuing or the Company shall have given notice of its election to begin an Extension Period with respect to the Securities or such Extension Period, or any extension thereof, shall be continuing, it shall not (i) declare or pay any dividends or distributions on, or redeem, purchase, acquire or make a liquidation payment with respect to, any shares of the Company's capital stock, or (ii) make any payment of principal of or any interest or premium, if any, on or repay, repurchase or redeem any debt securities of the Company that rank *pari passu* in all respects with or junior in interest to the Securities (other than (A) repurchases, redemptions or other acquisitions of shares of capital stock of the Company in connection with any employment contract, benefit plan or other similar arrangement with or for the benefit of any one or more employees, officers, directors or consultants, in connection with a dividend reinvestment or stockholder stock purchase plan or in connection with the issuance of capital stock of the Company (or securities convertible into or exercisable for such capital stock) as consideration in an acquisition transaction entered into prior to the applicable Extension Period, (B) as a result of an exchange or conversion of any class or series of the Company's capital stock (or any capital stock of a Subsidiary of the Company) for any class or series of the Company's capital stock or of any class or series of the Company's indebtedness for any class or series of the Company's capital stock, (C) the purchase of fractional interests in shares of the Company's capital stock pursuant to the conversion or exchange provisions of such capital stock or the security being converted or exchanged, (D) any declaration of a dividend in connection with any Rights Plan, the issuance of rights, stock or other property under any Rights Plan or the redemption or repurchase of rights pursuant thereto or (E) any dividend in the form of stock, warrants, options or other rights where the dividend stock or the stock issuable upon exercise of such warrants, options or other rights is the same stock as that on which the dividend is being paid or ranks *pari passu* with or junior to such stock).

(b) The Company also covenants with each Holder of Securities (i) to hold, directly or indirectly, one hundred percent (100%) of the Common Securities of the Trust, *provided*, that any permitted successor of the Company hereunder may succeed to the Company's ownership of such Common Securities, (ii) as holder of such Common Securities, not to voluntarily dissolve, wind-up or liquidate the Trust other than (A) in connection with a distribution of the Securities to the holders of the Preferred Securities in liquidation of the Trust or (B) in connection with certain mergers, consolidations or amalgamations permitted by the Trust Agreement and (iii) to use its reasonable commercial efforts, consistent with the terms and provisions of the Trust Agreement, to cause the Trust to continue to be taxable as a grantor trust and not as a corporation for United States Federal income tax purposes.

#### SECTION 10.7. *Waiver of Covenants.*

The Company may omit in any particular instance to comply with any covenant or condition contained in *Section 10.6* if, before or after the time for such compliance, the Holders of at least a majority in aggregate principal amount of the Outstanding Securities shall, by Act of such Holders, and at least a majority of the aggregate Liquidation Amount of the Preferred Securities then outstanding, by consent of such holders, either waive such compliance in such instance or generally waive compliance with such covenant or condition, but no such waiver shall extend to or affect such covenant or condition except to the extent so expressly waived, and, until such waiver shall become effective, the obligations of the Company in respect of any such covenant or condition shall remain in full force and effect.

#### SECTION 10.8. *Treatment of Securities.*

The Company will treat the Securities as indebtedness, and the amounts, other than payments of principal, payable in respect of the principal amount of such Securities as interest, for all U.S. federal income tax purposes. All payments in respect of the Securities will be made free and clear of U.S. withholding tax to any beneficial owner thereof that has provided an Internal Revenue Service Form W-9 or W-8BEN (or any substitute or successor form) establishing its U.S. or non-U.S. status for U.S. federal income tax purposes, or any other applicable form establishing a complete exemption from U.S. withholding tax.

### ARTICLE XI

#### REDEMPTION OF SECURITIES

##### SECTION 11.1. *Optional Redemption.*

The Company may, at its option, on any Interest Payment Date, on or after December 15, 2009, redeem the Securities in whole at any time or in part from time to time, at a Redemption Price equal to one hundred percent (100%) of the principal amount thereof (or of the redeemed portion thereof, as applicable), together, in the case of any such redemption, with accrued interest, including any Additional Interest, through but excluding the date fixed as the Redemption Date (the "Optional Redemption Price"); *provided*, that the Company shall have received the prior approval of any Applicable Insurance Regulatory Authorities with respect to such redemption if then required.

##### SECTION 11.2. *Special Event Redemption.*

Prior to December 15, 2009, upon the occurrence and during the continuation of a Special Event, the Company may, at its option, redeem the Securities, in whole but not in part, at a Redemption Price equal to one hundred seven and one half percent (107.5%) of the principal amount thereof, together, in the case of any such redemption, with accrued interest, including any Additional Interest, through but excluding the date fixed as the Redemption Date (the "Special Redemption Price"), *provided*, that the Company shall have received the prior approval of any Applicable Insurance Regulatory Authority with respect to such redemption if then required.

##### SECTION 11.3. *Election to Redeem; Notice to Trustee.*

The election of the Company to redeem any Securities, in whole or in part, shall be evidenced by or pursuant to a Board Resolution. In case of any redemption at the election of the Company, the Company shall, not less than forty-five (45) days and not more than seventy-five (75) days prior to the Redemption Date (unless a shorter notice shall be satisfactory to the Trustee), notify the Trustee and the Property Trustee under the Trust Agreement in writing of such date and of the principal amount of the Securities to be redeemed and provide the additional information required to be included in the notice or notices contemplated by *Section 11.5*. In the case of any redemption of Securities, in whole or in part, (a) prior to the expiration of any restriction on such redemption provided in this Indenture or the Securities or (b) pursuant to an election of the Company which is subject to a condition specified in this Indenture or the Securities, the Company shall furnish the Trustee with an Officers' Certificate and an Opinion of Counsel evidencing compliance with such restriction or condition.

##### SECTION 11.4. *Selection of Securities to be Redeemed.*

(a) If less than all the Securities are to be redeemed, the particular Securities to be redeemed shall be selected and redeemed on a pro rata basis not more than sixty (60) days prior to the Redemption Date by the Trustee from the Outstanding Securities not previously called for redemption, *provided*, that the unredeemed portion of the principal amount of any Security shall be in an authorized denomination (which shall not be less than the minimum authorized denomination) for such Security.



(b) The Trustee shall promptly notify the Company in writing of the Securities selected for redemption and, in the case of any Securities selected for partial redemption, the principal amount thereof to be redeemed. For all purposes of this Indenture, unless the context otherwise requires, all provisions relating to the redemption of Securities shall relate, in the case of any Security redeemed or to be redeemed only in part, to the portion of the principal amount of such Security that has been or is to be redeemed.

(c) The provisions of paragraphs (a) and (b) of this *Section 11.4* shall not apply with respect to any redemption affecting only a single Security, whether such Security is to be redeemed in whole or in part. In the case of any such redemption in part, the unredeemed portion of the principal amount of the Security shall be in an authorized denomination (which shall not be less than the minimum authorized denomination) for such Security.

#### SECTION 11.5. *Notice of Redemption.*

(a) Notice of redemption shall be given not later than the thirtieth (30<sup>th</sup>) day, and not earlier than the sixtieth (60<sup>th</sup>) day, prior to the Redemption Date to each Holder of Securities to be redeemed, in whole or in part, (unless a shorter notice shall be satisfactory to the Property Trustee under the related Trust Agreement).

(b) With respect to Securities to be redeemed, in whole or in part, each notice of redemption shall state:

(i) the Redemption Date;

(ii) the Redemption Price or, if the Redemption Price cannot be calculated prior to the time the notice is required to be sent, the estimate of the Redemption Price, as calculated by the Company, together with a statement that it is an estimate and that the actual Redemption Price will be calculated on the fifth Business Day prior to the Redemption Date (and if an estimate is provided, a further notice shall be sent of the actual Redemption Price on the date that such Redemption Price is calculated);

(iii) if less than all Outstanding Securities are to be redeemed, the identification (and, in the case of partial redemption, the respective principal amounts) of the particular Securities to be redeemed;

(iv) that on the Redemption Date, the Redemption Price will become due and payable upon each such Security or portion thereof, and that any interest (including any Additional Interest) on such Security or such portion, as the case may be, shall cease to accrue on and after said date; and

(v) the place or places where such Securities are to be surrendered for payment of the Redemption Price.

(c) Notice of redemption of Securities to be redeemed, in whole or in part, at the election of the Company shall be given by the Company or, at the Company's request, by the Trustee in the name and at the expense of the Company and shall be irrevocable. The notice if mailed in the manner provided above shall be conclusively presumed to have been duly given, whether or not the Holder receives such notice. In any case, a failure to give such notice by mail or any defect in the notice to the Holder of any Security designated for redemption as a whole or in part shall not affect the validity of the proceedings for the redemption of any other Security.

#### SECTION 11.6. *Deposit of Redemption Price.*

Prior to 10:00 a.m., New York City time, on the Redemption Date specified in the notice of redemption given as provided in *Section 11.5*, the Company will deposit with the Trustee or with one or more Paying Agents (or if the Company is acting as its own Paying Agent, the Company will segregate and hold in trust as provided in *Section 10.2*) an amount of money sufficient to pay the Redemption Price of, and any accrued interest (including any Additional Interest) on, all the Securities (or portions thereof) that are to be redeemed on that date.

#### SECTION 11.7. *Payment of Securities Called for Redemption.*

(a) If any notice of redemption has been given as provided in *Section 11.5*, the Securities or portion of Securities with respect to which such notice has been given shall become due and payable on the date and at the place or places stated in such notice at the applicable Redemption Price, together with accrued interest (including any Additional Interest) to the Redemption Date. On presentation and surrender of such Securities at a Place of Payment specified in such notice, the Securities or the specified portions thereof shall be paid and redeemed by the Company at the applicable Redemption Price, together with accrued interest (including any Additional Interest) to the Redemption Date.

(b) Upon presentation of any Security redeemed in part only, the Company shall execute and the Trustee shall authenticate and deliver to the Holder thereof, at the expense of the Company, a new Security or Securities, of authorized denominations, in aggregate principal amount equal to the unredeemed portion of the Security so presented and having the same Original Issue Date, Stated Maturity and terms.

(c) If any Security called for redemption shall not be so paid upon surrender thereof for redemption, the principal of and any premium on such Security shall, until paid, bear interest from the Redemption Date at the rate prescribed therefor in the Security.

## ARTICLE XII

### SUBORDINATION OF SECURITIES

#### Section 12.1. *Securities Subordinate to Senior Debt.*

The Company covenants and agrees, and each Holder of a Security, by its acceptance thereof, likewise covenants and agrees, that, to the extent and in the manner hereinafter set forth in this *Article XII*, the payment of the principal of and any premium and interest (including any Additional Interest) on each and all of the Securities are hereby expressly made subordinate and subject in right of payment to the prior payment in full of all Senior Debt.

#### SECTION 12.2. *No Payment When Senior Debt in Default; Payment Over of Proceeds Upon Dissolution, Etc.*

(a) In the event and during the continuation of any default by the Company in the payment of any principal of or any premium or interest on any Senior Debt (following any grace period, if applicable) when the same becomes due and payable, whether at maturity or at a date fixed for prepayment or by declaration of acceleration or otherwise, then, upon written notice of such default to the Company by the holders of such Senior Debt or any trustee therefor, unless and until such default shall have been cured or waived or shall have ceased to exist, no direct or indirect payment (in cash, property, securities, by set-off or otherwise) shall be made or agreed to be made on account of the principal of or any premium or interest (including any Additional Interest) on any of the Securities, or in respect of any redemption, repayment, retirement, purchase or other acquisition of any of the Securities.

(b) In the event of a bankruptcy, insolvency or other proceeding described in clause (d) or (e) of the definition of Event of Default (each such event, if any, herein sometimes referred to as a "*Proceeding*"), all Senior Debt (including any interest thereon accruing after the commencement of any such proceedings) shall first be paid in full before any payment or distribution, whether in cash, securities or other property, shall be made to any Holder of any of the Securities on account thereof. Any payment or distribution, whether in cash, securities or other property (other than securities of the Company or any other entity provided for by a plan of reorganization or readjustment the payment of which is subordinate, at least to the extent provided in these subordination provisions with respect to the indebtedness evidenced by the Securities, to the payment of all Senior Debt at the time outstanding and to any securities issued in respect thereof under any such plan of reorganization or readjustment), which would otherwise (but for these subordination provisions) be payable or deliverable in respect of the Securities shall be paid or delivered directly to the holders of Senior Debt in accordance with the priorities then existing among such holders until all Senior Debt (including any interest thereon accruing after the commencement of any Proceeding) shall have been paid in full.

(c) In the event of any Proceeding, after payment in full of all sums owing with respect to Senior Debt, the Holders of the Securities, together with the holders of any obligations of the Company ranking on a parity with the Securities, shall be entitled to be paid from the remaining assets of the Company the amounts at the time due and owing on account of unpaid principal of and any premium and interest (including any Additional Interest) on the Securities and such other obligations before any payment or other distribution, whether in cash, property or otherwise, shall be made on account of any capital stock or any obligations of the Company ranking junior to the Securities and such other obligations. If, notwithstanding the foregoing, any payment or distribution of any character or any security, whether in cash, securities or other property (other than securities of the Company or any other entity provided for by a plan of reorganization or readjustment the payment of which is subordinate, at least to the extent provided in these subordination provisions with respect to the indebtedness evidenced by the Securities, to the payment of all Senior Debt at the time outstanding and to any securities issued in respect thereof under any such plan of reorganization or readjustment) shall be received by the Trustee or any Holder in contravention of any of the terms hereof and before all Senior Debt shall have been paid in full, such payment or distribution or security shall be received

in trust for the benefit of, and shall be paid over or delivered and transferred to, the holders of the Senior Debt at the time outstanding in accordance with the priorities then existing among such holders for application to the payment of all Senior Debt remaining unpaid, to the extent necessary to pay all such Senior Debt (including any interest thereon accruing after the commencement of any Proceeding) in full. In the event of the failure of the Trustee or any Holder to endorse or assign any such payment, distribution or security, each holder of Senior Debt is hereby irrevocably authorized to endorse or assign the same.

(d) The Trustee and the Holders, at the expense of the Company, shall take such reasonable action (including the delivery of this Indenture to an agent for any holders of Senior Debt or consent to the filing of a financing statement with respect hereto) as may, in the opinion of counsel designated by the holders of a majority in principal amount of the Senior Debt at the time outstanding, be necessary or appropriate to assure the effectiveness of the subordination effected by these provisions.

(e) The provisions of this *Section 12.2* shall not impair any rights, interests, remedies or powers of any secured creditor of the Company in respect of any security interest the creation of which is not prohibited by the provisions of this Indenture.

(f) The securing of any obligations of the Company, otherwise ranking on a parity with the Securities or ranking junior to the Securities, shall not be deemed to prevent such obligations from constituting, respectively, obligations ranking on a parity with the Securities or ranking junior to the Securities.

#### SECTION 12.3. *Payment Permitted If No Default.*

Nothing contained in this *Article XII* or elsewhere in this Indenture or in any of the Securities shall prevent (a) the Company, at any time, except during the pendency of the conditions described in paragraph (a) of *Section 12.2* or of any Proceeding referred to in *Section 12.2*, from making payments at any time of principal of and any premium or interest (including any Additional Interest) on the Securities or (b) the application by the Trustee of any moneys deposited with it hereunder to the payment of or on account of the principal of and any premium or interest (including any Additional Interest) on the Securities or the retention of such payment by the Holders, if, at the time of such application by the Trustee, it did not have knowledge (in accordance with *Section 12.8*) that such payment would have been prohibited by the provisions of this *Article XII*, except as provided in *Section 12.8*.

#### SECTION 12.4. *Subrogation to Rights of Holders of Senior Debt.*

Subject to the payment in full of all amounts due or to become due on all Senior Debt, or the provision for such payment in cash or cash equivalents or otherwise in a manner satisfactory to the holders of Senior Debt, the Holders of the Securities shall be subrogated to the extent of the payments or distributions made to the holders of such Senior Debt pursuant to the provisions of this *Article XII* (equally and ratably with the holders of all indebtedness of the Company that by its express terms is subordinated to Senior Debt of the Company to substantially the same extent as the Securities are subordinated to the Senior Debt and is entitled to like rights of subrogation by reason of any payments or distributions made to holders of such Senior Debt) to the rights of the holders of such Senior Debt to receive payments and distributions of cash, property and securities applicable to the Senior Debt until the principal of and any premium and interest (including any Additional Interest) on the Securities shall be paid in full. For purposes of such subrogation, no payments or distributions to the holders of the Senior Debt of any cash, property or securities to which the Holders of the Securities or the Trustee would be entitled except for the provisions of this *Article XII*, and no payments made pursuant to the provisions of this *Article XII* to the holders of Senior Debt by Holders of the Securities or the Trustee, shall, as among the Company, its creditors other than holders of Senior Debt, and the Holders of the Securities, be deemed to be a payment or distribution by the Company to or on account of the Senior Debt.

#### SECTION 12.5. *Provisions Solely to Define Relative Rights.*

The provisions of this *Article XII* are and are intended solely for the purpose of defining the relative rights of the Holders of the Securities on the one hand and the holders of Senior Debt on the other hand. Nothing contained in this *Article XII* or elsewhere in this Indenture or in the Securities is intended to or shall (a) impair, as between the Company and the Holders of the Securities, the obligations of the Company, which are absolute and unconditional, to pay to the Holders of the Securities the principal of and any premium and interest (including any Additional Interest) on the Securities as and when the same shall become due and payable in accordance with their terms, (b) affect the relative rights against the Company of the Holders of the Securities and creditors of the Company other than their rights in relation to the holders of Senior Debt or (c) prevent the

Trustee or the Holder of any Security (or to the extent expressly provided herein, the holder of any Preferred Security) from exercising all remedies otherwise permitted by applicable law upon default under this Indenture, including filing and voting claims in any Proceeding, subject to the rights, if any, under this *Article XII* of the holders of Senior Debt to receive cash, property and securities otherwise payable or deliverable to the Trustee or such Holder.

SECTION 12.6. *Trustee to Effectuate Subordination.*

Each Holder of a Security by his or her acceptance thereof authorizes and directs the Trustee on his or her behalf to take such action as may be necessary or appropriate to acknowledge or effectuate the subordination provided in this *Article XII* and appoints the Trustee his or her attorney-in-fact for any and all such purposes.

SECTION 12.7. *No Waiver of Subordination Provisions.*

(a) No right of any present or future holder of any Senior Debt to enforce subordination as herein provided shall at any time in any way be prejudiced or impaired by any act or failure to act on the part of the Company or by any act or failure to act, in good faith, by any such holder, or by any noncompliance by the Company with the terms, provisions and covenants of this Indenture, regardless of any knowledge thereof that any such holder may have or be otherwise charged with.

(b) Without in any way limiting the generality of paragraph (a) of this *Section 12.7*, the holders of Senior Debt may, at any time and from to time, without the consent of or notice to the Trustee or the Holders of the Securities, without incurring responsibility to such Holders of the Securities and without impairing or releasing the subordination provided in this *Article XII* or the obligations hereunder of such Holders of the Securities to the holders of Senior Debt, do any one or more of the following: (i) change the manner, place or terms of payment or extend the time of payment of, or renew or alter, Senior Debt, or otherwise amend or supplement in any manner Senior Debt or any instrument evidencing the same or any agreement under which Senior Debt is outstanding, (ii) sell, exchange, release or otherwise deal with any property pledged, mortgaged or otherwise securing Senior Debt, (iii) release any Person liable in any manner for the payment of Senior Debt and (iv) exercise or refrain from exercising any rights against the Company and any other Person.

SECTION 12.8. *Notice to Trustee.*

(a) The Company shall give prompt written notice to a Responsible Officer of the Trustee of any fact known to the Company that would prohibit the making of any payment to or by the Trustee in respect of the Securities. Notwithstanding the provisions of this *Article XII* or any other provision of this Indenture, the Trustee shall not be charged with knowledge of the existence of any facts that would prohibit the making of any payment to or by the Trustee in respect of the Securities, unless and until a Responsible Officer of the Trustee shall have received written notice thereof from the Company or a holder of Senior Debt or from any trustee, agent or representative thereof; *provided*, that if the Trustee shall not have received the notice provided for in this *Section 12.8* at least two Business Days prior to the date upon which by the terms hereof any monies may become payable for any purpose (including, the payment of the principal of and any premium on or interest (including any Additional Interest) on any Security), then, anything herein contained to the contrary notwithstanding, the Trustee shall have full power and authority to receive such monies and to apply the same to the purpose for which they were received and shall not be affected by any notice to the contrary that may be received by it within two Business Days prior to such date.

(b) The Trustee shall be entitled to rely on the delivery to it of a written notice by a Person representing himself or herself to be a holder of Senior Debt (or a trustee, agent, representative or attorney-in-fact thereof) to establish that such notice has been given by a holder of Senior Debt (or a trustee, agent, representative or attorney-in-fact thereof). In the event that the Trustee determines in good faith that further evidence is required with respect to the right of any Person as a holder of Senior Debt to participate in any payment or distribution pursuant to this *Article XII*, the Trustee may request such Person to furnish evidence to the reasonable satisfaction of the Trustee as to the amount of Senior Debt held by such Person, the extent to which such Person is entitled to participate in such payment or distribution and any other facts pertinent to the rights of such Person under this *Article XII*, and if such evidence is not furnished, the Trustee may defer any payment to such Person pending judicial determination as to the right of such Person to receive such payment.

SECTION 12.9. *Reliance on Judicial Order or Certificate of Liquidating Agent.*

Upon any payment or distribution of assets of the Company referred to in this *Article XII*, the Trustee and the Holders of the Securities shall be entitled to conclusively rely upon any order or decree entered by any court of competent jurisdiction in which such Proceeding is pending, or a certificate of the trustee in bankruptcy, receiver, liquidating trustee, custodian, assignee for the benefit of creditors, agent or other Person making such payment or distribution, delivered to the Trustee or to the Holders of Securities, for the purpose of ascertaining the Persons entitled to participate in such payment or distribution, the holders of the Senior Debt and other indebtedness of the Company, the amount thereof or payable thereon, the amount or amounts paid or distributed thereon and all other facts pertinent thereto or to this *Article XII*.

SECTION 12.10. *Trustee Not Fiduciary for Holders of Senior Debt.*

The Trustee, in its capacity as trustee under this Indenture, shall not be deemed to owe any fiduciary duty to the holders of Senior Debt and shall not be liable to any such holders if it shall in good faith mistakenly pay over or distribute to Holders of Securities or to the Company or to any other Person cash, property or securities to which any holders of Senior Debt shall be entitled by virtue of this *Article XII* or otherwise.

SECTION 12.11. *Rights of Trustee as Holder of Senior Debt; Preservation of Trustee's Rights.*

The Trustee in its individual capacity shall be entitled to all the rights set forth in this *Article XII* with respect to any Senior Debt that may at any time be held by it, to the same extent as any other holder of Senior Debt, and nothing in this Indenture shall deprive the Trustee of any of its rights as such holder.

SECTION 12.12. *Article Applicable to Paying Agents.*

If at any time any Paying Agent other than the Trustee shall have been appointed by the Company and be then acting hereunder, the term "*Trustee*" as used in this *Article XII* shall in such case (unless the context otherwise requires) be construed as extending to and including such Paying Agent within its meaning as fully for all intents and purposes as if such Paying Agent were named in this *Article XII* in addition to or in place of the Trustee; *provided*, that *Sections 12.8* and *12.11* shall not apply to the Company or any Affiliate of the Company if the Company or such Affiliate acts as Paying Agent.

\* \* \* \*

This instrument may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, but all such counterparts shall together constitute but one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Indenture to be duly executed as of the day and year first above written.

AMERICAN EQUITY INVESTMENT LIFE HOLDING COMPANY

By: /s/ DEBRA RICHARDSON

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Name: Debra Richardson  
Title: Secretary and Senior Vice President

JPMORGAN CHASE BANK, N.A., as Trustee

By: /s/ MARIA D. CALZADO

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Name: Maria D. Calzado  
Title: Vice President

**DETERMINATION OF LIBOR**

With respect to the Securities, the London interbank offered rate ("*LIBOR*") shall be determined by the Calculation Agent in accordance with the following provisions (in each case rounded to the nearest .000001%):

(1) On the second LIBOR Business Day (as defined below) prior to an Interest Payment Date (except with respect to the first interest payment period, such date shall be December 20, 2004 (each such day, a "*LIBOR Determination Date*"), LIBOR for any given security shall for the following interest payment period equal the rate, as obtained by the Calculation Agent from Bloomberg Financial Markets Commodities News, for three-month Eurodollar deposits that appears on Dow Jones Telerate Page 3750 (as defined in the International Swaps and Derivatives Association, Inc. 1991 Interest Rate and Currency Exchange Definitions), or such other page as may replace such Page 3750, as of 11:00 a.m. (London time) on such LIBOR Determination Date.

(2) If, on any LIBOR Determination Date, such rate does not appear on Dow Jones Telerate Page 3750 or such other page as may replace such Page 3750, the Calculation Agent shall determine the arithmetic mean of the offered quotations of the Reference Banks (as defined below) to leading banks in the London interbank market for three-month Eurodollar deposits in an amount determined by the Calculation Agent by reference to requests for quotations as of approximately 11:00 a.m. (London time) on the LIBOR Determination Date made by the Calculation Agent to the Reference Banks. If, on any LIBOR Determination Date, at least two of the Reference Banks provide such quotations, LIBOR shall equal such arithmetic mean of such quotations. If, on any LIBOR Determination Date, only one or none of the Reference Banks provide such quotations, LIBOR shall be deemed to be the arithmetic mean of the offered quotations that leading banks in the City of New York selected by the Calculation Agent are quoting on the relevant LIBOR Determination Date for three-month Eurodollar deposits in an amount determined by the Calculation Agent by reference to the principal London offices of leading banks in the London interbank market; *provided* that, if the Calculation Agent is required but is unable to determine a rate in accordance with at least one of the procedures provided above, LIBOR shall be LIBOR as determined on the previous LIBOR Determination Date.

(3) As used herein: "*Reference Banks*" means four major banks in the London interbank market selected by the Calculation Agent; and "*LIBOR Business Day*" means a day on which commercial banks are open for business (including dealings in foreign exchange and foreign currency deposits) in London.

## Form of Officer's Financial Certificate

The undersigned, the [Chief Financial Officer/Treasurer/Assistant Treasurer/ Secretary/ Assistant Secretary, Chairman/Vice Chairman/Chief Executive Officer/President/Vice President] hereby certifies, pursuant to Section 7.3(b) of the Junior Subordinated Indenture, dated as of December 22, 2004 (the "Indenture"), among American Equity Investment Life Holding Company (the "Company") and JPMorgan Chase Bank, N.A., as trustee, that, as of [ ], 2004, the Company, if applicable, and its Subsidiary Insurance Companies (as defined below) had the following ratios and balances:

For the Company, if applicable, and each Subsidiary Insurance Company (as defined below) provide:

[INSURANCE COMPANY]

As of [Quarterly/Annual Financial Date], 20

NAIC Risk Based Capital Ratio (authorized control level)	%
--	---

Total Policyholders' Surplus	\$
------------------------------	----

Consolidated Debt to Total Policyholders' Surplus	%
---	---

Total Assets	\$
--------------	----

NAIC Class 1 & 2 Rated Investments to Total Fixed Income Investments	%
--	---

NAIC Class 1 & 2 Rated Investments to Total Investments	%
---	---

Return on Policyholders' Surplus	%
----------------------------------	---

[For Property & Casualty Companies, also provide:]

Expense Ratio	%
---------------	---

Loss and LAE Ratio	%
--------------------	---

Combined Ratio	%
----------------	---

Net Premiums Written (annualized) to Policyholders' Surplus	%]
---	----

- A table describing the quarterly report calculation procedures is provided on page 3 hereof

The following is a complete list as of [Quarterly/Annual Financial Date] of the Company's companies which are authorized to write insurance business or otherwise conduct insurance or reinsurance business (the "Subsidiary Insurance Companies"):

American Equity Investment Life Insurance Company

American Equity Investment Life Insurance Company of New York

[FOR FISCAL YEAR END: Attached hereto are the audited consolidated financial statements (including the balance sheet, income statement and statement of cash flows, and notes thereto, together with the report of the independent accountants thereon) of the Company and its consolidated subsidiaries for the three years ended [date], 20 and the Statutory Financial Statements (as defined in the Indenture) for the one year ended [date] 200 .]

[FOR FISCAL QUARTER END: Attached hereto are the unaudited consolidated and consolidating financial statements (including the balance sheet and income statement) of the Company and its consolidated subsidiaries and the Statutory Financial Statements (as defined in the Indenture) for the fiscal quarter ended [date], 20 .]

The financial statements fairly present in all material respects, in accordance with U.S. generally accepted accounting principles ("GAAP"), the financial position of the Company and its consolidated subsidiaries, and the results of operations and changes in financial condition as of the date, and for the [quarter] [annual] period ended [date], 20 , and such financial statements have been prepared in accordance with GAAP consistently applied throughout the period involved (except as otherwise noted therein).

The Statutory Financial Statements fairly present in all material respects in accordance with Applicable Accounting Principles, as defined in the Indenture, the financial position of the subject insurance company and have been prepared in accordance with Applicable Accounting Principles.

Schedule A-2



IN WITNESS WHEREOF, the undersigned has executed this Officer's Financial Certificate as of this                      day of                      , 20

By: \_\_\_\_\_  
Name:

American Equity Investment Life  
Holding Company  
5000 Westown Parkway, Suite 440  
West Des Moines, IA 50266  
(515) 457-1824

Schedule A-3

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# Financial Definitions

## INSURANCE COMPANY

Report Item	Description of Calculation
NAIC Risk Based Capital Ratio-P&C	Total Adjusted Capital/Authorized Control Level Risk-Based Capital
NAIC Risk Based Capital Ratio-Life	(Total Adjusted Capital-Asset Valuation Reserve)/Authorized Control Level Risk-Based Capital
Total Capital and Surplus-Life	Common Capital Stock + Preferred Capital Stock + Aggregate Write-Ins for other than special surplus funds + Surplus Notes + Gross Paid-In and Contributed Surplus + Aggregate Write-Ins for Special Surplus Funds + Unassigned Funds (Surplus) —Treasury Stock
Total Capital and Surplus-P&C	Aggregate Write-Ins for Special Surplus Funds + Common Capital Stock + Preferred Capital Stock + Aggregate Write Ins for other than special surplus funds + Surplus Notes + Gross Paid-In and Contributed Surplus + Unassigned Funds (Surplus) —Treasury Stock
Total Class 1 & 2 Rated Investments to Total Fixed Income	(Total Class 1 + Total Class 2 Rated Investments)/Total Fixed Investments Income Investments
Total Class 1 & 2 Rated Investments to Total Investments	(Total Class 1 + Total Class 2 Rated Investments)/Total Investments
Total Assets	Total Assets
Return on Policyholders' Surplus	Net Income/Policyholders' Surplus
Expense Ratio	Other Underwriting Expenses Incurred/Net premiums Earned
Loss and LAE Ratio	(Losses Incurred + Loss Expenses Incurred)/Net Premiums Earned
Combined Ratio	Expense Ratio + Loss and LAE Ratio
Net Premiums Written (annualized) to Policyholders' Surplus	Net Premiums Written/Policyholders' Surplus
Schedule A-4	

## QuickLinks

[Exhibit 4.17](#)  
[Schedule A](#)

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**GUARANTEE AGREEMENT**

between

**AMERICAN EQUITY INVESTMENT LIFE HOLDING COMPANY,**  
*as Guarantor;*

and

**JPMORGAN CHASE BANK, N.A.,**  
*as Guarantee Trustee*

Dated as of December 22, 2004

**AMERICAN EQUITY CAPITAL TRUST VIII**

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GUARANTEE AGREEMENT, dated as of December 22, 2004, executed and delivered by AMERICAN EQUITY INVESTMENT LIFE HOLDING COMPANY, an Iowa corporation (the "*Guarantor*") having its principal office at 5000 Westown Parkway, Suite 440, West Des Moines, IA 50266, and JPMORGAN CHASE BANK, N.A., a national banking association, as trustee (in such capacity, the "*Guarantee Trustee*"), for the benefit of the Holders (as defined herein) from time to time of the Preferred Securities (as defined herein) of AMERICAN EQUITY CAPITAL TRUST VIII, a Delaware statutory trust (the "*Issuer*").

W I T N E S S E T H:

WHEREAS, pursuant to an Amended and Restated Trust Agreement, dated as of the date hereof (the "*Trust Agreement*"), among the Guarantor, as Depositor, the Property Trustee, the Delaware Trustee and the Administrative Trustees named therein and the holders from time to time of the Preferred Securities (as hereinafter defined), the Issuer is issuing Twenty Million Dollars (\$20,000,000) aggregate Liquidation Amount (as defined in the Trust Agreement) of its Floating Rate Preferred Securities (Liquidation Amount \$1,000 per preferred security) (the "*Preferred Securities*") representing preferred undivided beneficial interests in the assets of the Issuer and having the terms set forth in the Trust Agreement;

WHEREAS, the Preferred Securities will be issued by the Issuer and the proceeds thereof, together with the proceeds from the issuance of the Issuer's Common Securities (as defined below), will be used to purchase the Notes (as defined in the Trust Agreement) of the Guarantor; and

WHEREAS, as incentive for the Holders to purchase Preferred Securities the Guarantor desires irrevocably and unconditionally to agree, to the extent set forth herein, to pay to the Holders of the Preferred Securities the Guarantee Payments (as defined herein) and to make certain other payments on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the purchase by each Holder of Preferred Securities, which purchase the Guarantor hereby agrees shall benefit the Guarantor, the Guarantor executes and delivers this Guarantee Agreement to provide as follows for the benefit of the Holders from time to time of the Preferred Securities:

## INTERPRETATION AND DEFINITIONS

SECTION 1.1. *Interpretation.*

In this Guarantee Agreement, unless the context otherwise requires:

- (a) capitalized terms used in this Guarantee Agreement but not defined in the preamble hereto have the respective meanings assigned to them in *Section 1.2*;
- (b) the words "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation";
- (c) all references to "the Guarantee Agreement" or "this Guarantee Agreement" are to this Guarantee Agreement as modified, supplemented or amended from time to time;
- (d) all references in this Guarantee Agreement to Articles and Sections are to Articles and Sections of this Guarantee Agreement unless otherwise specified;
- (e) the words "hereby", "herein", "hereof" and "hereunder" and other words of similar import refer to this Guarantee Agreement as a whole and not to any particular Article, Section or other subdivision;
- (f) a reference to the singular includes the plural and vice versa; and
- (g) the masculine, feminine or neuter genders used herein shall include the masculine, feminine and neuter genders.

SECTION 1.2. *Definitions.*

As used in this Guarantee Agreement, the terms set forth below shall, unless the context otherwise requires, have the following meanings:

"*Affiliate*" of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person; *provided*, that the Issuer shall not be deemed to be an Affiliate of the Guarantor. For the purposes of this definition, "*control*" when used with respect to any specified Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise; and the terms "*controlling*" and "*controlled*" have meanings correlative to the foregoing.

"*Beneficiaries*" means any Person to whom the Issuer is or hereafter becomes indebted or liable.

"*Board of Directors*" means either the board of directors of the Guarantor or any duly authorized committee of that board.

"*Common Securities*" means the securities representing common undivided beneficial interests in the assets of the Issuer.

"*Debt*" means with respect to any Person, whether recourse is to all or a portion of the assets of such Person, whether currently existing or hereafter incurred, and whether or not contingent and without duplication, (i) every obligation of such Person for money borrowed; (ii) every obligation of such Person evidenced by bonds, debentures, notes or other similar instruments, including obligations incurred in connection with the acquisition of property, assets or businesses; (iii) every reimbursement obligation of such Person with respect to letters of credit, bankers' acceptances or similar facilities issued for the account of such Person; (iv) every obligation of such Person issued or assumed as the deferred purchase price of property or services (but excluding trade accounts payable arising in the ordinary course of business); (v) every capital lease obligation of such Person; (vi) all indebtedness of such Person, whether incurred on or prior to the date of this Guarantee Agreement or thereafter incurred, for claims in respect of derivative products, including interest rate, foreign exchange rate and commodity forward contracts, options, swaps and similar arrangements; (vii) every obligation of the type referred to in clauses (i) through (vi) of another Person and all dividends of another Person the payment of which, in either case, such Person has guaranteed or is responsible or liable for, directly or indirectly, as obligor or otherwise; and (viii) any renewals, extensions, refundings, amendments or modifications of any obligation of the type referred to in clauses (i) through (vii).

"*Event of Default*" means a default by the Guarantor on any of its payment or other obligations under this Guarantee Agreement; *provided*, that except with respect to a default in payment of any Guarantee

Payments, the Guarantor shall have received notice of default from the Guarantee Trustee and shall not have cured such default within thirty (30) days after receipt of such notice.

"*Guarantee Payments*" means the following payments or distributions, without duplication, with respect to the Preferred Securities, to the extent not paid or made by or on behalf of the Issuer: (i) any accumulated and unpaid Distributions (as defined in the Trust Agreement) required to be paid on the Preferred Securities, to the extent the Issuer shall have funds on hand available therefor at such time, (ii) the Redemption Price with respect to any Preferred Securities to the extent the Issuer shall have funds on hand available therefor at such time, and (iii) upon a voluntary or involuntary termination, winding up or liquidation of the Issuer, unless Notes are distributed to the Holders, the lesser of (a) the aggregate of the Liquidation Amount of \$1,000 per Preferred Security plus accumulated and unpaid Distributions on the Preferred Securities to the date of payment, to the extent that the Issuer shall have funds available therefor at such time and (b) the amount of assets of the Issuer remaining available for distribution to Holders in liquidation of the Issuer after satisfaction of liabilities to creditors of the Issuer in accordance with applicable law (in either case, the "*Liquidation Distribution*").

"*Guarantee Trustee*" means JPMorgan Chase Bank, N.A., until a Successor Guarantee Trustee, as defined below, has been appointed and has accepted such appointment pursuant to the terms of this Guarantee Agreement, and thereafter means each such Successor Guarantee Trustee.

"*Guarantor*" means American Equity Investment Life Insurance Company and each of its successors and assigns.

"*Issuer*" has the meaning set forth herein above.

"*Holder*" means any holder, as registered on the books and records of the Issuer, of any Preferred Securities; *provided*, that, in determining whether the holders of the requisite percentage of Preferred Securities have given any request, notice, consent or waiver hereunder, "Holder" shall not include the Guarantor, the Guarantee Trustee or any Affiliate of the Guarantor or the Guarantee Trustee.

"*Indenture*" means the Junior Subordinated Indenture, dated as of the date hereof, as supplemented and amended, between the Guarantor and JPMorgan Chase Bank, N.A., as trustee.

"*List of Holders*" has the meaning specified in *Section 2.1*.

"*Majority in Liquidation Amount of the Preferred Securities*" means a vote by the Holder(s), voting separately as a class, of more than fifty percent (50%) of the aggregate Liquidation Amount of all then outstanding Preferred Securities issued by the Issuer.

"*Obligations*" means any costs, expenses or liabilities (but not including liabilities related to taxes) of the Issuer, other than obligations of the Issuer to pay to holders of any Trust Securities the amounts due such holders pursuant to the terms of the Trust Securities.

"*Officers' Certificate*" means, with respect to any Person, a certificate signed by the Chief Executive Officer, Chief Financial Officer, President or a Vice President of such Person, and by the Treasurer, an Assistant Treasurer, the Secretary or an Assistant Secretary of such Person, and delivered to the Guarantee Trustee. Any Officers' Certificate delivered with respect to compliance with a condition or covenant provided for in this Guarantee Agreement (other than the certificate provided pursuant to *Section 2.2*) shall include:

- (a) a statement that each officer signing the Officers' Certificate has read the covenant or condition and the definitions relating thereto;
- (b) a brief statement of the nature and scope of the examination or investigation undertaken by each officer in rendering the Officers' Certificate;
- (c) a statement that each officer has made such examination or investigation as, in such officer's opinion, is necessary to enable such officer to express an informed opinion as to whether or not such covenant or condition has been complied with; and
- (d) a statement as to whether, in the opinion of each officer, such condition or covenant has been complied with.



"Person" means a legal person, including any individual, corporation, estate, partnership, joint venture, association, joint stock company, limited liability company, trust, unincorporated association, government or any agency or political subdivision thereof or any other entity of whatever nature.

"Preferred Securities" has the meaning set forth in the first recital hereof.

"Responsible Officer" means, with respect to the Guarantee Trustee, the officer in the Institutional Trust Services department of the Trustee having direct responsibility for the administration of this Guarantee Agreement.

"Senior Debt" means the principal of and any premium, if any, and interest on (including interest accruing on or after the filing of any petition in bankruptcy or for reorganization relating to the Guarantor whether or not such claim for post-petition interest is allowed in such proceeding) all Debt of the Guarantor, whether incurred on or prior to the date of the Indenture or thereafter incurred, unless it is provided in the instrument creating or evidencing the same or pursuant to which the same is outstanding, that such obligations are not superior in right of payment to the Preferred Securities; *provided*, that if the Guarantor is subject to the regulation and supervision of an insurance regulatory authority, the Guarantor shall have received the approval of such appropriate insurance regulatory authority prior to issuing any such obligation; and *provided, further*, that Senior Debt shall not include any other debt securities and guarantees in respect of such debt securities issued to any trust other than the Trust (or a trustee of any such trust), partnership or other entity affiliated with the Guarantor that is a financing vehicle of the Guarantor (a "financing entity") in connection with the issuance by such financing entity of equity securities or other securities that are treated as equity capital for regulatory capital purposes guaranteed by the Guarantor pursuant to an instrument that ranks *pari passu* with or junior in right of payment to the Indenture, including, without limitation, securities issued by American Equity Capital Trust I, American Equity Capital Trust II, American Equity Capital Trust III, American Equity Capital Trust IV, American Equity Capital Trust V, American Equity Capital Trust VI, and American Equity Capital Trust VII.

"Trust Indenture Act" means the Trust Indenture Act of 1939, as amended and as in effect on the date of this Guarantee Agreement.

"Successor Guarantee Trustee" means a successor Guarantee Trustee possessing the qualifications to act as Guarantee Trustee under *Section 4.1*.

Capitalized or otherwise defined terms used but not otherwise defined herein shall have the meanings assigned to such terms in the Trust Agreement as in effect on the date hereof.

## ARTICLE II

### REPORTS

#### SECTION 2.1. *List of Holders.*

The Guarantor shall furnish or cause to be furnished to the Guarantee Trustee at such times as the Guarantee Trustee may request in writing, within thirty (30) days after the receipt by the Guarantor of any such request, a list, in such form as the Guarantee Trustee may reasonably require, of the names and addresses of the Holders (the "*List of Holders*") as of a date not more than fifteen (15) days prior to the time such list is furnished, in each case to the extent such information is in the possession or control of the Guarantor and is not identical to a previously supplied list of Holders or has not otherwise been received by the Guarantee Trustee in its capacity as such. The Guarantee Trustee may destroy any List of Holders previously given to it on receipt of a new List of Holders.

#### SECTION 2.2. *Periodic Reports to the Guarantee Trustee.*

The Guarantor shall deliver to the Guarantee Trustee, within one hundred and twenty (120) days after the end of each fiscal year of the Guarantor ending after the date of this Guarantee Agreement, an Officers' Certificate covering the preceding fiscal year, stating whether or not to the knowledge of the signers thereof the Guarantor is in default in the performance or observance of any of the terms or provisions or any of the conditions of this Guarantee Agreement (without regard to any period of grace or requirement of notice provided hereunder) and, if the Guarantor shall be in default thereof, specifying all such defaults and the nature and status thereof of which they have knowledge. The delivery requirements of this Section 2.2 may be satisfied by compliance with Section 8.16(a) of the Trust Agreement.

SECTION 2.3. *Event of Default; Waiver.*

The Holders of a Majority in Liquidation Amount of the Preferred Securities may, on behalf of the Holders, waive any past Event of Default and its consequences. Upon such waiver, any such Event of Default shall cease to exist, and any Event of Default arising therefrom shall be deemed to have been cured, for every purpose of this Guarantee Agreement, but no such waiver shall extend to any subsequent or other default or Event of Default or impair any right consequent therefrom.

SECTION 2.4. *Event of Default; Notice.*

(a) The Guarantee Trustee shall, within ninety (90) days after the occurrence of a default, transmit to the Holders notices of all defaults actually known to the Guarantee Trustee, unless such defaults have been cured or waived before the giving of such notice. For the purpose of this *Section 2.4*, the term "*default*" means any event that is, or after notice or lapse of time or both would become, an Event of Default.

(b) The Guarantee Trustee shall not be deemed to have knowledge of any Event of Default unless the Guarantee Trustee shall have received written notice, or a Responsible Officer charged with the administration of this Guarantee Agreement shall have obtained written notice, of such Event of Default from the Guarantor or a Holder.

**ARTICLE III**

**POWERS, DUTIES AND RIGHTS OF THE GUARANTEE TRUSTEE**

SECTION 3.1. *Powers and Duties of the Guarantee Trustee.*

(a) This Guarantee Agreement shall be held by the Guarantee Trustee for the benefit of the Holders, and the Guarantee Trustee shall not transfer this Guarantee Agreement to any Person except a Holder exercising its rights pursuant to *Section 5.4(d)* or to a Successor Guarantee Trustee upon acceptance by such Successor Guarantee Trustee of its appointment to act as Successor Guarantee Trustee. The right, title and interest of the Guarantee Trustee shall automatically vest in any Successor Guarantee Trustee, upon acceptance by such Successor Guarantee Trustee of its appointment hereunder, and such vesting and succession of title shall be effective whether or not conveyancing documents have been executed and delivered pursuant to the appointment of such Successor Guarantee Trustee.

(b) The rights, immunities, duties and responsibilities of the Guarantee Trustee shall be as provided by this Guarantee Agreement and there shall be no other duties or obligations, express or implied, of the Guarantee Trustee. Notwithstanding the foregoing, no provisions of this Guarantee Agreement shall require the Guarantee Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it. Whether or not herein expressly so provided, every provision of this Guarantee Agreement relating to the conduct or affecting the liability of or affording protection to the Guarantee Trustee shall be subject to the provisions of this *Section 3.1*. To the extent that, at law or in equity, the Guarantee Trustee has duties and liabilities relating to the Guarantor or the Holders, the Guarantee Trustee shall not be liable to any Holder for the Guarantee Trustee's good faith reliance on the provisions of this Guarantee Agreement. The provisions of this Guarantee Agreement, to the extent that they restrict the duties and liabilities of the Guarantee Trustee otherwise existing at law or in equity, are agreed by the Guarantor and the Holders to replace such other duties and liabilities of the Guarantee Trustee.

(c) No provision of this Guarantee Agreement shall be construed to relieve the Guarantee Trustee from liability for its own negligent action, negligent failure to act or own willful misconduct, except that:

(i) the Guarantee Trustee shall not be liable for any error of judgment made in good faith by a Responsible Officer of the Guarantee Trustee, unless it shall be proved that the Guarantee Trustee was negligent in ascertaining the pertinent facts upon which such judgment was made; and

(ii) the Guarantee Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Holders of not less than a Majority in Liquidation Amount of the Preferred Securities relating to the time, method and place of conducting any proceeding for any remedy available to the Guarantee Trustee, or exercising any trust or power conferred upon the Guarantee Trustee under this Guarantee Agreement.

SECTION 3.2. *Certain Rights of the Guarantee Trustee.*

(a) Subject to the provisions of *Section 3.1*:

(i) the Guarantee Trustee may conclusively rely and shall be fully protected in acting or refraining from acting in good faith and in accordance with the terms hereof upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document reasonably believed by it to be genuine and to have been signed, sent or presented by the proper party or parties;

(ii) any direction or act of the Guarantor contemplated by this Guarantee Agreement shall be sufficiently evidenced by an Officers' Certificate unless otherwise prescribed herein;

(iii) the Guarantee Trustee may consult with counsel, and the advice of such counsel shall be full and complete authorization and protection in respect of any action taken, suffered or omitted to be taken by it hereunder in good faith and in reliance thereon and in accordance with such advice. Such counsel may be counsel to the Guarantee Trustee, the Guarantor or any of its Affiliates and may be one of its employees. The Guarantee Trustee shall have the right at any time to seek instructions concerning the administration of this Guarantee Agreement from any court of competent jurisdiction;

(iv) the Guarantee Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Guarantee Agreement at the request or direction of any Holder, unless such Holder shall have provided to the Guarantee Trustee reasonable security or indemnity against the costs, expenses (including reasonable attorneys' fees and expenses) and liabilities that might be incurred by it in complying with such request or direction, including such reasonable advances as may be requested by the Guarantee Trustee; *provided*, that, nothing contained in this *Section 3.2(a)(iv)* shall be taken to relieve the Guarantee Trustee, upon the occurrence of an Event of Default, of its obligation to exercise the rights and powers vested in it by this Guarantee Agreement; *provided, further*, that nothing contained in this *Section 3.2(a)(iv)* shall prevent the Guarantee Trustee from exercising its rights under *Section 4.2* hereof.;

(v) the Guarantee Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document, but the Guarantee Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and if the Guarantee Trustee shall determine to make such inquiry or investigation, it shall be entitled to examine the books, records and premises of the Guarantor, personally or by agent or attorney;

(vi) the Guarantee Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through its agents, attorneys, custodians or nominees and the Guarantee Trustee shall not be responsible for any misconduct or negligence on the part of any such agent, attorney, custodian or nominee appointed with due care by it hereunder;

(vii) whenever in the administration of this Guarantee Agreement the Guarantee Trustee shall deem it desirable to receive instructions with respect to enforcing any remedy or right hereunder, the Guarantee Trustee (A) may request instructions from the Holders of a Majority in Liquidation Amount of the Preferred Securities, (B) may refrain from enforcing such remedy or right or taking such other action until such instructions are received and (C) shall be protected in acting in accordance with such instructions;

(viii) except as otherwise expressly provided by this Guarantee Agreement, the Guarantee Trustee shall not be under any obligation to take any action that is discretionary under the provisions of this Guarantee Agreement; and

(ix) whenever, in the administration of this Guarantee Agreement, the Guarantee Trustee shall deem it desirable that a matter be proved or established before taking, suffering or omitting to take any action hereunder, the Guarantee Trustee (unless other evidence is herein specifically prescribed) may, in the absence of bad faith on its part, request and rely upon an Officers' Certificate which, upon receipt of such request from the Guarantee Trustee, shall be promptly delivered by the Guarantor.

(b) No provision of this Guarantee Agreement shall be deemed to impose any duty or obligation on the Guarantee Trustee to perform any act or acts or exercise any right, power, duty or obligation conferred or imposed on it in any jurisdiction in which it shall be illegal, or in which the Guarantee Trustee shall be unqualified or incompetent in accordance with applicable law, to perform any such act or acts or to exercise any such right,

power, duty or obligation. No permissive power or authority available to the Guarantee Trustee shall be construed to be a duty to act in accordance with such power and authority.

### SECTION 3.3. *Compensation.*

The Guarantor agrees to pay to the Guarantee Trustee from time to time reasonable compensation for all services rendered by it hereunder (which compensation shall not be limited by any provisions of law in regard to the compensation of a trustee of an express trust) and to reimburse the Guarantee Trustee upon request for all reasonable expenses, disbursements and advances (including the reasonable fees and expenses of its attorneys and agents) incurred or made by the Guarantee Trustee in accordance with any provisions of this Guarantee Agreement.

### SECTION 3.4. *Indemnity.*

The Guarantor agrees to indemnify and hold harmless the Guarantee Trustee and any of its Affiliates and any of their officers, directors, shareholders, employees, representatives or agents from and against any loss, damage, liability, tax (other than income, franchise or other taxes imposed on amounts paid pursuant to *Section 3.3*), penalty, expense or claim of any kind or nature whatsoever incurred without negligence, bad faith or willful misconduct on its part, arising out of or in connection with the acceptance or administration of this Guarantee Agreement, including the costs and expenses of defending itself against any claim or liability in connection with the exercise or performance of any of its powers or duties hereunder. The Guarantee Trustee will not claim or exact any lien or charge on any Guarantee Payments as a result of any amount due to it under this Guarantee Agreement. This indemnity shall survive the termination of this Agreement or the resignation or removal of the Guarantee Trustee.

In no event shall the Guarantee Trustee be liable for any indirect, special, punitive or consequential loss or damage of any kind whatsoever, including, but not limited to, lost profits, even if the Guarantee Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action.

In no event shall the Guarantee Trustee be liable for any failure or delay in the performance of its obligations hereunder because of circumstances beyond its control, including, but not limited to, acts of God, flood, war (declared or undeclared), terrorism, fire, riot, embargo, government action, including any laws, ordinances, regulations, governmental action or the like which delay, restrict or prohibit the providing of the services contemplated by this Guarantee Agreement.

### SECTION 3.5. *Securities.*

The Guarantee Trustee or any other agent of the Guarantee Trustee, in its individual or any other capacity, may become the owner or pledgee of Common or Preferred Securities.

## ARTICLE IV

### GUARANTEE TRUSTEE

#### SECTION 4.1. *Guarantee Trustee; Eligibility.*

(a) There shall at all times be a Guarantee Trustee which shall:

(i) not be an Affiliate of the Guarantor; and

(ii) be a corporation organized and doing business under the laws of the United States or of any State thereof, authorized to exercise corporate trust powers, having a combined capital and surplus of at least fifty million dollars (\$50,000,000), subject to supervision or examination by Federal or State authority and having an office within the United States. If such corporation publishes reports of condition at least annually, pursuant to law or to the requirements of such supervising or examining authority, then, for the purposes of this *Section 4.1*, the combined capital and surplus of such corporation shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published.

(b) If at any time the Guarantee Trustee shall cease to be eligible to so act under *Section 4.1(a)*, the Guarantee Trustee shall immediately resign in the manner and with the effect set out in *Section 4.2(c)*.

(c) If the Guarantee Trustee has or shall acquire any "conflicting interest" within the meaning of Section 310(b) of the Trust Indenture Act, the Guarantee Trustee shall either eliminate such interest or resign in the manner and with the effect set out in *Section 4.2(c)*.

#### SECTION 4.2. *Appointment, Removal and Resignation of the Guarantee Trustee.*

(a) Subject to *Section 4.2(b)*, the Guarantee Trustee may be appointed or removed without cause at any time by the Guarantor, except during an Event of Default.

(b) The Guarantee Trustee shall not be removed until a Successor Guarantee Trustee has been appointed and has accepted such appointment by written instrument executed by such Successor Guarantee Trustee and delivered to the Guarantor.

(c) The Guarantee Trustee appointed hereunder shall hold office until a Successor Guarantee Trustee shall have been appointed or until its removal or resignation. The Guarantee Trustee may resign from office (without need for prior or subsequent accounting) by an instrument in writing executed by the Guarantee Trustee and delivered to the Guarantor, which resignation shall not take effect until a Successor Guarantee Trustee has been appointed and has accepted such appointment by instrument in writing executed by such Successor Guarantee Trustee and delivered to the Guarantor and the resigning Guarantee Trustee.

(d) If no Successor Guarantee Trustee shall have been appointed and accepted appointment as provided in this *Section 4.2* within thirty (30) days after delivery to the Guarantor of an instrument of resignation, the resigning Guarantee Trustee may petition, at the expense of the Guarantor, any court of competent jurisdiction for appointment of a Successor Guarantee Trustee. Such court may thereupon, after prescribing such notice, if any, as it may deem proper, appoint a Successor Guarantee Trustee.

## ARTICLE V

### GUARANTEE

#### Section 5.1. *Guarantee.*

(a) The Guarantor irrevocably and unconditionally agrees to pay in full to the Holders the Guarantee Payments (without duplication of amounts theretofore paid by or on behalf of the Issuer), as and when due, regardless of any defense (except for the defense of payment by the Issuer), right of set-off or counterclaim which the Issuer may have or assert. The Guarantor's obligation to make a Guarantee Payment may be satisfied by direct payment of the required amounts by the Guarantor to the Holders or by causing the Issuer to pay such amounts to the Holders. The Guarantor shall give prompt written notice to the Guarantee Trustee in the event it makes any direct payment to the Holders hereunder.

(b) The Guarantor hereby also agrees to assume any and all Obligations of the Issuer, and, in the event any such Obligation is not so assumed, subject to the terms and conditions hereof, the Guarantor hereby irrevocably and unconditionally guarantees to each Beneficiary the full payment, when and as due, of any and all Obligations to such Beneficiaries. This Guarantee is intended to be for the Beneficiaries who have received notice hereof.

## SECTION 5.2. *Waiver of Notice and Demand.*

The Guarantor hereby waives notice of acceptance of the Guarantee Agreement and of any liability to which it applies or may apply, presentment, demand for payment, any right to require a proceeding first against the Guarantee Trustee, Issuer or any other Person before proceeding against the Guarantor, protest, notice of nonpayment, notice of dishonor, notice of redemption and all other notices and demands.

## SECTION 5.3. *Obligations Not Affected.*

The obligations, covenants, agreements and duties of the Guarantor under this Guarantee Agreement shall in no way be affected or impaired by reason of the happening from time to time of any of the following:

- (a) the release or waiver, by operation of law or otherwise, of the performance or observance by the Issuer of any express or implied agreement, covenant, term or condition relating to the Preferred Securities to be performed or observed by the Issuer;
- (b) the extension of time for the payment by the Issuer of all or any portion of the Distributions (other than an extension of time for payment of Distributions that results from the extension of any interest payment period on the Notes as provided in the Indenture), Redemption Price, Liquidation Distribution or any other sums payable under the terms of the Preferred Securities or the extension of time for the performance of any other obligation under, arising out of, or in connection with, the Preferred Securities;
- (c) any failure, omission, delay or lack of diligence on the part of the Holders to enforce, assert or exercise any right, privilege, power or remedy conferred on the Holders pursuant to the terms of the Preferred Securities, or any action on the part of the Issuer granting indulgence or extension of any kind;
- (d) the voluntary or involuntary liquidation, dissolution, sale of any collateral, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition or readjustment of debt of, or other similar proceedings affecting, the Issuer or any of the assets of the Issuer;
- (e) any invalidity of, or defect or deficiency in, the Preferred Securities;
- (f) the settlement or compromise of any obligation guaranteed hereby or hereby incurred; or
- (g) any other circumstance whatsoever that might otherwise constitute a legal or equitable discharge or defense of a guarantor, it being the intent of this *Section 5.3* that the obligations of the Guarantor hereunder shall be absolute and unconditional under any and all circumstances.

There shall be no obligation of the Holders to give notice to, or obtain the consent of, the Guarantor with respect to the happening of any of the foregoing.

## SECTION 5.4. *Rights of Holders.*

The Guarantor expressly acknowledges that: (a) this Guarantee Agreement will be deposited with the Guarantee Trustee to be held for the benefit of the Holders; (b) the Guarantee Trustee has the right to enforce this Guarantee Agreement on behalf of the Holders; (c) the Holders of a Majority in Liquidation Amount of the Preferred Securities have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Guarantee Trustee in respect of this Guarantee Agreement or exercising any trust or power conferred upon the Guarantee Trustee under this Guarantee Agreement; and (d) any Holder may institute a legal proceeding directly against the Guarantor to enforce its rights under this Guarantee Agreement, without first instituting a legal proceeding against the Guarantee Trustee, the Issuer or any other Person.

## SECTION 5.5. *Guarantee of Payment.*

This Guarantee Agreement creates a guarantee of payment and not of collection. This Guarantee Agreement will not be discharged except by payment of the Guarantee Payments in full (without duplication of amounts theretofore paid by the Issuer) or upon distribution of Notes to Holders as provided in the Trust Agreement.

## SECTION 5.6. *Subrogation.*

The Guarantor shall be subrogated to all (if any) rights of the Holders against the Issuer in respect of any amounts paid to the Holders by the Guarantor under this Guarantee Agreement and shall have the right to waive payment by the Issuer pursuant to *Section 5.1*; *provided*, that, the Guarantor shall not (except to the extent required by mandatory provisions of law) be entitled to enforce or exercise any rights it may acquire by way of subrogation or any indemnity, reimbursement or other agreement, in all cases as a result of payment under this

Guarantee Agreement, if, at the time of any such payment, any amounts are due and unpaid under this Guarantee Agreement. If any amount shall be paid to the Guarantor in violation of the preceding sentence, the Guarantor agrees to hold such amount in trust for the Holders and to pay over such amount to the Holders.

SECTION 5.7. *Independent Obligations.*

The Guarantor acknowledges that its obligations hereunder are independent of the obligations of the Issuer with respect to the Preferred Securities and that the Guarantor shall be liable as principal and as debtor hereunder to make Guarantee Payments pursuant to the terms of this Guarantee Agreement notwithstanding the occurrence of any event referred to in subsections (a) through (g), inclusive, of *Section 5.3*.

SECTION 5.8. *Enforcement.*

A Beneficiary may enforce the Obligations of the Guarantor contained in *Section 5.1(b)* directly against the Guarantor, and the Guarantor waives any right or remedy to require that any action be brought against the Issuer or any other person or entity before proceeding against the Guarantor.

ARTICLE VI

COVENANTS AND SUBORDINATION

SECTION 6.1. *Dividends, Distributions and Payments.*

So long as any Preferred Securities remain outstanding, if there shall have occurred and be continuing an Event of Default or the Guarantor shall have entered into an Extension Period as provided for in the Indenture and such period, or any extension thereof, shall have commenced and be continuing, then the Guarantor may not (a) declare or pay any dividends or distributions on, or redeem, purchase, acquire or make liquidation payment with respect to, any of the Guarantor's capital stock or (b) make any payment of principal of or any interest or premium, if any, on or repay, repurchase or redeem any debt securities of the Guarantor that rank *pari passu* in all respects with or junior in interest to the Notes (other than (i) repurchases, redemptions or other acquisitions of shares of capital stock of the Guarantor in connection with any employment contract, benefit plan or other similar arrangement with or for the benefit of any one of more employees, officers, directors or consultants, in connection with a dividend reinvestment or stockholder stock purchase plan or in connection with the issuance of capital stock of the Guarantor (or securities convertible into or exercisable for such capital stock) as consideration in an acquisition transaction entered into prior to the occurrence of such Event of Default or the applicable Extension Period, (ii) as a result of an exchange or conversion of any class or series of the Guarantor's capital stock (or any capital stock of a subsidiary of the Guarantor) for any class or series of the Guarantor's capital stock or any class or series of the Guarantor's indebtedness for any class or series of the Guarantor's capital stock, (iii) the purchase of fractional interests in shares of the Guarantor's capital stock pursuant to the conversions or exchange provisions of such capital stock or the security being converted or exchanged, (iv) any declaration of a dividend in connection with any rights plan, the issuance of rights, stock or other property under any rights plan or the redemption or repurchase of rights pursuant thereto, or (v) any dividend in the form of stock, warrants, options or other rights where the dividend stock or the stock issuable upon exercise of such warrants, options or other rights is the same stock as that on which the dividend is being paid or ranks *pari passu* with or junior to such stock).

SECTION 6.2. *Subordination.*

The obligations of the Guarantor under this Guarantee Agreement will constitute unsecured obligations of the Guarantor and will rank subordinate and junior in right of payment to all Senior Debt of the Guarantor.

SECTION 6.3. *Pari Passu Guarantees.*

(a) The obligations of the Guarantor under this Guarantee Agreement shall rank *pari passu* with the obligations of the Guarantor under any similar guarantee agreements issued by the Guarantor with respect to preferred securities (if any) similar to the Preferred Securities, issued by trusts other than the Issuer established or to be established by the Guarantor (if any), in each case similar to the Issuer American Equity Capital Trust I, American Equity Capital Trust II, American Equity Capital Trust III, American Equity Capital Trust IV, American Equity Capital Trust V, American Equity Capital Trust VI, and American Equity Capital Trust VII.

(b) The right of the Guarantor to participate in any distribution of assets of any of its subsidiaries upon any such subsidiary's liquidation or reorganization or otherwise is subject to the prior claims of creditors of that subsidiary, except to the extent the Guarantor may itself be recognized as a creditor of that subsidiary. Accordingly, the Guarantor's obligations under this Guarantee will be effectively subordinated to all existing and

future liabilities of the Guarantor's subsidiaries, and claimants should look only to the assets of the Guarantor for payments thereunder. This Guarantee does not limit the incurrence or issuance of other secured or unsecured debt of the Guarantor, including Senior Debt of the Guarantor, under any indenture or agreement that the Guarantor may enter into in the future or otherwise.

## **ARTICLE VII**

### **TERMINATION**

#### **Section 7.1. *Termination.***

This Guarantee Agreement shall terminate and be of no further force and effect upon (a) full payment of the Redemption Price of all Preferred Securities, (b) the distribution of Notes to the Holders in exchange for all of the Preferred Securities or (c) full payment of the amounts payable in accordance with the Trust Agreement upon liquidation of the Issuer. Notwithstanding the foregoing, this Guarantee Agreement will continue to be effective or will be reinstated, as the case may be, if at any time any Holder must restore payment of any sums paid with respect to Preferred Securities or this Guarantee Agreement. The obligations of the Guarantor under *Sections 3.3 and 3.4* shall survive any such termination or the resignation and removal of the Guarantee Trustee.

## **ARTICLE VIII**

### **MISCELLANEOUS**

#### **SECTION 8.1. *Successors and Assigns.***

All guarantees and agreements contained in this Guarantee Agreement shall bind the successors, assigns, receivers, trustees and representatives of the Guarantor and shall inure to the benefit of the Holders of the Preferred Securities then outstanding. Except in connection with a consolidation, merger or sale involving the Guarantor that is permitted under Article VIII of the Indenture and pursuant to which the successor or assignee agrees in writing to perform the Guarantor's obligations hereunder, the Guarantor shall not assign its rights or delegate its obligations hereunder without the prior approval of the Holders of a Majority in Liquidation Amount of the Preferred Securities.

#### **SECTION 8.2. *Amendments.***

Except with respect to any changes that do not adversely affect the rights of the Holders in any material respect (in which case no consent of the Holders will be required), this Guarantee Agreement may only be amended with the prior approval of the Guarantor, the Guarantee Trustee and the Holders of not less than a Majority in Liquidation Amount of the Preferred Securities. The provisions of Article VI of the Trust Agreement concerning meetings or consents of the Holders shall apply to the giving of such approval.



SECTION 8.3. *Notices.*

Any notice, request or other communication required or permitted to be given hereunder shall be in writing, duly signed by the party giving such notice, and delivered, telecopied or mailed by first class mail as follows:

(a) if given to the Guarantor, to the address or facsimile number set forth below or such other address, facsimile number or to the attention of such other Person as the Guarantor may give notice to the Guarantee Trustee and the Holders:

American Equity Investment Life Insurance Company  
5000 Westown Parkway, Suite 440  
West Des Moines, IA 50266  
Facsimile No.: (515) 221-0744  
Attention: Wendy Carlson

(b) if given to the Issuer, at the Issuer's address or facsimile number set forth below or such other address, facsimile number or to the attention of such other Person as the Issuer may give notice to the Guarantee Trustee and the Holders:

American Equity Capital Trust VIII  
5000 Westown Parkway, Suite 440  
West Des Moines, IA 50266  
Facsimile No.: (515) 221-0744  
Attention: Wendy Carlson

(c) if given to the Guarantee Trustee, at the address or facsimile number set forth below or such other address, facsimile number or to the attention of such other Person as the Guarantee Trustee may give notice to the Guarantor and the Holders:

JPMorgan Chase Bank, N.A.  
600 Travis, 50<sup>th</sup> Floor  
Houston, Texas 77002  
Facsimile No.: 713-216-2101  
Attention: International Trust Services—  
American Equity Capital Trust VIII

(d) if given to any Holder, at the address set forth on the books and records of the Issuer.

All notices hereunder shall be deemed to have been given when received in person, telecopied with receipt confirmed, or mailed by first class mail, postage prepaid, except that if a notice or other document is refused delivery or cannot be delivered because of a changed address of which no notice was given, such notice or other document shall be deemed to have been delivered on the date of such refusal or inability to deliver.

SECTION 8.4. *Benefit.*

This Guarantee Agreement is solely for the benefit of the Holders and is not separately transferable from the Preferred Securities.

SECTION 8.5. *Governing Law.*

**This Guarantee Agreement and the rights and obligations of each party hereto, shall be construed and enforced in accordance with and governed by the laws of the State of New York without reference to its conflict of laws provisions (other than Section 5-1401 of the General Obligations Law).**

SECTION 8.6. *Submission to Jurisdiction.*

ANY LEGAL ACTION OR PROCEEDING BY OR AGAINST ANY PARTY HERETO OR WITH RESPECT TO OR ARISING OUT OF THIS GUARANTEE AGREEMENT MAY BE BROUGHT IN OR REMOVED TO THE COURTS OF THE STATE OF NEW YORK, IN AND FOR THE COUNTY OF NEW YORK, OR OF THE UNITED STATES OF AMERICA FOR THE SOUTHERN DISTRICT OF NEW YORK (IN EACH CASE SITTING IN THE BOROUGH OF MANHATTAN). BY EXECUTION AND DELIVERY OF THIS GUARANTEE AGREEMENT, EACH PARTY ACCEPTS, FOR ITSELF AND IN RESPECT OF ITS PROPERTY, GENERALLY AND UNCONDITIONALLY, THE JURISDICTION OF THE AFORESAID

COURTS (AND COURTS OF APPEALS THEREFROM) FOR LEGAL PROCEEDINGS ARISING OUT OF OR IN CONNECTION WITH THIS GUARANTEE AGREEMENT.

SECTION 8.7. *Counterparts.*

This instrument may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, but all such counterparts shall together constitute but one and the same instrument.

SECTION 8.8. *Severability.*

In the event that one or more of the provisions contained in this Guarantee Agreement shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Guarantee, but this Guarantee shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

[*Signature pages follow.*]

In WITNESS WHEREOF, the undersigned have executed this Guarantee Agreement as of the date first above written.

AMERICAN EQUITY INVESTMENT LIFE  
HOLDING COMPANY

By:     /s/ DEBRA J. RICHARDSON

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Name	Debra J. Richardson
Title:	Secretary and Senior Vice President

JPMORGAN CHASE BANK, N.A., not in its individual  
capacity, but solely as Guarantee Trustee

By:     /s/ MARIA D. CALZADO

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Name	Maria D. Calzado
Title:	Vice President

QuickLinks

[Exhibit 4.18](#)

**AMERICAN EQUITY INVESTMENT LIFE HOLDING COMPANY,  
Issuer**

**5.25% Contingent Convertible Senior Notes Due 2024**

**INDENTURE**

**U.S. Bank National Association,  
Trustee**

**December 6, 2004**

**CROSS-REFERENCE TABLE\***

<b>Trust Indenture Act Section</b>	<b>Indenture Section</b>
310(a)(1)	7.10
(a)(2)	7.10
(a)(3)	N.A.
(a)(4)	N.A.
(a)(5)	N.A.
(b)	7.10
(c)	N.A.
311(a)	7.11
(b)	7.11
(c)	N.A.
312(a)	N.A.
(b)	11.03
(c)	11.03
313(a)	7.06
(b)	7.06
(c)	N.A.
(d)	N.A.
314(a)	4.02, 4.03
(b)	N.A.
(c)(1)	N.A.
(c)(2)	N.A.
(c)(3)	N.A.
(d)	N.A.
(e)	N.A.
(f)	N.A.
315(a)	7.01(b)
(b)	7.05
(c)	N.A.
(d)	7.01(c)
(e)	6.11
316(a)(1)(A)	6.05
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(a)(2)	N.A.
(b)	N.A.
(c)	N.A.
317(a)(1)	N.A.
(a)(2)	N.A.
(b)	N.A.
318(a)	N.A.

N.A. means not applicable.

\* This Cross-Reference Table is not part of the Indenture.

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INDENTURE dated as of December 6, 2004 among AMERICAN EQUITY INVESTMENT LIFE HOLDING COMPANY, a Delaware corporation (the “**Company**”), and U.S. BANK NATIONAL ASSOCIATION, a national banking association organized under the laws of the United States of America (the “**Trustee**”).

Each party agrees as follows for the benefit of the other party and for the equal and ratable benefit of the Holders (as defined below) of the Company’s 5.25% Contingent Convertible Senior Notes due 2024 (the “**Securities**”):

## ARTICLE 1 DEFINITIONS AND INCORPORATION BY REFERENCE

### Section 1.01. *Definitions.*

“**Acquisition Value**” of the Common Stock means, for each Trading Day in the Valuation Period, the value of the consideration paid per share of Common Stock in connection with such Public Acquirer Change in Control, (i) for any cash, 100% of the face amount of such cash; (ii) for any Acquirer Common Stock, 100% of the closing sale price of such acquirer common stock on each such Trading Day; and (iii) for any other securities, assets or property, 102% of the fair market value of such security, asset or property on each such Trading Day, as determined by two independent nationally recognized investment banks selected by the Trustee for this purpose.

“**Affiliate**” has the meaning provided in Rule 405 under the Securities Act.

“**Agent**” means any Registrar, Paying Agent, Conversion Agent or co-registrar.

“**Applicable Procedures**” means, with respect to any transfer or transaction involving a Global Security or beneficial interests therein, the rules and procedures of the Depository for such Global Security, in each case to the extent applicable to such transaction and as in effect from time to time.

“**Bankruptcy Law**” means Title 11, U.S. Code or any similar federal, state, or foreign law for the relief of debtors.

“**Beneficial Owner**” shall be determined in accordance with Rule 13d-3 and Rule 13d-5 promulgated by the SEC under the Exchange Act or any successor provision, except that: (i) a person shall be deemed to have “Beneficial Ownership” of all shares of Common Stock that the Person has the right to acquire, whether exercisable immediately or only after the passage of time and (ii) any percentage of “Beneficial Ownership” shall be determined using the definition in clause (i) in both the numerator and the denominator.

“**Board of Directors**” means either the board of directors of the Company or any duly authorized committee of such board of directors authorized to act for it with respect to this Indenture.

“**Board Resolutions**” means a copy of one or more resolutions, certified by an Officer of the Company to have been duly adopted or consented to by the Board of Directors and to be in full force and effect, and delivered to the Trustee.

“**Business Day**” means any day, other than a Saturday or Sunday, that is neither a legal holiday nor a day on which commercial banks are authorized or required by law, regulation or executive order to close in The City of New York.

“**Capital Stock**” for any corporation means any and all shares, interests, rights to purchase, warrants, options, participations or other equivalents of or interests in (however designated) stock issued by that corporation, but excluding from all of the foregoing any debt securities convertible into Capital Stock, whether or not such debt securities include any right of participation with Capital Stock.

“**Change in Control**” means the occurrence of one or more of the following events:

(a) any sale, lease, exchange or other transfer (in one transaction or a series of related transactions) of all or substantially all of the properties and assets of the Company, to any Person or group of related Persons, as defined in Section 13(d) of the Exchange Act (a “**Group**”);

(b) the approval by the holders of the Capital Stock of the Company of any plan or proposal for the liquidation or dissolution of the Company, whether or not otherwise in compliance with this Indenture;



(c) any Person or Group, other than the Company, any Subsidiary of the Company or any employee benefit plan of the Company or any Subsidiary, becomes the Beneficial Owner, directly or indirectly, of shares of Voting Stock representing in excess of 50% of the aggregate ordinary voting power represented by all of the issued and outstanding Voting Stock of the Company; or

(d) the first day on which a majority of the members of the Board of Directors are not Continuing Directors.

**“Closing Sale Price”** on any date means the closing sale price per share (or if no closing sale price is reported, the average of the bid and ask prices or, if more than one in either case, the average of the average bid and the average ask prices) on such date for the Acquirer Common Stock as reported in composite transactions on the New York Stock Exchange or the principal United States securities exchange on which the Common Stock is traded or, if the Common

Stock is not listed on a United States national or regional securities exchange, as reported by The NASDAQ System.

**“Common Stock”** shall mean shares of the Company’s Common Stock, \$.01 par value per share, as they exist on the date of this Indenture or any other shares of Capital Stock of the Company into which the Common Stock shall be reclassified or changed.

**“Common Stock Price”** on any date means the closing sale price per share (or if no closing sale price is reported, the average of the bid and ask prices or, if more than one in either case, the average of the average bid and the average ask prices) on such date for the Common Stock as reported in composite transactions on the New York Stock Exchange or the principal United States securities exchange on which the Common Stock is traded or, if the Common Stock is not listed on a United States national or regional securities exchange, as reported by The NASDAQ System. If the Common Stock is not so quoted, the “Common Stock Price” will be the average of the mid-point of the last bid and asked prices for the Common Stock on the relevant date quoted by each of at least three nationally recognized independent investment banking firms selected by the Company for this purpose.

**“Company”** means the party named as the “Company” in the first paragraph of this Indenture until a successor replaces it pursuant to the applicable provisions of this Indenture and, thereafter, shall mean such successor. The foregoing sentence shall likewise apply to any subsequent successor or successors.

**“Company Order”** means a written request or order signed in the name of the Company by any two Officers.

**“Continuing Directors”** means, as of any date of determination, any member of the Board of Directors who (a) was a member of the Board of Directors as of the date hereof or (b) was nominated for election or elected to the Board of Directors with the approval of a majority of the Continuing Directors who were members of the Board of Directors at the time of such nomination or election.

**“Conversion Price”** means \$14.47 per share of Common Stock as of the date of this Indenture, subject to the adjustments described in Section 10.05 hereof.

**“Conversion Rate”** means the number of shares of Common Stock equal to \$1,000 divided by the Conversion Price, which shall be approximately 69.1085 prior to any adjustment thereto.

**“Corporate Trust Office”** means the office of the Trustee at which at any time the trust created by this Indenture shall be administered, which office at the

date hereof is located at U.S. Bank National Association, 60 Livingston Avenue EP-MN-WS3C, St. Paul, MN 55107-2292, or such other address as the Trustee may designate from time to time by notice to the Holders and the Company, or the principal corporate trust office of any successor Trustee (or such other address as a successor Trustee may designate from time to time by notice to the Holders and the Company).

**“Default”** means any event which is, or after notice or passage of time or both would be, an Event of Default.

**“Exchange Act”** means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder, as in effect from time to time.

**“GAAP”** means generally accepted accounting principles set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as may be approved by a significant segment of the accounting profession of the United States, which are in effect from time to time.

**“Holder”** means a Person in whose name a Security is registered on the Registrar’s books.

**“Indenture”** means this Indenture, as amended or supplemented from time to time in accordance with the terms hereof, including the provisions of the TIA that are deemed to be a part hereof.

**“Initial Purchasers”** shall mean Deutsche Bank Securities Inc., Raymond James & Associates, Inc. and Advest, Inc.

**“Liquidated Damages”** has the meaning set forth in the Registration Rights Agreement dated as of December 6, 2004 between the Company and the Initial Purchasers.

**“Market Price”** means the average of the Common Stock Prices for 20 consecutive Trading Days commencing 30 Trading Days before the record date with respect to any distribution, issuance or other event requiring such computation, appropriately adjusted (as determined in good faith by the Board of

Directors, whose determination shall be conclusive) to take into account the occurrence, during the period commencing on the first of such 20 consecutive Trading Days and ending on such record date, of any event requiring adjustment of the Conversion Price under this Indenture.

**“Obligations”** means all obligations for principal, premium, interest, penalties, fees, indemnifications, reimbursements, damages and other liabilities

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payable under the documentation under which any indebtedness is created, evidenced or secured, including, in the case of the Securities, Contingent Interest and Liquidated Damages, if any.

**“Offering Memorandum”** means the offering memorandum of the Company dated December 1, 2004 relating to the offering of the Securities.

**“Officer”** means, with respect to any Person, the Chairman of the Board, the Chief Executive Officer, the President, any Vice President (whether or not such title is preceded by any modifier such as “Executive, “Senior” or the like), the Chief Financial Officer, the Treasurer, the Controller or the Secretary of such Person or any other officer designated by the board of directors of such Person serving in a similar capacity; *provided* that the designation of any such Officer of the Company by the Board of Directors shall be evidenced in a Board Resolution.

**“Officers’ Certificate”** means a written certificate containing the information specified in Sections 11.04 and 11.05, signed in the name of the Company by any two Officers, and delivered to the Trustee. An Officers’ Certificate given pursuant to Section 4.03 shall be signed by the principal executive officer, principal financial officer or the principal accounting officer of the Company but need not contain the information specified in Sections 11.04 and 11.05.

**“Opinion of Counsel”** means a written opinion containing the information specified in Sections 11.04 and 11.05, from legal counsel who is acceptable to the Trustee in its reasonable discretion. The counsel may be an employee of, or counsel to, the Company or the Trustee.

**“Person”** means any individual, corporation, limited liability company, partnership, joint venture, association, joint-stock company, trust, unincorporated organization, government or any agency or political subdivision thereof or other entity.

**“Public Acquirer Change in Control”** means any transaction described in clause (c) of the definition of Change in Control where the acquirer, or any entity that it is a direct or indirect “beneficial owner” (as defined in Rule 13d-3 under the Exchange Act) of more than 50% of the aggregate ordinary voting power of all shares of such acquirer’s capital stock that are entitled to vote generally in the election of directors, but in each case other than the Company, has a class of common stock traded on a national securities exchange or quoted on the Nasdaq National Market or which will be so traded or quoted when issued or exchanged in connection with such Change in Control. Such acquirer’s or other entity’s class of common stock traded on a national securities exchange or quoted on the Nasdaq National Market or which will be so traded or quoted when issued or exchanged in connection with such fundamental change is herein referred to as **“Acquirer Common Stock.”**

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**“Responsible Officer”** shall mean, when used with respect to the Trustee, any officer within the corporate trust department of the Trustee, including any vice president, assistant vice president, trust officer or any other officer of the Trustee who customarily performs functions similar to those performed by the Persons who at the time shall be such officers, respectively, or to whom any corporate trust matter is referred because of such person’s knowledge of and familiarity with the particular subject and who shall have direct responsibility for the administration of this Indenture.

**“Rule 144A”** means Rule 144A under the Securities Act (or any successor provision), as it may be amended from time to time.

**“SEC”** means the Securities and Exchange Commission.

**“Security” or “Securities”** means any of the Company’s 5.25% Contingent Convertible Senior Notes Due 2024 issued under this Indenture.

**“Securities Act”** means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder, as in effect from time to time.

**“Significant Subsidiary”** has the meaning ascribed to such term in Regulation S-X (17 CFR Part 210).

**“Stated Maturity”**, when used with respect to any Security, means the date specified in such Security as the fixed date on which an amount equal to the principal amount of such Security is due and payable.

**“Subsidiary”** means, with respect to any Person, (i) any corporation of which the outstanding Capital Stock having at least a majority of the votes entitled to be cast in the election of directors under ordinary circumstances (determined without regard to any classification of directors) shall at the time be owned, directly or indirectly, by such Person, (ii) any other Person (other than a partnership) of which at least a majority of the voting interests under ordinary circumstances is at the time, directly or indirectly, owned by such Person or (iii) any partnership (a) the sole general partner or the managing general partner of which is such Person or a Subsidiary of such Person or (b) the only general partners of which are such Person or one or more Subsidiaries of such Person (or any combination thereof).

**“Tax Original Issue Discount”** means the amount of ordinary interest income on a Security that must be accrued as original issue discount for United States federal income tax purposes pursuant to Treasury regulation section 1.1275-4 or any successor provision.

**“TIA”** means the Trust Indenture Act of 1939 as in effect on the date of this Indenture, *provided* that in the event the TIA is amended after such date, TIA means, to the extent required by any such amendment, the TIA as so amended.

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“**Trading Day**” means any regular or abbreviated trading day of The New York Stock Exchange.

“**Trading Price**” on any date of determination means the average of the secondary market bid quotations per \$1,000 principal amount of Securities obtained by the Trustee for \$5,000,000 principal amount of the Securities at approximately 3:30 p.m., New York City time, on such determination date from three independent nationally recognized securities dealers the Company selects, which may include the Initial Purchasers; *provided* that if at least three such bids cannot reasonably be obtained by the Trustee, but two such bids are obtained, then the average of the two bids shall be used, and if only one such bid can reasonably be obtained by the Trustee, this one bid shall be used. If the Trustee cannot reasonably obtain at least one such bid or, in the Company’s reasonable judgment, the bid quotations are not indicative of the secondary market value of the Securities, then the Trading Price of the Securities will be determined in good faith by the Trustee, taking into account in such determination such factors as it, in its sole discretion after consultation with the Company, deems appropriate.

“**Transfer Restricted Securities Legend**” means the legend labeled as such and that is set forth in Exhibit A hereto.

“**Trustee**” means the party named as the “**Trustee**” in the first paragraph of this Indenture until a successor replaces it pursuant to the applicable provisions of this Indenture and, thereafter, shall mean such successor. The foregoing sentence shall likewise apply to any subsequent such successor or successors.

“**Voting Stock**” of a Person means Capital Stock of such Person of the class or classes pursuant to which the holders thereof have the general voting power under ordinary circumstances (determined without regard to any classification of directors) to elect at least a majority of the board of directors, managers or trustees of such Person (irrespective of whether or not at the time Capital Stock of any other class or classes shall have or might have voting power by reason of the happening of any contingency).

Section 1.02. *Other Definitions.*

Term	Defined in Section
Acceleration Notice	6.02(a)
Accepted Purchased Shares	10.05(f)
Act	1.05(a)
Agent Members	2.12(e)
Authenticating Agent	2.02
Change in Control Repurchase Date	3.09(a)
Change in Control Repurchase Price	3.09(a)
Change in Control Repurchase Notice	3.09(c)
Company Change in Control Repurchase Notice	3.09(b)

Term	Defined in Section
Company Change in Control Repurchase Notice	3.09(b)
Company Repurchase Notice	3.08(b)
Contingent Interest	Exhibit A
Contingent Interest Average Trading Price	Exhibit A
Contingent Interest Period	Exhibit A
Conversion Agent	2.03
Conversion Date	10.02(a)
Conversion Value	10.14(a)
Depository	2.01(b)
Determination Date	10.14(b)
Divided Threshold Amount	10.05(e)
DTC	2.01(b)
Event of Default	6.01
Ex-Dividend Date	10.01(b)
Expiration Time	10.05(d)
Global Security	2.01(b)
Interest Payment Date	Exhibit A
Legal Holiday	11.08
Net Share Amount	10.14(b)
Net Shares	10.14(b)
Offer Expiration Time	10.05(f)
Paying Agent	2.03
Payment Default	6.01(e)
Principal Return	10.14(b)
Pre-Dividend Sale Price	10.05(e)
Principal Value Conversion	10.01(a)
Repurchase Date	3.08(a)
Repurchase Notice	3.08(a)
Repurchase Price	3.08(a)
Purchased Shares	10.05(d)
QIB	2.06(e)
Quarter	10.01(a)
Record Date	Exhibit A
Redemption Date	3.01(a)

Redemption Price	3.01(a)
Registrar	2.03
Rule 144A Information	4.06
Transfer Restricted Securities	2.06(e)
Ten Day Average Closing Stock Price	10.14(a)

Section 1.03. *Incorporation by Reference of Trust Indenture Act.* Whenever this Indenture refers to a provision of the TIA, the provision is incorporated by reference in and made a part of this Indenture. The following

TIA terms incorporated by reference in this Indenture have the following meanings:

“**Commission**” means the SEC.

“**Indenture Securities**” means the Securities.

“**Indenture Security Holder**” means a Holder.

“**Indenture to be Qualified**” means this Indenture.

“**Indenture Trustee**” or “**Institutional Trustee**” means the Trustee.

“**Obligor**” on the indenture securities means the Company.

All other TIA terms incorporated by reference in this Indenture that are defined by the TIA, defined by a TIA reference to another statute or defined by an SEC rule have the meanings assigned to them by such definitions.

Section 1.04. *Rules of Construction.* Unless the context otherwise requires:

- (a) a term has the meaning assigned to it;
- (b) an accounting term not otherwise defined has the meaning assigned to it in accordance with GAAP;
- (c) “or” is not exclusive;
- (d) “including” means including, without limitation; and
- (e) words in the singular include the plural, and words in the plural include the singular.

Section 1.05. *Acts of Holders.*

(a) Any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Indenture to be given or taken by Holders may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such Holders in person or by agent duly appointed in writing or in the case of Securities evidenced by a Global Security, by any electronic transmission or other message, whether or not in written format, that complies with the Applicable Procedures; and, except as herein otherwise expressly provided, such action shall become effective when such instrument or instruments are delivered to the Trustee and, where it is hereby expressly required, to the Company. Such instrument or instruments (and the action embodied therein and evidenced thereby) are herein sometimes referred to as the “**Act**” of Holders. Proof of execution of any such instrument or of a writing

appointing any such agent shall be sufficient for any purpose of this Indenture and conclusive in favor of the Trustee and the Company, if made in the manner provided in this Section.

(b) The fact and date of the execution by any Person of any such instrument or writing may be proved by the affidavit of a witness of such execution or by a certificate of a notary public or other officer authorized by law to take acknowledgments of deeds, certifying that the individual signing such instrument or writing acknowledged to such officer the execution thereof. Where such execution is by a signer acting in a capacity other than such signer’s individual capacity, such certificate or affidavit shall also constitute sufficient proof of such signer’s authority. The fact and date of the execution of any such instrument or writing, or the authority of the Person executing the same, may also be proved in any other manner which the Trustee deems sufficient.

(c) The ownership of Securities shall be proved by the register maintained by the Registrar.

(d) Any request, demand, authorization, direction, notice, consent, waiver or other Act of the Holder of any Security shall bind every future Holder of the same Security and the holder of every Security issued upon the registration of transfer thereof or in exchange therefor or in lieu thereof in respect of anything done, omitted or suffered to be done by the Trustee or the Company in reliance thereon, whether or not notation of such action is made upon such Security.

(e) If the Company shall solicit from the Holders any request, demand, authorization, direction, notice, consent, waiver or other Act, the Company may, at its option, by or pursuant to a Board Resolution, fix in advance a record date for the determination of Holders entitled to give such request, demand, authorization, direction, notice, consent, waiver or other Act, but the Company shall have no obligation to do so. If such a record date is fixed, such

request, demand, authorization, direction, notice, consent, waiver or other Act may be given before or after such record date, but only the Holders of record at the close of business on such record date shall be deemed to be Holders for the purposes of determining whether Holders of the requisite proportion of outstanding Securities have authorized or agreed or consented to such request, demand, authorization, direction, notice, consent, waiver or other Act, and for that purpose the outstanding Securities shall be computed as of such record date; *provided* that no such authorization, agreement or consent by the Holders on such record date shall be deemed effective unless it shall become effective pursuant to the provisions of this Indenture not later than six months after the record date.

## ARTICLE 2 THE SECURITIES

### Section 2.01. *Form and Dating.*

(a) *Forms.* The Securities and the Trustee's certificate of authentication shall be substantially in the forms set forth on Exhibit A, which are a part of this Indenture and incorporated by reference herein. The Securities may have notations, legends or endorsements required by law, stock exchange rule or usage; *provided* that any such notation, legend or endorsement required by usage is in a form acceptable to the Company. The Company shall provide any such notations, legends or endorsements to the Trustee in writing. Each Security shall be dated the date of its authentication.

The terms and provisions contained in any series of Securities shall constitute, and are hereby expressly made, a part of this Indenture and the Company and the Trustee, by their execution and delivery of this Indenture, expressly agree to such terms and provisions and to be bound thereby.

(b) *Global Securities.* Unless otherwise required by law or otherwise contemplated by Section 2.12(a), all of the Securities will be represented by one or more Securities in global form (a "**Global Security**"), which shall be deposited with the Trustee at its Corporate Trust Office, as custodian for the depository and registered in the name of The Depository Trust Company ("**DTC**") or the nominee thereof (such depository, or any successor thereto, and any such nominee being hereinafter referred to as the "**Depository**"), duly executed by the Company and authenticated by the Trustee as hereinafter provided.

Each Global Security shall represent such of the outstanding Securities as shall be specified therein and each shall provide that it shall represent the aggregate amount of outstanding Securities from time to time endorsed thereon and that the aggregate amount of outstanding Securities represented thereby may from time to time be reduced or increased, as appropriate, to reflect exchanges, redemptions and conversions.

Any adjustment of the aggregate principal amount of a Global Security to reflect the amount of any increase or decrease in the amount of outstanding Securities represented thereby shall be made by the Trustee as required by Section 2.12 hereof and shall be made on the records of the Trustee and the Depository.

Section 2.02. *Execution and Authentication.* The Securities shall be executed on behalf of the Company by the manual or facsimile signature of any Officer.

Securities bearing the manual or facsimile signatures of individuals who were at the time of the execution of the Securities the proper Officers of the Company shall bind the Company, notwithstanding that such individuals or any of them have ceased to hold such offices prior to the authentication and delivery of such Securities or did not hold such offices at the date of authentication of such Securities.

No Security shall be entitled to any benefit under this Indenture or be valid or obligatory for any purpose unless there appears on such Security a certificate of authentication substantially in the form provided for herein duly executed by the Trustee by manual signature of an authorized signatory, and such certificate upon any Security shall be conclusive evidence, and the only evidence, that such Security has been duly authenticated and delivered hereunder.

The Trustee may appoint an authenticating agent (the "**Authenticating Agent**") reasonably acceptable to the Company to authenticate Securities. Unless otherwise provided in the appointment, the Authenticating Agent may authenticate Securities whenever the Trustee may do so. Each reference in this Indenture to authentication by the Trustee includes authentication by the Authenticating Agent. The Authenticating Agent has the same rights as an Agent to deal with the Company or with any Affiliate of the Company.

The aggregate principal amount of Securities which may be authenticated and delivered under this Indenture is unlimited. The Trustee shall authenticate and deliver Securities for original issue upon receipt of a Company Order and Board Resolutions authorizing the issuance of the Securities referenced in such Company Order.

The Securities shall be issued only in registered form without coupons and only in denominations of \$1,000 of principal amount and any integral multiple thereof.

Section 2.03. *Registrar, Paying Agent and Conversion Agent.* The Company shall maintain an office or agency where Securities may be presented for registration of transfer or for exchange (the "**Registrar**"), an office or agency where Securities may be presented for repurchase or payment (the "**Paying Agent**") and an office or agency where Securities may be presented for conversion (the "**Conversion Agent**"). The Registrar shall keep a register of the Securities and of their transfer and exchange. The Company, upon prior written notice to the Trustee, may have one or more co-registrars, one or more additional paying agents reasonably acceptable to the Trustee and one or more additional conversion agents. The term "Paying Agent" includes any additional paying agent, including any named pursuant to Section 4.05. The term "Conversion Agent" includes any additional conversion agent, including any named pursuant to Section 4.05.

The Company shall enter into an appropriate agency agreement with any Registrar, Paying Agent, Conversion Agent or co-registrar (if other than the Trustee). Such agreement shall implement the provisions of this Indenture that relate to such Agent. The Company shall notify the Trustee, in advance, of the

name and address of any such Agent. If the Company fails to maintain a Registrar, Paying Agent or Conversion Agent, the Trustee shall act as such and shall be entitled to appropriate compensation therefor pursuant to Section 7.07. The Company or any of its Subsidiaries or an Affiliate of the Company or any of

its Subsidiaries may act as Paying Agent, Registrar, Conversion Agent or co-registrar.

The Company initially appoints the Trustee as Registrar, Conversion Agent and Paying Agent in connection with the Securities.

Section 2.04. *Paying Agent to Hold Money in Trust.* Except as otherwise provided herein, not later than 11:00 a.m. (New York City time) on each due date of payments in respect of any Security, the Company shall deposit with the Paying Agent a sum of money and shares of Common Stock, as applicable, sufficient to make such payments becoming due. The Company shall require each Paying Agent (other than the Trustee) to agree in writing that such Paying Agent shall hold in trust for the benefit of Holders or the Trustee all money and shares of Common Stock, as applicable, held by such Paying Agent for the making of payments in respect of the Securities and shall notify the Trustee of any default by the Company in making any such payment. At any time during the continuance of any such default, such Paying Agent shall, upon the written request of the Trustee, forthwith pay to the Trustee all moneys and shares of Common Stock, as applicable, held in trust. If the Company, a Subsidiary of the Company or an Affiliate of the Company or any of its Subsidiaries acts as Paying Agent, it shall segregate the money and shares of Common Stock, as applicable, held by it as Paying Agent and hold it as a separate trust fund. The Company at any time may require each Paying Agent to pay all money and shares of Common Stock, as applicable, held by it to the Trustee and to account for any funds disbursed by it. Upon doing so, such Paying Agent shall have no further liability for such money or shares of Common Stock, as the case may be. The Paying Agent and Trustee shall return to the Company upon written request any money or shares of Common Stock held by them for the payment of any amount with respect to the Securities that remains unclaimed for two years, subject to applicable unclaimed property law. After return to the Company, Holders entitled to the money or shares of Common Stock must look to the Company for payment as general creditors unless an applicable abandoned property law designates another person.

Section 2.05. *Holder Lists.* The Trustee shall preserve in as current a form as is reasonably practicable the most recent list available to it of the names and addresses of Holders. If the Trustee is not the Registrar, the Company shall cause to be furnished to the Trustee on each June 1 and December 1 and at such other times as the Trustee may request in writing a list in such form and as of such date as the Trustee may reasonably require of the names and addresses of Holders, which list may be conclusively relied upon by the Trustee and dated not more than 15 days prior to the time such information is furnished; *provided* that the list of Holders provided on June 1 and December 1 shall contain the list of Holders as of the immediately preceding May 20 and November 20, respectively.

Section 2.06. *Transfer and Exchange.*

(a) Subject to Section 2.12 hereof, upon surrender for registration of transfer of any Securities to the Registrar, together with a written instrument of transfer satisfactory to the Registrar, substantially in the form affixed to the form of Security attached as Exhibit A hereto, duly executed by the Holder thereof or such Holder's attorney duly authorized in writing, at the office or agency of the Registrar or co-registrar, the Company shall execute and the Trustee shall authenticate and deliver, in the name of the designated transferee or transferees, one or more new Securities of any authorized denomination or denominations of a like aggregate principal amount.

At the option of the Holder thereof, Securities may be exchanged for other Securities of any authorized denomination or denominations, of a like aggregate principal amount, upon surrender of the Securities to be exchanged, together with a written instrument of transfer satisfactory to the Registrar duly executed by such Holder or such Holder's attorney duly authorized in writing, at the office or agency of the Registrar or co-registrar. Whenever any Securities are so surrendered for exchange, the Company shall execute, and the Trustee shall authenticate and deliver, the Securities that the Holder making the exchange is entitled to receive.

The Company shall not charge a service charge for any registration of transfer or exchange, but the Company may require payment of a sum sufficient to pay all taxes, assessments or other governmental charges that may be imposed in connection with the transfer or exchange of the Securities from the Holder requesting such transfer or exchange.

The Company shall not be required to make, and the Registrar need not register, transfers or exchanges of Securities selected for redemption (except, in the case of Securities to be redeemed in part, the portion thereof not to be redeemed) or any Securities in respect of which a Repurchase Notice or Change in Control Repurchase Notice has been given and not withdrawn by the Holder thereof in accordance with the terms of this Indenture (except, in the case of Securities to be repurchased in part, the portion thereof not to be repurchased) or any Securities for a period of 5 days before the mailing of a notice of redemption to each Holder of Securities to be redeemed, as provided in Section 3.03.

(b) Successive registrations and registrations of transfers and exchanges as aforesaid may be made from time to time as desired, and each such registration shall be noted on the register for the Securities.

(c) The Registrar shall provide to the Trustee such information as the Trustee may reasonably require in connection with the delivery by the Registrar of Securities upon transfer or exchange of Securities.

(d) The Registrar shall not be required to make registrations of transfer or exchange of Securities during any periods designated in the Securities or in this

(e) Notwithstanding any other provision of this Indenture or the Securities, until the expiration of the applicable holding period set forth in Rule 144(k) of the Securities Act (or any successor provision), the Securities may not be transferred or exchanged in whole or in part other than (i) to a person whom the seller reasonably believes is a qualified institutional buyer, as such term is defined in Rule 144A (a “**QIB**”), in a transaction meeting the requirements of Rule 144A, (ii) pursuant to an exemption from registration under the Securities Act provided by Rule 144 thereunder (if available), (iii) pursuant to an effective registration statement under the Securities Act or (iv) to the Company or any of its Subsidiaries, in each of cases (i) through (iv) in accordance with any applicable securities laws of any state of the United States. Whenever any Security is presented or surrendered for registration of transfer or exchange for a Security registered in a name other than that of the Holder thereof, such Security must be accompanied by a certificate in substantially the form set forth in Exhibit B, dated the date of such surrender and signed by the Holder of such Security, as to compliance with such restrictions on transfer. The Registrar shall not be required to accept for such registration of transfer or exchange any Security not so accompanied by a properly completed certificate.

Any certificate evidencing a Security (and all securities issued in exchange therefore or substitution thereof) shall bear the Transfer Restricted Securities Legend, unless (1) such Security has been sold pursuant to a registration statement that has been declared effective under the Securities Act (and which continues to be effective at the time of such transfer) or pursuant to Rule 144 under the Securities Act or any similar provision then in force, (2) such Security is eligible for resale pursuant to Rule 144(k) under the Securities Act (or any successor provision) or (3) otherwise agreed by the Company in writing, with written notice thereof to the Trustee.

Every Security that bears or is required under this Section 2.06(e) to bear the Transfer Restricted Securities Legend (the “**Transfer Restricted Securities**”) shall be subject to the restrictions on transfer set forth in this Section 2.06(e) (including those set forth in the Transfer Restricted Securities Legend), and the Holder of each such Transfer Restricted Security, by such Security Holder’s acceptance thereof, agrees to be bound by all such restrictions on transfer. As used in this Section 2.06(e), the term “**transfer**” encompasses any sale, pledge, loan, transfer or other disposition whatsoever of any Transfer Restricted Security or any interest therein.

Any Security (or Security issued in exchange or substitution therefor) as to which such restrictions on transfer shall have expired in accordance with their terms or as to conditions for removal of the Transfer Restricted Securities Legend have been satisfied may, upon surrender of such Security for exchange to the Registrar in accordance with the provisions of this Section 2.06, be exchanged for

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a new Security or Securities, of like tenor and aggregate principal amount, which shall not bear the Transfer Restricted Securities Legend. If the Transfer Restricted Security surrendered for exchange is represented by a Global Security bearing a Transfer Restricted Securities Legend, the principal amount of the Global Security so legended shall be reduced by the appropriate principal amount and the principal amount of a Global Security without the Transfer Restricted Securities Legend shall be increased by an equal principal amount. If a Global Security without the Transfer Restricted Securities Legend is not then outstanding, the Company shall execute and the Trustee shall authenticate and deliver a Global Security without the Transfer Restricted Securities Legend to the Depository.

**Section 2.07. Replacement Securities.** If any mutilated Security is surrendered to the Trustee, or the Company and the Trustee receive evidence to their satisfaction of the mutilation, destruction, loss or theft of any Security, and there is delivered to the Company and the Trustee such security or indemnity, at the expense of the Holder thereof, as may be required by them to save each of them harmless, then, in the absence of notice to the Company or the Trustee that such Security has been acquired by a protected purchaser (within the meaning of Section 8-303 of the Uniform Commercial Code as adopted in the State of New York), the Company shall execute, and upon the Company’s written request the Trustee shall authenticate and deliver, in exchange for any such mutilated Security or in lieu of any such destroyed, lost or stolen Security, at the expense of the Holder thereof, a new Security of like tenor and principal amount and bearing a number not contemporaneously outstanding.

In case any such mutilated, destroyed, lost or stolen Security has become or is about to become due and payable, or is about to be redeemed or repurchased by the Company pursuant to Article 3 hereof, the Company in its discretion may, instead of issuing a new Security, pay, redeem or repurchase such Security, as the case may be.

Upon the issuance of any new Securities under this Section, the Company may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses (including the fees and expenses of the Trustee) connected therewith.

Every new Security issued pursuant to this Section in lieu of any mutilated, destroyed, lost or stolen Security shall constitute an original additional contractual obligation of the Company, whether or not the destroyed, lost or stolen Security shall be at any time enforceable by anyone, and shall be entitled to all benefits of this Indenture equally and proportionately with any and all other Securities duly issued hereunder.

The provisions of this Section are exclusive and shall preclude (to the extent lawful) all other rights and remedies with respect to the replacement or payment of mutilated, destroyed, lost or stolen Securities.

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**Section 2.08. Outstanding Securities; Determinations of Holders’ Action.** Securities outstanding at any time are all the Securities authenticated by the Trustee pursuant to this Indenture, except for those cancelled by it, those delivered to it for cancellation pursuant to Section 2.10 and those described in this Section 2.08 as not outstanding. A Security does not cease to be outstanding because the Company or any Affiliate of the Company holds the Security; provided that in determining whether the Holders of the requisite principal amount of Securities have given or concurred in any request, demand, authorization, direction, notice, consent or waiver hereunder, Securities owned by the Company or any other obligor upon the Securities or any Affiliate of the Company or such other obligor shall be disregarded and deemed not to be outstanding, except that, in determining whether the Trustee shall be protected in relying upon any such request, demand, authorization, direction, notice, consent or waiver, only Securities which a Responsible Officer of the Trustee actually knows to be so owned shall be so disregarded; and provided further that Securities that the Company or an Affiliate offers to purchase or acquires pursuant to an offer, exchange offer, tender offer or otherwise shall not be deemed to be owned by the Company or an Affiliate until legal title to such Securities passes to the Company or such Affiliate, as the case may be. Subject to the foregoing, only Securities outstanding at the time of such determination shall be considered in any such determination (including, without limitation, determinations pursuant to Articles 6 and 9).

If a Security is replaced pursuant to Section 2.07, it ceases to be outstanding unless the Trustee receives proof satisfactory to it that the replaced Security is held by a protected purchaser.

If the Paying Agent holds, in accordance with this Indenture, prior to 11:00 a.m., New York City time, on a Redemption Date, or on the Business Day following a Repurchase Date or a Change in Control Repurchase Date, or on Stated Maturity, money sufficient to pay amounts owed with respect to Securities payable on that date, then immediately after such Redemption Date, Repurchase Date, Change in Control Repurchase Date or Stated Maturity, as the case may be, such Securities shall cease to be outstanding and interest (including Contingent Interest and Liquidated Damages, if any) on such Securities shall cease to accrue; *provided* that if such Securities are to be redeemed, notice of such redemption has been duly given pursuant to this Indenture or provision therefor satisfactory to the Trustee has been made.

If a Security is converted in accordance with Article 10, then from and after the time of conversion on the Conversion Date, such Security shall cease to be outstanding and interest (including Contingent Interest, if any) shall cease to accrue on such Security.

Section 2.09. *Temporary Securities.* Pending the preparation of definitive Securities, the Company may execute, and upon Company Order the Trustee shall authenticate and deliver, temporary Securities that are printed, lithographed,

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typewritten, mimeographed or otherwise produced, in any authorized denomination, substantially of the tenor of the definitive Securities in lieu of which they are issued, and with such appropriate insertions, omissions, substitutions and other variations as the Officers executing such Securities may determine, as conclusively evidenced by their execution of such Securities.

If temporary Securities are issued, the Company will cause definitive Securities to be prepared without unreasonable delay. After the preparation of definitive Securities, the temporary Securities shall be exchangeable for definitive Securities upon surrender of the temporary Securities at the office or agency of the Company designated for such purpose pursuant to Section 2.03, without charge to the Holder. Upon surrender for cancellation of any one or more temporary Securities, the Company shall execute and the Trustee shall authenticate and deliver in exchange therefor a like principal amount of definitive Securities of authorized denominations. Until so exchanged, the temporary Securities shall in all respects be entitled to the same benefits under this Indenture as definitive Securities.

Section 2.10. *Cancellation.* All Securities surrendered for payment, redemption, repurchase, conversion, exchange or registration of transfer shall, if surrendered to any Person other than the Trustee, be delivered to the Trustee and shall be promptly cancelled by it, or, if surrendered to the Trustee, shall be promptly cancelled by it. The Company may at any time deliver to the Trustee for cancellation any Securities previously authenticated and delivered hereunder that the Company may have acquired in any manner whatsoever, and all Securities so delivered shall be promptly cancelled by the Trustee. The Company may not issue new Securities to replace Securities it has paid or delivered to the Trustee for cancellation or that any Holder has converted pursuant to Article 10. No Securities shall be authenticated in lieu of or in exchange for any Securities cancelled as provided in this Section, except as expressly permitted by this Indenture. All cancelled Securities held by the Trustee shall be disposed of by the Trustee in accordance with the Trustee's customary procedures.

Section 2.11. *Persons Deemed Owners.* Prior to due presentment of a Security for registration of transfer, the Company, the Trustee and any agent of the Company or the Trustee may treat the Person in whose name such Security is registered as the owner of such Security for the purpose of receiving payment of the principal amount of the Security or the payment of any Redemption Price, Repurchase Price or Change in Control Repurchase Price in respect thereof, and accrued but unpaid interest (including Contingent Interest and Liquidated Damages, if any) thereon, for the purpose of conversion and for all other purposes whatsoever, whether or not such Security be overdue, and neither the Company, the Trustee nor any agent of the Company or the Trustee shall be affected by notice to the contrary.

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#### Section 2.12. *Global Securities.*

(a) Notwithstanding any other provisions of this Indenture or the Securities, a Global Security shall not be exchanged in whole or in part for a Security registered in the name of any Person other than the Depositary, any successor Depositary or one or more nominees thereof; *provided* that a Global Security may be exchanged for Securities registered in the name of any Person designated by the Company if (1) the Depositary has notified the Company that it is unwilling or unable to continue as Depositary for such Global Security or such Depositary has ceased to be a "clearing agency" registered under the Exchange Act, and a successor Depositary is not appointed by the Company within 90 days, (2) the Company has provided the Depositary with written notice that it has decided to discontinue use of the system of book-entry transfer through the Depositary or any successor Depositary or (3) an Event of Default has occurred or is continuing with respect to the Securities, and either (i) the Depositary notifies the Trustee that it elects to cause the issuance of Securities in definitive form or (ii) a holder of a beneficial interest in a Global Security requests to exchange such beneficial interest for Securities registered in the name of another Person. Any Global Security exchanged pursuant to clauses (1) or (2) above shall be so exchanged in whole and not in part, and any Global Security exchanged pursuant to clause (3) above may be exchanged in whole or from time to time in part as directed by the Depositary. Any Security issued in exchange for a Global Security or any portion thereof shall be a Global Security; *provided* that any such Security so issued that is registered in the name of a Person other than the Depositary or a nominee thereof shall not be a Global Security.

(b) Securities issued in exchange for a Global Security or any portion thereof shall be issued in definitive, fully registered form, without interest coupons, shall have an aggregate principal amount equal to that of such Global Security or portion thereof to be so exchanged, shall be registered in such names and be in such authorized denominations as the Depositary shall designate and shall bear the applicable legends provided for herein. Any Global Security to be exchanged in whole shall be surrendered by the Depositary to the Trustee, as Registrar. With regard to any Global Security to be exchanged in part, either such Global Security shall be so surrendered for exchange or, if the Trustee is acting as custodian for the Depositary or its nominee with respect to such Global Security, the principal amount thereof shall be reduced by an amount equal to the portion thereof to be so exchanged, by means of an appropriate adjustment made on the records of the Trustee. Upon any such surrender or adjustment, the Trustee shall authenticate and deliver the Security issuable on such exchange to or upon the order of the Depositary or an authorized representative thereof.



(c) Subject to the provisions of Section 2.12(e), the registered Holder may grant proxies and otherwise authorize any Person, including Agent Members (as defined below) and Persons that may hold interests through Agent Members, to take any action which a Holder is entitled to take under this Indenture or the Securities.

(d) If any of the events specified in Section 2.12(a) occurs, the Company will promptly make available to the Trustee a reasonable supply of Securities in definitive form.

(e) Neither any members of, or participants in, the Depositary (collectively, the “**Agent Members**”) nor any other Persons on whose behalf Agent Members may act shall have any rights under this Indenture with respect to any Global Security registered in the name of the Depositary or any nominee thereof, or under any such Global Security, and the Depositary or such nominee, as the case may be, may be treated by the Company, the Trustee and any agent of the Company or the Trustee as the absolute owner and holder of such Global Security for all purposes whatsoever. Notwithstanding the foregoing, nothing herein shall prevent the Company, the Trustee or any agent of the Company or the Trustee from giving effect to any written certification, proxy or other authorization furnished by the Depositary or such nominee, as the case may be, or impair, as between the Depositary, its Agent Members and any other Person on whose behalf an Agent Member may act, the operation of customary practices of such Persons governing the exercise of the rights of a holder of any Security.

(f) With respect to any Global Security, the Company, the Registrar and the Trustee shall be entitled to treat the Person in whose name such Global Security is registered as the absolute owner of such Security for all purposes of this Indenture, and neither the Company, the Registrar nor the Trustee shall have any responsibility or obligation to any Agent Members or other beneficial owners of the Securities represented by such Global Security. Without limiting the immediately preceding sentence, neither the Company, the Registrar nor the Trustee shall have any responsibility or obligation with respect to (1) the accuracy of the records of the Depositary or any other Person with respect to any ownership interest in any Global Security, (2) the delivery to any Person, other than a Holder, of any notice with respect to the Securities represented by a Global Security, including any notice of redemption or repurchase, (3) the selection of the particular Securities or portions thereof to be redeemed or repurchased in the event of a partial redemption or repurchase of part of the Securities outstanding or (4) the payment to any Person, other than a Holder, of any amount with respect to the principal of or Redemption Price, Repurchase Price, Change in Control Repurchase Price or accrued but unpaid interest (including Contingent Interest and Liquidated Damages, if any) with respect to any Global Security.

Section 2.13. *CUSIP Numbers.* The Company may issue the Securities with one or more CUSIP numbers (if then generally in use), and, if the Company so elects, the Trustee shall use CUSIP numbers in notices of redemption as a convenience to Holders; *provided* that any such notice may state that no representation is made as to the correctness of such numbers either as printed on the Securities or as contained in any notice of a redemption and that reliance may be placed only on the other identification numbers printed on the Securities, and any such redemption shall not be affected by any defect in or omission of such

numbers. The Company will promptly notify the Trustee in writing of any change in the CUSIP numbers.

Section 2.14. *Designation.* The indebtedness evidenced by the Securities is hereby irrevocably designated as “senior indebtedness” or such other term denoting seniority for the purposes of any other existing or future indebtedness of the Company which the Company makes subordinate in right of payment to any senior (or such other term denoting seniority) indebtedness of the Company.

### ARTICLE 3 REDEMPTION AND REPURCHASES

#### Section 3.01. *Right to Redeem; Notices to Trustee.*

(a) *Optional Redemption.* On or after December 15, 2011, the Company, at its option, may redeem the Securities in whole at any time or in part from time to time (each such date, a “**Redemption Date**”), in any integral multiple of \$1,000, for cash at a price equal to 100% of the principal amount of the Securities to be redeemed (the “**Redemption Price**”), together with accrued but unpaid interest (including Contingent Interest and Liquidated Damages, if any) thereon, up to but not including the Redemption Date; *provided* that if the Redemption Date is between the close of business on an interest record date and the opening of business on the related Interest Payment Date, accrued but unpaid interest (including Contingent Interest and Liquidated Damages, if any) will be payable to the Holders in whose names the Securities are registered at the close of business on the relevant interest record date.

(b) *Notice to Trustee.* If the Company elects to redeem Securities pursuant to this Section 3.01, it shall notify the Trustee in writing of the Redemption Date, the principal amount of Securities to be redeemed and the Redemption Price. The Company shall give the notice to the Trustee provided for in this Section 3.01(b) by a Company Order prior to the date notice of redemption is to be given to Holders pursuant to Section 3.03 (unless a shorter notice shall be satisfactory to the Trustee).

Section 3.02. *Selection of Securities to Be Redeemed.* If less than all the Securities are to be redeemed, subject to the Applicable Procedures in the case of Global Securities to be so redeemed, the Trustee shall select the Securities to be redeemed by any method that the Trustee deems fair and appropriate. In the event of a partial redemption, the Trustee may select for redemption portions of the principal amount of Securities in principal amounts of \$1,000 and integral multiples thereof

Provisions of this Indenture that apply to Securities called for redemption also apply to portions of Securities called for redemption. The Trustee shall

notify the Company promptly of the Securities or portions of Securities to be redeemed.

If any Security selected for partial redemption is converted in part before termination of the conversion right with respect to the portion of the Security so selected for redemption, the converted portion of such Security shall be deemed (so far as possible) to be the portion selected for redemption. Securities that have been converted during a selection of Securities to be redeemed may be treated by the Trustee as outstanding for the purpose of such selection.

Section 3.03. *Notice of Redemption.* At least 30 days but not more than 60 days before any Redemption Date, the Company shall mail a notice of redemption (the “**Notice of Redemption**”) by first-class mail, postage prepaid, to each Holder of Securities to be redeemed at such Holder’s registered address.

The notice of redemption shall identify the Securities to be redeemed and shall state:

- (a) the Redemption Date;
- (b) the Redemption Price and, to the extent known at the time of such notice the amount of accrued but unpaid interest (including Contingent Interest and Liquidated Damages, if any) payable on the Redemption Date;
- (c) the current Conversion Price;
- (d) the name and address of the Paying Agent and Conversion Agent;
- (e) that Securities called for redemption may be converted at any time before the close of business on the second Business Day immediately preceding the Redemption Date;
- (f) that Holders who want to convert Securities must satisfy the requirements set forth in the Securities and Article 10 of this Indenture;
- (g) that Securities called for redemption must be surrendered to the Paying Agent in order to collect the Redemption Price therefor, together with accrued but unpaid interest (including Contingent Interest and Liquidated Damages, if any) thereon;
- (h) if fewer than all the outstanding Securities are to be redeemed, the certificate numbers, if any, and principal amounts of the particular Securities to be redeemed;
- (i) that, unless the Company defaults in paying the Redemption Price, interest (including Contingent Interest and Liquidated Damages, if any) on Securities called for redemption will cease to accrue on and after the Redemption Date and the Securities called for redemption will cease to be outstanding; and

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- (j) the CUSIP number of the Securities called for redemption.

At the Company’s request, the Trustee shall give the Notice of Redemption in the Company’s name and at the Company’s expense, so long as the Company makes such request at least three Business Days prior to the date by which such Notice of Redemption is to be given to Holders in accordance with this Section 3.03 and the Company provides the Trustee with all information required for such notice of redemption.

If any of the Securities is in the form of a Global Security, then the Company shall modify such Notice of Redemption to the extent necessary to accord with the Applicable Procedures that apply to the redemption of Global Securities.

Section 3.04. *Effect of Notice of Redemption.* Once notice of redemption is given, Securities called for redemption become due and payable on the Redemption Date and at the Redemption Price stated in the notice of redemption, together with accrued but unpaid interest (including Contingent Interest and Liquidated Damages, if any) thereon, except for Securities which are converted in accordance with the terms of this Indenture. Upon surrender to the Paying Agent, such Securities shall be paid at the Redemption Price stated in the notice of redemption, together with accrued but unpaid interest (including Contingent Interest and Liquidated Damages, if any) thereon, up to but not including the Redemption Date.

Section 3.05. *Deposit of Redemption Price.* Prior to 11:00 a.m. (New York City time) on the Redemption Date, the Company shall deposit with the Paying Agent (or if the Company or a Subsidiary thereof or an Affiliate of either of them is the Paying Agent, shall segregate and hold in trust) money sufficient to pay the aggregate Redemption Price of all Securities to be redeemed on the Redemption Date, together with accrued but unpaid interest (including Contingent Interest and Liquidated Damages, if any) thereon, up to but not including the Redemption Date, other than Securities or portions of Securities called for redemption that on or prior thereto have been delivered by the Company to the Trustee for cancellation or have been converted pursuant to Article 10. The Paying Agent shall as promptly as practicable return to the Company any money not required for making payments on the Redemption Date because of the conversion of Securities pursuant to Article 10. If such money is then held by the Company in trust and is not required for making payments on the Redemption Date, it shall be discharged from such trust.

Section 3.06. *Securities Redeemed in Part.* Upon surrender of a Security that is redeemed in part, the Company shall execute and the Trustee shall authenticate and deliver to the Holder thereof, without service charge, a new Security or Securities of any authorized denomination as requested by such Holder in an aggregate principal amount equal to, and in exchange for, the unredeemed portion of the principal amount of the Security surrendered.

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Section 3.07. *Sinking Fund.* There shall be no sinking fund provided for the Securities.

Section 3.08. *Repurchase of Securities at Option of the Holder on Specified Dates.*

(a) At the option of the Holder, the Company shall repurchase on December 15, 2011, December 15, 2014 and December 15, 2019 (each, a **“Repurchase Date”**) all or a portion of the Securities held by such Holder for cash at a price per Security equal to 100% of the aggregate principal amount of the Security (the **“Repurchase Price”**), together with accrued but unpaid interest (including Contingent Interest and Liquidated Damages, if any) thereon, up to but not including the Repurchase Date.

Securities shall be repurchased pursuant to this Section 3.08 at the option of the Holder thereof upon:

(i) delivery to the Company and the Paying Agent by the Holder of a written notice (a **“Repurchase Notice”**) at any time from the opening of business on the date that is 30 Business Days prior to the Repurchase Date until the close of business on the Business Day prior to such Repurchase Date stating:

(A) if the Security which the Holder will deliver to be repurchased is a Security in definitive form, the certificate number of such Security, or if such Security is a Global Security, the notice must comply with the Applicable Procedures;

(B) the portion of the principal amount of the Security which the Holder will deliver to be repurchased, which portion must be in a principal amount of \$1,000 or any integral multiple thereof; and

(C) that such Security shall be repurchased as of the Repurchase Date pursuant to the terms and conditions specified in this Indenture; and

(ii) delivery or book-entry transfer of such Security to the Paying Agent prior to, on or after the Repurchase Date (together with all necessary endorsements) at the offices of the Paying Agent, such delivery being a condition to receipt by the Holder of the Repurchase Price therefor, together with accrued but unpaid interest (including Contingent Interest and Liquidated Damages, if any); *provided* that the Repurchase Price, together with accrued but unpaid interest (including Contingent Interest and Liquidated Damages, if any) thereon, shall be so paid pursuant to this Section 3.08 only if the Security so delivered to the Paying

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Agent shall conform in all respects to the description thereof in the related Repurchase Notice.

The Company shall repurchase from the Holder thereof, pursuant to this Section 3.08, a portion of a Security if the principal amount of such portion is \$1,000 or an integral multiple of \$1,000. Provisions of this Indenture that apply to the repurchase of all of a Security also apply to the repurchase of a portion of a Security.

Any repurchase by the Company contemplated pursuant to the provisions of this Section 3.08 shall be consummated by the delivery to the Paying Agent of the Repurchase Price, together with accrued but unpaid interest (including Liquidated Damages, if any) thereon, to be received by the Holder promptly following the later of the Repurchase Date and the time of delivery or book-entry transfer of the Security to the Paying Agent in accordance with this Section 3.08.

Notwithstanding anything herein to the contrary, any Holder delivering to the Paying Agent the Repurchase Notice contemplated by this Section 3.08(a) shall have the right to withdraw such Repurchase Notice at any time prior to the close of business on the Repurchase Date by delivery of a written notice of withdrawal to the Paying Agent at the principal office of the Paying Agent in accordance with Section 3.10.

The Paying Agent shall promptly notify the Company of the receipt by it of any Repurchase Notice or written notice of withdrawal thereof.

(b) *Company Repurchase Notice.* In connection with any repurchase of Securities pursuant to this Section 3.08, the Company shall give written notice of the Repurchase Date to the Holders (the **“Company Repurchase Notice”**). The Company Repurchase Notice shall be sent by first-class mail to the Trustee and to each Holder not less than 30 Business Days prior to any Repurchase Date. Each Company Repurchase Notice shall include a form of Repurchase Notice to be completed by a Holder and shall state:

(i) the Repurchase Price, the Conversion Price and, to the extent known at the time of such notice, the amount of accrued but unpaid interest (including Contingent Interest and Liquidated Damages, if any) that will be payable with respect to the Securities on the Repurchase Date;

(ii) the name and address of the Paying Agent and the Conversion Agent;

(iii) that Securities as to which a Repurchase Notice has been given may be converted only if (x) the applicable Repurchase Notice has been withdrawn in accordance with the terms of this Indenture and (y) the Securities may be converted pursuant to Article 10 of the Indenture;

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(iv) that Securities must be surrendered to the Paying Agent to collect payment of the Repurchase Price and accrued but unpaid interest (including Contingent Interest and Liquidated Damages, if any);

(v) that the Repurchase Price for any Securities as to which a Repurchase Notice has been given and not withdrawn, together with accrued but unpaid interest (including Contingent Interest and Liquidated Damages, if any) payable with respect thereto, shall be paid promptly following the later of the Repurchase Date and the time of surrender of such Securities as described in clause (iv);

(vi) the procedures the Holder must follow under this Section 3.08;

(vii) the conversion rights of the Securities;

(viii) that, unless the Company defaults in making payment of such Repurchase Price, interest (including Contingent Interest and Liquidated Damages, if any) on Securities covered by any Repurchase Notice will cease to accrue on and after the Repurchase Date;

(ix) the CUSIP number of the Securities; and

(x) the procedures for withdrawing a Repurchase Notice or (as specified in Section 3.10).

At the Company's request, which shall be made at least three Business Days prior to the date by which the Company Repurchase Notice is to be given to the Holders in accordance with this Section 3.08, and at the Company's expense, the Trustee shall give the Company Repurchase Notice in the Company's name; *provided* that, in all cases, the text of the Company Repurchase Notice shall be prepared by the Company.

If any of the Securities is in the form of a Global Security, then the Company shall modify such notice to the extent necessary to accord with the Applicable Procedures that apply to the repurchase of Global Securities.

*Section 3.09. Repurchase of Securities at Option of the Holder Upon a Change in Control.*

(a) If at any time that Securities remain outstanding there shall have occurred a Change in Control, Securities shall be repurchased by the Company, at the option of the Holder thereof, at a price in cash (the "**Change in Control Repurchase Price**") equal to 100% of the aggregate principal amount of such Securities plus accrued but unpaid interest (including Contingent Interest and Liquidated Damages, if any) thereon, up to but not including the date (the "**Change in Control Repurchase Date**") fixed by the Company that is not less

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than 30 days nor more than 45 days after the date the Company Change in Control Repurchase Notice (as defined below) is given, subject to satisfaction by or on behalf of the Holder of the requirements set forth in Section 3.09(c); *provided* that if the Change in Control Repurchase Date is between the close of business on an interest record date and the opening of business on the related Interest Payment Date, accrued but unpaid interest (including Contingent Interest and Liquidated Damages, if any) will be payable to the Holders in whose names the Securities are registered at the close of business on the relevant interest record date.

(b) *Company Change in Control Repurchase Notice.* In connection with any repurchase of Securities pursuant to this Section 3.09, the Company shall give written notice of the occurrence of a Change in Control, the repurchase right arising as a result thereof and the Change in Control Repurchase Date to the Holders and the Trustee (the "**Company Change in Control Repurchase Notice**"). The Company Change in Control Repurchase Notice shall be sent by first-class mail to the Trustee and to each Holder not more than 30 days after the occurrence of a Change in Control. Each Company Change in Control Repurchase Notice shall include a form of Change in Control Repurchase Notice to be completed by a Holder and shall state:

(i) the Change in Control Repurchase Date;

(ii) the Change in Control Repurchase Price, the Conversion Price and, to the extent known at the time of such notice, the amount of accrued but unpaid interest (including Contingent Interest and Liquidated Damages, if any) that will be payable with respect to the Securities on the Change in Control Repurchase Date;

(iii) the name and address of the Paying Agent and the Conversion Agent;

(iv) that the Company must receive the Holder's Change in Control Repurchase Notice on or before the close of business on the third Business Day prior to the Change in Control Repurchase Date;

(v) that Securities must be surrendered to the Paying Agent to collect payment of the Change in Control Repurchase Price and accrued but unpaid interest (including Contingent Interest and Liquidated Damages, if any);

(vi) that the Change in Control Repurchase Price for any Securities as to which a Change in Control Repurchase Notice has been given and not withdrawn, together with any accrued but unpaid interest (including Liquidated Damages, if any) payable with respect thereto, shall be paid promptly following the later of the Change in Control Repurchase Date and the time of surrender of such Securities as described in clause (v);

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(vii) the procedures the Holder must follow under this Section 3.09;

(viii) the conversion rights of the Securities, including that Securities as to which a Change in Control Repurchase Notice has been given may be converted only if such Change in Control Repurchase Notice has been withdrawn in accordance with the terms of this Indenture;

(ix) that, unless the Company defaults in making payment of such Change in Control Repurchase Price, interest (including Contingent Interest and Liquidated Damages, if any) on Securities covered by any Change in Control Repurchase Notice will cease to accrue on and after the Change in Control Repurchase Date;

(x) the CUSIP number of the Securities; and

(xi) the procedures for withdrawing a Change in Control Repurchase Notice (as specified in Section 3.10).

At the Company's request, which shall be made at least three Business Days prior to the date by which the Company Change in Control Repurchase Notice is to be given to the Holders in accordance with this Section 3.09 and at the Company's expense, the Trustee shall give the Company Change in Control Repurchase Notice in the Company's name; *provided* that, in all cases, the text of the Company Change in Control Repurchase Notice shall be prepared by the Company.

If any of the Securities is in the form of a Global Security, then the Company shall modify such notice to the extent necessary to accord with the Applicable Procedures that apply to the repurchase of Global Securities.

(c) For a Security to be so repurchased at the option of the Holder upon a Change in Control, the Paying Agent must receive such Security with the form entitled "Option to Elect Repurchase Upon a Change in Control" (a "**Change in Control Repurchase Notice**") on the reverse thereof duly completed, together with such Security duly endorsed for transfer, on or before the close of business on the third Business Day prior to the Change in Control Repurchase Date. All questions as to the validity, eligibility (including time of receipt) and acceptance of any Security for repurchase shall be determined by the Company, whose determination shall be final and binding.

The Company shall repurchase from the Holder thereof, pursuant to this Section 3.09, a portion of a Security if the principal amount of such portion is \$1,000 or an integral multiple of \$1,000. Provisions of this Indenture that apply to the repurchase of all of a Security also apply to the repurchase of a portion of a Security.

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Any repurchase by the Company contemplated pursuant to the provisions of this Section 3.09 shall be consummated by the delivery to the Paying Agent of the Change in Control Repurchase Price, together with accrued but unpaid interest (including Contingent Interest and Liquidated Damages, if any) thereon, to be received by the Holder promptly following the later of the Change in Control Repurchase Date and the time of delivery or book-entry transfer of the Security to the Paying Agent in accordance with this Section 3.09.

Notwithstanding anything herein to the contrary, any Holder delivering to the Paying Agent the Change in Control Repurchase Notice contemplated by this Section 3.09(c) shall have the right to withdraw such Change in Control Repurchase Notice at any time prior to the close of business on the Change in Control Repurchase Date by delivery of a written notice of withdrawal to the Paying Agent at the principal office of the Paying Agent in accordance with Section 3.10.

The Paying Agent shall promptly notify the Company of the receipt by it of any Change in Control Repurchase Notice or written withdrawal thereof.

Notwithstanding anything herein to the contrary, the Company's obligations pursuant to this Section 3.09 shall be satisfied if a third party makes an offer to repurchase outstanding Securities after a Change in Control in the manner and at the times and otherwise in compliance in all material respects with the requirements of this Section 3.09 and such third party purchases all Securities properly tendered and not withdrawn pursuant to the requirements of this Section 3.09.

(d) Not more than 30 days after the occurrence of a Change in Control, the Company shall use its commercially reasonable efforts to either (i) obtain the consents under all existing indebtedness required to permit the repurchase of the Securities pursuant to any Company Change in Control Repurchase Notice or (ii) repay in full all existing indebtedness and terminate all commitments under all existing indebtedness, in each case the terms of which would prohibit the repurchase of the Securities pursuant to any Company Change in Control Repurchase Notice; provided that if no Holders deliver a Change in Control Repurchase Notice prior to such date or if the Company shall have satisfied its obligations to repurchase the Securities of all Holders that have submitted a Change in Control Repurchase Notice, the Company shall be deemed to have satisfied the requirements of this Section 3.09(d).

Section 3.10. *Effect of Repurchase Notice or Change in Control Repurchase Notice.* Upon receipt by the Paying Agent of a Repurchase Notice or Change in Control Repurchase Notice, the Holder of the Security in respect of which such Repurchase Notice or Change in Control Repurchase Notice, as the case may be, was given shall (unless such Repurchase Notice or Change in Control Repurchase Notice is withdrawn as specified in the following two paragraphs) thereafter be entitled to receive solely the Repurchase Price or

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Change in Control Repurchase Price, together with accrued but unpaid interest (including Contingent Interest and Liquidated Damages, if any) thereon, to but not including the Repurchase Date or Change in Control Repurchase Date, as the case may be, with respect to such Security. Such Repurchase Price or Change in Control Repurchase Price, together with accrued but unpaid interest (including Contingent Interest and Liquidated Damages, if any) thereon, to but not including the Repurchase Date or Change in Control Repurchase Date, as the case may be, shall be paid to such Holder, subject to receipt of funds by the Paying Agent, promptly following the later of (x) the Repurchase Date or the Change in Control Repurchase Date, as the case may be, with respect to such Security (provided that the conditions in Section 3.08 or Section 3.09, as applicable, have been satisfied) and (y) the time of delivery or book-entry transfer of such Security to the Paying Agent by the Holder thereof in the manner required by Section 3.08 or Section 3.09(c), as applicable. Securities in respect of which a Repurchase Notice or Change in Control Repurchase Notice, as the case may be, has been given by the Holder thereof may not be converted pursuant to Article 10 hereof on or after the date of the delivery of such Repurchase Notice or Change in Control Repurchase Notice, as the case may be, unless such Repurchase Notice or Change in Control Repurchase Notice, as the case may be, has first been validly withdrawn as specified in the following two paragraphs.

A Repurchase Notice or Change in Control Repurchase Notice, as the case may be, may be withdrawn by means of a written notice of withdrawal delivered to the office of the Paying Agent in accordance with the Repurchase Notice or Change in Control Repurchase Notice, as the case may be, at any time prior to the close of business on the Repurchase Date or the Change in Control Repurchase Date, as the case may be, specifying:

- (i) if the Security with respect to which such notice of withdrawal is being submitted is a Security in definitive form, the certificate number of such Security, or if such Security is a Global Security, the notice must comply with the Applicable Procedures;
- (ii) the principal amount of the Security with respect to which such notice of withdrawal is being submitted; and
- (iii) the principal amount, if any, of such Security which remains subject to the original Repurchase Notice or Change in Control Repurchase Notice, as the case may be, and which has been or will be delivered for repurchase by the Company.

There shall be no repurchase of any Securities pursuant to Section 3.08 if an Event of Default (other than a default in the payment of the Redemption Price) has occurred prior to, on or after, as the case may be, the giving by the Holders of such Securities of the required Repurchase Notice and such Event of Default is continuing. The Paying Agent will promptly return to the respective Holders thereof any Securities (x) with respect to which a Repurchase Notice has been

withdrawn in compliance with this Indenture, or (y) held by it during the continuance of an Event of Default (other than a default in the payment of the Repurchase Price) in which case, upon such return, the Repurchase Notice with respect thereto shall be deemed to have been withdrawn.

Section 3.11. *Deposit of Repurchase Price or Change in Control Repurchase Price.* Prior to 11:00 a.m. (New York City time) on the Business Day immediately following the Repurchase Date or the Change in Control Repurchase Date, as the case may be, the Company shall deposit with the Trustee or with the Paying Agent (or, if the Company or a Subsidiary thereof or an Affiliate of either of them is acting as the Paying Agent, shall segregate and hold in trust as provided in Section 2.04) an amount of money (in immediately available funds if deposited on such Business Day) sufficient to pay the aggregate Repurchase Price or Change in Control Repurchase Price, as the case may be, together with accrued but unpaid interest (including Contingent Interest and Liquidated Damages, if any) thereon, to but not including the Repurchase Date or Change in Control Repurchase Date, as the case may be, of all the Securities or portions thereof which are to be repurchased as of the Repurchase Date or Change in Control Repurchase Date, as the case may be.

Section 3.12. *Securities Repurchased in Part.* Any Security in definitive form that is to be repurchased only in part shall be surrendered at the office of the Paying Agent (with, if the Company or the Trustee so requires, due endorsement by, or a written instrument of transfer in form satisfactory to the Company and the Trustee duly executed by, the Holder thereof or such Holder's attorney duly authorized in writing) and the Company shall execute and the Trustee shall authenticate and deliver to the Holder of such Security, without service charge, one or more new Securities in definitive form, of any authorized denomination as requested by such Holder in aggregate principal amount equal to, and in exchange for, the portion of the principal amount of the Security in definitive form so surrendered which is not repurchased.

Section 3.13. *Covenant to Comply with Securities Laws upon Repurchase of Securities.* When complying with the provisions of Sections 3.08 or 3.09 hereof (so long as such offer or repurchase constitutes an "issuer tender offer" for purposes of Rule 13e-4 (which term, as used herein, includes any successor provision thereto) under the Exchange Act at the time of such offer or repurchase), the Company shall (i) comply in all material respects with Rule 13e-4 and Rule 14e-1 under the Exchange Act, (ii) file the related Schedule TO (or any successor schedule, form or report) under the Exchange Act and (iii) otherwise comply in all material respects with all federal and state securities laws so as to permit the rights and obligations under Sections 3.08 or 3.09 to be exercised in the time and in the manner specified in Sections 3.08 or 3.09.

Section 3.14. *Repayment to the Company.* To the extent that the aggregate amount of cash deposited by the Company pursuant to Section 3.11 exceeds the aggregate Repurchase Price or Change in Control Repurchase Price,

as the case may be, of the Securities or portions thereof which the Company is obligated to repurchase as of the Repurchase Date or Change in Control Repurchase Date, as the case may be, together with accrued but unpaid interest (including Contingent Interest and Liquidated Damages, if any) thereon, then, unless otherwise agreed in writing with the Company, promptly after the Business Day following the Repurchase Date or Change in Control Repurchase Date, as the case may be, the Trustee shall return any such excess to the Company together with interest, if any, thereon (subject to the provisions of Section 7.01(f)).

#### ARTICLE 4 COVENANTS

Section 4.01. *Payment of Securities.* The Company shall promptly make all payments and deliveries in respect of the Securities on the dates and in the manner provided in the Securities or pursuant to this Indenture. Any amounts to be given to the Trustee or Paying Agent, as the case may be, shall be deposited with the Trustee or Paying Agent, as the case may be, by 11:00 a.m. (New York City time), on the dates required pursuant to Section 2.04 hereof. Interest installments, Liquidated Damages, Contingent Interest, principal amount, Redemption Price, Repurchase Price, Change in Control Repurchase Price and interest, if any, due on overdue amounts shall be considered paid on the applicable date due if at 11:00 a.m. (New York City time) on such date, the Trustee or the Paying Agent, as the case may be, holds, in accordance with this Indenture, money sufficient to pay all such amounts then due.

The Company shall, to the extent permitted by law, pay interest on overdue amounts at the rate per annum set forth in paragraph 1 of the Securities, compounded quarterly, which interest shall accrue from the date such overdue amount was originally due to the date payment of such amount, including interest thereon, has been made or duly provided for. All such interest shall be payable on demand. The accrual of such interest on overdue amounts shall be in addition to the continued accrual of interest on the Securities.

Section 4.02. *SEC and Other Reports.* The Company shall file with the Trustee, within 15 days after it files such annual and quarterly reports, information, documents and other reports with the SEC, copies of its annual report and the information, documents and other reports (or copies of such portions of any of the foregoing as the SEC may by rules and regulations prescribe) which the Company is required to file with the SEC pursuant to Section 13 or 15(d) of the Exchange Act. In the event the Company is at any time no longer subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act, it shall continue to provide the Trustee with reports containing substantially the same information as would have been required to be filed with the SEC had the Company continued to have been subject to such reporting requirements. In such event, such reports shall be provided to the Trustee at the

times the Company would have been required to provide reports had it continued to have been subject to such reporting requirements. In addition, the Company shall comply with the other provisions of TIA Section 314(a).

(a) The Company shall deliver to the Trustee within 120 days after the end of each fiscal year of the Company (beginning with the fiscal year ending on December 31, 2004) an Officers' Certificate, stating whether or not to the best knowledge of the signers thereof the Company is in default in the performance and observance of any of the terms, provisions and conditions of this Indenture (without regard to any period of grace or requirement of notice provided hereunder), and if the Company shall be in default, specifying all such defaults and the nature and status thereof of which the signers thereof may have knowledge.

(b) The Company shall, so long as any of the Securities are outstanding, deliver to the Trustee promptly, and in any event within 15 days after becoming aware of any Default or Event of Default under this Indenture, an Officers' Certificate specifying such Default or Event of Default and what action the Company is taking or proposes to take with respect thereto. The Trustee shall not be deemed to have knowledge of a Default or Event of Default unless one of its Responsible Officers receives written notice of the Default or Event of Default from the Company or any of the Holders.

Section 4.04. *Further Instruments and Acts.* Upon request of the Trustee, the Company will execute and deliver such further instruments and do such further acts as may be reasonably necessary or proper to carry out more effectively the purposes of this Indenture.

Section 4.05. *Maintenance of Office or Agency.* The Company will maintain in the Borough of Manhattan, The City of New York, an office or agency of the Trustee, Registrar, Paying Agent and Conversion Agent where Securities may be presented or surrendered for payment, where Securities may be surrendered for registration of transfer, exchange, repurchase, redemption or conversion and where notices and demands to or upon the Company in respect of the Securities and this Indenture may be served. The Trustee's office located at U.S. Bank National Association, 60 Livingston Avenue, EP-MN-WS3C, St. Paul, MN 55107-2292, shall initially be such office or agency where Securities may be surrendered for payment, and the Corporate Trust Office shall initially be such office or agency for all of the other aforesaid purposes. The Company shall give prompt written notice to the Trustee of the location, and of any change in the location, of any such office or agency (other than a change in the location of the office or agency of the Trustee). If at any time the Company shall fail to maintain any such required office or agency or shall fail to furnish the Trustee with the address thereof; such presentations, surrenders, notices and demands may be made or served at the address of the Trustee set forth in Section 11.02. The

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Company may also from time to time designate one or more other offices or agencies where the Securities may be presented or surrendered for any or all such purposes, and may from time to time rescind such designations; *provided* that no such designation or rescission shall in any manner relieve the Company of its obligation to maintain at least one Paying Agent having an office or agency in the Borough of Manhattan, The City of New York.

Section 4.06. *Delivery of Certain Information.* At any time when the Company is not subject to Section 13 or 15(d) of the Exchange Act, upon the request of a Holder or any Beneficial Owner of Securities or holder or Beneficial Owner of Common Stock delivered upon conversion thereof, the Company will promptly furnish or cause to be furnished Rule 144A Information (as defined below) to such Holder or any Beneficial Owner of Securities or holder or Beneficial Owner of Common Stock delivered upon conversion thereof or to a prospective purchaser of any such security designated by any such holder, as the case may be, to the extent required to permit compliance by such Holder or holder with Rule 144A under the Securities Act in connection with the resale of any such security. "**Rule 144A Information**" shall be such information as is specified pursuant to Rule 144A(d)(4) under the Securities Act or any successor provisions. Whether a Person is a Beneficial Owner shall be determined by the Company to the Company's reasonable satisfaction.

Section 4.07. *Liquidated Damages.* If at any time Liquidated Damages become payable by the Company pursuant to the Registration Rights Agreement, the Company shall promptly deliver to the Trustee a certificate to that effect and stating (i) the amount of such Liquidated Damages that are payable and (ii) the date on which such Liquidated Damages are payable pursuant to the terms of the Registration Rights Agreement. Unless and until a Responsible Officer of the Trustee receives such a certificate, the Trustee may assume without inquiry that no Liquidated Damages are payable.

Section 4.08. *Calculation of Tax Original Issue Discount.* At the request of the Trustee, the Company shall file with the Trustee promptly at the end of each calendar year (i) a written notice specifying the amount of Tax Original Issue Discount (including daily rates and accrual periods) accrued on the Notes as of the end of such year and (ii) such other specific information relating to such Tax Original Issue Discount as may then be reasonably requested by the Trustee and relevant under the Internal Revenue Code of 1986, as amended from time to time, or the Treasury regulations promulgated thereunder.

## ARTICLE 5 SUCCESSOR CORPORATION

Section 5.01. *When the Company May Consolidate, Merge or Transfer Assets.* The Company shall not consolidate with or merge with or into any other Person or sell, lease exchange or otherwise transfer (in one transaction or a series

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of related transactions) all or substantially all of its properties and assets to any other Person, unless:

(a) (i) the Company shall be the resulting or surviving corporation or (ii) the Person (if other than the Company) formed by such consolidation or into which the Company is merged or the Person which acquires by sale, lease, exchange or other transfer all or substantially all of the properties and assets of the Company (A) shall be a corporation, limited partnership, limited liability company or other business entity organized and validly existing under the laws of the United States or any State thereof or the District of Columbia, and (B) shall expressly assume, by an indenture supplemental hereto, executed and delivered to the Trustee, in form satisfactory to the Trustee, all of the obligations of the Company under the Securities and this Indenture;

(b) immediately after giving effect to such transaction, no Event of Default and no Default shall have occurred and be continuing; and

(c) the Company shall have delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that such consolidation, merger, sale, lease, exchange or other transfer and, if a supplemental indenture is required in connection with such transaction, such supplemental indenture, comply with this Article 5 and that all conditions precedent herein provided for relating to such transaction have been satisfied.

For purposes of the foregoing, the transfer (by lease, assignment, sale or otherwise) of the properties and assets of one or more Subsidiaries (other than to the Company or another Subsidiary of the Company), which, if such assets were owned by the Company would constitute all or substantially all of the properties and assets of the Company, shall be deemed to be the transfer of all or substantially all of the properties and assets of the Company. The successor Person formed by such consolidation or into which the Company is merged or the successor Person to which such sale, lease, exchange or other transfer is made shall succeed to, and (except in the case of a lease) be substituted for, and may exercise every right and power of; the Company under this Indenture with the same effect as if such successor had been named as the Company herein; and thereafter, except in the case of a lease and except for obligations the Company may have under a supplemental indenture pursuant to Section 9.06, the Company shall be discharged from all obligations and covenants under this Indenture and the Securities. Subject to Section 9.06, the Company, the Trustee and the successor Person shall enter into a supplemental indenture to evidence the succession and substitution of such successor Person and such discharge and release of the Company, as applicable.

## ARTICLE 6 DEFAULTS AND REMEDIES

Section 6.01. *Events of Default.* Subject to the provisions set forth below in this Section 6.01, each of the following events is an “**Event of Default**”:

- (a) the failure to pay interest (including Contingent Interest and Liquidated Damages, if any) on any Securities when the same becomes due and payable and the continuation of such default for a period of 30 days, whether or not such failure shall be due to compliance with agreements with respect to any other indebtedness or any other cause;
- (b) the failure to pay the principal of any Securities, when such principal becomes due and payable, at Stated Maturity, upon acceleration, upon redemption or otherwise (including the failure to make cash payments due upon conversion or make a payment to repurchase Securities tendered pursuant to a Repurchase Notice or Change in Control Repurchase Notice), whether or not such failure shall be due to compliance with agreements with respect to any other indebtedness or any other cause;
- (c) the failure to provide a Company Change in Control Repurchase Notice in accordance with the terms of Section 3.09(b) hereof;
- (d) a default in the observance or performance of any other covenant or agreement contained in this Indenture which default continues for a period of 45 days after the Company receives written notice specifying the default (and demanding that such default be remedied) from the Trustee or the beneficial Holders of at least 25% of the outstanding principal amount of the Securities (except in the case of a default with respect to Section 5.01, which will constitute an Event of Default with such notice requirement but without such passage of time requirement);
- (e) a default under any mortgage, indenture or instrument under which there may be issued or by which there may be secured or evidenced any indebtedness of the Company or any of its Subsidiaries, or the payment of which is guaranteed by the Company or any of its Subsidiaries, whether such indebtedness now exists or is created after the issuance of the Securities, which default (i) is caused by a failure to pay principal of or premium, if any, or interest on such indebtedness after any applicable grace period provided in such indebtedness on the date of such default (a “**Payment Default**”) or (ii) results in the acceleration of such indebtedness prior to its express maturity and, in either such case, the principal amount of such indebtedness, together with the principal amount of any other such indebtedness under which there has been a Payment Default or the maturity of which has been so accelerated, aggregates at least \$10,000,000; *provided that* if any such default is cured or waived or any such acceleration rescinded, or such indebtedness is repaid, within a period of 45 days from the continuation of such default beyond the applicable grace period or the

occurrence of such acceleration, as the case may be, such event of default and any consequential acceleration of the Securities shall be automatically rescinded, so long as such rescission does not conflict with any judgment or decree;

- (f) one or more judgments in an uninsured aggregate amount in excess of \$10,000,000 shall have been rendered against the Company or any of its Subsidiaries and remain undischarged, unpaid or unstayed for a period of 60 days after such judgment or judgments become final and nonappealable;
- (g) the Company or any of its Significant Subsidiaries pursuant to or under or within the meaning of any Bankruptcy Law:
  - (i) commences a voluntary case or proceeding;
  - (ii) consents to the entry of an order for relief against it in an involuntary case or proceeding;
  - (iii) consents to the appointment of a custodian of it or for all or substantially all of its property;
  - (iv) makes a general assignment for the benefit of its creditors; or
  - (v) shall generally not pay its debts when such debts become due or shall admit in writing its inability to pay its debts generally; or
- (h) a court of competent jurisdiction enters an order or decree under any Bankruptcy Law that:
  - (i) is for relief against the Company or any Significant Subsidiary of the Company in an involuntary case or proceeding;
  - (ii) appoints a custodian of the Company or any Significant Subsidiary of the Company for all or substantially all of its properties; or
  - (iii) orders the liquidation of the Company or any Significant Subsidiary of Company;

and in each case the order or decree remains unstayed and in effect for 60 consecutive days.



(a) If an Event of Default (other than an Event of Default specified in clause (g) or (h) of Section 6.01) shall occur and be continuing, the Trustee may, and at the written request of the Holders of at least 25% in principal amount of outstanding Securities shall, declare the principal of and accrued but unpaid interest (including Contingent Interest and Liquidated Damages, if any) on all the

Securities to be due and payable by notice in writing to the Company (the “**Acceleration Notice**”). Such notice shall specify the respective Event of Default and that it is a “notice of acceleration.” Upon the giving of an Acceleration Notice, the principal of and accrued but unpaid interest (including Contingent Interest and Liquidated Damages, if any) on all the Securities shall become immediately due and payable. If an Event of Default specified in clause (g) or (h) of Section 6.01 occurs and is continuing, then all unpaid Obligations on all of the outstanding Securities shall *ipso facto* become and be immediately due and payable without any declaration or other act on the part of the Trustee or any Holder.

(b) At any time after a declaration of acceleration with respect to the Securities as described in the preceding paragraph, the Holders of a majority in aggregate principal amount of the Securities at the time outstanding may rescind and cancel such declaration and its consequences (i) if the rescission would not conflict with any judgment or decree, (ii) if all existing Events of Default have been cured or waived except nonpayment of principal or interest (including Contingent Interest and Liquidated Damages, if any) that has become due solely because of such acceleration, (iii) if interest on overdue installments of interest (to the extent the payment of such interest is lawful) and on overdue principal, which has become due otherwise than by such declaration of acceleration, has been paid, (iv) if the Company has paid the Trustee its reasonable compensation and reimbursed the Trustee for its expenses, disbursements and advances and (v) in the event of the cure or waiver of an Event of Default of the type described in clause (d) of Section 6.01, the Trustee shall have received an Officers’ Certificate and an Opinion of Counsel that such Event of Default has been cured or waived. No such rescission shall affect any subsequent Event of Default or impair any right consequent thereto.

Section 6.03. *Other Remedies.* If an Event of Default occurs and is continuing, the Trustee may pursue any available remedy to collect the payment of the principal amount of all the Securities plus accrued but unpaid interest (including Contingent Interest and Liquidated Damages, if any) thereon, or to enforce the performance of any provision of the Securities or this Indenture.

The Trustee may maintain a proceeding even if the Trustee does not possess any of the Securities or does not produce any of the Securities in the proceeding. A delay or omission by the Trustee or any Holder in exercising any right or remedy accruing upon an Event of Default shall not impair the right or remedy or constitute a waiver of, or acquiescence in, the Event of Default. No remedy is exclusive of any other remedy. All available remedies are cumulative to the extent permitted by law.

Section 6.04. *Waiver of Past Defaults.* The Holders of a majority in aggregate principal amount of the Securities at the time outstanding, by notice in writing to the Trustee (and without notice to any other Holder), may waive an existing Event of Default and its consequences, except (i) an Event of Default

described in Section 6.01(a) or 6.01(b), (ii) an Event of Default in respect of a provision that under Section 9.02 cannot be amended without the consent of each Holder affected or (iii) an Event of Default which constitutes a failure to convert any Security in accordance with the terms of Article 10. When an Event of Default is waived, it is deemed cured, but no such waiver shall extend to any subsequent or other Event of Default or impair any consequent right. This Section 6.04 shall be in lieu of Section 316(a)(1)(B) of the TIA and such Section 316(a)(1)(B) is hereby expressly excluded from this Indenture, as permitted by the TIA.

Section 6.05. *Control by Majority.* The Holders of a majority in aggregate principal amount of the Securities at the time outstanding may direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or of exercising any trust or power conferred on the Trustee. However, the Trustee may refuse to follow any direction that conflicts with law or this Indenture or that the Trustee determines in good faith is unduly prejudicial to the rights of other Holders or would involve the Trustee in personal liability unless the Trustee is offered indemnity satisfactory to it. This Section 6.05 shall be in lieu of Section 316(a)(1)(A) of the TIA and such Section 316(a)(1)(A) is hereby expressly excluded from this Indenture, as permitted by the TIA.

Section 6.06. *Limitation on Suits.* A Holder may not pursue any remedy with respect to this Indenture or the Securities unless:

- (a) the Holder gives to the Trustee written notice stating that an Event of Default is continuing;
- (b) the Holders of at least 25% in aggregate principal amount of the Securities at the time outstanding make a written request to the Trustee to pursue the remedy;
- (c) such Holder or Holders offer to the Trustee security or indemnity satisfactory to the Trustee against any loss, liability or expense;
- (d) the Trustee does not comply with the request within 60 days after receipt of such notice, request and offer of security or indemnity; and
- (e) the Holders of a majority in aggregate principal amount of the Securities at the time outstanding do not give the Trustee a direction inconsistent with the request during such 60-day period.

A Holder may not use this Indenture to prejudice the rights of any other Holder or to obtain a preference or priority over any other Holder.

Section 6.07. *Rights of Holders to Receive Payment and to Convert.* Notwithstanding any other provision of this Indenture, the right of any Holder to

receive payment of interest installments (including Contingent Interest and Liquidated Damages, if any), the principal amount, Redemption Price, Repurchase Price, Change in Control Repurchase Price or interest, if any, due on overdue amounts in respect of the Securities held by such Holder, on or after the respective due dates expressed in the Securities, and to convert the Securities in accordance with Article 10, or to bring suit for the enforcement of any such payment on or after such respective dates or the enforcement of the right to convert, shall not be impaired or affected adversely without the consent of such Holder.

Section 6.08. *Collection Suit by Trustee.* If an Event of Default described in Section 6.01(a) or 6.01(b) occurs and is continuing, the Trustee may recover judgment in its own name and as trustee of an express trust against the Company or any other obligor upon the Securities for the whole amount owing with respect to the Securities and the amounts provided for in Section 7.07.

Section 6.09. *Trustee May File Proofs of Claim.* In case of the pendency of any receivership, insolvency, liquidation, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceeding relative to the Company or any other obligor upon the Securities or the property of the Company or of such other obligor or their creditors, the Trustee (irrespective of whether any amounts in respect of the Securities shall then be due and payable as therein expressed or by declaration or otherwise and irrespective of whether the Trustee shall have made any demand on the Company for the payment of any such amounts) shall be entitled and empowered, by intervention in such proceeding or otherwise,

(a) to file and prove a claim for any accrued but unpaid amounts due in respect of the Securities, and to file such other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel or any other amounts due the Trustee under Section 7.07) and of the Holders allowed in such judicial proceeding, and

(b) to collect and receive any moneys or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or similar official in any such judicial proceeding is hereby authorized by each Holder to make such payments to the Trustee and, in the event that the Trustee shall consent to the making of such payments directly to the Holders, to pay the Trustee any amount due it for the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, and any other amounts due the Trustee under Section 7.07.

Nothing herein contained shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Holder any plan of

reorganization, arrangement, adjustment or composition affecting the Securities or the rights of any Holder thereof, or to authorize the Trustee to vote in respect of the claim of any Holder in any such proceeding.

Section 6.10. *Priorities.* If the Trustee collects any money pursuant to this Article 6, it shall pay out the money in the following order:

FIRST: to the Trustee for amounts due under Section 7.07;

SECOND: to Holders for amounts due and unpaid on the Securities and for any accrued but unpaid interest amounts due (including Contingent Interest and Liquidated Damages, if any) in respect of the Securities, ratably, without preference or priority of any kind, according to such amounts due and payable on the Securities; and

THIRD: the balance, if any, to the Company.

The Trustee may fix a record date and payment date for any payment to Holders pursuant to this Section 6.10. At least 15 days before such record date, the Trustee shall mail to each Holder and the Company a notice that states the record date, the payment date and the amount to be paid.

Section 6.11. *Suits.* In any suit for the enforcement of any right or remedy under this Indenture or in any suit against the Trustee for any action taken or omitted by it as Trustee, a court in its discretion may require the filing by any party litigant (other than the Trustee) in the suit of an undertaking to pay the costs of the suit, and the court in its discretion may assess reasonable costs, including reasonable attorneys' fees and expenses, against any party litigant in the suit, having due regard to the merits and good faith of the claims or defenses made by the party litigant. This Section 6.11 does not apply to a suit by the Trustee, a suit by a Holder pursuant to Section 6.07 or a suit by Holders of more than 10% in aggregate principal amount of the Securities at the time outstanding. This Section 6.11 shall be in lieu of Section 315(e) of the TIA and such Section 315(e) is hereby expressly excluded from this Indenture, as permitted by the TIA.

Section 6.12. *Waiver of Stay, Extension or Usury Laws.* The Company covenants (to the fullest extent that it may lawfully do so) that it will not at any time insist upon, or plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay or extension law or any usury or other law wherever enacted, now or at any time hereafter in force, which would prohibit or forgive the Company from paying all or any portion of any amounts due in respect of the Securities, as contemplated herein, or which may affect the covenants or the performance of this Indenture; and the Company (to the fullest extent that it may lawfully do so) hereby expressly waives all benefit or advantage of any such law and covenants that it will not hinder, delay or impede the execution of any power herein granted to the Trustee, but will suffer and permit the execution of every such power as though no such law had been enacted.

(a) If an Event of Default has occurred and is continuing, the Trustee shall exercise the rights and powers vested in it by this Indenture and use the same degree of care and skill in its exercise as a prudent man would exercise or use under the circumstances in the conduct of his own affairs.

(b) Except during the continuance of an Event of Default:

(i) the Trustee need perform only those duties that are specifically set forth in this Indenture and no others; and

(ii) in the absence of bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture, but in case of any such certificates or opinions which by any provision hereof are specifically required to be furnished to the Trustee, the Trustee shall examine the certificates and opinions to determine whether or not they conform to the requirements of this Indenture, but need not confirm or investigate the accuracy of mathematical calculations or other facts stated therein.

This Section 7.01(b) shall be in lieu of Section 315(a) of the TIA and such Section 315(a) is hereby expressly excluded from this Indenture, as permitted by the TIA.

(c) The Trustee may not be relieved from liability for its own negligent action, its own negligent failure to act or its own willful misconduct, except that:

(i) this paragraph (c) does not limit the effect of paragraph (b) of this Section 7.01;

(ii) the Trustee shall not be liable for any error of judgment made in good faith by a Responsible Officer unless it is conclusively determined by a court of competent jurisdiction that the Trustee was negligent in ascertaining the pertinent facts; and

(iii) the Trustee shall not be liable with respect to any action it takes or omits to take in good faith in accordance with a direction received by it pursuant to Section 6.02, 6.04 or 6.05.

Sections 7.01(c)(i), (ii) and (iii) shall be in lieu of Sections 315(d)(1), 315(d)(2) and 315(d)(3) of the TIA and such Sections 315(d)(1), 315(d)(2) and 315(d)(3) are hereby expressly excluded from this Indenture, as permitted by the TIA.

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(d) Every provision of this Indenture that in any way relates to the Trustee is subject to Sections 7.01(a), (b), (c), (e) and (f).

(e) The Trustee may refuse to perform any duty or exercise any right or power or expend or risk its own funds or otherwise incur any financial liability unless it receives indemnity satisfactory to it against any loss, liability or expense.

(f) Money held by the Trustee in trust hereunder need not be segregated from other funds except to the extent required by law. The Trustee (acting in any capacity hereunder) shall be under no liability for interest on any money received by it hereunder unless otherwise agreed in writing with the Company.

Section 7.02. *Rights of Trustee.* Subject to its duties and responsibilities under the TIA,

(a) the Trustee may conclusively rely and shall be fully protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document reasonably believed by it to be genuine and to have been signed or presented by the proper party or parties;

(b) whenever in the administration of this Indenture the Trustee shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Trustee (unless other evidence be herein specifically prescribed) may obtain and, in the absence of bad faith or negligence on its part, conclusively rely upon an Officers' Certificate and/or an Opinion of Counsel;

(c) the Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through agents, attorneys, custodians or nominees, and without limiting the generality of the foregoing, the Trustee may appoint an agent (i) to obtain the quotations referred to in the definition of "Trading Price of the Securities," and (ii) to report such quotations or determinations to the Company and the Depository on behalf of the Trustee; and the Trustee shall not be responsible for any misconduct or negligence on the part of any agent, attorney, custodian or nominee appointed with due care by it hereunder;

(d) the Trustee shall not be liable for any action taken, suffered, or omitted to be taken by it in good faith which it reasonably believes to be authorized or within its rights or powers conferred under this Indenture;

(e) the Trustee may consult with counsel selected by it and any advice or opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered or omitted by it hereunder in good faith and in accordance with such advice or opinion of such counsel;

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(f) the Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request, order or direction of any of the Holders, pursuant to the provisions of this Indenture, unless such Holders shall have offered to the Trustee security or indemnity satisfactory to it against the costs, expenses and liabilities which may be incurred therein or thereby;

(g) any request or direction of the Company mentioned herein shall be sufficiently evidenced by a Company Order and any resolution of the Board of Directors shall be sufficiently evidenced by a Board Resolution;

(h) the Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document, but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee shall determine to make such further inquiry or investigation, it shall be entitled, during normal business hours, to examine the books, records and premises of the Company, personally or by agent or attorney at the sole cost of the Company and shall incur no liability or additional liability of any kind by reason of such inquiry or investigation;

(i) except with respect to Section 4.01, the Trustee shall have no duty to inquire as to the performance of the Company with respect to the covenants contained in Article 4 of this Indenture. In addition, the Trustee shall not be deemed to have knowledge of an Event of Default except (i) any Default or Event of Default occurring pursuant to Sections 4.01, 6.01(a) and 6.01(b) or (ii) any Default or Event of Default of which the Trustee shall have received written notification or obtained actual knowledge;

(j) delivery of reports, information and documents to the Trustee under Section 4.02 of this Indenture is for informational purposes only and the Trustee's receipt of the foregoing shall not constitute constructive notice of any information contained therein or determinable from information contained therein, including the Company's compliance with any of their covenants hereunder (as to which the Trustee is entitled to rely exclusively on Officers' Certificates)

(k) the rights, privileges, protections, immunities and benefits given to the Trustee, including its right to be indemnified, are extended to, and shall be enforceable by, the Trustee in each of its capacities hereunder (including Paying Agent, Registrar and Conversion Agent), and to all other Persons employed to act hereunder, including the Trustee's officers, employees, agents and custodians;

(l) the Trustee may request that the Company deliver an Officers' Certificate setting forth the names of individuals and/or titles of officers authorized at such time to take specified actions pursuant to this Indenture, which Officers' Certificate may be signed by any person authorized to sign an Officers'

Certificate, including any person specified as so authorized in any such certificate previously delivered and not superseded;

(m) neither the Trustee nor any of its officers, directors, employees or agents shall be liable for any action taken or omitted under this Indenture or in connection therewith except to the extent caused by the Trustee's gross negligence, bad faith or willful misconduct, as determined by the final judgment of a court of competent jurisdiction, no longer subject to appeal or review; and anything in this Indenture to the contrary notwithstanding, to the extent permitted by the TIA in no event shall the Trustee be liable for special, indirect or consequential loss or damage of any kind whatsoever (including but not limited to lost profits), even if the Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action;

(n) the Trustee is not required to give any bond or surety with respect to the performance of its duties or the exercise of its powers under this Indenture; and

(o) notwithstanding anything else herein contained, whenever any provision of this Indenture indicates that any confirmation of a condition or event is qualified by the words "to the knowledge" or "known to" the Trustee or other words of similar meaning, said words shall mean and refer to the current awareness of one or more Responsible Officers who are located at the Corporate Trust Office.

**Section 7.03. *Individual Rights of Trustee.*** The Trustee in its individual or any other capacity may become the owner or pledgee of Securities and may otherwise deal with the Company or its Affiliates with the same rights it would have if it were not Trustee. Any Paying Agent, Registrar, Conversion Agent or co-registrar may do the same with like rights. However, the Trustee must comply with Sections 7.10 and 7.11.

**Section 7.04. *Trustee's Disclaimer.*** The Trustee makes no representation as to the validity or adequacy of this Indenture or the Securities, shall not be accountable for the Company's use or application of the proceeds from the Securities, and shall not be responsible for any statement in any registration statement for the Securities under the Securities Act or in any offering document for the Securities, the Indenture or the Securities (other than its certificate of authentication), or the determination as to which Beneficial Owners are entitled to receive any notices hereunder.

**Section 7.05. *Notice of Defaults.*** If an Event of Default occurs and if it is actually known to a Responsible Officer of the Trustee, the Trustee shall give to each Holder notice of all current Event of Defaults known to it within 30 days after any such Event of Default occurs or, if later, within 15 days after it is known to the Trustee, unless such Event of Default shall have been cured or waived before the giving of such notice. Notwithstanding the preceding sentence, except

in the case of an Event of Default described in Sections 6.01(a) and 6.01(b), the Trustee may withhold the notice if and so long as a trust committee of officers of the Trustee in good faith determines that withholding the notice is in the interests of Holders. The second sentence of this Section 7.05 shall be in lieu of the proviso to Section 315(b) of the TIA and such proviso is hereby expressly excluded from this Indenture, as permitted by the TIA.

**Section 7.06. *Reports by Trustee to Holders.*** Within 60 days after each May 15 beginning with the May 15 following the date of this Indenture, the Trustee shall mail to each Holder a brief report dated as of such May 15 that complies with TIA Section 313(a), if required by such Section 313(a), but only to the extent any such report is required to be given pursuant to said TIA Section 313(a), or any successor provision of the TIA. The Trustee also shall comply with TIA Section 313(b).

Commencing at the time this Indenture is qualified under the TIA, a copy of each report at the time of its mailing to Holders shall be filed with the SEC and each securities exchange, if any, on which the Securities are listed. The Company agrees to notify the Trustee in writing promptly whenever the Indenture is qualified under the TIA and the Securities become listed on any securities exchange and of any delisting thereof.

**Section 7.07. *Compensation and Indemnity.*** The Company agrees:

(a) to pay to the Trustee from time to time, and the Trustee shall be entitled to, such compensation as the Company and the Trustee shall from time to time agree in writing for all services rendered by it hereunder (which compensation shall not be limited (to the extent permitted by law) by any provision of law in regard to the compensation of a trustee of an express trust);

(b) to reimburse the Trustee upon its request for all reasonable expenses, disbursements and advances incurred or made by the Trustee in accordance with any provision of this Indenture or any documents executed in connection herewith (including the reasonable compensation and the expenses, advances and disbursements of its agents and counsel), except any such expense, disbursement or advance as may be attributable to its negligence, bad faith or willful misconduct; and

(c) to indemnify the Trustee or any predecessor Trustee and their respective agents, officers, directors and employees for, and to hold them harmless against, any loss, damage, claim, liability, cost or expense (including attorneys' fees and expenses and taxes (other than franchise, capital, net worth, employment and ad valorem taxes and taxes based upon, measured by or determined by the income or gross receipts of the Trustee)) incurred without negligence or bad faith on their part, arising out of or in connection with the acceptance or administration of this trust, including the costs and expenses of defending themselves against any claim (whether asserted by the Company or any

Holder or any other Person) or liability in connection with the Trustee's exercise or performance of any of its powers or duties hereunder.

To secure the Company's payment obligations in this Section 7.07, the Trustee shall have a lien prior to the Securities on all money or property held or collected by the Trustee, except any money or property held in trust to pay interest installments (including Contingent Interest and Liquidated Damages, if any), the principal amount, Redemption Price, Repurchase Price, Change in Control Repurchase Price or interest, if any, due on overdue amounts, as the case may be, in respect of any particular Securities.

The Company's payment obligations pursuant to this Section 7.07 shall survive the discharge of this Indenture or the earlier termination or resignation of the Trustee. When the Trustee incurs expenses after the occurrence of an Event of Default specified in Section 6.01(g) or Section 6.01(h), the expenses, including the reasonable charges and expenses of its counsel, are intended to constitute expenses of administration under any Bankruptcy Law.

Any amounts due and owing the Trustee hereunder (whether in nature of fees, expenses, indemnification payments or reimbursement for advances) which have not been paid by or on behalf of the Company within 15 days following written notice thereof given to the Company in accordance with the provisions of Section 11.02, shall bear interest at an interest rate equal to the Trustee's announced prime rate in effect from time to time, plus four percent (4.0%) per annum.

Section 7.08. *Replacement of Trustee.* The Trustee may resign by so notifying the Company; *provided* that no such resignation shall be effective until a successor Trustee has accepted its appointment pursuant to this Section 7.08. The Holders of a majority in aggregate principal amount of the Securities at the time outstanding may remove the Trustee by so notifying the Trustee and the Company in writing. The Company shall remove the Trustee if:

- (a) the Trustee fails to comply with Section 7.10;
- (b) the Trustee is adjudged bankrupt or insolvent;
- (c) a receiver or public officer takes charge of the Trustee or its property; or
- (d) the Trustee otherwise becomes incapable of acting.

If the Trustee resigns or is removed or if a vacancy exists in the office of Trustee for any reason, the Company shall promptly appoint, by Board Resolution, a successor Trustee.

A successor Trustee shall deliver a written acceptance of its appointment to the retiring Trustee and to the Company satisfactory in form and substance to the retiring Trustee and the Company. Thereupon the resignation or removal of the retiring Trustee shall become effective, and the successor Trustee shall have all the rights, powers and duties of the Trustee under this Indenture; *provided*, notwithstanding the foregoing, the effectiveness of any such resignation or removal shall be conditioned on receipt by the retiring Trustee of all amounts due and owing under Section 7.07 hereof. The successor Trustee shall mail a notice of its succession to Holders. The retiring Trustee shall promptly transfer all property held by it as Trustee to the successor Trustee, subject to the lien provided for in Section 7.07.

If a successor Trustee does not take office within 30 days after the retiring Trustee gives its notice of resignation or is removed, the retiring Trustee, the Company or the Holders of a majority in aggregate principal amount of the Securities at the time outstanding may petition any court of competent jurisdiction at the expense of the Company for the appointment of a successor Trustee.

If the Trustee fails to comply with Section 7.10, any Holder may petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor Trustee.

Section 7.09. *Successor Trustee by Merger Etc.* If the Trustee consolidates with, merges or converts into, or transfers all or substantially all its corporate trust business or assets (including the administration of the trust created by this Indenture) to, another Person, the resulting or surviving Person without any further act shall be the successor Trustee. As soon as practicable, the successor Trustee shall mail a notice of its succession to the Company and the Holders. Any such successor must nevertheless be eligible and qualified under the provisions of Section 7.01 hereof.

Section 7.10. *Eligibility; Disqualification.* The Trustee shall at all times satisfy the requirements of TIA Section 310(a)(1). The Trustee (or its parent holding company) shall have a combined capital and surplus of at least \$50,000,000 as set forth in its most recent filed annual report of condition. Nothing

herein contained shall prevent the Trustee from filing with the SEC the application referred to in the penultimate paragraph of TIA Section 310(b). The Trustee shall comply with TIA Section 310(b); *provided* that there shall be excluded from the operation of TIA Section 310(b)(1) any indenture or indentures under which other securities or certificates of interest or participation in other securities of the Company are outstanding if the requirements for such exclusion set forth in TIA Section 310(b)(1) are met.

If at any time the Trustee shall cease to be eligible in accordance with this Section 7.10, it shall resign immediately in the manner and with the effect specified in Article 7.

Section 7.11. *Preferential Collection of Claims Against Company.* The Trustee shall comply with TIA Section 311(a), excluding any creditor relationship listed in TIA Section 311(b). A Trustee who has resigned or been removed shall be subject to TIA Section 311(a) to the extent indicated therein.

Section 7.12. *Force Majeure.* To the extent permitted by the TIA, in no event shall the Trustee be liable for any failure or delay in the performance of its obligations hereunder because of circumstances beyond the Trustee's control, including, but not limited to, acts of God, flood, war (whether declared or undeclared), terrorism, fire, riot, embargo or government action, including any laws, ordinances, regulations, governmental action or the like which delay, restrict or prohibit the providing of the services contemplated by this Indenture.

## ARTICLE 8 DISCHARGE OF INDENTURE

Section 8.01. *Discharge of Liability on Securities.* When (a) the Company delivers to the Trustee all outstanding Securities (other than Securities replaced pursuant to Section 2.07) for cancellation or (b) all outstanding Securities have become due and payable and the Company deposits with the Trustee cash and shares of Common Stock (as applicable under the terms of this Indenture) sufficient to pay all amounts due and owing on all outstanding Securities (other than Securities replaced pursuant to Section 2.07), and if in either case the Company pays all other sums payable hereunder by the Company, then this Indenture shall, subject to Section 7.07, cease to be of further effect. The Trustee shall join in the execution of a document prepared by the Company acknowledging satisfaction and discharge of this Indenture on demand at the cost and expense of the Company and accompanied by an Officers' Certificate and Opinion of Counsel.

Section 8.02. *Repayment to the Company.* The Trustee, the Paying Agent and the Conversion Agent shall return to the Company upon written request any money or shares of Common Stock held by them for the payment of any amount and any shares of Common Stock with respect to the Securities that remain unclaimed for two years, subject to applicable unclaimed property law. After return to the Company, as applicable, Holders entitled to the money or shares of Common Stock must look to the Company for payment as general creditors unless an applicable abandoned property law designates another person and the Trustee, the Paying Agent and the Conversion Agent shall have no further liability to the Holders with respect to such money or shares of Common Stock for that period commencing after the return thereof.

## ARTICLE 9 AMENDMENTS

Section 9.01. *Without Consent of Holders.* The Company and the Trustee may amend or supplement this Indenture or the Securities without notice to or consent of any Holder:

- (a) to comply with Article 5 or Section 10.11;
- (b) to cure any ambiguity, omission, defect or inconsistency in this Indenture;
- (c) to make any other change that does not adversely affect the rights of any Holder in any material respect; *provided* that any change to conform this Indenture to the Offering Memorandum shall be deemed not to adversely affect the rights of any Holder;
- (d) to make provisions with respect to the conversion right of the Holders pursuant to the requirements of Section 10.01;
- (e) to evidence and provide for the acceptance of appointment hereunder by a successor Trustee with respect to the Securities; or
- (f) to comply with the provisions of the TIA, or with any requirement of the SEC arising as a result of the qualification of this Indenture under the TIA.

Section 9.02. *With Consent of Holders.*

The Company and the Trustee may amend or supplement this Indenture or the Securities without notice to any Holder but with the consent of the Holders of a majority in aggregate principal amount of the Securities at the time outstanding. The Holders of a majority in aggregate principal amount of the Securities at the time outstanding may waive compliance by the Company with restrictive provisions of this Indenture other than as set forth in this Section 9.02 below, and waive any past Event of Default under this Indenture and its consequences, except a default in the payment of the principal of, or Redemption Price, Repurchase Price, Change in Control Repurchase Price of, or any interest on, any Security, or in respect of a provision which under this Indenture cannot be modified or amended without the consent of the Holder of each outstanding Security affected.

Subject to Section 9.04, without the consent of each Holder affected, however, an amendment, supplement or waiver, including a waiver pursuant to Section 6.04, may not:

- (a) change the Stated Maturity of, or any payment date of any installment of interest (including Contingent Interest and Liquidated Damages, if any) on, any Security;

- (b) reduce the principal amount or Redemption Price of, or the rate of interest (including Contingent Interest and Liquidated Damages, if any) on, any Security, whether upon acceleration, redemption or otherwise, or alter the manner of calculation of interest or the rate of accrual thereof on any Security;
- (c) change the currency for payment of principal of, or interest (including Contingent Interest and Liquidated Damages, if any) on, any Security;
- (d) impair the right to institute suit for the enforcement of any payment of any amount with respect to any Security when due;
- (e) adversely affect the conversion rights provided in Article 10;
- (f) modify the provisions of this Indenture requiring the Company to make an offer to repurchase Securities upon a Change in Control pursuant to Section 3.09, or to repurchase the Securities at the option of the Holders pursuant to Section 3.08;
- (g) reduce the percentage of principal amount of the outstanding Securities necessary to modify or amend this Indenture or to consent to any waiver provided for in this Indenture;
- (h) waive a default in the payment of any amount or shares of Common Stock with respect to any Security when due (except as provided in Section 6.02); or
- (i) make any changes to Section 6.04, Section 6.07 or this Section 9.02.

It shall not be necessary for the consent of the Holders under this Section 9.02 to approve the particular form of any proposed amendment, supplement or waiver, but it shall be sufficient if such consent approves the substance thereof.

After an amendment under this Section 9.02 becomes effective, the Company shall mail to each Holder a notice briefly describing the amendment. Failure to mail the notice or a defect in the notice shall not affect the validity of the amendment.

Section 9.03. *Compliance with Trust Indenture Act.* Every supplemental indenture executed pursuant to this Article 9 shall comply with the TIA.

Section 9.04. *Revocation and Effect of Consents.* Until an amendment, waiver or other action by Holders becomes effective, a consent thereto by a Holder of a Security hereunder is a continuing consent by such Holder and every subsequent Holder of such Security or portion of such Security that evidences the same obligation as the consenting Holder's Security, even if notation of the consent, waiver or action is not made on such Security. However, unless otherwise agreed by such Holder or a predecessor Holder, any such Holder or subsequent Holder may revoke the consent, waiver or action as to such Holder's

Security or portion of the Security if the Trustee receives the notice of revocation before the date the amendment, waiver or action becomes effective. After an amendment, waiver or action becomes effective, it shall bind every Holder.

Section 9.05. *Notation on or Exchange of Securities.* Securities authenticated and delivered after the execution of any supplemental indenture pursuant to this Article 9 may, and shall if required by the Trustee, bear a notation in form approved by the Trustee as to any matter provided for in such supplemental indenture. If the Company shall so determine, new Securities so modified as to conform, in the opinion of the Trustee and the Board of Directors, to any such supplemental indenture may be prepared and executed by the Company, and such new Securities may be authenticated and delivered by the Trustee in exchange for outstanding Securities.

Section 9.06. *Trustee to Sign Supplemental Indentures.* The Trustee shall sign any supplemental indenture authorized pursuant to this Article 9 if the amendment contained therein does not, in the sole determination of the Trustee, adversely affect the rights, duties, powers, privileges, benefits, indemnities, liabilities or immunities of the Trustee. If it does, the Trustee may, but need not, sign such supplemental indenture. In signing any supplemental indenture the Trustee shall be entitled to receive, and (subject to the provisions of Section 7.01) shall be fully protected in relying upon, an Officers' Certificate and an Opinion of Counsel stating that such amendment is authorized or permitted by this Indenture.

Section 9.07. *Effect of Supplemental Indentures.* Upon the execution of any supplemental indenture under this Article 9, this Indenture shall be modified in accordance therewith, and such supplemental indenture shall form a part of this Indenture for all purposes, and every Holder of Securities theretofore or thereafter authenticated and delivered hereunder shall be bound thereby.

## ARTICLE 10 CONVERSION OF THE SECURITIES

### Section 10.01. *Conversion Privilege.*

(a) Subject to the provisions of this Article 10, a Holder of a Security may convert such Security into cash and Common Stock equal to the Conversion Value on or prior to December 6, 2024, if any of the following conditions is satisfied:

- (i) during any fiscal quarter (the "**Quarter**") commencing on or after December 6, 2004, if the Common Stock Price for at least 20 Trading Days in the period of 30 consecutive Trading Days ending on the last Trading Day of the Quarter immediately preceding such Quarter (appropriately adjusted to take into account the occurrence, during such 30 consecutive Trading Day period, of any event requiring adjustment of the

Conversion Price under this Indenture) is more than 120% of the Conversion Price on such 30th Trading Day;

(ii) such Security has been called for redemption by the Company pursuant to Section 3.01 and the redemption has not yet occurred, so long as the Holder surrenders such Security for conversion prior to the close of business on the date that is two Business Days prior to the applicable Redemption Date, even if the Security is not otherwise convertible at such time;

(iii) (A) a distribution to all holders of Common Stock of rights, warrants or options entitling them (for a period commencing no earlier than the date of distribution and expiring not more than 60 days after the date of distribution) to subscribe for or purchase shares of Common Stock at a price less than the average Common Stock Price for the 10 Trading Days immediately preceding the date such distribution was first publicly announced; or

(B) a distribution to all holders of Common Stock of cash or other assets, evidences of Company indebtedness, rights or warrants to purchase or subscribe for Capital Stock or other securities of the Company, where the fair market value of such distribution per share of Common Stock (as determined by the Board of Directors, whose determination shall be conclusive evidence of such fair market value) exceeds 10% of the Common Stock Price on the Trading Day immediately preceding the date such distribution was first publicly announced;

*provided* that the Holder shall have no right to convert any Security pursuant to this Section 10.01(a)(iii) if the Holder of a Security otherwise participates in the distribution described in this Section 10.01(a)(iii) on an as-converted basis solely into Common Stock at the then applicable Conversion Price without conversion of such Holder's Securities; or

(iv) if the Company is party to a consolidation, merger, share exchange, sale of all or substantially all of its properties and assets or other similar transaction, in each case pursuant to which the Common Stock is subject to conversion into cash, securities or other property from and after the effective date of such transaction until and including the date that is 30 days after the effective date of such transaction.

(b) If a Holder elects to convert its Securities in connection with a specified corporate transaction pursuant to Sections 10.01(a)(iii)(A) and 10.01(a)(iii)(B) that occurs on or prior to December 15, 2011, which constitutes a Change in Control (other than relating to the composition of our Board of Directors as described in clause (d) of the definition of Change in Control in Section 1.01) and 10% or more of the fair market value of the consideration for the common shares (as determined by the Board of Directors, whose

determination shall be conclusive evidence of such fair market value) in the corporate transaction consists of (i) cash, (ii) other property or (iii) securities that are not traded or scheduled to be traded immediately following such transaction on a U.S. national securities exchange or the Nasdaq National Market, then the Conversion Price of the Securities being converted by such Holder at that time shall be adjusted so that such Holder will be entitled to receive a number of Common Shares equal to the sum of (A) the aggregate principal amount of the Securities to be converted divided by the Conversion Price per \$1,000 principal amount of Securities and (B) the number of additional Common Stock (the "**Additional Shares**") determined in the manner set forth below; *provided* that if the Share Price in such transaction is equal to or greater than \$60.00 or less than \$9.81 (subject in each case to adjustment as described below), the number of Additional Shares shall be zero; and *provided further* that in no event will the Conversion Rate exceed approximately 101.9368 per \$1,000 principal amount of Securities, subject to adjustments in the same manner as the Conversion Price as set forth in this Indenture. For the avoidance of doubt, the adjustment provided for in this Section 10.01(b) shall only be made with respect to the Securities being converted in connection with such Change in Control and shall not be effective as to any Securities not so converted.

The number of Additional Shares will be determined by the Company by reference to the table attached as Schedule A hereto, based on the date the corporate transaction becomes effective (the "**Effective Date**") and the share price paid per share of Common Stock in the corporate transaction (the "**Share Price**"); *provided* that if the Share Price is between two Share Price amounts in the table or the Effective Date is between two Effective Dates in the table, the Company shall determine the number of Additional Shares by a straight-line interpolation between the number of Additional Shares set forth for the higher and lower Share Price amounts and the two dates, as applicable, based on a 365-day year.

The Share Prices set forth in the first row of the table (i.e., column headers) in Schedule A hereto and set forth in the proviso at the end of paragraph (d) above will be adjusted as of any date on which the Conversion Price of the Securities is adjusted pursuant to the Indenture. The adjusted Share Prices will equal the Share Prices applicable immediately prior to such adjustment, multiplied by a fraction, the numerator of which is the Conversion Price immediately prior to the adjustment giving rise to the Common Stock Price adjustment and the denominator of which is the Conversion Price as so adjusted. The number of Additional Shares will be adjusted in the same manner as the Conversion Price as set forth in this Indenture.

(c) Notwithstanding the foregoing, and in lieu of adjusting the Conversion Rate as set forth in Section 10.01(b), in the case of a Public Acquirer Change in Control, the Company may elect that, from and after the Effective Date of such Public Acquirer Change in Control, the right to convert a Security will be changed into a right to convert a Security into a number of shares of Acquirer Common Stock. At any time prior to the twentieth day immediately preceding the

proposed Effective Date of the Public Acquirer Change in Control, the Company may irrevocably elect to adjust the terms of the Holder's conversion privilege set forth in Section 10.14 such that following such adjustment Acquirer Common Stock shall be deemed to be the Common Stock and the Conversion Rate on and following the Effective Date of such transaction described in this Section 10.01(c) shall be the product of:

(i) the Conversion Rate in effect immediately prior to the Effective Date of such Change in Control, times



(ii) the average of the quotients obtained, for each Trading Day in the 10 consecutive Trading Day period commencing on the Trading Day next succeeding the Effective Date of such Public Acquirer Change in Control (the “Valuation Period”), of:

- (A) the Acquisition Value of our Common Stock on each such Trading Day in the Valuation Period, divided by
- (B) the Closing Sale Price of the Acquirer Common Stock on each such Trading Day in the Valuation Period.

(d) In the case of the foregoing Sections 10.01(a)(iii)(A) and 10.01(a)(iii)(B), the Company shall cause a notice of such distribution to be filed with the Trustee and the Conversion Agent and to be mailed to each Holder of Securities no later than 20 days prior to the Ex-Dividend Date for such distribution. Once the Company has given such notice, Holders may surrender their Securities for conversion at any time thereafter until the earlier of the close of business on the Business Day prior to the Ex-Dividend Date or the Company’s announcement that such distribution will not take place. The “**Ex-Dividend Date**” for any such issuance or distribution means the date immediately prior to the commencement of “ex-dividend” trading for such issuance or distribution on The New York Stock Exchange or such other national securities exchange or The Nasdaq Stock Market or similar system of automated dissemination of quotations of securities prices on which the Common Stock is then listed or quoted.

(e) A Holder may convert a portion of a Security equal to \$1,000 or any integral multiple thereof. Provisions of this Indenture that apply to conversion of all of a Security also apply to conversion of a portion of a Security.

If a Security is called for redemption pursuant to Section 3.01, in order to convert such Security, the Holder must deliver the Security to the Conversion Agent (or, if the Security is held in book-entry form, complete and deliver to the Depositary appropriate instructions in accordance with the Applicable Procedures) at any time prior to the close of business on the day that is two Business Days prior to the applicable Redemption Date for such Security (unless the Company shall default in paying the Redemption Price when due, in which case the conversion right shall terminate on the date such default is cured and

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such Security is redeemed). A Security in respect of which a Holder has delivered a Repurchase Notice pursuant to Section 3.08 or a Change in Control Repurchase Notice pursuant to Section 3.09 exercising the option of such Holder to require the Company to repurchase such Security may be converted only if such Repurchase Notice or Change in Control Repurchase Notice, as the case may be, is withdrawn by a written notice of withdrawal delivered to the Paying Agent prior to the close of business on the Repurchase Date or the Change in Control Repurchase Date, as the case may be, in accordance with Section 3.10.

(f) A Holder of Securities is not entitled to any rights of a holder of Common Stock until such Holder has converted its Securities into Common Stock.

#### Section 10.02. *Conversion Procedure.*

(a) To convert a Security, a Holder must (i) if the Security is in definitive form, complete and manually sign the irrevocable conversion notice on the back of the Security and deliver such notice to the Conversion Agent, (ii) if the Security is in definitive form, surrender the Security to the Conversion Agent, (iii) if the Security is in definitive form, furnish appropriate endorsements and transfer documents if required by the Registrar or the Conversion Agent, (iv) pay any transfer or other tax, if required by Section 10.03 and (v) if the Security is held in book-entry form, complete and deliver to the Depositary appropriate instructions pursuant to the Applicable Procedures. The later of (x) the date on which the Holder satisfies all of the foregoing requirements and (y) the Determination Date is the “**Conversion Date**”. As promptly as practicable after the Conversion Date and in any event within four Business Days thereof, the Company shall deliver to the Holder through the Conversion Agent cash and shares of Common Stock in the amounts calculated in accordance with Section 10.14.

(b) The Person in whose name the Security is registered shall be deemed to be a stockholder of record on the Conversion Date; *provided* that no surrender of a Security on any date when the stock transfer books of the Company shall be closed shall be effective to constitute the Person or Persons entitled to receive the shares of Common Stock upon such conversion as the record holder or holders of such shares of Common Stock on such date, but such surrender shall be effective to constitute the Person or Persons entitled to receive such shares of Common Stock as the record holder or holders thereof for all purposes at the close of business on the next succeeding day on which such stock transfer books are open; *provided, further* that such conversion shall be at the Conversion Price in effect on the date that such Security shall have been surrendered for conversion, as if the stock transfer books of the Company had not been closed. Upon conversion of a Security, such Person shall no longer be a Holder of such Security.

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(c) No payment or adjustment will be made for accrued but unpaid interest (including Contingent Interest and Liquidated Damages, if any) on a converted Security or for dividends or distributions on shares of Common Stock issued upon conversion of a Security. The Company shall not adjust the Conversion Price to account for the accrued but unpaid interest. Notwithstanding the foregoing, if Securities are converted after the close of business on a regular record date and prior to the opening of business on the next Interest Payment Date, including the date of maturity, Holders of such Securities at the close of business on such regular record date shall receive the accrued but unpaid interest (including Contingent Interest and Liquidated Damages, if any) payable on such Securities on the corresponding Interest Payment Date notwithstanding the conversion. In such event, such Security, when surrendered for conversion, must be accompanied by delivery of a check payable to the Conversion Agent in an amount equal to the accrued but unpaid interest (including Contingent Interest and Liquidated Damages, if any) payable on such Interest Payment Date on the portion so converted. If such payment does not accompany such Security, the Security shall not be converted; *provided* that no such check shall be required if such Security has been called for redemption on a Redemption Date within the period between the close of business on such record date and the opening of business on such Interest Payment Date, or if such Security is surrendered for conversion on the Interest Payment Date. If the Company defaults in the payment of interest (including Contingent Interest and Liquidated Damages, if any) payable on the Interest Payment Date, the Conversion Agent shall promptly repay such funds to the Holder.

(d) Upon surrender of a Security that is converted in part, the Company shall execute, and the Trustee shall, upon receipt of a Company Order, authenticate and deliver to the Holder, a new Security equal in principal amount to the unconverted portion of the Security surrendered.

Section 10.03. *Taxes on Conversion.* If a Holder converts a Security, the Company shall pay any documentary, stamp or similar issue or transfer tax due on the issue of shares of Common Stock upon such conversion. However, the Holder shall pay any tax which is due because the Holder requests the shares to be issued in a name other than the Holder's name. The Conversion Agent may refuse to deliver the certificates representing the Common Stock being issued in a name other than the Holder's name until the Conversion Agent receives a sum sufficient to pay any tax which will be due because the shares are to be issued in a name other than the Holder's name. Nothing herein shall preclude any tax withholding required by law or regulations.

Section 10.04. *Company to Provide Stock.* The Company shall, prior to issuance of any Securities hereunder, and from time to time as may be necessary, reserve, out of its authorized but unissued Common Stock, a sufficient number of shares of Common Stock to permit the conversion of all outstanding Securities into shares of Common Stock. The certificates representing the shares of

Common Stock issued upon conversion of Transfer Restricted Securities shall bear a legend substantially in the following form:

"THIS SECURITY HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR ANY STATE OR OTHER SECURITIES LAWS. NEITHER THIS SECURITY NOR ANY INTEREST OR PARTICIPATION HEREIN MAY BE REOFFERED, SOLD, ASSIGNED, TRANSFERRED, PLEDGED, ENCUMBERED OR OTHERWISE DISPOSED OF IN THE ABSENCE OF SUCH REGISTRATION OR UNLESS SUCH TRANSACTION IS EXEMPT FROM, OR NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT. BY ITS ACQUISITION HEREOF OR OF A BENEFICIAL INTEREST HEREIN, THE HOLDER (1) REPRESENTS THAT IT IS A "QUALIFIED INSTITUTIONAL BUYER" (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT ("RULE 144A")) AND IS PURCHASING IN COMPLIANCE WITH RULE 144A UNDER THE SECURITIES ACT, (2) AGREES NOT TO OFFER, SELL OR OTHERWISE TRANSFER SUCH SECURITY PRIOR TO THE DATE WHICH IS THE LATER OF (X) TWO YEARS (OR SUCH SHORTER PERIOD OF TIME AS PERMITTED BY RULE 144(k) OF THE SECURITIES ACT) AFTER THE LATER OF THE LAST DATE OF ORIGINAL ISSUANCE OF THIS SECURITY (OR ANY PREDECESSOR OF THIS SECURITY) AND THE LAST DATE ON WHICH AMERICAN EQUITY INVESTMENT LIFE HOLDING COMPANY OR ANY AFFILIATE OF AMERICAN EQUITY INVESTMENT LIFE HOLDING COMPANY WAS THE OWNER OF THIS SECURITY (OR ANY PREDECESSOR OF THIS SECURITY) AND (Y) SUCH LATER DATE, IF ANY, AS MAY BE REQUIRED BY APPLICABLE LAW (THE "RESALE RESTRICTION TERMINATION DATE") EXCEPT (A) TO AMERICAN EQUITY INVESTMENT LIFE HOLDING COMPANY OR ANY SUBSIDIARY THEREOF, (B) PURSUANT TO A REGISTRATION STATEMENT WHICH HAS BEEN DECLARED EFFECTIVE UNDER THE SECURITIES ACT AND WHICH CONTINUES TO BE EFFECTIVE AT THE TIME OF SUCH TRANSFER, (C) PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT PROVIDED BY RULE 144 UNDER THE SECURITIES ACT (IF AVAILABLE) OR (D) FOR SO LONG AS THE SECURITIES ARE ELIGIBLE FOR RESALE PURSUANT TO RULE 144A, TO A PERSON IT REASONABLY BELIEVES IS A "QUALIFIED

INSTITUTIONAL BUYER" AS DEFINED IN RULE 144A THAT PURCHASES FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER TO WHOM NOTICE IS GIVEN THAT THE TRANSFER IS BEING MADE IN RELIANCE ON RULE 144A AND (3) AGREES THAT IT WILL GIVE TO EACH PERSON TO WHOM THIS SECURITY IS TRANSFERRED A NOTICE SUBSTANTIALLY TO THE EFFECT OF THIS LEGEND; AND, IN EACH OF THE FOREGOING CASES, TO REQUIRE THAT A CERTIFICATE OF TRANSFER IN THE FORM APPEARING ON THE OTHER SIDE OF THIS SECURITY IS COMPLETED AND DELIVERED BY THE TRANSFEROR TO AMERICAN EQUITY INVESTMENT LIFE HOLDING COMPANY AND THE TRUSTEE (WITH RESPECT TO TRANSFERS OF SECURITIES) OR THE TRANSFER AGENT (WITH RESPECT TO TRANSFERS OF COMMON STOCK). THIS LEGEND WILL BE REMOVED UPON THE REQUEST OF THE HOLDER AFTER THE RESALE RESTRICTION TERMINATION DATE."

The Company covenants that all shares of Common Stock delivered upon conversion of the Securities shall be newly issued shares or treasury shares, shall be duly authorized, validly issued, fully paid and non-assessable and shall be free from preemptive rights and free of any lien or adverse claim.

The Company will endeavor promptly to comply with all federal and state securities laws regulating the offer and delivery of shares of Common Stock upon conversion of Securities, if any, and will list or cause to have quoted such shares of Common Stock on each national securities exchange or in the over-the-counter market or such other market on which the Common Stock is then listed or quoted.

Section 10.05. *Adjustment of Conversion Price.* The Conversion Price shall be adjusted (without duplication) from time to time by the Company as follows:

(a) In case the Company shall (i) pay a dividend or other distribution in shares of Common Stock to all holders of Common Stock, (ii) subdivide its outstanding Common Stock into a greater number of shares or (iii) combine its outstanding Common Stock into a smaller number of shares, the Conversion Price shall be adjusted so that the Holder of any Security thereafter surrendered for conversion shall be entitled to receive the number of shares of Common Stock which it would have owned or been entitled to receive had such Security been converted immediately prior to the happening of such event. For the purposes of calculating the Conversion Price adjustment pursuant to this Section 10.05(a), Holders of a Security shall be treated as if they had the right to convert the Security solely into Common Stock at the then applicable Conversion Price. An adjustment made pursuant to this Section 10.05(a) shall become effective

immediately after the record date in the case of a dividend or distribution and shall become effective immediately after the effective date in the case of subdivision, combination or reclassification.

(b) In case the Company shall issue to all holders of Common Stock rights, warrants or options entitling such holders (for a period commencing no earlier than the date of distribution and expiring not more than 60 days after the date of distribution) to subscribe for or purchase shares of Common Stock (or securities convertible into Common Stock) at a price per share less than the average Common Stock Price for the 10 Trading Days immediately preceding the date the distribution of such rights, warrants or options was first publicly announced by the Company, the Conversion Price shall be decreased so that the Conversion Price shall equal the price determined by multiplying the Conversion Price in effect immediately prior to the record date for such issue by a fraction,

(i) the numerator of which shall be the number of shares of Common Stock outstanding on such date of public announcement, plus the number of shares which the aggregate subscription or purchase price for the total number of shares of Common Stock offered by the rights, warrants or options so issued (or the aggregate conversion price of the convertible securities offered by such rights, warrants or options) would purchase at such average Common Stock Price, and

(ii) the denominator of which shall be the number of shares of Common Stock outstanding on such date of public announcement plus the number of additional shares of Common Stock offered by such rights, warrants or options (or into which the convertible securities so offered by such rights, warrants or options are convertible).

*provided* that no adjustment will be made if Holders of the notes are entitled to participate in the distribution on substantially the same terms as holders of our Common Stock as if such Holders had converted their Securities solely into Common Stock immediately prior to such distribution at the then applicable Conversion Price. Such adjustment shall be made successively whenever any such rights, warrants or options are issued, and shall become effective immediately after such record date. If at the end of the period during which such rights, warrants or options are exercisable not all rights, warrants or options shall have been exercised, the adjusted Conversion Price shall be immediately readjusted to what it would have been upon application of the foregoing adjustment substituting the number of additional shares of Common Stock actually issued (or the number of shares of Common Stock issuable upon conversion of convertible securities actually issued) for the total number of shares of Common Stock offered (or convertible securities offered).

(c) In case the Company shall distribute to all holders of Common Stock any shares of Capital Stock of the Company (other than Common Stock) or evidences of its indebtedness, other securities or other assets, or shall distribute to

all holders of Common Stock, rights, warrants or options to subscribe for or purchase any of its securities (excluding (i) those rights, options and warrants referred to in Section 10.05(b); (ii) those dividends, distributions, subdivisions and combinations referred to in Section 10.05(a); and (iii) those dividends and distributions paid in cash referred to in Section 10.05(e)), then in each such case the Conversion Price shall be decreased so that the same shall equal the price determined by multiplying the Conversion Price in effect immediately prior to the date of such distribution by a fraction,

(i) the numerator of which shall be the Market Price on the record date for the determination of holders of Common Stock entitled to receive such distribution less the fair market value on such record date (as determined by the Board of Directors, whose determination shall be conclusive evidence of such fair market value) of the portion of the Capital Stock or evidences of indebtedness, securities or assets so distributed or of such rights, warrants or options, in each case applicable to one share of Common Stock, and

(ii) the denominator of which shall be the Market Price on such record date,

such adjustment to become effective immediately after the record date for such distribution; *provided* that if the numerator of the foregoing fraction is less than \$1.00 (including a negative amount), then in lieu of the foregoing adjustment, adequate provision shall be made so that each Holder shall have the right to receive upon conversion, in addition to the cash and Common Stock issuable upon such conversion, the distribution such Holder would have received had such Holder converted its Security solely into Common Stock at the then applicable Conversion Price immediately prior to the record date for such distribution; *provided* that no adjustment will be made if Holders of the notes are entitled to participate in the distribution on substantially the same terms as holders of our Common Stock as if such Holders had converted their Securities solely into Common Stock immediately prior to such distribution at the then applicable Conversion Price;

Notwithstanding the foregoing, if the distribution by the Company to all holders of its Common Stock consists of Capital Stock of, or similar equity interests in, a Subsidiary or other business unit of the Company (unless such Capital Stock or similar equity interests are distributed to holders in such distribution as if such holders had converted their Securities into Common Stock), the Conversion Price shall be decreased so that the same shall be equal to the rate determined by multiplying the Conversion Price in effect on the record date with respect to such distribution by a fraction:

(i) the numerator of which shall be the average Common Stock Price over the Spinoff Valuation Period; and

(ii) the denominator of which shall be the sum of (x) the average Common Stock Price over the ten (10) consecutive Trading Day period (the “**Spinoff Valuation Period**”) commencing on and including the fifth Trading Day after the date on which “ex-dividend trading” commences for such dividend or distribution on the New York Stock Exchange or such other national or regional exchange or market on which the Common Shares are then listed or quoted plus (y) the average fair market value (as determined by the Board of Directors and described in a resolution of the Board of Directors) over the Spinoff Valuation Period of the portion of the assets so distributed applicable to one share of Common Stock,

such adjustment to become effective immediately prior to the opening of business on the day following such record date; *provided* that the Company may in lieu of the foregoing adjustment make adequate provision so that each Holder shall have the right to receive upon conversion the amount of the distribution such holder would have received had such holder converted each Note on the record date with respect to such distribution. If any dividend or distribution of the type described in this Section 10.05(c) is declared but not so paid or made, such adjustment to the Conversion Price shall be reversed. In any case in which this paragraph is applicable, Section 10.05(a), Section 10.05(b) and the first paragraph of this Section 10.05(c) shall not be applicable.

(d) In case the Company or any Subsidiary of the Company makes a payment in respect of a tender or exchange offer, other than an odd-lot offer, to holders of our Common Stock to the extent that, together with any cash and the fair market value of any other consideration in respect of any tender or exchange offer by us or any of our subsidiaries for shares of our Common Stock consummated within the preceding 12 months not triggering a Conversion Price adjustment, exceeds an amount equal to 12.5% of the market capitalization of our Common Stock on the expiration date of the tender offer, the Conversion Price shall be decreased so that the same shall equal the price determined by multiplying the Conversion Price in effect immediately prior to the Expiration Time by a fraction,

(i) the numerator of which shall be the number of shares of Common Stock outstanding (including any tendered or exchanged shares) at the last time (the “**Offer Expiration Time**”) tenders or exchanges may be made pursuant to such tender or exchange offer (as it may be amended) multiplied by the Common Stock Price on the Trading Day next succeeding the Offer Expiration Time, and

(ii) the denominator of which shall be the sum of (x) the fair market value (determined as aforesaid) of the aggregate consideration payable to holders of Common Stock based on the acceptance (up to any maximum specified in the terms of the tender or exchange offer) of all shares of Common Stock validly tendered or exchanged and not

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withdrawn as of the Expiration Time (the shares deemed so accepted up to any such maximum being referred to as the “**Purchased Shares**”) and (y) the product of the number of shares of Common Stock outstanding (less any Purchased Shares) at the Offer Expiration Time and the Common Stock Price on the Trading Day next succeeding the Offer Expiration Time,

such adjustment to become effective immediately prior to the opening of business on the day following the Expiration Time. If the Company is obligated to purchase shares pursuant to any such tender or exchange offer, but the Company is permanently prevented by applicable law from effecting any such purchases or all such purchases are rescinded, the Conversion Price shall again be adjusted to be the Conversion Price that would then be in effect if such tender or exchange offer had not been made.

(e) In case the Company shall declare a cash dividend or cash distribution to all of the holders of Common Stock such that the aggregate cash dividends or cash distributions per share of Common Stock in any fiscal year exceeds \$0.02 (the “**Dividend Threshold Amount**”), the Conversion Price shall be decreased so that the Conversion Price shall equal the price determined by multiplying the Conversion Price in effect immediately prior to the record date for such dividend or distribution by a fraction,

(i) the numerator of which shall be the average of the Common Stock Price for the three consecutive Trading Days ending on the Trading Day immediately preceding the record date for such dividend or distribution (the “**Pre-Dividend Sale Price**”), minus the difference between the full amount of the dividend or distribution to the extent payable in cash applicable to one share of our Common Stock and the Dividend Threshold Amount, and

(ii) the denominator of which shall be the Pre-Dividend Sale Price,

such adjustment to become effective immediately after the record date for such dividend or distribution; *provided* that if the numerator of the foregoing fraction is less than \$1.00 (including a negative amount), then in lieu of the foregoing adjustment, adequate provision shall be made so that each Holder shall have the right to receive upon conversion, in addition to the cash and Common Stock issuable upon such conversion, the amount of cash such Holder would have received had such Holder converted its Security solely into Common Stock at the then applicable Conversion Price immediately prior to the record date for such cash dividend or cash distribution. If such cash dividend or cash distribution is not so paid or made, the Conversion Price shall again be adjusted to be the Conversion Price that would then be in effect if such dividend or distribution had not been declared.

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(f) In case of a tender or exchange offer made by a Person other than the Company or any Subsidiary of the Company for an amount that increases the offeror’s ownership of Common Stock to more than twenty-five percent (25%) of the Common Stock outstanding and shall involve the payment by such Person of consideration per share of Common Stock having a fair market value (as determined by the Board of Directors, whose determination shall be conclusive, and described in a resolution of the Board of Directors) that as of the Offer Expiration Time exceeds the Common Stock Price on the Trading Day next succeeding the Offer Expiration Time, and in which, as of the Offer Expiration Time the Board of Directors is not recommending rejection of the offer, the Conversion Price shall be decreased so that the same shall equal the price determined by multiplying the Conversion Price in effect immediately prior to the Offer Expiration Time by a fraction,

(i) the numerator of which shall be the number of shares of Common Stock outstanding (including any tendered or exchanged shares) at the Offer Expiration Time multiplied by the Common Stock Price on the Trading Day next succeeding the Offer Expiration Time, and

(ii) the denominator of which shall be the sum of (x) the fair market value (determined as aforesaid) of the aggregate consideration payable to holders of Common Stock based on the acceptance (up to any maximum specified in the terms of the tender or exchange offer) of all shares validly tendered or exchanged and not withdrawn as of the Offer Expiration Time (the shares deemed so accepted up to any such maximum being referred to as the “**Accepted Purchased Shares**”) and (y) the product of the number of shares of Common Stock outstanding (less any Accepted Purchased Shares) at the Offer Expiration Time and the Common Stock Price on the Trading Day next succeeding the Offer Expiration Time,

such adjustment to become effective immediately prior to the opening of business on the day following the Offer Expiration Time. If such Person is obligated to purchase shares pursuant to any such tender or exchange offer, but such Person is permanently prevented by applicable law from effecting any such purchases or all such purchases are rescinded, the Conversion Price shall again be adjusted to be the Conversion Price that would then be in effect if such tender or exchange offer had not been made. Notwithstanding the foregoing, the adjustment described in this Section 10.05(f) shall not be made if, as of the Offer Expiration Time, the offering documents with respect to such offer disclose a plan or intention to cause the Company to engage in any transaction described in Article 5.

(g) In any case in which this Section 10.05 shall require that an adjustment be made immediately following a record date established for purposes of this Section 10.05, the Company may elect to defer (but only until five Business Days following the filing by the Company with the Trustee of the certificate described in Section 10.09) issuing to the holder of any Security

converted after such record date the cash, shares of Common Stock and other Capital Stock of the Company issuable upon such conversion over and above the cash, shares of Common Stock and other Capital Stock of the Company issuable upon such conversion only on the basis of the Conversion Price prior to adjustment; and, in lieu of the cash and shares the issuance of which is so deferred, the Company shall issue or cause its transfer agents to issue due bills or other appropriate evidence of the right to receive such shares.

(h) Before taking any action which would cause an adjustment decreasing the Conversion Price so that the shares of Common Stock issuable upon conversion of the Securities would be issued for less than the par value of such Common Stock, the Company will take all corporate action which may be necessary in order that the Company may validly and legally issue fully paid and non-assessable shares of such Common Stock at such adjusted Conversion Price.

Section 10.06. *No Adjustment.* No adjustment in the Conversion Price shall be required unless the adjustment would require an increase or decrease of at least 1% in the Conversion Price as last adjusted; *provided* that any adjustments which by reason of this Section 10.06 are not required to be made shall be carried forward and taken into account in any subsequent adjustment. All calculations under this Article 10 shall be made to the nearest cent, with one-half cent rounded up, or to the nearest ten thousandth (0.0001) of a share, with each five hundred thousandth (0.00005) of a share being rounded up, as the case may be..

No adjustment need be made upon the issuance of Common Stock under any present or future employee benefits plan or program of the Company.

No adjustment need be made upon the issuance of Common Stock pursuant to (i) the exercise of any options, warrants or rights to purchase such Common Stock, (ii) the exchange of any exchangeable securities for such Common Stock or (iii) the conversion of any convertible securities into such Common Stock, in each case so long as such options, warrants, rights to purchase, exchangeable securities or convertible securities are outstanding as of the date on which the Securities are first issued.

No adjustment need be made for a change in the par value or a change to no par value of the Common Stock.

To the extent that the Securities become convertible into cash, no adjustment need be made thereafter as to the cash. Interest will not accrue on the cash.

Section 10.07. *Equivalent Adjustments.* If, as a result of an adjustment made pursuant to Section 10.05 above, the Holder of any Security thereafter surrendered for conversion shall become entitled to receive any shares of Capital Stock of the Company other than shares of Common Stock, thereafter the Conversion Price of such other shares so receivable upon conversion of any

Securities shall be subject to adjustment from time to time in a manner and on terms as nearly equivalent as practicable to the provisions with respect to Common Stock contained in this Article 10.

Section 10.08. *Adjustment for Tax Purposes.* The Company shall be entitled to make such reductions in the Conversion Price, in addition to those required by Section 10.05, as the Board of Directors in its discretion shall determine to be advisable in order that any stock dividends, subdivisions of shares, distributions of rights to purchase stock or other securities, or distributions of securities convertible into or exchangeable for stock hereafter made by the Company to its holders of Common Stock shall not be taxable to such holders.

Section 10.09. *Notice of Adjustment.* Whenever the Conversion Price is adjusted, or Holders become entitled to other securities or due bills, the Company shall promptly mail to Holders a notice of the adjustment and file with the Trustee an Officers' Certificate briefly stating the facts requiring the adjustment and the manner of computing it. The certificate shall be conclusive evidence of the correctness of such adjustment, absent manifest error, and the Trustee may conclusively assume that, unless and until such certificate is received by it, no such adjustment is required.

Section 10.10. *Notice of Certain Transactions.* In case:

- (a) the Company shall declare a dividend (or any other distribution) on the Common Stock; or
- (b) the Company shall authorize the granting to the holders of Common Stock of rights, warrants or options to subscribe for or purchase any share of any class or any other rights, warrants or options; or
- (c) of any reclassification of the Common Stock of the Company (other than a subdivision or combination of its outstanding Common Stock, or a change in par value, or from par value to no par value, or from no par value to par value), or of any consolidation, merger, or share exchange to which the Company is a party and for which approval of any holders of Common Stock is required, or of the sale or transfer of all or substantially all of the properties and assets of the Company; or
- (d) of the voluntary or involuntary dissolution, liquidation or winding-up of the Company;

the Company shall cause to be filed with the Trustee and the Conversion Agent and to be mailed to each Holder of Securities at its address appearing on the list provided for in Section 2.05, as promptly as possible but in any event at least ten days prior to the applicable date hereinafter specified, a notice stating (x) the date on which a record is to be taken for the purpose of such dividend, distribution or rights, warrants or options, or, if a record is not to be taken, the date as of which

the holders of Common Stock of record to be entitled to such dividend, distribution or rights are to be determined, or (y) the date on which such reclassification, consolidation, merger, share exchange, sale, transfer, dissolution, liquidation or winding-up is expected to become effective or occur, and the date as of which it is expected that holders of Common Stock of record shall be entitled to exchange their Common Stock for securities or other property deliverable upon such reclassification, consolidation, merger, share exchange, sale, transfer, dissolution, liquidation or winding-up. Failure to give such notice, or any defect therein, shall not affect the legality or validity of such dividend, distribution, reclassification, consolidation, merger, sale, share exchange, transfer, dissolution, liquidation or winding-up.

Section 10.11. *Effect of Reclassification, Consolidation, Merger, Share Exchange or Sale on Conversion Privilege.* If any of the following shall occur, namely: (i) any reclassification or change of outstanding shares of Common Stock (other than a change in par value, or from par value to no par value, or from no par value to par value, or as a result of a subdivision or combination); (ii) any consolidation, combination, merger or share exchange to which the Company is a party other than a merger in which the Company is the resulting or surviving corporation and which does not result in any reclassification of, or change (other than a change in name, or par value, or from par value to no par value, or from no par value to par value, or as a result of a subdivision or combination) in, outstanding shares of Common Stock; or (iii) any sale or conveyance of all or substantially all of the properties and assets of the Company, then the Company, or such successor or purchasing corporation, as the case may be, shall, as a condition precedent to such reclassification, change, consolidation, merger, share exchange, sale or conveyance, execute and deliver to the Trustee a supplemental indenture providing that the Holder of each Security then outstanding shall have the right to convert such Security into the kind and amount of cash, securities or other property receivable upon such reclassification, change, consolidation, merger, share exchange, sale or conveyance by a holder of the number of shares of Common Stock deliverable upon conversion of such Security solely into Common Stock at the then applicable Conversion Price immediately prior to such reclassification, change, consolidation, merger, share exchange, sale or conveyance. Such supplemental indenture shall provide for adjustments of the Conversion Price which shall be as nearly equivalent as may be practicable to the adjustments of the Conversion Price provided for in this Article 10. If, in the case of any such consolidation, merger, share exchange, sale or conveyance, the stock or other securities and property (including cash) receivable thereupon by a holder of Common Stock includes shares of Capital Stock or other securities and property of a corporation other than the successor or purchasing corporation, as the case may be, in such consolidation, merger, share exchange, sale or conveyance, then such supplemental indenture shall also be executed by such other corporation and shall contain such additional provisions to protect the interests of the Holders of the Securities as the Board of Directors shall reasonably consider necessary by reason of the foregoing. The provision of this

Section 10.11 shall similarly apply to successive consolidations, mergers, share exchanges, sales or conveyances. Notwithstanding the foregoing, a distribution by the Company to all or substantially all holders of Common Stock for which an adjustment to the Conversion Price or provision for conversion of the Securities may be made pursuant to Section 10.05 shall not be deemed to be a sale or conveyance of all or substantially all of the properties and assets of the Company for purposes of this Section 10.11.

In the event the Company shall execute a supplemental indenture pursuant to this Section 10.11, the Company shall promptly file with the Trustee an Opinion of Counsel stating that such supplemental indenture is authorized or permitted by this Indenture and an Officers' Certificate briefly stating the reasons therefor, the kind or amount of cash, securities or other property receivable by Holders of the Securities upon the conversion of their Securities after any such reclassification, change, consolidation, merger, share exchange, sale or conveyance, any adjustment to be made with respect thereto and that all conditions precedent have been complied with.

Section 10.12. *Trustee's Disclaimer.* The Trustee has no duty to determine when an adjustment under this Article 10 should be made, how it should be made or what such adjustment should be made, but may accept as conclusive evidence of the correctness of any such adjustment, and shall be fully protected in relying upon, the Officers' Certificate with respect thereto which the Company is obligated to file with the Trustee pursuant to Section 10.09. The Trustee shall not be accountable for and makes no representation as to the validity or value of any securities or assets issued upon conversion of Securities, and the Trustee shall not be responsible for the Company's failure to comply with any provisions of this Article 10. Each Conversion Agent (other than the Company or an Affiliate of the Company) shall have the same protection under this Section 10.12 as the Trustee.

The Trustee shall not be under any responsibility to determine the correctness of any provisions contained in any supplemental indenture executed pursuant to Section 10.11, but may accept as conclusive evidence of the correctness thereof, and shall be protected in relying upon, the Officers' Certificate with respect thereto which the Company is obligated to file with the Trustee pursuant to Section 10.11.

Section 10.13. *Voluntary Reduction.* The Company from time to time may reduce the Conversion Price by any amount for any period of time if such period is at least 20 Trading Days or such longer period as may be required by law and if the reduction is irrevocable during such period; if the Board of Directors determines, in good faith, that such decrease would be in the best interests of the Company; *provided* that in no event may the Conversion Price be less than the par value of a share of Common Stock. Any such determination by the Board of Directors shall be conclusive.

#### Section 10.14. *Conversion Value of Securities Tendered.*

(a) Holders tendering the Securities for conversion shall be entitled to receive, upon conversion of such Securities, cash and shares of Common Stock, the value of which (the "**Conversion Value**") shall be equal to the product of:

(i) (A) the aggregate principal amount of Securities to be converted divided by 1,000 multiplied by (B) the then applicable Conversion Rate; and

(ii) the average of the Common Stock Prices for the ten consecutive Trading Days (appropriately adjusted to take into account the occurrence during such period of stock splits, stock dividends and similar events) beginning on the second Trading Day immediately following the day the Securities are tendered for conversion (the "**Ten Day Average Closing Stock Price**").

(b) Subject to certain exceptions described below and under Sections 10.01(b) and 10.01(a)(iii), the Company shall deliver the Conversion Value to converting holders as follows:

- (i) an amount in cash (the “**Principal Return**”) equal to the lesser of (a) the Conversion Value of the Securities to be converted and (b) the aggregate principal amount of the Securities to be converted;
- (ii) if the Conversion Value of the Securities to be converted is greater than the Principal Return, an amount in whole shares (the “**Net Shares**”), determined as set forth below, equal to such aggregate Conversion Value less the Principal Return (the “**Net Share Amount**”); and
- (iii) an amount paid in cash, determined as set forth below, in lieu of any fractional shares of Common Stock.

The number of Net Shares to be paid shall be determined by dividing the Net Share Amount by the Ten Day Average Closing Stock Price, and rounding down to the nearest whole share. Holders of Securities will not receive fractional shares upon conversion of Securities. In lieu of fractional shares, Holders will receive cash for the value of the fractional shares, which cash payment shall be based on the Ten Day Average Closing Stock Price.

The Conversion Value, Principal Return, number of Net Shares, Net Share Amount and the cash payment for fractional shares shall be determined by the Company at the end of the ten consecutive Trading Day period beginning on the second Trading Day immediately following the day the Securities are tendered for conversion (the “**Determination Date**”).

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(c) The Company shall pay the Principal Return and cash for fractional shares and deliver the Net Shares, if any, as promptly as practicable after the Conversion Date, but in no event later than four Business Days thereafter. Except as provided in Section 10.02(c), delivery of the Principal Return, Net Shares and cash in lieu of fractional shares shall be deemed to satisfy the Company’s obligation to pay the principal amount of a converted Security and accrued but unpaid interest (including Contingent Interest and Liquidated Damages, if any) thereon. Any accrued interest (including Contingent interest and Liquidated Damages, if any) payable on a converted Security shall be deemed paid in full rather than canceled, extinguished or forfeited.

(d) Neither the Trustee nor the Conversion Agent has any duty to determine or calculate the Conversion Value, Principal Return, number of Net Shares, the Net Share Amount or any other computation required under this Article 10, all of which shall be determined by the Company (or the Trustee, as the case may be) in accordance with the provisions of this Indenture, and the Trustee and Conversion Agent shall not be under any responsibility to determine the correctness of any such determinations and/or calculations and may conclusively rely on the correctness thereof.

Section 10.15. *Simultaneous Adjustments.* In the event that this Article 10 requires adjustments to the Conversion Price under more than one of Sections 10.05(a) and (c), and the record dates for the distributions giving rise to such adjustments shall occur on the same date, then such adjustments shall be made by applying, first, the provisions of Section 10.05(c), as applicable, and, second, the provisions of Section 10.05(a). If more than one event requiring adjustment pursuant to Section 10.05 shall occur before completing the determination of the Conversion Price for the first event requiring such adjustment, then the Board of Directors (whose determination shall, if made in good faith, be conclusive) shall make such adjustments to the Conversion Price (and the calculation thereof) after giving effect to all such events as shall preserve for Holders the Conversion Price protection provided in Section 10.05.

## ARTICLE 11 MISCELLANEOUS

Section 11.01. *Trust Indenture Act Controls.* If any provision of this Indenture limits, qualifies, or conflicts with another provision which is required to be included in this Indenture by the TIA, the required provision shall control.

Section 11.02. *Notices.* Any request, demand, authorization, notice, waiver, consent or communication shall be in writing, in the English language and delivered in person or mailed by first-class mail, postage prepaid, addressed as follows, or transmitted by facsimile transmission (confirmed orally) to the following facsimile numbers:

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if to the Company, to:

American Equity Investment Life Holding Company  
5000 Westown Parkway, Suite 440  
West Des Moines, Iowa

if to the Trustee, to:

U.S. Bank National Association  
60 Livingston Avenue  
EP-MN-WS3C  
St. Paul, MN 55107-2292

The Company or the Trustee by notice given to the other in the manner provided above may designate additional or different addresses for subsequent notices or communications.

Any notice or communication given to a Holder shall be mailed to the Holder, by first-class mail, postage prepaid, at the Holder’s address as it appears on the registration books of the Registrar and shall be sufficiently given if so mailed within the time prescribed.

Failure to mail a notice or communication to a Holder or any defect in it shall not affect its sufficiency with respect to other Holders. If a notice or communication is mailed in the manner provided above, it is duly given, whether or not received by the addressee.

If the Company mails a notice or communication to the Holders, it shall mail a copy to the Trustee and each Registrar, Paying Agent, Conversion Agent or co-registrar.

Section 11.03. *Communication by Holders with Other Holders.* Holders may communicate pursuant to TIA Section 312(b) with other Holders with respect to their rights under this Indenture or the Securities. The Company, the Trustee, the Registrar, the Paying Agent, the Conversion Agent and anyone else shall have the protection of TIA Section 312(c).

Section 11.04. *Certificate and Opinion as to Conditions Precedent.* Upon any request or application by the Company to the Trustee to take or refrain from taking any action under this Indenture, the Company shall furnish to the Trustee:

(a) an Officers' Certificate stating that, in the opinion of the signers, all conditions precedent, if any, provided for in this Indenture relating to the proposed action have been complied with; and

(b) an Opinion of Counsel stating that, in the opinion of such counsel, all such conditions precedent have been complied with.

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In any case where several matters are required to be certified by, or covered by an opinion of, any specified Person, it is not necessary that all such matters be certified by, or covered by the opinion of, only one such Person, or that they be so certified or covered by only one document, but one such Person may certify or give an opinion with respect to some matters and one or more other such eligible and qualified Persons as to other matters, and any such Person may certify or give an opinion as to such matters in one or several documents.

Any certificate or opinion of an officer of the Company may be based, insofar as it relates to legal matters, upon a certificate or opinion of, or representations by, counsel, unless such officer knows, or in the exercise of reasonable care should know, that the certificate or opinion or representations with respect to the matters upon which his or her certificate or opinion is based are erroneous. Any such certificate or Opinion of Counsel may be based, insofar as it relates to factual matters, upon a certificate or opinion of, or representations by, an officer or officers of the Company stating the information on which counsel is relying unless such counsel knows, or in the exercise of reasonable care should know, that the certificate or opinion or representations with respect to such matters are erroneous.

Where any Person is required to make, give or execute two or more applications, requests, consents, certificates, statements, opinions or other instruments under this Indenture, they may, but need not, be consolidated and form one instrument.

Section 11.05. *Statements Required in Certificate or Opinion.* Each Officers' Certificate or Opinion of Counsel with respect to compliance with a covenant or condition provided for in this Indenture shall include:

(a) a statement that each person making such Officers' Certificate or Opinion of Counsel has read such covenant or condition;

(b) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such Officers' Certificate or Opinion of Counsel are based;

(c) a statement that, in the opinion of each such person, he has made such examination or investigation as is necessary to enable such person to express an informed opinion as to whether or not such covenant or condition has been complied with; and

(d) a statement that, in the opinion of such person, such covenant or condition has been complied with.

Section 11.06. *Separability Clause.* In case any provision in this Indenture or in the Securities shall be invalid, illegal or unenforceable, the

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validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

Section 11.07. *Rules by Trustee, Paying Agent, Conversion Agent and Registrar.* The Trustee may make reasonable rules for action by or a meeting of Holders. The Registrar, the Conversion Agent and the Paying Agent may make reasonable rules for their functions.

Section 11.08. *Legal Holidays.* A "Legal Holiday" is any day other than a Business Day. If any specified date (including a date for giving notice) is a Legal Holiday, the action shall be taken on the next succeeding day that is not a Legal Holiday, and, if the action to be taken on such date is a payment in respect of the Securities, no interest (including Contingent Interest and Liquidated Damages, if any), shall accrue for the intervening period.

Section 11.09. *Governing Law.* THIS INDENTURE AND EACH SECURITY SHALL BE DEEMED TO BE A CONTRACT MADE UNDER THE LAWS OF THE STATE OF NEW YORK, AND FOR ALL PURPOSES SHALL BE CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK.

Section 11.10. *No Recourse Against Others.* A director, officer, employee or stockholder, as such, of the Company shall not have any liability for any Obligations of the Company under the Securities or for any claim based on, in respect of or by reason of such Obligations or their creation. By accepting a Security, each Holder shall waive and release all such liability. The waiver and release shall be part of the consideration for the issue of the Securities.

Section 11.11. *Successors.* All agreements of the Company in this Indenture and the Securities shall bind its successor. All agreements of the Trustee in this Indenture shall bind its successor.

Section 11.12. *Multiple Originals.* This Indenture may be executed in any number of counterparts, each of which shall be an original, but such counterparts shall together constitute but one and the same instrument.



Section 11.13. *Table of Contents and Headings.* The Table of Contents and the headings of the Articles or Sections of this Indenture have been inserted for convenience of reference only, are not to be considered as part of this Indenture and shall in no way modify or restrict any of the terms or provisions hereof.

Section 11.14. *tax Treatment of the Securities.* The Company agrees, and by acceptance of a beneficial interest in a Security each Holder and any Beneficial Owner of a Security shall be deemed to agree, to treat, for United States federal income tax purposes, the Securities as debt instruments that are subject to Treasury regulation section 1.1275-4 or any successor provision (the “contingent

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payment regulations”). For United States federal income tax purposes, the Company further agrees, and by acceptance of a beneficial interest in a Security each Holder and any Beneficial Owner of a Security shall be deemed to agree (i) to treat the cash and the fair market value of any Common Stock received upon the conversion of a Security as a contingent payment for purposes of the contingent payment regulations, (ii) to accrue interest with respect to outstanding Securities as original issue discount for United States federal income tax purposes (*i.e.* Tax Original Issue Discount) according to the “noncontingent bond method” set forth in the contingent payment regulations, using the comparable yield of 8% compounded semi-annually, and (iii) to be bound by the Company’s determination of the “projected payment schedule” within the meaning of the contingent payment regulations, with respect to the Securities. Holders or Beneficial Owners may obtain the issue price, amount of Tax Original Issue Discount, issue date, comparable yield and projected payment schedule, by submitting a written request for it to the Company at the following address: 5000 Westown Parkway #440, West Des Moines, IA 50266.

The Company acknowledges and agrees, and by acceptance of a beneficial interest in a Security each Holder and any Beneficial Owner of a Security shall be deemed to acknowledge and agree, that (i) the comparable yield means the annual yield the Company would pay, as of the issue date, on a noncontingent, nonconvertible, fixed-rate debt instrument with terms and conditions otherwise similar to those of the Securities and (ii) the comparable yield and the projected payment schedule that a Holder or Beneficial Owner may obtain as described above do not constitute a representation by the Company regarding the actual amounts that will be paid on the Securities or the value of the Common Stock into which the Securities may be converted.

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IN WITNESS WHEREOF, the undersigned, being duly authorized, have executed this Indenture on behalf of the respective parties hereto as of the date first above written.

AMERICAN EQUITY INVESTMENT  
LIFE HOLDING COMPANY.

By: /s/ Wendy L. Carlson  
Name: Wendy L. Carlson  
Title: Chief Financial Officer and  
General Counsel

U.S. BANK NATIONAL  
ASSOCIATION, as Trustee

By: /s/ Richard Prokosch  
Name: Richard Prokosch  
Title: Vice President

EXHIBIT A

**[FORM OF FACE OF GLOBAL SECURITY]**

[Transfer Restricted Securities Legend – Include only on Transfer  
Restricted Securities]

[THIS SECURITY HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE “SECURITIES ACT”), OR ANY STATE OR OTHER SECURITIES LAWS. NEITHER THIS SECURITY NOR ANY INTEREST OR PARTICIPATION HEREIN MAY BE REOFFERED, SOLD, ASSIGNED, TRANSFERRED, PLEDGED, ENCUMBERED OR OTHERWISE DISPOSED OF IN THE ABSENCE OF SUCH REGISTRATION OR UNLESS SUCH TRANSACTION IS EXEMPT FROM, OR NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT. BY ITS ACQUISITION HEREOF OR OF A BENEFICIAL INTEREST HEREIN, THE HOLDER (1) REPRESENTS THAT IT IS A “QUALIFIED INSTITUTIONAL BUYER” (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT (“RULE 144A”)) AND IS PURCHASING IN COMPLIANCE WITH RULE 144A UNDER THE SECURITIES ACT, (2) AGREES NOT TO OFFER, SELL OR OTHERWISE TRANSFER SUCH SECURITY PRIOR TO THE DATE WHICH IS THE LATER OF (X) TWO YEARS (OR SUCH SHORTER PERIOD OF TIME AS PERMITTED BY RULE 144(k) OF THE SECURITIES ACT) AFTER THE LATER OF THE LAST DATE OF ORIGINAL ISSUANCE OF THIS SECURITY (OR ANY PREDECESSOR OF THIS SECURITY) AND THE LAST DATE ON WHICH AMERICAN EQUITY INVESTMENT LIFE HOLDING COMPANY OR ANY AFFILIATE OF AMERICAN EQUITY INVESTMENT LIFE HOLDING COMPANY WAS THE OWNER OF THIS SECURITY (OR ANY PREDECESSOR OF THIS SECURITY) AND (Y) SUCH LATER DATE, IF ANY, AS MAY BE REQUIRED BY APPLICABLE LAW (THE “RESALE RESTRICTION TERMINATION DATE”) EXCEPT (A) TO AMERICAN EQUITY INVESTMENT LIFE HOLDING COMPANY OR ANY SUBSIDIARY THEREOF, (B)

PURSUANT TO A REGISTRATION STATEMENT WHICH HAS BEEN DECLARED EFFECTIVE UNDER THE SECURITIES ACT AND WHICH CONTINUES TO BE EFFECTIVE AT THE TIME OF SUCH TRANSFER, (C) PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT PROVIDED BY RULE 144 UNDER THE SECURITIES ACT (IF AVAILABLE) OR (D) FOR SO LONG AS THE SECURITIES ARE ELIGIBLE FOR RESALE PURSUANT TO RULE 144A, TO A PERSON IT REASONABLY BELIEVES IS A “QUALIFIED INSTITUTIONAL BUYER” AS DEFINED IN RULE 144A THAT PURCHASES FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER TO WHOM NOTICE IS GIVEN THAT THE TRANSFER IS BEING MADE IN RELIANCE ON RULE 144A AND (3) AGREES THAT IT WILL GIVE TO EACH PERSON TO WHOM THIS SECURITY IS TRANSFERRED A NOTICE SUBSTANTIALLY TO THE

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EFFECT OF THIS LEGEND; AND, IN EACH OF THE FOREGOING CASES, TO REQUIRE THAT A CERTIFICATE OF TRANSFER IN THE FORM APPEARING ON THE OTHER SIDE OF THIS SECURITY IS COMPLETED AND DELIVERED BY THE TRANSFEROR TO AMERICAN EQUITY INVESTMENT LIFE HOLDING COMPANY AND THE TRUSTEE (WITH RESPECT TO TRANSFERS OF SECURITIES) OR THE TRANSFER AGENT (WITH RESPECT TO TRANSFERS OF COMMON STOCK). THIS LEGEND WILL BE REMOVED UPON THE REQUEST OF THE HOLDER AFTER THE RESALE RESTRICTION TERMINATION DATE.]

[FOR PURPOSES OF SECTIONS 1272, 1273 AND 1275 OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED (THE “CODE”), THIS SECURITY IS BEING ISSUED WITH TAX ORIGINAL ISSUE DISCOUNT. THE ISSUE PRICE OF THIS SECURITY IS \$1,000 OF PRINCIPAL AMOUNT, AND THE ISSUE DATE OF THIS SECURITY IS DECEMBER 6, 2004. IN ADDITION, THIS SECURITY IS SUBJECT TO UNITED STATES FEDERAL INCOME TAX REGULATIONS GOVERNING CONTINGENT PAYMENT DEBT INSTRUMENTS. FOR PURPOSES OF SECTIONS 1272, 1273 AND 1275 OF THE CODE, THE COMPARABLE YIELD OF THIS SECURITY IS 8% COMPOUNDED SEMI-ANNUALLY (WHICH WILL BE TREATED AS THE YIELD TO MATURITY FOR UNITED STATES FEDERAL INCOME TAX PURPOSES).

FOR UNITED STATES FEDERAL INCOME TAX PURPOSES, AMERICAN EQUITY INVESTMENT LIFE HOLDING COMPANY AGREES, AND BY ACCEPTANCE OF A BENEFICIAL INTEREST IN THIS SECURITY EACH HOLDER AND ANY BENEFICIAL OWNER OF THIS SECURITY SHALL BE DEEMED TO HAVE AGREED, (1) TO TREAT THIS SECURITY AS A DEBT INSTRUMENT THAT IS SUBJECT TO TREASURY REGULATIONS SECTION 1.1275-4 OR ANY SUCCESSOR PROVISION (THE “**CONTINGENT PAYMENT REGULATIONS**”), (2) TO TREAT THE CASH AND THE FAIR MARKET VALUE OF ANY COMMON STOCK RECEIVED UPON CONVERSION OF THIS SECURITY AS A CONTINGENT PAYMENT FOR PURPOSES OF THE CONTINGENT PAYMENT REGULATIONS, (3) TO ACCRUE INTEREST WITH RESPECT TO THIS SECURITY AS ORIGINAL ISSUE DISCOUNT FOR UNITED STATES FEDERAL INCOME TAX PURPOSES ACCORDING TO THE “NONCONTINGENT BOND METHOD” SET FORTH IN THE CONTINGENT PAYMENT REGULATIONS AND (4) TO BE BOUND BY AMERICAN EQUITY INVESTMENT LIFE HOLDING COMPANY’S DETERMINATION OF THE “COMPARABLE YIELD” AND “PROJECTED PAYMENT SCHEDULE,” EACH WITHIN THE MEANING OF THE CONTINGENT PAYMENT REGULATIONS, WITH RESPECT TO THIS SECURITY.]

[Global Securities Legend – Include only on Global Securities]

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[UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY TO THE COMPANY OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY (AND ANY PAYMENT HEREON IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL SINCE THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN. TRANSFERS OF THIS GLOBAL SECURITY SHALL BE LIMITED TO TRANSFERS TO NOMINEES OF THE DEPOSITORY TRUST COMPANY OR TO A SUCCESSOR THEREOF OR SUCH SUCCESSOR’S NOMINEE AND TRANSFERS OF PORTIONS OF THIS GLOBAL SECURITY SHALL BE LIMITED TO TRANSFERS MADE IN ACCORDANCE WITH THE RESTRICTIONS SET FORTH IN THE INDENTURE REFERRED TO ON THE REVERSE HEREOF.]

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## AMERICAN EQUITY INVESTMENT LIFE HOLDING COMPANY.

### 5.25% Contingent Convertible Senior Note Due 2024

No.: \_\_\_\_\_ CUSIP: [ \_\_\_\_\_ ]\*

Issue Date: \_\_\_\_\_ Principal Amount: \_\_\_\_\_

American Equity Investment Life Holding Company, a Delaware corporation, promises to pay to [Cede & Co.]\* or registered assigns, [the principal amount of \$ \_\_\_\_\_] [the principal amount as set forth on Schedule I hereto]\*\*, on December 6, 2024, subject to the further provisions of this Security set forth on the reverse hereof, which further provisions shall for all purposes have the same effect as if set forth at this place. This Security is convertible as specified on the other side of this Security.

Interest Payment Dates: June 6 and December 6, commencing June 6, 2005.

American Equity Investment Life Holding  
Company

By: \_\_\_\_\_

Name:

Title:

\_\_\_\_\_  
\* For Rule 144A Global Security only

\*\* Include only on Global Security

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## TRUSTEE'S CERTIFICATE OF AUTHENTICATION

U.S. Bank National Association, as Trustee, certifies that this is one of the Securities referred to in the within-mentioned Indenture.

By: \_\_\_\_\_

Authorized Signatory

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

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## [FORM OF REVERSE SIDE OF NOTE]

### AMERICAN EQUITY INVESTMENT LIFE HOLDING COMPANY

#### 5.25% Contingent Convertible Senior Note Due 2024

#### (1) Interest.

This Security will bear interest from December 6, 2004 or from the most recent date to which interest has been paid or duly provided for, quarterly in arrears on June 6 and December 6 of each year (each, an **"Interest Payment Date"**), subject to Section 11.08 of the Indenture, commencing June 6, 2005. The Company will pay interest on any overdue principal amount at the interest rate borne by the Securities at the time such interest on the overdue principal amount accrues, compounded quarterly, and it shall pay interest on overdue installments of interest and Contingent Interest and Liquidated Damages, if any (without regard to any applicable grace period), at the same interest rate, compounded quarterly. Interest (including Contingent Interest and Liquidated Damages, if any) on the Securities will be computed on the basis of a 360-day year comprised of twelve 30-day months.

The Company shall pay additional interest (**"Contingent Interest"**) to the Holders during any six-month period (a **"Contingent Interest Period"**) from and including an Interest Payment Date to but excluding the next Interest Payment Date, commencing with the six-month period ending June 6, 2012, if the average Trading Price per Security for the five Trading Days ending on the third Trading Day immediately preceding the first day of the applicable Contingent Interest Period (the **"Contingent Interest Average Trading Price"**) equals 120% or more of the principal amount of such Security. The amount of Contingent Interest payable per \$1,000 principal amount of Securities in respect of any Contingent interest Period shall equal 0.50% per annum on the Contingent Interest Average Trading Price. The Company will pay Contingent Interest, if any, in the same manner and at the same time as it will pay interest as described above.

Upon determination that Holders will be entitled to receive Contingent Interest for a Contingent Interest Period, on or prior to the first day of such Contingent Interest Period, the Company shall issue a press release and notify the Trustee promptly in writing.

#### (2) Method of Payment.

The Company will pay interest (including Contingent Interest and Liquidated Damages, if any) on this Security to the Person who is the registered Holder of this Security at the close of business on May 20 or November 20 (each, a **"Record Date"**), as the case may be, immediately preceding the related Interest Payment Date. Subject to the terms and conditions of the Indenture, the Company

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will make all payments and deliveries in respect of the Redemption Price, Repurchase Price, Change in Control Repurchase Price and the principal amount at Stated Maturity, as the case may be, to the Holder who surrenders a Security to a Paying Agent to collect such payments in respect of the Security. The Company will pay cash amounts in money of the United States that at the time of payment is legal tender for payment of public and private debts. However, the Company may pay interest (including Contingent interest and Liquidated Damages, if any), the Redemption Price, Repurchase Price, Change in Control Repurchase Price and the principal amount at Stated Maturity, as the case may be, to a Holder holding Securities in definitive form by check or wire payable in such money; *provided* that a Holder holding Securities in definitive form with an aggregate principal amount in excess of \$1,000,000 may request payment by wire transfer in immediately available funds to an account in North America at the election of such Holder. The Company may mail an interest check to the Holder's registered address. Notwithstanding the foregoing, so long as this Security is registered in the name of a Depositary or its nominee, all payments hereon shall be made by wire transfer of immediately available funds to the account of the Depositary or its nominee.

(3) Paying Agent, Conversion Agent and Registrar.

Initially, U.S. Bank National Association (the “**Trustee**”) will act as Paying Agent, Conversion Agent and Registrar. The Company may appoint and change any Paying Agent, Conversion Agent or Registrar without notice, other than notice to the Trustee; *provided* that the Company will maintain at least one Paying Agent having an office or agency in the State of New York, City of New York, Borough of Manhattan, which shall initially be an office or agency of the Trustee. The Company or any of its Subsidiaries or any of their Affiliates may act as Paying Agent, Conversion Agent or Registrar.

(4) Indenture.

The Company issued the Securities under an Indenture dated as of December 6, 2004 (the “**Indenture**”), between the Company and the Trustee. The terms of the Securities include those stated in the Indenture and those made part of the Indenture by reference to the Trust Indenture Act of 1939, as in effect from time to time (the “**TIA**”). Capitalized terms used herein and not defined herein have the meanings ascribed thereto in the Indenture. The Securities are subject to all such terms, and Holders are referred to the Indenture and the TIA for a statement of those terms.

The Securities are senior unsecured obligations of the Company and may be issued in unlimited principal amount under the Indenture. The Indenture does not limit other indebtedness of the Company, secured or unsecured.

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(5) Redemption at the Option of the Company.

No sinking fund is provided for the Securities. Beginning on December 15, 2011 and during the periods thereafter to maturity, the Securities are redeemable as a whole at any time, or in part from time to time, in any integral multiple of \$1,000, at the option of the Company for cash at a Redemption Price equal to 100% of the principal amount, together with accrued but unpaid interest (including Contingent Interest and Liquidated Damages, if any) thereon, up to but not including the Redemption Date; *provided* that, if the Redemption Date is between the close of business on a Record Date and the opening of business on the related Interest Payment Date, interest will be payable to the Holders in whose names the Securities are registered at the close of business on the relevant Record Date.

Notice of redemption pursuant to paragraph 5 of this Security will be mailed at least 30 days but not more than 60 days before the Redemption Date to each Holder of Securities to be redeemed at the Holder’s registered address. If money sufficient to pay the Redemption Price of all Securities (or portions thereof) to be redeemed on the Redemption Date is deposited with the Paying Agent prior to 11:00 a.m., New York City time, on the Redemption Date, immediately after such Redemption Date, interest (including Contingent Interest and Liquidated Damages, if any) shall cease to accrue on such Securities or portions thereof. Securities in denominations larger than \$1,000 of principal amount may be redeemed in part but only in integral multiples of \$1,000 of principal amount.

(6) Repurchase By the Company at the Option of the Holder on Specified Dates; Repurchase at the Option of the Holder Upon a Change in Control.

Subject to the terms and conditions of the Indenture, the Company shall become obligated to repurchase, at the option of the Holder, all or a portion of the Securities held by such Holder, in any integral multiple of \$1,000, on December 15, 2011, December 15, 2014 and December 15, 2019 (each, a “**Repurchase Date**”), for cash at a price per Security equal to 100% of the aggregate principal amount of the Security (the “**Repurchase Price**”), together with accrued but unpaid interest (including Contingent Interest and Liquidated Damages, if any) thereon, up to but not including the Repurchase Date upon delivery of a Repurchase Notice containing the information set forth in the Indenture, together with the Securities subject thereto, at any time from the opening of business on the date that is 30 Business Days prior to such Repurchase Date until the close of business on the Business Day prior to such Repurchase Date, and upon delivery of the Securities to the Paying Agent by the Holder as set forth in the Indenture.

At the option of the Holder and subject to the terms and conditions of the Indenture, the Company shall become obligated to repurchase the Securities held by such Holder after the occurrence of a Change in Control of the Company for a Change in Control Repurchase Price equal to 100% of the principal amount thereof plus accrued but unpaid interest (including Contingent Interest and

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Liquidated Damages, if any) thereon, up to but not including the Change in Control Repurchase Date which Change in Control Repurchase Price shall be paid in cash (*provided* that if the Change in Control Repurchase Date is between the close of business on a Record Date and the opening of business on the related Interest Payment Date, accrued but unpaid interest will be payable to the Holders in whose names the Securities are registered at the close of business on the relevant Record Date). Holders have the right to withdraw any Repurchase Notice or Change in Control Repurchase Notice, as the case may be, by delivering to the Paying Agent a written notice of withdrawal in accordance with the provisions of the Indenture.

If cash sufficient to pay the Repurchase Price or Change in Control Repurchase Price, as the case may be, and accrued but unpaid interest (including Contingent Interest and Liquidated Damages, if any) on all Securities or portions thereof to be repurchased as of the Repurchase Date or the Change in Control Repurchase Date, as the case may be, is held by the Paying Agent by 11:00 a.m., New York City time, on the Business Day immediately following the Repurchase Date or the Change in Control Repurchase Date, interest (including Contingent interest and Liquidated Damages, if any) shall cease to accrue on such Securities (or portions thereof) as of such Repurchase Date or Change in Control Repurchase Date, and the Holder thereof shall have no other rights as such, other than the right to receive the Repurchase Price or Change in Control Repurchase Price, as the case may be, and interest (including Contingent Interest and Liquidated Damages, if any) upon surrender of such Security.

(7) Conversion.

Upon satisfaction of the conditions set forth in Section 10.01(a) of the Indenture, a Holder of a Security may convert any portion of the principal amount of any Security that is an integral multiple of \$1,000 into cash and fully paid and non-assessable shares (calculated as to each conversion to the nearest 1/10000th of a share) of Common Stock in accordance with the provisions of Section 10.14 of the Indenture; *provided* that if such Security is called

for redemption, the conversion right will terminate at the close of business on the second Business Day immediately preceding the Redemption Date of such Security (unless the Company shall default in making the redemption payment when due, in which case the conversion right shall terminate at the close of business on the date such default is cured and such Security is redeemed). Such conversion right shall commence on the initial issuance date of the Securities and expire at the close of business on the date of maturity, subject, in the case of conversion of any Global Security, to any Applicable Procedures. The Conversion Price shall, as of the date of the Indenture, initially be \$14.47 per share of Common Stock. The Conversion Rate shall, as of the date of the Indenture, initially be approximately 69.1085. The Conversion Price and Conversion Rate will be adjusted under the circumstances specified in the Indenture. Upon conversion, no adjustment for interest (including Contingent Interest and Liquidated Damages, if any) or dividends will be made. No fractional shares will be issued upon conversion; in

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lieu thereof, an amount will be paid in cash based upon the Ten Day Average Closing Stock Price (as defined in the Indenture). Except as provided in Section 10.02(c) of the Indenture, delivery of the Principal Return, Net Shares and cash in lieu of fractional shares shall be deemed to satisfy the Company's obligation to pay the principal amount of a converted Security and accrued but unpaid interest (including Contingent Interest and Liquidated Damages, if any) thereon. Any accrued interest (including Contingent Interest and Liquidated Damages, if any) payable on a converted Security will be deemed paid in full, rather than canceled, extinguished or forfeited.

In addition, following certain corporate transactions as set forth in Sections 10.01(a)(iii)(A) and 10.01(a)(iii)(B) that occur on or prior to December 15, 2011 and that constitute a Change in Control (other than relating to the composition of the Board of Directors as described in clause (d) of the definition of Change in Control in Section 1.01) and for which 10% or more of the fair market value of the consideration for the Common Stock (as determined by the Board of Directors) in the corporate transaction consists of (i) cash, (ii) other property or (iii) securities that are not traded or scheduled to be traded immediately following such transaction on a U.S. national securities exchange or the Nasdaq National Market, a Holder who elects to convert its Securities in connection with such corporate transaction will be entitled to receive Additional Shares of Common Stock upon conversion in certain circumstances.

To convert a Security, a Holder must (a) complete and manually sign the conversion notice set forth below and deliver such notice to the Conversion Agent, (b) surrender the Security to the Conversion Agent, (c) furnish appropriate endorsements and transfer documents if required by the Registrar or the Conversion Agent, (d) pay any transfer or other tax, if required and (e) if the Security is held in book-entry form, complete and deliver to the Depositary appropriate instructions pursuant to the Applicable Procedures. If a Holder surrenders a Security for conversion between the close of business on a Record Date and the opening of business on the related Interest Payment Date, the Security must be accompanied by payment of an amount equal to the interest (including Contingent Interest and Liquidated Damages, if any) payable on such Interest Payment Date on the principal amount of the Security or portion thereof then converted; *provided* that no such payment shall be required if such Security has been called for redemption on a Redemption Date within the period between close of business on such Record Date and the opening of business on such Interest Payment Date, or if such Security is surrendered for conversion on the Interest Payment Date. A Holder may convert a portion of a Security equal to \$1,000 or any integral multiple thereof.

A Security in respect of which a Holder has delivered a Repurchase Notice or a Change of Control Repurchase Notice exercising the option of such Holder to require the Company to repurchase such Security as provided in Section 3.08 or Section 3.09, respectively, of the Indenture may be converted only if such notice of exercise is withdrawn in accordance with the terms of the Indenture.

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(8) Denominations; Transfer; Exchange.

The Securities are in fully registered form, without coupons, in denominations of \$1,000 of principal amount and integral multiples of \$1,000. A Holder may transfer or exchange Securities in accordance with the Indenture. The Registrar may require a Holder, among other things, to furnish appropriate endorsements and transfer documents and to pay any taxes and fees required by law or permitted by the Indenture. The Registrar need not transfer or exchange any Securities selected for redemption (except, in the case of a Security to be redeemed in part, the portion of the Security not to be redeemed), or any Securities in respect of which a Repurchase Notice or a Change in Control Repurchase Notice has been given and not withdrawn (except, in the case of a Security to be repurchased in part, the portion of the Security not to be repurchased), or any Securities for a period of 15 days before the mailing of a notice of redemption of Securities to be redeemed.

(9) Persons Deemed Owners.

The registered Holder of this Security may be treated as the owner of this Security for all purposes.

(10) Amendment; Waiver.

Subject to certain exceptions set forth in the Indenture, (i) the indenture or the Securities may be amended with the written consent of the Holders of at least a majority in aggregate principal amount of the Securities at the time outstanding and (ii) certain defaults may be waived with the written consent of the Holders of a majority in aggregate principal amount of the Securities at the time outstanding. Subject to certain exceptions set forth in the Indenture, without the consent of any Holder, the Company and the Trustee may amend the Indenture or the Securities (i) to cure any ambiguity, omission, defect or inconsistency, or make any other change that does not adversely affect the rights of any Holder in any material respect, (ii) to comply with Article 5 or Section 10.11 of the Indenture, (iii) to make provisions with respect to the conversion right of Holders pursuant to the requirements of Section 10.01 of the Indenture, (iv) to evidence and provide for the acceptance of appointment under the Indenture by a successor Trustee, or (v) to comply with the provisions of the TIA or any requirement of the SEC in connection with the qualification of the Indenture under the TIA.

(11) Defaults and Remedies.

Except as set forth in the Indenture, if an Event of Default occurs and is continuing, the Trustee or the Holders of not less than 25% in principal amount of Securities then outstanding may declare all the Securities to be due and payable in the manner, at the time and with the effect provided in the Indenture. Holders of Securities may not enforce the Indenture or the Securities except as provided in the Indenture. The Trustee is not obligated to enforce the Indenture or the

Securities unless it has received security or indemnity reasonably satisfactory to it. The Indenture permits, subject to certain limitations therein provided, Holders of a majority in aggregate principal amount of the Securities at the time outstanding to direct the Trustee in its exercise of any trust or power. The Trustee may withhold from Holders of Securities notice of any continuing Default or Event of Default (except a default in payment of principal or interest when due, for any reason) if it determines in good faith that withholding notice is in the interests of Holders.

(12) Trustee Dealings with the Company.

Subject to certain limitations imposed by the TIA, the Trustee under the Indenture, in its individual or any other capacity, may become the owner or pledgee of Securities and may otherwise deal with and collect obligations owed to it by the Company or its Affiliates and may otherwise deal with the Company or its Affiliates with the same rights it would have if it were not Trustee.

(13) No Recourse Against Others.

A director, officer, employee or shareholder, as such, of the Company shall not have any liability for any obligations of the Company under the Securities or the Indenture or for any claim based on, in respect of or by reason of such obligations or their creation. By accepting a Security, each Holder waives and releases all such liability. The waiver and release are part of the consideration for the issue of the Securities.

(14) Ranking.

The Securities shall be unsecured senior obligations of the Company and shall rank equally in right of payment with any other existing and future senior indebtedness of the Company and senior to any future subordinated indebtedness of the Company.

(15) Authentication.

This Security shall not be valid until an authorized signatory of the Trustee manually signs the Trustee's Certificate of Authentication on the other side of this Security.

(16) Abbreviations.

Customary abbreviations may be used in the name of a Holder or an assignee, such as TEN COM ("**Tenants In Common**"), TEN ENT ("**Tenants By The Entireties**"), JT TEN ("**Joint Tenants With Right Of Survivorship And Not As Tenants In Common**"), CUST ("**Custodian**") and U/G/M/A ("**Uniform Gift To Minors Act**").

(17) Governing Law.

THE LAWS OF THE STATE OF NEW YORK SHALL GOVERN THE INDENTURE AND THIS SECURITY.

(18) CUSIP Numbers.

Pursuant to a recommendation promulgated by the Committee on Uniform Security Identification Procedures, the Company has caused CUSIP numbers to be printed on the Securities as a convenience to the Holders of the Securities. No representation is made as to the accuracy of such numbers as printed on the Securities and reliance may be placed only on the other identification numbers printed hereon.

### ASSIGNMENT FORM

To assign this Security, fill in the form below

I or we assign and transfer this Security to

(Insert assignee's soc. sec. or tax ID no.)

(Print or type assignee's name, address and zip code)

and irrevocably appoint \_\_\_\_\_ agent to transfer this Security on the books of the Company. The agent may substitute another to act for him.

Date: \_\_\_\_\_

### CONVERSION NOTICE

To convert this Security into Cash and Common Stock of the Company, check the box o

To convert only part of this Security, state the principal amount to be converted (which must be \$1,000 or an integral multiple of \$1,000):

If you want the stock certificate made out in another person's name fill in the form below:

(Insert the other person's soc. sec. tax ID no.)

(Print or type other person's name, address and zip code)

Your Signature: \_\_\_\_\_

Signature Guaranteed

Participant in a Recognized Signature  
Guarantee Medallion Program

By: \_\_\_\_\_  
Authorized Signatory

A-1-14

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**FORM OF REPURCHASE NOTICE**

To: American Equity Investment Life Holding Company

The undersigned registered holder of this Security requests and instructs the Company to repurchase this Security, or the portion hereof (which is \$1,000 principal amount or a multiple thereof) designated below, on the date specified below, in accordance with the terms and conditions specified in paragraph 6 of this Security and the Indenture referred to in this Security and directs that the check in payment for this Security or the portion thereof and any Securities representing the portion of principal amount hereof not to be so repurchased, be issued and delivered to the registered holder hereof unless a different name has been indicated below. If any portion of this Security not repurchased is to be issued in the name of a Person other than the undersigned, the undersigned shall pay all transfer taxes payable with respect thereto.

Dated:

\_\_\_\_\_  
Signature(s)

Fill in for registration of Securities not  
repurchased if to be issued other than  
to and in the name of registered holder:

(Name)

(Street Address)

(City, state and zip code)

Please print name and address

principal amount to be repurchased (if less than all): \$ ,000

date of requested repurchase: •, 20  
(specify either •, 2011, 2014 or 2019)

A-1-15

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**FORM OF OPTION TO ELECT REPURCHASE  
UPON A CHANGE IN CONTROL**

To: American Equity Investment Life Holding Company

The undersigned registered holder of this Security hereby acknowledges receipt of a notice from American Equity Investment Life Holding Company (the "Company") as to the occurrence of a Change in Control with respect to the Company and requests and instructs the Company to repurchase this Security, or the portion hereof (which is \$1,000 principal amount or a multiple thereof) designated below, in accordance with the terms of the Indenture referred to in this Security and directs that the check in payment for this Security or the portion thereof and any Securities representing any unreleased principal amount hereof, be issued and delivered to the registered holder hereof unless a different name has been indicated below. If any portion of this Security not repurchased is to be issued in the name of a Person other than the undersigned, the undersigned shall pay all transfer taxes payable with respect thereto.

Dated:

\_\_\_\_\_  
Signature(s)

Fill in for registration of Securities not repurchased if to be issued other than to and in the name of registered holder:

(Name)

(Street Address)

(City, state and zip code)

Please print name and address

principal amount to be repurchased (if less than all): \$ ,000

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SCHEDULE I\*

AMERICAN EQUITY INVESTMENT LIFE HOLDING COMPANY  
5.25% Contingent Convertible Senior Notes Due 2024

No:

Date	Principal Amount	Notation
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\* Include only on Global Security

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EXHIBIT B

Transfer Certificate

In connection with any transfer of any of the Securities within the period prior to the expiration of the holding period applicable to the sales thereof under Rule 144(k) under the Securities Act of 1933, as amended (the “**Securities Act**”) (or any successor provision), the undersigned registered owner of this Security hereby certifies with respect to \$ principal amount of the above-captioned Securities presented or surrendered on the date hereof (the “**Surrendered Securities**”) for registration of transfer, or for exchange or conversion where the securities deliverable upon such exchange or conversion are to be registered in a name other than that of the undersigned registered owner (each such transaction being a “transfer”), that such transfer complies with the restrictive legend set forth on the face of the Surrendered Securities for the reason checked below:

- ☐ The transfer of the Surrendered Securities complies with Rule 144A under the U.S. Securities Act of 1933, as amended (the “**Securities Act**”); or
- ☐ The transfer of the Surrendered Securities is pursuant to an exemption from the registration requirement of the Securities Act provided by Rule 144 thereunder; or
- ☐ The transfer of the Surrendered Securities is pursuant to an effective registration statement under the Securities Act; or
- ☐ A transfer of the Surrendered Securities is made to the Company or any of its subsidiaries.

The undersigned confirms that, to the undersigned’s knowledge, such Securities are not being transferred to an “affiliate” of the Company as defined in Rule 144 under the Securities Act (an “Affiliate”).

Date: \_\_\_\_\_

\_\_\_\_\_  
Signature(s)

(If the registered owner is a corporation, partnership or fiduciary, the title of the Person signing on behalf of such registered owner must be stated.)

Signature(s)e Guaranteed  
\_\_\_\_\_



By: \_\_\_\_\_  
Authorized Signatory

B-1

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**SCHEDULE A**

The following table sets forth the number of Additional Shares to be received per \$1,000 principal amount of Securities:

[to come]

B-1

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## REGISTRATION RIGHTS AGREEMENT

Dated as of December 6, 2004

by and among

AMERICAN EQUITY INVESTMENT LIFE HOLDING COMPANY,

DEUTSCHE BANK SECURITIES INC.,

RAYMOND JAMES &amp; ASSOCIATES, INC., and

ADVEST, INC.

5.25% Contingent Convertible Senior Notes Due 2024

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## REGISTRATION RIGHTS AGREEMENT

This Registration Rights Agreement (this “Agreement”) is dated as of December 6, 2004, by and among American Equity Investment Life Holding Company, an Iowa corporation (the “Company”), and Deutsche Bank Securities Inc., Raymond James & Associates, Inc. and Advest, Inc. (the “Initial Purchasers”).

This Agreement is entered into in connection with the Purchase Agreement dated December 1, 2004 (the “Purchase Agreement”) between the Company and the Initial Purchasers, which provides for the sale by the Company to the Initial Purchasers of \$175,000,000 aggregate principal amount of the Company’s 5.25% Contingent Convertible Senior Notes Due 2024 (the “Firm Notes”), plus up to an additional \$75,000,000 aggregate principal amount of the same which Deutsche Bank Securities Inc. may subsequently elect to purchase pursuant to the terms of the Purchase Agreement (the “Option Notes” and, together with the Firm Notes, the “Notes”), which are convertible into cash and common stock, par value \$1.00 per share, of the Company (the “Underlying Shares”). The Notes are being issued pursuant to an Indenture dated as of the date hereof (the “Indenture”), by and between the Company and U.S. Bank National Association, as Trustee.

In order to induce the Initial Purchasers to enter into the Purchase Agreement, the Company has agreed to provide the registration rights set forth in this Agreement for the benefit of the Initial Purchasers and subsequent holders of the Notes or Underlying Shares as provided herein. The execution and delivery of this Agreement is a condition to the Initial Purchasers’ obligation to purchase the Firm Notes under the Purchase Agreement.

The parties hereto hereby agree as follows:

1. Definitions. As used in this Agreement, the following terms shall have the following meanings: “Agreement”: See the first introductory paragraph hereto.

“Amendment Effectiveness Deadline Date”: See Section 2(d)(i) hereof.

“Amount of Registrable Securities”: (a) With respect to Notes constituting Registrable Securities, the aggregate principal amount of all such Notes then outstanding, (b) with respect to Underlying Shares constituting Registrable Securities, the aggregate number of such Underlying Shares outstanding multiplied by the Conversion Price (as defined in the Indenture) in effect at the time of computing the Amount of Registrable Securities or, if no Notes are then outstanding, the Conversion Price shall be calculated as if the Notes were continuously outstanding to the date of calculation, giving effect to any adjustments to the Conversion Price set forth in the Indenture as if the Indenture continued to be in effect, and (c) with respect to combinations thereof, the sum of (a) and (b) for the relevant Registrable Securities.

“Business Day”: Any day that is not a Saturday, Sunday or a day on which banking institutions in the City of New York are authorized or required by law or executive order to be closed.

“Closing Date”: December 6, 2004.

“Company”: See the first introductory paragraph hereto.

“Controlling Person”: See Section 6 hereof.

“Damages Payment Date”: See Section 3(c) hereof.

“Deferral Period”: See Section 3(b) hereof.

“Depository”: The Depository Trust Company until a successor is appointed by the Company.

“Designated Counsel”: One firm of counsel chosen by the Holders of a majority in Amount of Registrable Securities to be included in a Registration Statement for a Shelf Registration and identified to the Company in writing prior to the filing of such Registration Statement.

“Effectiveness Date”: The 210<sup>th</sup> day after the Closing Date.

“Effectiveness Period”: See Section 2(a) hereof.

“Exchange Act”: The Securities Exchange Act of 1934, as amended, and the rules and regulations of the SEC promulgated thereunder.

“Filing Date”: The 120<sup>th</sup> day after the Closing Date.

“Firm Notes”: See the second introductory paragraph hereto.

“Holder”: Any beneficial owner from time to time of Registrable Securities.

“Indemnified Holder”: See Section 6 hereof.

“Indemnified Person”: See Section 6 hereof.

“Indemnifying Person”: See Section 6 hereof.

“Indenture”: See the second introductory paragraph hereto.

“Initial Purchasers”: See the first introductory paragraph hereto.

“Initial Shelf Registration”: See Section 2(a) hereof.

“Inspectors”: See Section 4(k) hereof.

“Liquidated Damages”: See Section 3(a) hereof.

“Notes”: See the second introductory paragraph hereto.

“Notice and Questionnaire”: means a written notice delivered to the Company containing substantially the information called for by the Form of Selling Securityholder Notice and Questionnaire attached as Appendix A to the Offering Memorandum of the Company relating to the Notes.

“Option Notes”: See the second introductory paragraph hereto.

“Person”: An individual, partnership, corporation, limited liability company, unincorporated association, trust or joint venture, or a governmental agency or political subdivision thereof.

“Prospectus”: The prospectus included in any Registration Statement (including, without limitation, any prospectus subject to completion and a prospectus that includes any information previously omitted from a prospectus filed as part of an effective registration statement in reliance upon Rule 430A promulgated under the Securities Act), as amended or supplemented by any prospectus supplement, and all other amendments and supplements to the Prospectus, including post-effective amendments, and all material incorporated by reference or deemed to be incorporated by reference in such Prospectus.

“Purchase Agreement”: See the second introductory paragraph hereto.

“Records”: See Section 4(k) hereof.

“Registrable Securities”: All Notes and all Underlying Shares upon original issuance thereof and at all times subsequent thereto until the earliest to occur of (i) a Registration Statement covering such Notes and Underlying Shares having been declared effective by the SEC and such Notes or Underlying Shares having been disposed of in accordance with such effective Registration Statement, (ii) such Notes or Underlying Shares having been sold in compliance with Rule 144 or being able to (except with respect to affiliates of the Company within the meaning of the Securities Act) be sold in compliance with Rule 144(k), or (iii) such Notes or Underlying Shares ceasing to be outstanding.

“Registration Default”: See Section 3(a) hereof.

“Registration Statement”: Any registration statement of the Company filed with the SEC pursuant to the provisions of this Agreement, including the Prospectus, amendments and supplements to such registration statement, including post-effective amendments, all exhibits and all documents

incorporated by reference or deemed to be incorporated by reference in such registration statement.

“Rule 144”: Rule 144 promulgated under the Securities Act, as such Rule may be amended from time to time, or any similar rule (other than Rule 144A) or regulation hereafter adopted by the SEC providing for offers and sales of securities made in compliance therewith resulting in offers and sales by subsequent holders that are not affiliates of an issuer of such securities being free of the registration and prospectus delivery requirements of the Securities Act.

“Rule 144A”: Rule 144A promulgated under the Securities Act, as such Rule may be amended from time to time, or any similar rule (other than Rule 144) or regulation hereafter adopted by the SEC.

“Rule 415”: Rule 415 promulgated under the Securities Act, as such Rule may be amended from time to time, or any similar rule or regulation hereafter adopted by the SEC.

“SEC”: The U.S. Securities and Exchange Commission.

“Securities Act”: The Securities Act of 1933, as amended, and the rules and regulations of the SEC promulgated thereunder.

“Selling Holder”: On any date, any Holder that has delivered a Notice and Questionnaire to the Company on or prior to such date.

“Shelf Registration”: See Section 2(b) hereof.

“Shelf Registration Statement”: See Section 2(b) hereof.

“Subsequent Shelf Registration”: See Section 2(b) hereof.

“TIA”: The Trust Indenture Act of 1939, as amended, and the rules and regulations of the SEC promulgated thereunder.

“Trustee”: The Trustee under the Indenture.

“Underlying Shares”: See the second introductory paragraph hereto.

“Underwritten Registration” or “Underwritten Offering”: A registration in which Registrable Securities are sold to an underwriter for reoffering to the public.

## 2. Shelf Registration.

(a) Initial Shelf Registration. The Company shall file with the SEC a Registration Statement for an offering to be made on a continuous basis pursuant to Rule 415 covering all of the Registrable Securities (the “Initial Shelf Registration”) on or prior to the Filing Date.

The Initial Shelf Registration shall be on Form S-3 or another appropriate form permitting registration of the Registrable Securities for resale by Holders in the manner or manners designated by them (excluding Underwritten Offerings) and set forth in the Initial Shelf Registration. The Company shall not permit any securities other than the Registrable Securities to be included in the Initial Shelf Registration or any Subsequent Shelf Registration (as defined below).

The Company shall use its commercially reasonable efforts to cause the Initial Shelf Registration to be declared effective under the Securities Act on or prior to the Effectiveness Date and to keep the Initial Shelf Registration continuously effective under the

Securities Act until the date (A) that is two years after the Closing Date, or if later, the date on which the Option Notes were issued, (such period, as it may be shortened pursuant to clauses (i), (ii) or (iii) immediately following, the “Effectiveness Period”), or such shorter period ending when (i) all of the Registrable Securities covered by the Initial Shelf Registration have been sold in the manner set forth and as contemplated in the Initial Shelf Registration, (ii) the date on which all the Registrable Securities (x) held by Persons who are not affiliates of the Company may be resold pursuant to Rule 144(k) under the Securities Act or (y) cease to be outstanding, (iii) all the Registrable Securities have been resold pursuant to Rule 144 under the Securities Act or (B) a Subsequent Shelf Registration covering all of the Registrable Securities has been declared effective under the Securities Act.

(b) Subsequent Shelf Registrations. If the Initial Shelf Registration ceases to be effective for any reason at any time during the Effectiveness Period (other than because of the sale of all of the Registrable Securities registered thereunder), the Company shall use its commercially reasonable efforts to obtain the prompt withdrawal of any order suspending the effectiveness thereof, and in any event shall within 45 days of such cessation of effectiveness amend the Initial Shelf Registration in a manner reasonably expected by the Company to obtain the withdrawal of the order suspending the effectiveness thereof, or file an additional “shelf” Registration Statement pursuant to Rule 415 covering all of the Registrable Securities (a “Subsequent Shelf Registration”). If a Subsequent Shelf Registration is filed, the Company shall use its commercially reasonable efforts to cause the Subsequent Shelf Registration to be declared effective under the Securities Act as soon as practicable after such filing (or if filed during a Deferral Period, after the expiration of such Deferral Period) and to keep such Registration Statement continuously effective for the balance of the Effectiveness Period. As used herein, the term “Shelf Registration” means the Initial Shelf Registration or any Subsequent Shelf Registration and the term “Shelf Registration Statement” means any Registration Statement filed in connection with a Shelf Registration.

(c) Supplements and Amendments. The Company shall promptly supplement and amend a Shelf Registration if required by the rules, regulations or instructions applicable to the registration form used for such Shelf Registration, if required by the Securities Act, or if reasonably requested by the Holders of a majority in Amount of Registrable Securities covered by such Shelf Registration Statement.

(d) Notice and Questionnaire. Each Holder agrees that if such Holder wishes to sell Registrable Securities pursuant to a Shelf Registration Statement and related Prospectus, it will do so only in accordance with this Section 2(d) and Section 4A hereof. Each Holder wishing to sell Registrable Securities pursuant to a Shelf Registration Statement and related Prospectus agrees to deliver a Notice and Questionnaire to the Company at least five (5) Business Days prior to the date that the Initial Shelf Registration Statement is declared effective under the Securities Act. From and after the date the Initial Shelf Registration Statement is declared effective, the Company shall, as promptly as practicable after the date a fully completed and legible Notice and Questionnaire, together with such other information as the Company may reasonably request, is received by the Company, and in any event upon the later of (x) twenty (20) days after such date, if a supplement to the related Prospectus is required to be filed, (y) forty-five (45) days after such date, if a post-effective amendment to the Shelf Registration

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Statement or an additional Shelf Registration Statement is required to be filed or (z) ten (10) Business Days after the expiration of any Deferral Period in effect when the Notice and Questionnaire is received by the Company:

(i) if required by applicable law, file with the SEC a post-effective amendment to the Shelf Registration Statement or a Subsequent Shelf Registration or prepare and, if required by applicable law, file a supplement to the related Prospectus or a supplement or amendment to any document incorporated therein by reference or file any other required document so that the Holder delivering such Notice and Questionnaire is named as a selling securityholder in the Shelf Registration Statement and the related Prospectus in such a manner as to permit such Holder to deliver such Prospectus to purchasers of the Registrable Securities (subject to the rights of the Company under Section 3(b) to create a Deferral Period) in accordance with applicable law and, if the Company shall file a post-effective amendment to the Shelf Registration Statement, use its commercially reasonable efforts to cause such post-effective amendment to be declared effective under the Securities Act as promptly as practicable, but in any event by the date (the “Amendment Effectiveness Deadline Date”) that is forty-five (45) days after the date such post-effective amendment is required by this clause to be filed;

(ii) provide such Holder copies of any documents filed pursuant to Section 2(d)(i); and

(iii) notify such Holder as promptly as practicable after the effectiveness under the Securities Act of any post-effective amendment filed pursuant to Section 2(d)(i); *provided* that if such Notice and Questionnaire is delivered during a Deferral Period, the Company shall so inform the Holder delivering such Notice and Questionnaire and shall take the actions set forth in clauses (i), (ii) and (iii) above upon expiration of the Deferral Period. Notwithstanding anything contained herein to the contrary, (i) the Company shall be under no obligation to name any Holder that has not delivered a fully completed and legible Notice and Questionnaire, together with such other information as the Company may reasonably request, to the Company in accordance with this Section 2(d) and (ii) the Amendment Effectiveness Deadline Date shall be extended by up to ten (10) Business Days from the expiration of a Deferral Period (and the Company shall incur no obligation to pay Liquidated Damages during such extension) if such Deferral Period shall be in effect on the Amendment Effectiveness Deadline Date.

### 3. Liquidated Damages.

(a) The Company and the Initial Purchasers agree that the Holders of Notes that are Registrable Securities will suffer damages if the Company fails to fulfill its obligations under Section 2 hereof and that it would not be feasible to ascertain the extent of such damages with precision. Accordingly, the Company agrees to pay liquidated damages on the Notes that

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are Registrable Securities (“Liquidated Damages”) under the circumstances and to the extent set forth below (each of which shall be given independent effect; each a “Registration Default”):

(i) if the Initial Shelf Registration is not filed on or prior to the Filing Date, then commencing on the day after the Filing Date, Liquidated Damages shall accrue on the Notes that are Registrable Securities at a rate of 0.50% per annum on the aggregate principal amount of all such Notes then outstanding;

(ii) if a Shelf Registration is not declared effective by the SEC on or prior to the Effectiveness Date, then commencing on the day after the Effectiveness Date, Liquidated Damages shall accrue on the Notes that are Registrable Securities at a rate of 0.50% per annum on the aggregate principal amount of all such Notes then outstanding;

(iii) if a Shelf Registration has been declared effective and such Shelf Registration ceases to be effective at any time during the Effectiveness Period (other than as permitted under Section 3(b)), then commencing on the day after the date such Shelf Registration ceases to be effective, Liquidated Damages shall accrue on the Notes that are Registrable Securities at a rate of 0.50% per annum on the aggregate principal amount of all such Notes then outstanding;

(iv) if any post-effective amendment filed pursuant to Section 2(d)(i) has not become effective under the Securities Act on or prior to the Amendment Effectiveness Deadline Date, then commencing on the day after the Amendment Effectiveness Deadline Date, Liquidated Damages shall accrue on the Notes that are Registrable Securities at a rate of 0.50% per annum on the aggregate principal amount of all such Notes then outstanding; and

(v) if the aggregate duration of Deferral Periods in any period exceeds the number of days permitted in respect of such period pursuant to Section 3(b), then commencing on the day that caused the limit on the aggregate duration of Deferral Periods to be exceeded, Liquidated Damages shall accrue on the Notes that are Registrable Securities at a rate of 0.50% per annum on the aggregate principal amount of all such Notes then outstanding;

*provided* that Liquidated Damages on the Notes that are Registrable Securities may not accrue under more than one of the foregoing clauses (i), (ii), (iii), (iv) and (v) at any one time; *provided further* that in no event shall Liquidated Damages accrue at a rate per annum exceeding 0.50% of the aggregate principal amount of the Notes that are Registrable Securities then outstanding; and *provided further* that (1) upon the filing of the Initial Shelf Registration as required hereunder (in the case of clause (a)(i) of this Section 3), (2) upon the effectiveness of a Shelf Registration as required hereunder (in the case of clause (a)(ii) of this Section 3), (3) upon the effectiveness of a Shelf Registration which had ceased to remain effective (in the case of clause (a)(iii) of this Section 3), (4) upon the effectiveness of a post-effective amendment as required hereunder (in the case of clause (a)(iv) of this Section 3), or (5) upon the termination of the Deferral Period that caused the limit on the aggregate duration of Deferral Periods to be exceeded (in the case of clause (a)(v) of this Section 3), Liquidated Damages on the Notes that are Registrable Securities

as a result of such clause shall cease to accrue. It is understood and agreed that, notwithstanding any provision to the contrary, no Liquidated Damages shall accrue on any Notes that are Registrable Securities that are then covered by, and may be sold under, an effective Shelf Registration Statement.

(b) Notwithstanding Section 3(a), the Company, upon written notice to the Holders, shall be permitted to suspend the availability of a Registration Statement covering the Registrable Securities for any bona fide reason whatsoever for up to 45 consecutive days (the “Deferral Period”) in any 90-day period without being obligated to pay Liquidated Damages; *provided* that Deferral Periods may not total more than 90 days in the aggregate in any twelve-month period. The Company shall not be required to specify in the written notice to the Holders the nature of the event giving rise to the Deferral Period.

(c) So long as Notes remain outstanding, the Company shall notify the Trustee within five Business Days after each and every date on which an event occurs in respect of which Liquidated Damages are required to be paid. Any amounts of Liquidated Damages due pursuant to clause (a)(i), (a)(ii), (a)(iii), (a)(iv) or (a)(v) of this Section 3 will be payable in cash semiannually on June 6 and December 6 of each year (each, a “Damages Payment Date”), commencing with the first such Damages Payment Date occurring after any such Liquidated Damages commences to accrue, to Holders to whom regular interest is payable on the Damages Payment Date, with respect to Notes that are Registrable Securities, *provided* that any Liquidated Damages accrued with respect to any Note or portion thereof called for redemption by the Company on a redemption date or converted into Underlying Shares on a conversion date prior to the Damages Payment Date, shall, in any such event, be paid instead to the Holder who submitted such Note or portion thereof for redemption or conversion on the applicable redemption date or conversion date, as the case may be, on such date (or promptly following the conversion date, in the case of conversion). The amount of Liquidated Damages for Notes that are Registrable Securities will be determined by multiplying the applicable rate of Liquidated Damages by the aggregate principal amount of all such Notes then outstanding on the first Damages Payment Date following such Registration Default in the case of the first such payment of Liquidated Damages with respect to a Registration Default (and thereafter at the next succeeding Damages Payment Date until the cure of such Registration Default), multiplied by a fraction, the numerator of which is the number of days such Liquidated Damages rate was applicable during such period (determined on the basis of a 360-day year comprised of twelve 30-day months and, in the case of a partial month, the actual number of days elapsed), and the denominator of which is 360. The parties agree that the sole monetary damages payable for a violation of the terms of this Agreement with respect to which Liquidated Damages are expressly provided shall be such Liquidated Damages.

#### 4. Registration Procedures.

In connection with its registration obligations pursuant to Section 2 hereof, the Company shall:

(a) Prepare and file with the SEC, on or prior to the Filing Date, a Registration Statement or Registration Statements as prescribed by Section 2 hereof, and use its

commercially reasonable efforts to cause each such Registration Statement to become effective and remain effective as provided herein; *provided* that before filing any Registration Statement or Prospectus or any amendments or supplements thereto, the Company shall furnish to and afford the Initial Purchasers a reasonable opportunity to review copies of all such documents proposed to be filed (in each case, where possible, at least three Business Days prior to such filing, or such later date as is reasonable under the circumstances) and to reflect in each such document when so filed reasonable comments of the Initial Purchasers.

(b) Prepare and file with the SEC such amendments and post-effective amendments to each Shelf Registration, as may be necessary to keep such Registration Statement continuously effective for the Effectiveness Period; cause the related Prospectus to be supplemented by any prospectus supplement required by applicable law, and as so supplemented to be filed pursuant to Rule 424 (or any similar provisions then in force) promulgated under the Securities Act; and comply with the provisions of the Securities Act applicable to it with respect to the disposition of all Registrable Securities covered by such Registration Statement during the Effectiveness Period in accordance with the intended methods of distribution set forth in such Registration Statement as so amended or in such Prospectus as so supplemented.

(c) Notify the Selling Holders and Designated Counsel, if any, promptly (but in any event within two Business Days), (i) when a Prospectus or any prospectus supplement or post-effective amendment to a Registration Statement has been filed, and, with respect to a Registration Statement or any post-effective amendment, when the same has become effective under the Securities Act (including in such notice a written statement that any Holder may, upon request, obtain, at the sole expense of the Company, one conformed copy of such Registration Statement or post-effective amendment, including financial statements and schedules, documents incorporated or deemed to be incorporated by reference and exhibits), (ii) of the issuance by the SEC of any stop order suspending the effectiveness of a Registration Statement or of any order preventing or suspending the use of any Prospectus or the initiation of any proceedings for that purpose, (iii) of the happening of any event, the existence of any condition or any information becoming known (but not the nature or details concerning such event, condition or information) that makes any statement made in such Registration Statement or related Prospectus or any document incorporated or deemed to be incorporated therein by reference untrue in any material respect or that requires the making of any changes in or amendments or supplements to such Registration Statement, Prospectus or documents so that, in the case of the Registration Statement, it will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading, and that in the case of the Prospectus, it will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading (provided, however, that no notice of the Company pursuant to this clause (iii) shall be required in the event that the Company promptly files a prospectus supplement to update the Prospectus

or a Current Report on Form 8-K or other appropriate Exchange Act report that is incorporated by reference into the Registration Statement, which, in either case, contains the requisite information with respect to such event, condition or information that results in such Registration Statement no longer containing any untrue statement of a material fact or omitting to state a material fact necessary to make the statements contained therein not misleading) and (iv) of the Company's

determination that a post-effective amendment to a Registration Statement would be appropriate which notice may in any case, at the discretion of the Company state that it constitutes a notice of deferral under Section 3(b) hereof.

(d) Use its commercially reasonable efforts to prevent the issuance of any order suspending the effectiveness of a Registration Statement or of any order preventing or suspending the use of a Prospectus and, if any such order is issued, to use its commercially reasonable efforts to obtain the withdrawal of any such order at the earliest possible moment or if any such order or suspension is during any Deferral Period, at the earliest possible time after such Deferral Period ends, and provide prompt notice to the Selling Holders of the withdrawal of any such order.

(e) Furnish as promptly as practicable after the filing of such documents with the SEC to each Selling Holder and Designated Counsel, if any, upon request and at the sole expense of the Company, one conformed copy of the Registration Statement or Registration Statements and each post-effective amendment thereto, including financial statements and schedules, and, if requested, all documents incorporated or deemed to be incorporated therein by reference and all exhibits.

(f) Deliver to each Selling Holder and Designated Counsel, if any, at the sole expense of the Company, as many copies of the Prospectus (including each form of preliminary prospectus) and each amendment or supplement thereto and any documents incorporated by reference therein as such Persons may reasonably request; and, subject to Sections 4A(a) and 4A(c) hereof, the Company hereby consents (except during any Deferral Period) to the use of such Prospectus and each amendment or supplement thereto by each of the Selling Holders of Registrable Securities and dealers, if any, in connection with the offering and sale of the Registrable Securities covered by such Prospectus and any amendment or supplement thereto in the manner set forth therein.

(g) Cause the Company's counsel to perform Blue Sky law investigations and file registrations and qualifications required to be filed in connection with the registration or qualification (or exemption from such registration or qualification) of such Registrable Securities or offer and sale under the securities or Blue Sky laws of such jurisdictions within the United States as any Selling Holder reasonably requests, use its commercially reasonable efforts to keep each such registration or qualification (or exemption therefrom) effective during the period such Registration Statement is required to be kept effective and do any and all other acts or things reasonably necessary or advisable under Blue Sky laws to enable the disposition in such jurisdictions of the Registrable Securities covered by the applicable Registration Statement in the manner set forth therein; *provided* that the Company shall not be required to (i) qualify generally to do business in any jurisdiction where it is not then so qualified, (ii) take any action that would subject it to general service of process in any such jurisdiction where it is not then so subject or (iii) subject itself to taxation in any such jurisdiction where it is not then so subject.

(h) Cooperate with the Selling Holders and their respective counsel to facilitate the timely preparation and delivery of certificates representing shares of Registrable Securities to be sold, which certificates shall not bear any restrictive legends and shall be in a

form eligible for deposit with The Depository Trust Company; and enable such shares of Registrable Securities to be in such denominations and registered in such names as the Selling Holders may reasonably request.

(i) Upon the occurrence of any event contemplated by Section 4(c)(ii), 4(c)(iii) or 4(c)(iv) hereof, as promptly as practicable prepare and (subject to Section 4(a) hereof) file with the SEC, at the sole expense of the Company, a supplement or post-effective amendment to the Registration Statement or a supplement to the related Prospectus or any document incorporated or deemed to be incorporated therein by reference, or file any other required document so that, as thereafter delivered to the purchasers of the Registrable Securities being sold thereunder, any such Prospectus will not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(j) Prior to the effective date of the first Registration Statement relating to the Registrable Securities, (i) provide the Trustee for the Notes and the transfer agent for the Common Stock with certificates for the Registrable Securities in a form eligible for deposit with The Depository Trust Company and (ii) provide a CUSIP number for the Registrable Securities.

(k) During the Effectiveness Period, if requested in connection with a disposition of Registrable Securities pursuant to a Registration Statement, make available at reasonable times for inspection by one or more representatives of the Selling Holders and any attorney or accountant retained by any such Selling Holders (collectively, the "Inspectors"), at the offices where normally kept, during reasonable business hours, at such time or times as shall be mutually convenient for the Company and the Inspectors as a group, all financial and other records, pertinent corporate documents and instruments of the Company and its subsidiaries (collectively, the "Records") as shall be reasonably necessary to enable them to exercise any applicable due diligence responsibilities, and cause the officers, directors and employees of the Company and its subsidiaries to supply all information reasonably requested by any such Inspector in connection with such Registration Statement; *provided* that the Company shall have no obligation to provide any such information prior to the execution by the party receiving such information of a confidentiality agreement in a form reasonably acceptable to the Company. Records that the Company determines, in good faith, to be confidential and any Records that it notifies the Inspectors are confidential shall not be used for any purpose other than satisfying "due diligence" obligations under the Securities Act and exercising rights under this Agreement and shall not be disclosed by any Inspector unless (i) the disclosure of such Records is necessary to avoid or correct a material misstatement or material omission in such Registration Statement, (ii) the release of such Records is ordered pursuant to a subpoena or other order from a court of competent jurisdiction, (iii) disclosure of such information is, in the opinion of counsel for the Selling Holder or any Inspector, necessary or advisable in connection with any action, claim, suit or proceeding, directly involving or potentially involving such Selling Holder or Inspector and arising out of, based upon, relating to, or involving this Agreement or any transactions contemplated hereby or arising hereunder or (iv) the information in such Records has been made generally available to the public other than through the acts of such Inspector; *provided* that prior notice shall be provided as soon as practicable to the Company of the potential disclosure of any information by such Inspector pursuant to clauses (ii) or (iii) of this sentence to permit the

Company to obtain a protective order (or waive the provisions of this paragraph (k)). Each Inspector shall take such actions as are reasonably necessary to protect the confidentiality of such information (if practicable) to the extent such actions are otherwise not inconsistent with, an impairment of or in derogation of the rights and interests of the Holder or any Inspector, unless and until such information in such Records has been made generally available to the public other than as a result of a breach of this Agreement.

(l) During the Effectiveness Period, comply with all applicable rules and regulations of the SEC applicable to any Registration Statement and make generally available to its security holders earning statements satisfying the provisions of Section 11(a) of the Securities Act and Rule 158 thereunder (or any similar rule promulgated under the Securities Act) no later than 45 days after the end of any 12-month period (or 90 days after the end of any 12-month period if such period is a fiscal year) commencing on the first day of the first fiscal quarter of the Company after the effective date of a Registration Statement, which statements shall cover said 12-month periods.

(m) Cause the Indenture to be qualified under the TIA not later than the effective date of the first Registration Statement relating to the Registrable Securities; and in connection therewith, cooperate with the Trustee and the Holders of the Registrable Securities and their respective counsel to effect such changes to the Indenture as may be required for the Indenture to be so qualified in accordance with the terms of the TIA; and execute, and use all reasonable efforts to cause the Trustee to execute, all documents as may be required to effect such changes and all other forms and documents required to be filed with the SEC to enable the Indenture to be so qualified in a timely manner.

(n) If requested by Designated Counsel, if any, or the Holders of a majority in Amount of Registrable Securities, (i) promptly incorporate in a prospectus supplement or post-effective amendment such information as the Designated Counsel, if any, or such Holders reasonably determine is necessary to be included therein, (ii) make all required filings of such prospectus supplement or such post-effective amendment as soon as reasonably practicable after the Company has received notification of the matters to be incorporated in such prospectus supplement or post-effective amendment and (iii) supplement or make amendments to such Registration Statement.

(o) Use its commercially reasonable efforts to take all other steps necessary or advisable to effect the registration of the Registrable Securities covered by a Registration Statement contemplated hereby, provided that the Company shall not be required to take any action in connection with an Underwritten Offering.

4A. Holders' Obligations. (a) Each Holder agrees, by acquisition of the Registrable Securities, that no Holder shall be entitled to sell any of such Registrable Securities pursuant to a Registration Statement or to receive a Prospectus relating thereto, unless such Holder has furnished the Company with a Notice and Questionnaire as required pursuant to Section 2(d) hereof (including the information required to be included in such Notice and Questionnaire) and the information set forth in the next sentence. Each Selling Holder agrees promptly to furnish to the Company all information required to be disclosed in order to make the

information previously furnished to the Company by such Selling Holder not misleading and any other information regarding such Selling Holder and the distribution of such Registrable Securities as the Company may from time to time reasonably request. Any sale of any Registrable Securities by any Holder shall constitute a representation and warranty by such Holder that the information relating to such Holder and its plan of distribution is as set forth in the Prospectus delivered by such Holder in connection with such disposition, that such Prospectus does not as of the time of such sale contain any untrue statement of a material fact relating to or provided by such Holder or its plan of distribution and that such Prospectus does not as of the time of such sale omit to state any material fact relating to or provided by such Holder or its plan of distribution necessary to make the statements in such Prospectus, in the light of the circumstances under which they were made, not misleading.

(b) The Company may require each Selling Holder of Registrable Securities as to which any registration is being effected to furnish to the Company such additional information regarding such Holder and its plan of distribution of such Registrable Securities as the Company may, from time to time, reasonably request to the extent necessary or advisable to comply with the Securities Act. The Company may exclude from such registration the Registrable Securities of any Selling Holder if such Holder fails to furnish such additional information within twenty (20) Business Days after receiving such request. Each Selling Holder as to which any Shelf Registration is being effected agrees to furnish promptly to the Company all information required to be disclosed so that the information previously furnished to the Company by such Holder is not materially misleading and does not omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading in light of the circumstances under which they were made.

(c) Each Holder of Registrable Securities agrees by acquisition of such Registrable Securities that, upon actual receipt of any notice from the Company suspending the availability of the Registration Statement pursuant to Section 3(b) hereof, or upon the happening of any event of the kind described in Section 4(c)(ii), 4(c)(iii) or 4(c)(iv) hereof (each Holder agrees to keep any such notice confidential), such Holder will forthwith discontinue disposition of such Registrable Securities covered by such Registration Statement or Prospectus until such Holder's receipt of the copies of the supplemented or amended Prospectus contemplated by Section 4(i) hereof, or until it is advised in writing by the Company that the use of the applicable Prospectus may be resumed, and it has received copies of any additional or supplemental filings that are incorporated or deemed incorporated by reference in such Prospectus thereto.

## 5. Registration Expenses.

(a) All fees and expenses incident to the performance of or compliance with this Agreement by the Company shall be borne by the Company, including, without limitation, (i) all registration and filing fees (including, without limitation, fees and expenses of compliance with state securities or Blue Sky laws, including, without limitation, reasonable fees and disbursements of counsel in connection with Blue Sky qualifications of the Registrable Securities and determination of the eligibility of the Registrable Securities for investment under the laws of such jurisdictions as provided in Section 4(g) hereof), (ii) printing expenses, including, without limitation, expenses of printing certificates for Registrable Securities in a form eligible for



deposit with The Depository Trust Company and of printing prospectuses if the printing of prospectuses is requested by the Holders of a majority in Amount of Registrable Securities included in any Registration Statement, (iii) messenger, telephone and delivery expenses, (iv) fees and disbursements of counsel for the Company, (v) Securities Act liability insurance, if the Company desires such insurance, (vi) fees and expenses of all other Persons retained by the Company, (vii) internal expenses of the Company (including, without limitation, all salaries and expenses of officers and employees of the Company performing legal or accounting duties), (viii) the expense of any annual audit, (ix) the fees and expenses incurred in connection with the listing of the securities to be registered on any securities exchange, if applicable, and (x) the expenses relating to printing, word processing and distributing all Registration Statements and any other documents necessary in order to comply with this Agreement. Notwithstanding anything in this Agreement to the contrary, each Holder shall pay all brokerage commissions with respect to any Registrable Securities sold by it and, except as set forth in Section 5(b) below, the Company shall not be responsible for the fees and expenses of any counsel, accountant or advisor for the Holders.

(b) The Company shall bear or reimburse the Holders of the Registrable Securities being registered in a Shelf Registration for the reasonable fees and disbursements of Designated Counsel.

6. Indemnification.

(a) The Company agrees to indemnify and hold harmless (x) each Holder (which, for the absence of doubt, for purposes of this Section 6 shall include the Initial Purchasers), (y) each Person, if any, who controls (within the meaning of either Section 15 of the Securities Act or Section 20 of the Exchange Act) any Holder (any of the Persons referred to in this clause (b) being hereinafter referred to as a “Controlling Person”), and (z) the respective officers, directors, partners, employees, representatives and agents of any Holder (including any predecessor holder) or any Controlling Person (any person referred to in clause (x), (y) or (z) may hereinafter be referred to as an “Indemnified Holder”), against any losses, claims, damages or liabilities to which such Indemnified Holder may become subject under the Securities Act or otherwise, insofar as such losses, claims, damages or liabilities (or actions or proceedings in respect thereof) arise out of or are based upon (i) any untrue statement or alleged untrue statement of any material fact contained in any Registration Statement or Prospectus, or any amendment or supplement thereto or any related preliminary prospectus or (ii) the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, in the light of the circumstances under which they were made; *provided* that the Company will not be liable under this Section 6(a), (x) to the extent that any such loss, claim, damage or liability arises out of or is based upon an untrue statement or alleged untrue statement, or omission or alleged omission made in any such Registration Statement or Prospectus, or any amendment or supplement thereto or any related preliminary prospectus in reliance upon and in conformity with written information relating to any Holder furnished to the Company by or on behalf of such Holder specifically for use therein, (y) with respect to any untrue statement or alleged untrue statement, or omission or alleged omission made in any preliminary prospectus if the person asserting any such loss, claim, damage or liability who purchased Registrable Securities which are the subject thereof did not receive a

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copy of the Prospectus (or the preliminary prospectus as then amended or supplemented if the Company shall have furnished such Indemnified Holder with such amendment or supplement thereto on a timely basis) at or prior to the written confirmation of the sale of such Registrable Securities to such person and, in any case where such delivery is required by applicable law, the untrue statement or alleged untrue statement or omission or alleged omission of a material fact made in such preliminary prospectus was corrected in the Prospectus (or the preliminary prospectus as then amended or supplemented if the Company shall have furnished such Indemnified Holder with such amendment or supplement thereto on a timely basis) or (z) arising from the offer or sale of Registrable Securities during any Deferral Period, if notice thereof was given to such Holder. The Company shall notify such Indemnified Holder promptly of the institution, threat or assertion of any claim, proceeding (including any governmental investigation) or litigation in connection with the matters addressed by this Agreement that involves the Company or such Indemnified Holder.

(b) Subject to Section 6(d) below, the Company agrees to reimburse each Indemnified Holder upon demand for any legal or other out-of-pocket expenses reasonably incurred by such Indemnified Holder in connection with investigating or defending any such loss, claim, damage or liability, any action or proceeding or in responding to a subpoena or governmental inquiry related to the offering of the Registrable Securities, whether or not such Indemnified Holder is a party to any action or proceeding. In the event that it is finally judicially determined that an Indemnified Holder was not entitled to receive payments for legal and other expenses pursuant to this Section 6, such Indemnified Holder will promptly return all sums that had been advanced pursuant hereto.

(c) Each Holder agrees, severally and not jointly, to indemnify and hold harmless the Company, its directors and officers and each Person who controls the Company (within the meaning of either Section 15 of the Securities Act or Section 20 of the Exchange Act) to the same extent as the indemnity provided in Section 6(a) from the Company to each Holder, but only with reference to such losses, claims, damages or liabilities which are caused by any untrue statement or omission or alleged untrue statement or omission made in reliance upon and in conformity with information relating to a Holder furnished to the Company in writing by such Holder expressly for use in any Registration Statement or Prospectus, or any amendment or supplement thereto or any related preliminary prospectus. The liability of any Holder under this Section 6(c) shall in no event exceed the proceeds received by such Holder from sales of Registrable Securities giving rise to such obligation.

(d) In case any suit, action, proceeding (including any governmental or regulatory investigation), claim or demand shall be brought or asserted against any Person in respect of which indemnity may be sought pursuant to Section 6(a) or (c), such Person (the “Indemnified Person”) shall promptly notify the Person or Persons against whom such indemnity may be sought (each an “Indemnifying Person”) in writing. No indemnification provided for in Section 6(a) or (c) shall be available to any Person who shall have failed to give notice as provided in this Section 6(d) if the party to whom notice was not given was unaware of the proceeding to which such notice would have related and was materially prejudiced by the failure to give such notice. Nevertheless, the failure to give such notice shall not relieve the Indemnifying Person or Persons from any liability which it or they may have to the Indemnified

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Person for contribution or otherwise than on account of the provisions of Section 6(a) or (c). In case any such proceeding shall be brought against any Indemnified Person and it shall notify the Indemnifying Person of the commencement thereof, the Indemnifying Person shall be entitled to participate therein and, to the extent that it shall wish, jointly with any other Indemnifying Person similarly notified, to assume the defense thereof, with counsel reasonably

satisfactory to such Indemnified Person and shall pay as incurred (or within 30 days of presentation) the fees and disbursements of such counsel related to such proceeding. In any such proceeding, any Indemnified Person shall have the right to retain its own counsel at its own expense. Notwithstanding the foregoing, the Indemnifying Person shall pay as incurred (or within 30 days of presentation) the fees and expenses of the counsel retained by the Indemnified Person in the event (i) the Indemnifying Person and the Indemnified Person shall have mutually agreed to the retention of such counsel, (ii) the named parties to any such proceeding (including any impleaded parties) include both the Indemnifying Person and the Indemnified Person and representation of both parties by the same counsel would be inappropriate due to actual or potential differing interests between them or (iii) the Indemnifying Person shall have failed to assume the defense of and employ counsel reasonably acceptable to the Indemnified Person within a reasonable period of time after notice of commencement of the action. It is understood that the Indemnifying Person shall not, in connection with any proceeding or related proceedings in the same jurisdiction, be liable for the reasonable fees and expenses of more than one separate firm for all such Indemnified Persons. Such firm shall be designated in writing by Holders of a majority in Amount of Registrable Securities in the case of parties indemnified pursuant to Section 6(a) and by the Company in the case of parties indemnified pursuant to Section 6(c). The Indemnifying Person shall not be liable for any settlement of any proceeding effected without its written consent, but if settled with such consent or if there be a final judgment for the plaintiff, the Indemnifying Person agrees to indemnify the Indemnified Person from and against any loss or liability by reason of such settlement or judgment. In addition, the Indemnifying Person will not, without the prior written consent of the Indemnified Person, settle or compromise or consent to the entry of any judgment in any pending or threatened claim, action or proceeding of which indemnification may be sought hereunder (whether or not any Indemnified Person is an actual or potential party to such claim, action or proceeding) unless such settlement, compromise or consent includes an unconditional release of each Indemnified Person from all liability arising out of such claim, action or proceeding.

(e) To the extent the indemnification provided for in this Section 6 is unavailable to or insufficient to hold harmless an Indemnified Person under Section 6(a) or (c) in respect of any losses, claims, damages or liabilities (or actions or proceedings in respect thereof) referred to therein, except by reason of the exceptions set forth in Section 6(a) or (c) or the failure of the Indemnified Person to give notice as required in Section 6(d), then each Indemnifying Person shall contribute to the amount paid or payable by such Indemnified Person as a result of such losses, claims, damages or liabilities (or actions or proceedings in respect thereof) in such proportion as is appropriate to reflect the relative benefits received by the Indemnifying Person on the one hand and the Indemnified Person on the other hand from the offering of the Notes pursuant to the Purchase Agreement and the Registrable Securities pursuant to any Shelf Registration. If, however, the allocation provided by the immediately preceding sentence is not permitted by applicable law, then each Indemnifying Person shall

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contribute to such amount paid or payable by such Indemnified Person in such proportion as is appropriate to reflect not only such relative benefits but also the relative fault of the Indemnifying Person on the one hand and the Indemnified Person on the other in connection with the statements or omissions which resulted in such losses, claims, damages or liabilities (or actions or proceedings in respect thereof), as well as any other relevant equitable considerations. The relative benefits received by the Company shall be deemed to be equal to the total net proceeds (before deducting expenses) received by the Company under the Purchase Agreement from the offering and sale of the Registrable Securities giving rise to such obligations. The relative benefits received by any Holder shall be deemed to be equal to the value of receiving registration rights for the Registrable Securities under this Agreement. The relative fault of the parties shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Company on the one hand, such Indemnified Holder on the other, and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission.

(f) The Company and the Initial Purchasers agree that it would not be just and equitable if contribution pursuant to Section 6(e) were determined by pro rata allocation or by any other method of allocation which does not take account of the equitable considerations referred to in Section 6(e). The amount paid or payable by an Indemnified Person as a result of the losses, claims, damages or liabilities (or actions or proceedings in respect thereof) referred to in Section 6(e) shall be deemed to include any legal or other expenses reasonably incurred by such Indemnified Person in connection with investigating or defending any such action or claim or enforcing any rights hereunder. Notwithstanding the provisions of Section 6(e) and (f), (i) in no event shall any Holder be required to contribute any amount in excess of the amount by which the net proceeds received by such Holder from the offering or sale of the Registrable Securities pursuant to a Shelf Registration Statement exceeds the amount of damages which such Holder would have otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission and (ii) no Person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any Person who was not guilty of such fraudulent misrepresentation.

(g) Except as otherwise provided in this Section 6, any losses, claims, damages, liabilities or expenses for which an Indemnified Person is entitled to indemnification or contribution under this Section 6 shall be paid by the Indemnifying Person to the Indemnified Person as such losses, claims, damages, liabilities or expenses are incurred (or within 30 days of presentation).

(h) The remedies provided for in this Section 6 are not exclusive and shall not limit any rights or remedies that may otherwise be available to any indemnified party at law or in equity.

(i) The indemnity and contribution agreements contained in this Section 6 shall remain operative and in full force and effect regardless of (i) any termination of this Agreement, (ii) any investigation made by or on behalf of any Holder or any Person controlling any Holder or by or on behalf of the Company, its officers or directors or any other Person

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controlling the Company and (iii) acceptance of and payment for any of the Registrable Securities.

## 7. Rules 144 and 144A.

The Company covenants that it will file the reports required to be filed by it under the Securities Act and the Exchange Act and the rules and regulations adopted by the SEC thereunder in a timely manner in accordance with the requirements of the Securities Act and the Exchange Act and, if at any time before the expiration of the Effectiveness Period the Company is not required to file such reports, it will, upon the request of any Holder, make available such information necessary to permit sales pursuant to Rule 144A under the Securities Act. The Company further covenants that, until the Effectiveness Period has expired, it will use all reasonable efforts to take such further action as any Holder of Registrable Securities may reasonably request, all to the extent required from time to time to enable such holder to sell Registrable Securities without registration under the Securities Act within the

limitation of the exemptions provided by (a) Rule 144 and Rule 144A under the Securities Act, as such rules may be amended from time to time, or (b) any similar rule or regulation hereafter adopted by the SEC. The Company will provide a copy of this Agreement to prospective purchasers of Registrable Securities identified to the Company by the Initial Purchasers upon request. Upon the request of any Holder, the Company shall deliver to such Holder a written statement as to whether it is subject to and has complied with such requirements. Notwithstanding the foregoing, nothing in this Section 7 shall be deemed to require the Company to register any of its securities pursuant to the Exchange Act.

8. Underwritten Registrations.

No Holder of Registrable Securities may participate in any Underwritten Registration hereunder.

9. Miscellaneous.

(a) No Inconsistent Agreements. The Company has not, as of the date hereof, and the Company shall not, after the date of this Agreement, enter into any agreement with respect to any of its securities that is inconsistent with the rights granted to the Holders of Registrable Securities in this Agreement or otherwise conflicts with the provisions hereof.

(b) Adjustments Affecting Registrable Securities. The Company shall not, directly or indirectly, take any action with respect to the Registrable Securities as a class with the intent of adversely affecting the ability of the Holders of Registrable Securities to include such Registrable Securities in a registration undertaken pursuant to this Agreement.

(c) Amendments and Waivers. The provisions of this Agreement may not be amended, modified or supplemented, and waivers or consents to departures from the provisions hereof may not be given, otherwise than with the prior written consent of the Company and the Holders of not less than a majority in Amount of Registrable Securities; *provided* that Section 6 and this Section 9(c) may not be amended, modified or supplemented without the prior written consent of the Company and each Holder (including, in the case of an amendment, modification

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or supplement of Section 6, any Person who was a Holder of Registrable Securities disposed of pursuant to any Registration Statement). Notwithstanding the foregoing, a waiver or consent to depart from the provisions hereof with respect to a matter that relates exclusively to the rights of Holders of Registrable Securities whose securities are being sold pursuant to a Registration Statement and that does not directly or indirectly affect, impair, limit or compromise the rights of other Holders of Registrable Securities may be given by Holders of at least a majority in Amount of Registrable Securities being sold by such Holders pursuant to such Registration Statement. Each Holder of Registrable Securities outstanding at the time of any amendment, modification, supplement, waiver, or consent or thereafter shall be bound by any such amendment, modification, supplement, waiver, or consent effected pursuant to this Section, whether or not any notice of such amendment, modification, supplement, waiver, or consent is delivered to such Holder.

(d) Notices. All notices, requests and other communications (including without limitation any notices or other communications to the Trustee) provided for or permitted hereunder shall be made in writing and delivered by hand-delivery, registered first-class mail, next-day air courier or facsimile:

(1) if to a Holder of Registrable Securities, at the most current address of such Holder set forth on (x) the records of the registrar under the Indenture, in the case of Holders of Notes, and (y) the stock ledger of the Company, in the case of Holders of common stock of the Company, unless, in either such case, any Holder shall have provided notice information in a Notice and Questionnaire or any amendment thereto, in which case such information shall control.

(2) if to the Initial Purchasers:

c/o Deutsche Bank Securities Inc.  
60 Wall Street  
New York, New York 10005  
Facsimile No.: (212) 797-8974  
Attention: Equity Capital Markets  
with a copy to the General Counsel  
Facsimile No.: (212) 797-4564

Raymond James & Associates, Inc.  
880 Carillon Parkway  
St. Petersburg, FL 33716  
Facsimile No.: [    ]  
Attention: [        ]

Advest, Inc.  
90 State House Square  
Hartford, CT 06103  
Facsimile No.: [    ]  
Attention: [        ]

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with a copy to:

Davis Polk & Wardwell  
450 Lexington Avenue

New York, New York 10017  
Facsimile No.: (212) 450-4745  
Attention: Richard A. Drucker

(3) if to the Company:

American Equity Investment Life Holding Company  
5000 Westown Parkway  
Suite 440  
West Des Moines, Iowa 50266  
Facsimile No.: (515) 221-9947  
Attention: Wendy L. Carlson

with a copy to:

Skadden, Arps, Slate, Meagher & Flom LLP  
333 West Wacker Drive  
Chicago, Illinois 60606  
Facsimile No.: (312) 407-0411  
Attention: William R. Kunkel

All such notices, requests and communications shall be deemed to have been duly given: when delivered by hand, if personally delivered; the earlier of the date indicated on the notice of receipt and five (5) Business Days after being deposited in the mail, postage prepaid, if mailed; one Business Day after being timely delivered to a next-day air courier; and when the addressor receives facsimile confirmation, if sent by facsimile during normal business hours, and otherwise on the next Business Day during normal business hours.

(e) Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the successors and assigns of each of the parties hereto, including the Holders; *provided* that this Agreement shall not inure to the benefit of or be binding upon a successor or assign of a Holder unless and except to the extent such successor or assign holds Registrable Securities.

(f) Counterparts. This Agreement may be executed in any number of counterparts and by the parties hereto in separate counterparts, including via facsimile, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

(g) Headings. The headings in this Agreement are for convenience of reference only and shall not limit or otherwise affect the meaning hereof.

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(h) Governing Law. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, AS APPLIED TO CONTRACTS MADE AND PERFORMED WHOLLY WITHIN THE STATE OF NEW YORK, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW. EACH OF THE PARTIES HERETO AGREES TO SUBMIT TO THE JURISDICTION OF THE FEDERAL AND NEW YORK STATE COURTS SITTING IN MANHATTAN, NEW YORK CITY, THE STATE OF NEW YORK, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT.

(i) Severability. If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction to be invalid, illegal, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions set forth herein shall remain in full force and effect and shall in no way be affected, impaired or invalidated, and the parties hereto shall use their best efforts to find and employ an alternative means to achieve the same or substantially the same result as that contemplated by such term, provision, covenant or restriction. It is hereby stipulated and declared to be the intention of the parties that they would have executed the remaining terms, provisions, covenants and restrictions without including any of such that may be hereafter declared invalid, illegal, void or unenforceable.

(j) Securities Held by the Company or Its Affiliates. Whenever the consent or approval of Holders of a specified percentage in Amount of Registrable Securities is required hereunder, Registrable Securities held by the Company or its affiliates (as such term is defined in Rule 405 under the Securities Act) shall not be counted in determining whether such consent or approval was given by the Holders of such required percentage.

(k) Third-Party Beneficiaries. Holders of Registrable Securities are intended third party beneficiaries of this Agreement and this Agreement may be enforced by such Persons.

(l) Entire Agreement. This Agreement, together with the Purchase Agreement and the Indenture, is intended by the parties as a final and exclusive statement of the agreement and understanding of the parties hereto in respect of the subject matter contained herein and therein and any and all prior oral or written agreements, representations, or warranties, contracts, understandings, correspondence, conversations and memoranda between the Initial Purchasers on the one hand and the Company on the other, or between or among any agents, representatives, parents, subsidiaries, affiliates, predecessors in interest or successors in interest with respect to the subject matter hereof and thereof are merged herein and replaced hereby.

[Signature page follows]

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IN WITNESS WHEREOF, the parties have executed this Registration Rights Agreement as of the date first written above.

By: /s/ Wendy L. Carlson  
Name: Wendy L. Carlson  
Title: Chief Financial Officer and  
General Counsel

DEUTSCHE BANK SECURITIES INC.  
RAYMOND JAMES & ASSOCIATE, INC.  
ADVEST, INC.

By: DEUTSCHE BANK SECURITIES INC.

By: /s/ Michael L. Albanese  
Name: Michael L. Albanese  
Title: Director

By: /s/ Donald Sung  
Name: Donald Sung  
Title: Managing Director

[Signature Page to Registration Rights Agreement]

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**AMERICAN EQUITY INVESTMENT LIFE HOLDING COMPANY,  
Issuer**

**5.25% Contingent Convertible Senior Notes Due 2024**

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**FIRST SUPPLEMENTAL INDENTURE**

**to the**

**INDENTURE**

**Dated December 6, 2004**

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**U.S. Bank National Association,  
Trustee**

**December 30, 2004**

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FIRST SUPPLEMENTAL INDENTURE dated as of December 30, 2004 among AMERICAN EQUITY INVESTMENT LIFE HOLDING COMPANY, an Iowa corporation (the "**Company**"), and U.S. BANK NATIONAL ASSOCIATION, a national banking association organized under the laws of the United States of America (the "**Trustee**").

WHEREAS, the Company executed and delivered the Indenture, dated as of December 6, 2004 (the "**Original Indenture**") (the Original Indenture, as supplemented from time to time, including without limitation pursuant to this First Supplemental Indenture being referred to herein as the "**Indenture**") to provide, among other things, for the issuance of the Company's 5.25% Contingent Convertible Senior Notes Due 2024 (the "**Convertible Notes**");

WHEREAS, Section 2.02 of the Indenture provides that the Company may issue additional Convertible Notes from time to time in an unlimited aggregate principal amount;

WHEREAS, pursuant to the terms of the Indenture, the Company desires to enter into this Supplemental Indenture to provide for the establishment and issuance of additional Convertible Notes in a new series to be known as its Series B 5.25% Contingent Convertible Senior Notes Due 2024 (the "**Securities**");

WHEREAS, Section 9.01 of the Indenture provides that the Company and the Trustee may amend and supplement the Indenture without notice to, or the consent of, any Holder to make changes to the Indenture that do not adversely affect the rights of any Holder in any material respect;

WHEREAS, pursuant to the terms of the Indenture, the Company and the Trustee desire to supplement the Indenture hereby to permit the Company to establish and issue multiple, separate series of Convertible Notes, each with the terms, except as otherwise set forth in this Supplemental Indenture, as specified in the Original Indenture;

WHEREAS, the Board of Directors of the Company has duly adopted resolutions authorizing the Company to execute and deliver this Supplemental Indenture and to issue the Securities and the Common Stock issuable upon conversion thereof;

WHEREAS, the Company has requested that the Trustee execute and deliver this Supplemental Indenture and take all actions necessary to make (i) this Supplemental Indenture a valid instrument in accordance with its terms, and (ii) the Securities, when executed by the Company and authenticated and delivered by the Trustee, the valid obligations of the Company;

NOW THEREFORE, in consideration of the purchase and acceptance of the Securities by the Holders thereof, and for the purpose of setting forth the form and terms of the Securities, the Company covenants and agrees with the Trustee as follows:

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ARTICLE 1  
DEFINITIONS

*Section 1.01. Definition of Terms.*

Unless the context otherwise requires:

- (a) a term defined in the Original Indenture has the same meaning when used in this Supplemental Indenture unless the definition of such term is amended and supplemented pursuant to this Supplemental Indenture;
- (b) a term defined anywhere in this Supplemental Indenture has the same meaning throughout;
- (c) the singular includes the plural and vice versa;
- (d) a reference to a Section or Article is to a Section or Article of this Supplemental Indenture;
- (e) headings are for convenience of reference only and do not affect interpretation;
- (f) the following terms have the meanings given to them in this Section 1.01(f):

**"Liquidated Damages"** has the meaning set forth in the Registration Rights Agreement.

**"Registration Rights Agreement"** means the Registration Rights Agreement dated as of December 30, 2004 between the Company and the Initial Purchaser relating to the Securities.

ARTICLE 2  
THE SECURITIES

*Section 2.01. Designation.*

The Company hereby establishes a new series of Convertible Notes designated the "Series B 5.25% Contingent Convertible Senior Notes Due 2024" for issuance under the Indenture. The Securities shall be substantially in the form attached as Exhibit A hereto. The Securities may have notations, legends or endorsements required by law, stock exchange rule or usage; *provided* that any such notation, legend or endorsement required by usage is in a form acceptable to the Company. The Company shall provide any such notations, legends or endorsements to the Trustee in writing. Each Security shall be dated the date of its authentication. The terms and provisions contained in this series of Securities shall constitute, and are hereby expressly made, a part of the Indenture and the Company and the Trustee, by their execution and delivery of this Supplemental Indenture, expressly agree to such terms and provisions and to be bound thereby.

The Stated Maturity of the Securities shall be December 6, 2024 and they shall bear interest at the rate of 5.25% per annum from December 6, 2004 or, if closer to the date of issuance, from the most recent Interest Payment Date for which interest has been paid or duly provided for, payable semi-annually in arrears on each June 6 and December 6 (each, an Interest Payment Date), commencing June 6, 2005.

The Securities are not subject to any sinking fund.

Interest on the Securities (including Contingent Interest and Liquidated Damages, if any) shall be computed on the basis of a 360 day year comprised of twelve 30 day months.

The Securities shall be issuable in registered form without coupons in denominations of \$1,000 and any integral multiple thereof.

*Section 2.02. Principal Amount.*

The aggregate principal amount of the Securities which may be authenticated and delivered pursuant to this Supplemental Indenture is unlimited. The Securities issued on the date hereof and any additional Securities issued pursuant hereto shall constitute a separate series of Securities, and shall not be a part of the series of Convertible Notes issued on December 6, 2004 by the Company.

*Section 2.03. Separate Series of Securities.*

For all purposes of the Indenture and this Supplemental Indenture including, without limitation, Sections 1.05, 3.01, 6.01, 6.02, 6.03, 6.04, 6.05, 9.01, and 9.02 of the Indenture, (i) all Securities, whether initial Securities, exchange Securities or additional Securities, shall constitute a separate series of Convertible Notes and

shall vote together and be treated as one series of Convertible Notes and (ii) the Holders of the Securities shall constitute a separate class of Holders under the Indenture.

*Section 2.04. Scope Of Global Security.*

Any Global Security shall represent such of the outstanding Securities of this series as shall be specified therein and shall provide that it shall represent the aggregate amount of outstanding Securities of this series from time to time endorsed thereon and that the aggregate amount of outstanding Securities represented thereby may from time to time be increased or reduced to reflect redemptions, transfers or exchanges permitted hereby.

*Section 2.05. Registration Rights Agreement.*

Holders of the Securities shall have the benefit of the Company's registration obligations with respect to the Securities as more fully set forth in the Registration Rights Agreement.

ARTICLE 3  
DISCHARGE OF THE INDENTURE

*Section 3.01. Discharge of the Indenture.* Article 8 of the Indenture shall apply to the Securities.

ARTICLE 4  
MISCELLANEOUS

*Section 4.01. Ratification Of Indenture.*

The Indenture, as supplemented by this Supplemental Indenture, is in all respects ratified and confirmed, and this Supplemental Indenture shall be deemed part of the Indenture as it relates to the Securities in the manner and to the extent herein and therein provided.

*Section 4.02. Trustee Not Responsible For Recitals.*

The recitals herein contained are made by the Company and not by the Trustee, and the Trustee assumes no responsibility for the correctness thereof. The Trustee makes no representation as to the validity or sufficiency of this Supplemental Indenture.

*Section 4.03. Governing Law.*

This Supplemental Indenture and each Security shall be deemed to be a contract made under the laws of the State of New York, and for all purposes shall be construed in accordance with the laws of the State of New York.

*Section 4.04. Separability.*

In case any one or more of the provisions contained in this Supplemental Indenture or in the Global Security shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Supplemental Indenture or of the Global Security, but this Supplemental Indenture and the Global Security shall be construed as if such invalid or illegal or unenforceable provision had never been contained herein or therein.

*Section 4.05. Tax Treatment of Securities.*

The Company agrees, and by acceptance of a beneficial interest in a Security each Holder and any Beneficial Owner of a Security shall be deemed to agree, to treat, for United States federal income tax purposes, the Securities as debt instruments that are subject to Treasury regulation section 1.1275-4 or any successor provision (the "contingent payment regulations"). For United States federal income tax purposes, the Company further agrees, and by acceptance of a beneficial interest in a Security each Holder and any Beneficial Owner of a Security shall be deemed to agree (i) to treat the cash and the fair market value of any Common Stock received upon the conversion of a Security as a contingent payment for purposes of the contingent payment regulations, (ii) to accrue interest with respect to outstanding Securities as original issue discount for United States federal income tax purposes (*i.e.* Tax Original Issue Discount) according to the "noncontingent bond method" set forth in the contingent payment regulations, using the comparable yield of 8% compounded semi-annually, and (iii) to be bound by the Company's determination of the "projected payment schedule," within the meaning of the

contingent payment regulations, with respect to the Securities. Holders or Beneficial Owners may obtain the issue price, amount of Tax Original Issue Discount, issue date, comparable yield and projected payment schedule by submitting a written request to the Company at the following address: 5000 Westown Parkway #440, West Des Moines, IA 50266.

*Section 4.06. Multiple Originals.*

This Supplemental Indenture may be executed in any number of counterparts, each of which shall be an original, but such counterparts shall together constitute one and the same instrument.

IN WITNESS WHEREOF, the Company has caused this Supplemental Indenture to be signed and acknowledged by its duly authorized officers, and U.S. Bank National Association has caused this Supplemental Indenture to be signed by one of its duly authorized officers, as of the day and year first above written.

AMERICAN EQUITY INVESTMENT LIFE HOLDING COMPANY

By:     /s/ WENDY L. CARLSON

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Name:       Wendy L. Carlson  
Title:       Chief Financial Officer

U.S. BANK NATIONAL ASSOCIATION, as Trustee

By:     /s/ LORI ANNE ROSENBERG

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Name:       Lori Anne Rosenberg  
Title:       Vice President

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## [FORM OF FACE OF GLOBAL SECURITY]

THIS SECURITY HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR ANY STATE OR OTHER SECURITIES LAWS. NEITHER THIS SECURITY NOR ANY INTEREST OR PARTICIPATION HEREIN MAY BE REOFFERED, SOLD, ASSIGNED, TRANSFERRED, PLEDGED, ENCUMBERED OR OTHERWISE DISPOSED OF IN THE ABSENCE OF SUCH REGISTRATION OR UNLESS SUCH TRANSACTION IS EXEMPT FROM, OR NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT. BY ITS ACQUISITION HEREOF OR OF A BENEFICIAL INTEREST HEREIN, THE HOLDER (1) REPRESENTS THAT IT IS A "QUALIFIED INSTITUTIONAL BUYER" (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT ("RULE 144A")) AND IS PURCHASING IN COMPLIANCE WITH RULE 144A UNDER THE SECURITIES ACT, (2) AGREES NOT TO OFFER, SELL OR OTHERWISE TRANSFER SUCH SECURITY PRIOR TO THE DATE WHICH IS THE LATER OF (X) TWO YEARS (OR SUCH SHORTER PERIOD OF TIME AS PERMITTED BY RULE 144(k) OF THE SECURITIES ACT) AFTER THE LATER OF THE LAST DATE OF ORIGINAL ISSUANCE OF THIS SECURITY (OR ANY PREDECESSOR OF THIS SECURITY) AND THE LAST DATE ON WHICH AMERICAN EQUITY INVESTMENT LIFE HOLDING COMPANY OR ANY AFFILIATE OF AMERICAN EQUITY INVESTMENT LIFE HOLDING COMPANY WAS THE OWNER OF THIS SECURITY (OR ANY PREDECESSOR OF THIS SECURITY) AND (Y) SUCH LATER DATE, IF ANY, AS MAY BE REQUIRED BY APPLICABLE LAW (THE "RESALE RESTRICTION TERMINATION DATE") EXCEPT (A) TO AMERICAN EQUITY INVESTMENT LIFE HOLDING COMPANY OR ANY SUBSIDIARY THEREOF, (B) PURSUANT TO A REGISTRATION STATEMENT WHICH HAS BEEN DECLARED EFFECTIVE UNDER THE SECURITIES ACT AND WHICH CONTINUES TO BE EFFECTIVE AT THE TIME OF SUCH TRANSFER, (C) PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT PROVIDED BY RULE 144 UNDER THE SECURITIES ACT (IF AVAILABLE) OR (D) FOR SO LONG AS THE SECURITIES ARE ELIGIBLE FOR RESALE PURSUANT TO RULE 144A, TO A PERSON IT REASONABLY BELIEVES IS A "QUALIFIED INSTITUTIONAL BUYER" AS DEFINED IN RULE 144A THAT PURCHASES FOR ITS OWN ACCOUNT OR FOR THE ACCOUNT OF A QUALIFIED INSTITUTIONAL BUYER TO WHOM NOTICE IS GIVEN THAT THE TRANSFER IS BEING MADE IN RELIANCE ON RULE 144A AND (3) AGREES THAT IT WILL GIVE TO EACH PERSON TO WHOM THIS SECURITY IS TRANSFERRED A NOTICE SUBSTANTIALLY TO THE EFFECT OF THIS LEGEND; AND, IN EACH OF THE FOREGOING CASES, TO REQUIRE THAT A CERTIFICATE OF TRANSFER IN THE FORM APPEARING ON THE OTHER SIDE OF THIS SECURITY IS COMPLETED AND DELIVERED BY THE TRANSFEROR TO AMERICAN EQUITY INVESTMENT LIFE HOLDING COMPANY AND THE TRUSTEE (WITH RESPECT TO TRANSFERS OF SECURITIES) OR THE TRANSFER AGENT (WITH RESPECT TO TRANSFERS OF COMMON STOCK). THIS LEGEND WILL BE REMOVED UPON THE REQUEST OF THE HOLDER AFTER THE RESALE RESTRICTION TERMINATION DATE.

FOR PURPOSES OF SECTIONS 1272, 1273 AND 1275 OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED (THE "CODE"), THIS SECURITY IS BEING ISSUED WITH TAX ORIGINAL ISSUE DISCOUNT. THE ISSUE PRICE OF THIS SECURITY IS (x) \$1,050 PLUS (y) ACCRUED INTEREST FROM DECEMBER 6, 2004 TO DECEMBER 30, 2004 (EQUAL TO \$3.50), OR \$1,053.50 PER \$1,000 OF PRINCIPAL AMOUNT, AND THE ISSUE DATE OF THIS SECURITY IS DECEMBER 30, 2004. IN ADDITION, THIS SECURITY IS SUBJECT TO UNITED STATES FEDERAL INCOME TAX REGULATIONS GOVERNING CONTINGENT PAYMENT DEBT INSTRUMENTS. FOR PURPOSES OF SECTIONS 1272, 1273 AND 1275 OF THE CODE, THE COMPARABLE YIELD OF THIS SECURITY IS 8% COMPOUNDED SEMI-ANNUALLY (WHICH WILL BE TREATED AS THE YIELD TO MATURITY FOR UNITED STATES FEDERAL INCOME TAX PURPOSES).

FOR UNITED STATES FEDERAL INCOME TAX PURPOSES, AMERICAN EQUITY INVESTMENT LIFE HOLDING COMPANY AGREES, AND BY ACCEPTANCE OF A BENEFICIAL INTEREST IN THIS SECURITY EACH HOLDER AND ANY BENEFICIAL OWNER OF THIS SECURITY SHALL BE DEEMED TO HAVE AGREED, (1) TO TREAT THIS SECURITY AS A DEBT INSTRUMENT THAT IS SUBJECT TO TREASURY REGULATIONS SECTION 1.1275-4 OR ANY SUCCESSOR PROVISION (THE "**CONTINGENT PAYMENT REGULATIONS**"), (2) TO TREAT THE CASH AND THE FAIR MARKET VALUE OF ANY COMMON STOCK RECEIVED UPON CONVERSION OF THIS SECURITY AS A CONTINGENT PAYMENT FOR PURPOSES OF THE CONTINGENT PAYMENT REGULATIONS, (3) TO

ACCRUE INTEREST WITH RESPECT TO THIS SECURITY AS ORIGINAL ISSUE DISCOUNT FOR UNITED STATES FEDERAL INCOME TAX PURPOSES ACCORDING TO THE "NONCONTINGENT BOND METHOD" SET FORTH IN THE CONTINGENT PAYMENT REGULATIONS AND (4) TO BE BOUND BY AMERICAN EQUITY INVESTMENT LIFE HOLDING COMPANY'S DETERMINATION OF THE "COMPARABLE YIELD" AND "PROJECTED PAYMENT SCHEDULE," EACH WITHIN THE MEANING OF THE CONTINGENT PAYMENT REGULATIONS, WITH RESPECT TO THIS SECURITY.

AMERICAN EQUITY INVESTMENT LIFE HOLDING COMPANY AGREES TO PROVIDE PROMPTLY TO THE HOLDER OF THIS SECURITY, UPON WRITTEN REQUEST, THE ISSUE PRICE, AMOUNT OF TAX ORIGINAL ISSUE DISCOUNT, ISSUE DATE, COMPARABLE YIELD AND PROJECTED PAYMENT SCHEDULE. ANY SUCH WRITTEN REQUEST SHOULD BE SENT TO AMERICAN EQUITY INVESTMENT LIFE HOLDING COMPANY AT THE FOLLOWING ADDRESS: 5000 WESTOWN PARKWAY, SUITE 440, WEST DES MOINES, IOWA 50266, ATTENTION: WENDY L. CARLSON.

UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY TO THE COMPANY OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY (AND ANY PAYMENT HEREON IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL SINCE THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN. TRANSFERS OF THIS GLOBAL SECURITY SHALL BE LIMITED TO TRANSFERS TO NOMINEES OF THE DEPOSITORY TRUST COMPANY OR TO A SUCCESSOR THEREOF OR SUCH SUCCESSOR'S NOMINEE AND TRANSFERS OF PORTIONS OF THIS GLOBAL SECURITY SHALL BE LIMITED TO TRANSFERS MADE IN ACCORDANCE WITH THE RESTRICTIONS SET FORTH IN THE INDENTURE REFERRED TO ON THE REVERSE HEREOF.

AMERICAN EQUITY INVESTMENT LIFE HOLDING COMPANY

5.25% Contingent Convertible Senior Note Due 2024

No.: 1

CUSIP:

Issue Date:

Principal Amount: \$

American Equity Investment Life Holding Company, an Iowa corporation, promises to pay to Cede & Co. or registered assigns, the principal amount of, on December 6, 2024, subject to the further provisions of this Security set forth on the reverse hereof, which further provisions shall for all purposes have the same effect as if set forth at this place. This Security is convertible as specified on the other side of this Security.

Interest Payment Dates: June 6 and December 6, commencing June 6, 2005.

Record Dates: May 20 and November 20, commencing May 20, 2005.

American Equity Investment Life Holding Company

By:

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Name: Wendy L. Carlson  
Title: Chief Financial Officer

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**TRUSTEE'S CERTIFICATE OF AUTHENTICATION**

U.S. Bank National Association, as Trustee, certifies that this is one of the Securities referred to in the within-mentioned Indenture.

By: \_\_\_\_\_  
Authorized Signatory

Dated:



AMERICAN EQUITY INVESTMENT LIFE HOLDING COMPANY

Series B 5.25% Contingent Convertible Senior Note Due 2024

(1) New Series of Securities.

This Security shall constitute a new, separate series of Securities under the Indenture and Holders hereof shall constitute a separate class of Holders.

(2) Interest.

This Security will bear interest from December 6, 2004 or from the most recent date to which interest has been paid or duly provided for, semi-annually in arrears on June 6 and December 6 of each year (each, an **"Interest Payment Date"**), subject to Section 11.08 of the Indenture, commencing June 6, 2005. The Company will pay interest on any overdue principal amount at the interest rate borne by the Securities at the time such interest on the overdue principal amount accrues, compounded semi-annually, and it shall pay interest on overdue installments of interest and Contingent Interest and Liquidated Damages, if any (without regard to any applicable grace period), at the same interest rate, compounded semi-annually. Interest (including Contingent Interest and Liquidated Damages, if any) on the Securities will be computed on the basis of a 360-day year comprised of twelve 30-day months.

The Company shall pay additional interest (**"Contingent Interest"**) to the Holders during any six-month period (a **"Contingent Interest Period"**) from and including an Interest Payment Date to but excluding the next Interest Payment Date, commencing with the six-month period ending June 6, 2012, if the average Trading Price per Security for the five Trading Days ending on the third Trading Day immediately preceding the first day of the applicable Contingent Interest Period (the **"Contingent Interest Average Trading Price"**) equals 120% or more of the principal amount of such Security. The amount of Contingent Interest payable per \$1,000 principal amount of Securities in respect of any Contingent Interest Period shall equal 0.50% per annum on the Contingent Interest Average Trading Price. The Company will pay Contingent Interest, if any, in the same manner and at the same time as it will pay interest as described above.

Upon determination that Holders will be entitled to receive Contingent Interest for a Contingent Interest Period, on or prior to the first day of such Contingent Interest Period, the Company shall issue a press release and notify the Trustee promptly in writing.

(3) Method of Payment.

The Company will pay interest (including Contingent Interest and Liquidated Damages, if any) on this Security to the Person who is the registered Holder of this Security at the close of business on May 20 or November 20 (each a **"Record Date"**), as the case may be, immediately preceding the related Interest Payment Date. Subject to the terms and conditions of the Indenture, the Company will make all payments and deliveries in respect of the Redemption Price, Repurchase Price, Change in Control Repurchase Price and the principal amount at Stated Maturity, as the case may be, to the Holder who surrenders a Security to a Paying Agent to collect such payments in respect of the Security. The Company will pay cash amounts in money of the United States that at the time of payment is legal tender for payment of public and private debts. However, the Company may pay interest (including Contingent Interest and Liquidated Damages, if any), the Redemption Price, Repurchase Price, Change in Control Repurchase Price and the principal amount at Stated Maturity, as the case may be, to a Holder holding Securities in definitive form by check or wire payable in such money; *provided* that a Holder holding Securities in definitive form with an aggregate principal amount in excess of \$1,000,000 may request payment by wire transfer in immediately available funds to an account in North America at the election of such Holder. The Company may mail an interest check to the Holder's registered address. Notwithstanding the foregoing, so long as this Security is registered in the name of a Depositary or its nominee, all payments hereon shall be made by wire transfer of immediately available funds to the account of the Depositary or its nominee.

(4) Paying Agent, Conversion Agent and Registrar.

Initially, U.S. Bank National Association (the **"Trustee"**) will act as Paying Agent, Conversion Agent and Registrar. The Company may appoint and change any Paying Agent, Conversion Agent or Registrar without notice, other than notice to the Trustee; *provided* that the Company will maintain at least one Paying Agent having an office or agency in the State of New York, City of New York, Borough of Manhattan, which shall initially be an

office or agent of the Trustee. The Company or any of its Subsidiaries or any of their Affiliates may act as Paying Agent, Conversion Agent or Registrar.

(5) Indenture.

The Company issued the Securities under an Indenture dated as of December 6, 2004 (the "**Original Indenture**") between the Company and the Trustee, as supplemented by the First Supplemental Indenture dated as December 30, 2004 (the "**Supplemental Indenture**", and together with the Original Indenture, the "**Indenture**"), between the Company and the Trustee. The terms of the Securities include those stated in the Indenture and those made part of the Indenture by reference to the Trust Indenture Act of 1939, as in effect from time to time (the "**TIA**"). Capitalized terms used herein and not defined herein have the meanings ascribed thereto in the Indenture. The Securities are subject to all such terms, and Holders are referred to the Indenture and the TIA for a statement of those terms.

The Securities are senior unsecured obligations of the Company and may be issued in unlimited principal amount under the Indenture. The Indenture does not limit other indebtedness of the Company, secured or unsecured.

(6) Redemption at the Option of the Company.

No sinking fund is provided for the Securities. Beginning on December 15, 2011 and during the periods thereafter to maturity, the Securities of this series are redeemable as a whole at any time, or in part from time to time, in any integral multiple of \$1,000, at the option of the Company for cash at a Redemption Price equal to 100% of the principal amount, together with accrued but unpaid interest (including Contingent Interest and Liquidated Damages, if any) thereon, up to but not including the Redemption Date; *provided* that, if the Redemption Date is between the close of business on a Record Date and the opening of business on the related Interest Payment Date, interest will be payable to the Holders in whose names the Securities are registered at the close of business on the relevant Record Date.

Notice of redemption pursuant to paragraph 5 of this Security will be mailed at least 30 days but not more than 60 days before the Redemption Date to each Holder of Securities to be redeemed at the Holder's registered address. If money sufficient to pay the Redemption Price of all Securities of this series (or portions thereof) to be redeemed on the Redemption Date is deposited with the Paying Agent prior to 11:00 a.m., New York City time, on the Redemption Date, immediately after such Redemption Date, interest (including Contingent Interest and Liquidated Damages, if any) shall cease to accrue on such Securities or portions thereof. Securities in denominations larger than \$1,000 of principal amount may be redeemed in part but only in integral multiples of \$1,000 of principal amount.

(7) Repurchase By the Company at the Option of the Holder on Specified Dates; Repurchase at the Option of the Holder Upon a Change in Control.

Subject to the terms and conditions of the Indenture, the Company shall become obligated to repurchase, at the option of the Holder, on December 15, 2011, December 15, 2014 and December 15, 2019 (each, a "**Repurchase Date**"), all or a portion of the Securities held by such Holder, in any integral multiple of \$1,000, for cash at a price per Security equal to 100% of the aggregate principal amount of the Security (the "**Repurchase Price**"), together with accrued but unpaid interest (including Contingent Interest and Liquidated Damages, if any) thereon, up to but not including the Repurchase Date upon delivery of a Repurchase Notice containing the information set forth in the Indenture, together with the Securities subject thereto, at any time from the opening of business on the date that is 30 Business Days prior to such Repurchase Date until the close of business on the Business Day prior to such Repurchase Date, and upon delivery of the Securities to the Paying Agent by the Holder as set forth in the Indenture.

At the option of the Holder and subject to the terms and conditions of the Indenture, the Company shall become obligated to repurchase the Securities held by such Holder after the occurrence of a Change in Control of the Company for a Change in Control Repurchase Price equal to 100% of the principal amount thereof plus accrued but unpaid interest (including Contingent Interest and Liquidated Damages, if any) thereon, up to but not including the Change in Control Repurchase Date which Change in Control Repurchase Price shall be paid in cash (*provided* that if the Change in Control Repurchase Date is between the close of business on a Record Date and the opening of business on the related Interest Payment Date, accrued but unpaid interest will be payable to the Holders in whose names the Securities are registered at the close of business on the relevant Record Date). Holders have the right to withdraw any Repurchase Notice or Change in Control Repurchase Notice, as the case

may be, by delivering to the Paying Agent a written notice of withdrawal in accordance with the provisions of the Indenture.

If cash sufficient to pay the Repurchase Price or Change in Control Repurchase Price, as the case may be, and accrued but unpaid interest (including Contingent Interest and Liquidated Damages, if any) on all Securities of this series or portions thereof to be repurchased as of the Repurchase Date or the Change in Control Repurchase Date, as the case may be, is held by the Paying Agent by 11:00 a.m., New York City time, on the Business Day immediately following the Repurchase Date or the Change in Control Repurchase Date, interest (including Contingent Interest and Liquidated Damages, if any) shall cease to accrue on such Securities (or portions thereof) as of such Repurchase Date or Change in Control Repurchase Date, and the Holder thereof shall have no other rights as such, other than the right to receive the Repurchase Price or Change in Control Repurchase Price, as the case may be, and interest (including Contingent Interest and Liquidated Damages, if any) upon surrender of such Security.

(8) Conversion.

Upon satisfaction of the conditions set forth in Section 10.01(a) of the Indenture, a Holder of a Security may convert any portion of the principal amount of any Security that is an integral multiple of \$1,000 into cash and fully paid and non-assessable shares (calculated as to each conversion to the nearest 1/10000th of a share) of Common Stock in accordance with the provisions of Section 10.14 of the Indenture; *provided* that if such Security is called for redemption, the conversion right will terminate at the close of business on the second Business Day immediately preceding the Redemption Date of such Security (unless the Company shall default in making the redemption payment when due, in which case the conversion right shall terminate at the close of business on the date such default is cured and such Security is redeemed). Such conversion right shall commence on the initial issuance date of the Securities and expire at the close of business on the date of maturity, subject, in the case of conversion of any Global Security, to any Applicable Procedures. The Conversion Price shall, as of the date of the Indenture, initially be \$14.47 per share of Common Stock. The Conversion Rate shall, as of the date of the Indenture, initially be approximately 69.1085. The Conversion Price and Conversion Rate will be adjusted under the circumstances specified in the Indenture. Upon conversion, no adjustment for interest (including Contingent Interest and Liquidated Damages, if any) or dividends will be made. No fractional shares will be issued upon conversion; in lieu thereof, an amount will be paid in cash based upon the Ten Day Average Closing Stock Price (as defined in the Indenture). Except as provided in Section 10.02(c) of the Indenture, delivery of the Principal Return, Net Shares and cash in lieu of fractional shares shall be deemed to satisfy the Company's obligation to pay the principal amount of a converted Security and accrued but unpaid interest (including Contingent Interest and Liquidated Damages, if any) thereon. Any accrued interest (including Contingent Interest and Liquidated Damages, if any) payable on a converted Security will be deemed paid in full, rather than canceled, extinguished or forfeited.

In addition, following certain corporate transactions as set forth in Sections 10.01(a)(iii)(A) and 10.01(a)(iii)(B) that occur on or prior to December 15, 2011 and that constitute a Change in Control (other than relating to the composition of the Board of Directors as described in clause (d) of the definition of Change in Control in Section 1.01) and for which 10% or more of the fair market value of the consideration for the Common Stock (as determined by the Board of Directors) in the corporate transaction consists of (i) cash, (ii) other property or (iii) securities that are not traded or scheduled to be traded immediately following such transaction on a U.S. national securities exchange or the Nasdaq National Market, a Holder who elects to convert its Securities in connection with such corporate transaction will be entitled to receive Additional Shares of Common Stock upon conversion in certain circumstances.

To convert a Security, a Holder must (a) complete and manually sign the conversion notice set forth below and deliver such notice to the Conversion Agent, (b) surrender the Security to the Conversion Agent, (c) furnish appropriate endorsements and transfer documents if required by the Registrar or the Conversion Agent, (d) pay any transfer or other tax, if required and (e) if the Security is held in book-entry form, complete and deliver to the Depositary appropriate instructions pursuant to the Applicable Procedures. If a Holder surrenders a Security for conversion between the close of business on the Record Date and the opening of business on the related Interest Payment Date, the Security must be accompanied by payment of an amount equal to the interest (including Contingent Interest and Liquidated Damages, if any) payable on such Interest Payment Date on the principal amount of the Security or portion thereof then converted; *provided* that no such payment shall be required if such Security has been called for redemption on a Redemption Date within the period between close of business on such Record Date and the opening of business on such Interest Payment Date, or if such Security

is surrendered for conversion on the Interest Payment Date. A Holder may convert a portion of a Security equal to \$1,000 or any integral multiple thereof.

A Security in respect of which a Holder has delivered a Repurchase Notice or a Change of Control Repurchase Notice exercising the option of such Holder to require the Company to repurchase such Security as provided in Section 3.08 or Section 3.09, respectively, of the Indenture may be converted only if such notice of exercise is withdrawn in accordance with the terms of the Indenture.

(9) Denominations; Transfer; Exchange.

The Securities are in fully registered form, without coupons, in denominations of \$1,000 of principal amount and integral multiples of \$1,000. A Holder may transfer or exchange Securities in accordance with the Indenture. The Registrar may require a Holder, among other things, to furnish appropriate endorsements and transfer documents and to pay any taxes and fees required by law or permitted by the Indenture. The Registrar need not transfer or exchange any Securities selected for redemption (except, in the case of a Security to be redeemed in part, the portion of the Security not to be redeemed), or any Securities in respect of which a Repurchase Notice or a Change in Control Repurchase Notice has been given and not withdrawn (except, in the case of a Security to be repurchased in part, the portion of the Security not to be repurchased), or any Securities for a period of 15 days before the mailing of a notice of redemption of Securities to be redeemed.

(10) Persons Deemed Owners.

The registered Holder of this Security may be treated as the owner of this Security for all purposes.

(11) Amendment; Waiver.

Subject to certain exceptions set forth in the Indenture, (i) the Indenture or the Securities may be amended with the written consent of the Holders of at least a majority in aggregate principal amount of the Securities of this series at the time outstanding and (ii) certain defaults may be waived with the written consent of the Holders of a majority in aggregate principal amount of the Securities of this series at the time outstanding. Subject to certain exceptions set forth in the Indenture, without the consent of any Holder, the Company and the Trustee may amend the Indenture or the Securities (i) to cure any ambiguity, omission, defect or inconsistency, or make any other change that does not adversely affect the rights of any Holder in any material respect, (ii) to comply with Article 5 or Section 10.11 of the Indenture, (iii) to make provisions with respect to the conversion right of Holders pursuant to the requirements of Section 10.01 of the Indenture, (iv) to evidence and provide for the acceptance of appointment under the Indenture by a successor Trustee, or (v) to comply with the provisions of the TIA or any requirement of the SEC in connection with the qualification of the Indenture under the TIA.

(12) Defaults and Remedies.

Except as set forth in the Indenture, if an Event of Default occurs and is continuing, the Trustee or the Holders of not less than 25% in principal amount of Securities of this series then outstanding may declare all the Securities to be due and payable in the manner, at the time and with the effect provided in the Indenture. Holders of Securities of this series may not enforce the Indenture or the Securities except as provided in the Indenture. The Trustee is not obligated to enforce the Indenture or the Securities unless it has received security or indemnity reasonably satisfactory to it. The Indenture permits, subject to certain limitations therein provided, Holders of a majority in aggregate principal amount of the Securities of this series at the time outstanding to direct the Trustee in its exercise of any trust or power. The Trustee may withhold from Holders of Securities notice of any continuing Default or Event of Default (except a default in payment of principal or interest when due, for any reason) if it determines in good faith that withholding notice is in the interests of Holders.

(13) Trustee Dealings with the Company.

Subject to certain limitations imposed by the TIA, the Trustee under the Indenture, in its individual or any other capacity, may become the owner or pledgee of Securities and may otherwise deal with and collect obligations owed to it by the Company or its Affiliates and may otherwise deal with the Company or its Affiliates with the same rights it would have if it were not Trustee.

(14) No Recourse Against Others.

A director, officer, employee or shareholder, as such, of the Company shall not have any liability for any obligations of the Company under the Securities or the Indenture or for any claim based on, in respect of or by

reason of such obligations or their creation. By accepting a Security, each Holder waives and releases all such liability. The waiver and release are part of the consideration for the issue of the Securities.

(15) Ranking.

The Securities shall be unsecured senior obligations of the Company and shall rank equally in right of payment with any other existing and future senior indebtedness of the Company and senior to any future subordinated indebtedness of the Company.

(16) Authentication.

This Security shall not be valid until an authorized signatory of the Trustee manually signs the Trustee's Certificate of Authentication on the other side of this Security.

(17) Abbreviations.

Customary abbreviations may be used in the name of a Holder or an assignee, such as TEN COM ("**Tenants In Common**"), TEN ENT ("Tenants By The Entireties"), JT TEN ("**Joint Tenants With Right Of Survivorship And Not As Tenants In Common**"), CUST ("Custodian") and U/G/M/A ("**Uniform Gift To Minors Act**").

(18) Governing Law.

THE LAWS OF THE STATE OF NEW YORK SHALL GOVERN THE INDENTURE AND THIS SECURITY.

(19) CUSIP Numbers.

Pursuant to a recommendation promulgated by the Committee on Uniform Security Identification Procedures, the Company has caused CUSIP numbers to be printed on the Securities as a convenience to the Holders of the Securities. No representation is made as to the accuracy of such numbers as printed on the Securities and reliance may be placed only on the other identification numbers printed hereon.

## ASSIGNMENT FORM

To assign this Security, fill in the form below:

I or we assign and transfer this Security to

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(Insert assignee's soc. sec. or tax ID no.)

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(Print or type assignee's name, address and zip code)

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and irrevocably appoint \_\_\_\_\_ agent to transfer this Security on the books of the Company. The agent may substitute another to act for him.

Date: \_\_\_\_\_

## CONVERSION NOTICE

To convert this Security into Cash and Common Stock of the Company, check the box o

To convert only part of this Security, state the principal amount to be converted (which must be \$1,000 or an integral multiple of \$1,000):

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If you want the stock certificate made out in another person's name fill in the form below:

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(Insert the other person's soc. sec. or tax ID no.)

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(Print or type other person's name, address and zip code)

Your Signature: \_\_\_\_\_

(Sign exactly as your name appears on the other side of this Security)

Signature Guaranteed

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Participant in a Recognized Signature Guarantee Medallion Program

By: \_\_\_\_\_

Authorized Signatory

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## FORM OF REPURCHASE NOTICE

To: American Equity Investment Life Holding Company

The undersigned registered holder of this Security requests and instructs the Company to repurchase this Security, or the portion hereof (which is \$1,000 principal amount or a multiple thereof) designated below, on the date specified below, in accordance with the terms and conditions specified in paragraph 6 of this Security and the Indenture referred to in this Security and directs that the check in payment for this Security or the portion thereof and any Securities representing the portion of principal amount hereof not to be so repurchased, be issued and delivered to the registered holder hereof unless a different name has been indicated below. If any portion of this Security not repurchased is to be issued in the name of a Person other than the undersigned, the undersigned shall pay all transfer taxes payable with respect thereto.

Dated:

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Signature(s)

Fill in for registration of Securities not repurchased if to be issued other than to  
and in the name of registered holder:

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(Name)

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(Street Address)

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(City, state and zip code)

Please print name and address

principal amount to be repurchased (if less than all): \$ ,000

date of requested repurchase: December 15, 20  
(specify either December 15, 2011, 2014 or 2019)

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**FORM OF OPTION TO ELECT REPURCHASE  
UPON A CHANGE IN CONTROL**

To:     American Equity Investment Life Holding Company

The undersigned registered holder of this Security hereby acknowledges receipt of a notice from American Equity Investment Life Holding Company (the "Company") as to the occurrence of a Change in Control with respect to the Company and requests and instructs the Company to repurchase this Security, or the portion hereof (which is \$1,000 principal amount or a multiple thereof) designated below, in accordance with the terms of the Indenture referred to in this Security and directs that the check in payment for this Security or the portion thereof and any Securities representing any unrepurchased principal amount hereof, be issued and delivered to the registered holder hereof unless a different name has been indicated below. If any portion of this Security not repurchased is to be issued in the name of a Person other than the undersigned, the undersigned shall pay all transfer taxes payable with respect thereto.

Dated:

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Signature(s)

Fill in for registration of Securities not repurchased if to be issued other than to  
and in the name of registered holder:

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(Name)

---

(Street Address)

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(City, state and zip code)

Please print name and address

principal amount to be repurchased (if less than all): \$     ,000

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SCHEDULE I

AMERICAN EQUITY INVESTMENT LIFE HOLDING COMPANY  
Series B 5.25% Contingent Convertible Senior Notes Due 2024

No:

Date	Principal Amount	Notation

QuickLinks

[Exhibit 4.21](#)

## REGISTRATION RIGHTS AGREEMENT

Dated as of December 30, 2004

by and between

AMERICAN EQUITY INVESTMENT LIFE HOLDING COMPANY

and

DEUTSCHE BANK SECURITIES INC.

5.25% Contingent Convertible Senior Notes Due 2024

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## REGISTRATION RIGHTS AGREEMENT

This Registration Rights Agreement (this “Agreement”) is dated as of December 30, 2004, by and between American Equity Investment Life Holding Company, an Iowa corporation (the “Company”), and Deutsche Bank Securities Inc. (the “Initial Purchaser”).

This Agreement is entered into in connection with the Purchase Agreement dated December 23, 2004 (the “Purchase Agreement”) between the Company and the Initial Purchaser, which provides for the sale by the Company to the Initial Purchaser of \$10,000,000 aggregate principal amount of the Company’s 5.25% Contingent Convertible Senior Notes Due 2024 (the “Notes”), which are convertible into cash and common stock, par value \$1.00 per share, of the Company (the “Underlying Shares”). The Notes are being issued pursuant to an Indenture dated as of December 6, 2004 (the “Base Indenture”), as supplemented by a First Supplemental Indenture dated as of the date hereof (the “First Supplemental Indenture” and together with the Base Indenture, the “Indenture”), by and between the Company and U.S. Bank National Association, as Trustee.

In order to induce the Initial Purchaser to enter into the Purchase Agreement, the Company has agreed to provide the registration rights set forth in this Agreement for the benefit of the Initial Purchaser and subsequent holders of the Notes or Underlying Shares as provided herein. The execution and delivery of this Agreement is a condition to the Initial Purchaser’s obligation to purchase the Notes under the Purchase Agreement.

The parties hereto hereby agree as follows:

1. Definitions. As used in this Agreement, the following terms shall have the following meanings: “Agreement”: See the first introductory paragraph hereto.

“Amendment Effectiveness Deadline Date”: See Section 2(d)(i) hereof.

“Amount of Registrable Securities”: (a) With respect to Notes constituting Registrable Securities, the aggregate principal amount of all such Notes then outstanding, (b) with respect to Underlying Shares constituting Registrable Securities, the aggregate number of such Underlying Shares outstanding multiplied by the Conversion Price (as defined in the Indenture) in effect at the time of computing the Amount of Registrable Securities or, if no Notes are then outstanding, the Conversion Price shall be calculated as if the Notes were continuously outstanding to the date of calculation, giving effect to any adjustments to the Conversion Price set forth in the Indenture as if the Indenture continued to be in effect, and (c) with respect to combinations thereof, the sum of (a) and (b) for the relevant Registrable Securities.

“Business Day”: Any day that is not a Saturday, Sunday or a day on which banking institutions in the City of New York are authorized or required by law or executive order to be closed.

“Closing Date”: December 30, 2004.

“Company”: See the first introductory paragraph hereto.

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“Controlling Person”: See Section 6 hereof.

“Damages Payment Date”: See Section 3(c) hereof.

“Deferral Period”: See Section 3(b) hereof.

“Depository”: The Depository Trust Company until a successor is appointed by the Company.

“Designated Counsel”: One firm of counsel chosen by the Holders of a majority in Amount of Registrable Securities to be included in a Registration Statement for a Shelf Registration and identified to the Company in writing prior to the filing of such Registration Statement.

“Effectiveness Date”: The 210<sup>th</sup> day after the Closing Date.

“Effectiveness Period”: See Section 2(a) hereof.

“Exchange Act”: The Securities Exchange Act of 1934, as amended, and the rules and regulations of the SEC promulgated thereunder.

“Filing Date”: The 120<sup>th</sup> day after the Closing Date.

“Holder”: Any beneficial owner from time to time of Registrable Securities.

“Indemnified Holder”: See Section 6 hereof.

“Indemnified Person”: See Section 6 hereof.

“Indemnifying Person”: See Section 6 hereof.

“Indenture”: See the second introductory paragraph hereto.

“Initial Purchaser”: See the first introductory paragraph hereto.

“Initial Shelf Registration”: See Section 2(a) hereof.

“Inspectors”: See Section 4(k) hereof.

“Liquidated Damages”: See Section 3(a) hereof.

“Notes”: See the second introductory paragraph hereto.

“Notice and Questionnaire”: means a written notice delivered to the Company containing substantially the information called for by the Form of Selling Securityholder Notice and Questionnaire attached as Appendix A to the Offering Memorandum of the Company relating to the Notes.

“Person”: An individual, partnership, corporation, limited liability company, unincorporated association, trust or joint venture, or a governmental agency or political subdivision thereof.

“Prospectus”: The prospectus included in any Registration Statement (including, without limitation, any prospectus subject to completion and a prospectus that includes any information previously omitted from a prospectus filed as part of an effective registration statement in reliance upon Rule 430A promulgated under the Securities Act), as amended or supplemented by any prospectus supplement, and all other amendments and supplements to the Prospectus, including post-effective amendments, and all material incorporated by reference or deemed to be incorporated by reference in such Prospectus.

“Purchase Agreement”: See the second introductory paragraph hereto.

“Records”: See Section 4(k) hereof.

“Registrable Securities”: All Notes and all Underlying Shares upon original issuance thereof and at all times subsequent thereto until the earliest to occur of (i) a Registration Statement covering such Notes and Underlying Shares having been declared effective by the SEC and such Notes or Underlying Shares having been disposed of in accordance with such effective Registration Statement, (ii) such Notes or Underlying Shares having been sold in compliance with Rule 144 or being able to (except with respect to affiliates of the Company within the meaning of the Securities Act) be sold in compliance with Rule 144(k), or (iii) such Notes or Underlying Shares ceasing to be outstanding.

“Registration Default”: See Section 3(a) hereof.

“Registration Statement”: Any registration statement of the Company filed with the SEC pursuant to the provisions of this Agreement, including the Prospectus, amendments and supplements to such registration statement, including post-effective amendments, all exhibits and all documents incorporated by reference or deemed to be incorporated by reference in such registration statement.

“Rule 144”: Rule 144 promulgated under the Securities Act, as such Rule may be amended from time to time, or any similar rule (other than Rule 144A) or regulation hereafter adopted by the SEC providing for offers and sales of securities made in compliance therewith resulting in offers and sales by subsequent holders that are not affiliates of an issuer of such securities being free of the registration and prospectus delivery requirements of the Securities Act.

“Rule 144A”: Rule 144A promulgated under the Securities Act, as such Rule may be amended from time to time, or any similar rule (other than Rule 144) or regulation hereafter adopted by the SEC.

“Rule 415”: Rule 415 promulgated under the Securities Act, as such Rule may be amended from time to time, or any similar rule or regulation hereafter adopted by the SEC.

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“SEC”: The U.S. Securities and Exchange Commission.

“Securities Act”: The Securities Act of 1933, as amended, and the rules and regulations of the SEC promulgated thereunder.

“Selling Holder”: On any date, any Holder that has delivered a Notice and Questionnaire to the Company on or prior to such date.

“Shelf Registration”: See Section 2(b) hereof.

“Shelf Registration Statement”: See Section 2(b) hereof.

“Subsequent Shelf Registration”: See Section 2(b) hereof.

“TIA”: The Trust Indenture Act of 1939, as amended, and the rules and regulations of the SEC promulgated thereunder.

“Trustee”: The Trustee under the Indenture.

“Underlying Shares”: See the second introductory paragraph hereto.

“Underwritten Registration” or “Underwritten Offering”: A registration in which Registrable Securities are sold to an underwriter for reoffering to the public.

## 2. Shelf Registration.

(a) Initial Shelf Registration. The Company shall file with the SEC a Registration Statement for an offering to be made on a continuous basis pursuant to Rule 415 covering all of the Registrable Securities (the “Initial Shelf Registration”) on or prior to the Filing Date.

The Initial Shelf Registration shall be on Form S-3 or another appropriate form permitting registration of the Registrable Securities for resale by Holders in the manner or manners designated by them (excluding Underwritten Offerings) and set forth in the Initial Shelf Registration. The Company shall not permit any securities other than the Registrable Securities to be included in the Initial Shelf Registration or any Subsequent Shelf Registration (as defined below).

The Company shall use its commercially reasonable efforts to cause the Initial Shelf Registration to be declared effective under the Securities Act on or prior to the Effectiveness Date and to keep the Initial Shelf Registration continuously effective under the Securities Act until the date (A) that is two years after the Closing Date (such period, as it may be shortened pursuant to clauses (i), (ii) or (iii) immediately following, the “Effectiveness Period”), or such shorter period ending when (i) all of the Registrable Securities covered by the Initial Shelf Registration have been sold in the manner set forth and as contemplated in the Initial Shelf Registration, (ii) the date on which all the Registrable Securities (x) held by Persons who are not affiliates of the Company may be resold pursuant to Rule 144(k) under the Securities Act

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or (y) cease to be outstanding, (iii) all the Registrable Securities have been resold pursuant to Rule 144 under the Securities Act or (B) a Subsequent Shelf Registration covering all of the Registrable Securities has been declared effective under the Securities Act.

(b) Subsequent Shelf Registrations. If the Initial Shelf Registration ceases to be effective for any reason at any time during the Effectiveness Period (other than because of the sale of all of the Registrable Securities registered thereunder), the Company shall use its commercially reasonable efforts to obtain the prompt withdrawal of any order suspending the effectiveness thereof, and in any event shall within 45 days of such cessation of effectiveness amend the Initial Shelf Registration in a manner reasonably expected by the Company to obtain the withdrawal of the order suspending the effectiveness thereof, or file an additional “shelf” Registration Statement pursuant to Rule 415 covering all of the Registrable Securities (a “Subsequent Shelf Registration”). If a Subsequent Shelf Registration is filed, the Company shall use its commercially reasonable efforts to cause the Subsequent Shelf Registration to be declared effective under the Securities Act as soon as practicable after such filing (or if filed during a Deferral Period, after the expiration of such Deferral Period) and to keep such Registration Statement continuously effective for the balance of the Effectiveness Period. As used herein, the term “Shelf Registration” means the Initial Shelf Registration or any Subsequent Shelf Registration and the term “Shelf Registration Statement” means any Registration Statement filed in connection with a Shelf Registration.

(c) Supplements and Amendments. The Company shall promptly supplement and amend a Shelf Registration if required by the rules, regulations or instructions applicable to the registration form used for such Shelf Registration, if required by the Securities Act, or if reasonably requested by the Holders of a majority in Amount of Registrable Securities covered by such Shelf Registration Statement.

(d) Notice and Questionnaire. Each Holder agrees that if such Holder wishes to sell Registrable Securities pursuant to a Shelf Registration Statement and related Prospectus, it will do so only in accordance with this Section 2(d) and Section 4A hereof. Each Holder wishing to sell Registrable Securities pursuant to a Shelf Registration Statement and related Prospectus agrees to deliver a Notice and Questionnaire to the Company at least five (5) Business Days prior to the date that the Initial Shelf Registration Statement is declared effective under the Securities Act. From and after the date the Initial Shelf Registration Statement is declared effective, the Company shall, as promptly as practicable after the date a fully completed and legible Notice and Questionnaire, together with such other information as the Company may reasonably request, is received by the Company, and in any event upon the later of (x) twenty (20) days after such date, if a supplement to the related Prospectus is required to be filed, (y) forty-five (45) days after such date, if a post-effective amendment to the Shelf Registration Statement or an additional Shelf Registration Statement is required to be filed or (z) ten (10) Business Days after the expiration of any Deferral Period in effect when the Notice and Questionnaire is received by the Company:

(i) if required by applicable law, file with the SEC a post-effective amendment to the Shelf Registration Statement or a Subsequent Shelf Registration or prepare and, if required by applicable law, file a supplement to the

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related Prospectus or a supplement or amendment to any document incorporated therein by reference or file any other required document so that the Holder delivering such Notice and Questionnaire is named as a selling securityholder in the Shelf Registration Statement and the related Prospectus in such a manner as to permit such Holder to deliver such Prospectus to purchasers of the Registrable Securities (subject to the rights of the Company under Section 3(b) to create a Deferral Period) in accordance with applicable law and, if the Company shall file a post-effective amendment to the Shelf Registration Statement, use its commercially reasonable efforts to cause such post-effective amendment to be declared effective under the Securities Act as promptly as practicable, but in any event by the date (the “Amendment Effectiveness Deadline Date”) that is forty-five (45) days after the date such post-effective amendment is required by this clause to be filed;

(ii) provide such Holder copies of any documents filed pursuant to Section 2(d)(i); and

(iii) notify such Holder as promptly as practicable after the effectiveness under the Securities Act of any post-effective amendment filed pursuant to Section 2(d)(i); *provided* that if such Notice and Questionnaire is delivered during a Deferral Period, the Company shall so inform the Holder delivering such Notice and Questionnaire and shall take the actions set forth in clauses (i), (ii) and (iii) above upon expiration of the Deferral Period. Notwithstanding anything contained herein to the contrary, (i) the Company shall be under no obligation to name any Holder that has not delivered a fully completed and legible Notice and Questionnaire, together with such other information as the Company may reasonably request, to the Company in accordance with this Section 2(d) and (ii) the Amendment Effectiveness Deadline Date shall be extended by up to ten (10) Business Days from the expiration of a Deferral Period (and the Company shall incur no obligation to pay Liquidated Damages during such extension) if such Deferral Period shall be in effect on the Amendment Effectiveness Deadline Date.

### 3. Liquidated Damages.

(a) The Company and the Initial Purchaser agree that the Holders of Notes that are Registrable Securities will suffer damages if the Company fails to fulfill its obligations under Section 2 hereof and that it would not be feasible to ascertain the extent of such damages with precision. Accordingly, the Company agrees to pay liquidated damages on the Notes that are Registrable Securities (“Liquidated Damages”) under the circumstances and to the extent set forth below (each of which shall be given independent effect; each a “Registration Default”):

(i) if the Initial Shelf Registration is not filed on or prior to the Filing Date, then commencing on the day after the Filing Date, Liquidated Damages shall accrue on the Notes that are Registrable Securities at a rate of 0.50% per annum on the aggregate principal amount of all such Notes then outstanding;

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(ii) if a Shelf Registration is not declared effective by the SEC on or prior to the Effectiveness Date, then commencing on the day after the Effectiveness Date, Liquidated Damages shall accrue on the Notes that are Registrable Securities at a rate of 0.50% per annum on the aggregate principal amount of all such Notes then outstanding;

(iii) if a Shelf Registration has been declared effective and such Shelf Registration ceases to be effective at any time during the Effectiveness Period (other than as permitted under Section 3(b)), then commencing on the day after the date such Shelf Registration ceases to be effective, Liquidated Damages shall accrue on the Notes that are Registrable Securities at a rate of 0.50% per annum on the aggregate principal amount of all such Notes then outstanding;

(iv) if any post-effective amendment filed pursuant to Section 2(d)(i) has not become effective under the Securities Act on or prior to the Amendment Effectiveness Deadline Date, then commencing on the day after the Amendment Effectiveness Deadline Date, Liquidated Damages shall accrue on the Notes that are Registrable Securities at a rate of 0.50% per annum on the aggregate principal amount of all such Notes then outstanding; and

(v) if the aggregate duration of Deferral Periods in any period exceeds the number of days permitted in respect of such period pursuant to Section 3(b), then commencing on the day that caused the limit on the aggregate duration of Deferral Periods to be exceeded, Liquidated Damages shall accrue on the Notes that are Registrable Securities at a rate of 0.50% per annum on the aggregate principal amount of all such Notes then outstanding;

*provided* that Liquidated Damages on the Notes that are Registrable Securities may not accrue under more than one of the foregoing clauses (i), (ii), (iii), (iv) and (v) at any one time; *provided further* that in no event shall Liquidated Damages accrue at a rate per annum exceeding 0.50% of the aggregate principal amount of the Notes that are Registrable Securities then outstanding; and *provided further* that (1) upon the filing of the Initial Shelf Registration as required hereunder (in the case of clause (a)(i) of this Section 3), (2) upon the effectiveness of a Shelf Registration as required hereunder (in the case of clause (a)(ii) of this Section 3), (3) upon the effectiveness of a Shelf Registration which had ceased to remain effective (in the case of clause (a)(iii) of this Section 3), (4) upon the effectiveness of a post-effective amendment as required hereunder (in the case of clause (a)(iv) of this Section 3), or (5) upon the termination of the Deferral Period that caused the limit on the aggregate duration of Deferral Periods to be exceeded (in the case of clause (a)(v) of this Section 3), Liquidated Damages on the Notes that are Registrable Securities as a result of such clause shall cease to accrue. It is understood and agreed that, notwithstanding any provision to the contrary, no Liquidated Damages shall accrue on any Notes that are Registrable Securities that are then covered by, and may be sold under, an effective Shelf Registration Statement.

(b) Notwithstanding Section 3(a), the Company, upon written notice to the Holders, shall be permitted to suspend the availability of a Registration Statement covering the

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Registrable Securities for any bona fide reason whatsoever for up to 45 consecutive days (the “Deferral Period”) in any 90-day period without being obligated to pay Liquidated Damages; *provided* that Deferral Periods may not total more than 90 days in the aggregate in any twelve month period. The Company shall not be required to specify in the written notice to the Holders the nature of the event giving rise to the Deferral Period.

(c) So long as Notes remain outstanding, the Company shall notify the Trustee within five Business Days after each and every date on which an event occurs in respect of which Liquidated Damages are required to be paid. Any amounts of Liquidated Damages due pursuant to clause (a)(i), (a)(ii), (a)(iii), (a)(iv) or (a)(v) of this Section 3 will be payable in cash semiannually on June 6 and December 6 of each year (each, a “Damages Payment Date”), commencing with the first such Damages Payment Date occurring after any such Liquidated Damages commences to accrue, to Holders to whom regular interest is payable on the Damages Payment Date, with respect to Notes that are Registrable Securities, *provided* that any Liquidated Damages accrued with respect to any Note or portion thereof called for redemption by the Company on a redemption date or converted into Underlying Shares on a conversion date prior to the Damages Payment Date, shall, in any such event, be paid instead to the Holder who submitted such Note or portion thereof for redemption or conversion on the applicable redemption date or conversion date, as the case may be, on such date (or promptly following the conversion date, in the case of conversion). The amount of Liquidated Damages for Notes that are Registrable Securities will be determined by multiplying the applicable rate of Liquidated Damages by the aggregate principal amount of all such Notes then outstanding on the first Damages Payment Date following such Registration Default in the case of the first such payment of Liquidated Damages with respect to a Registration Default (and thereafter at the next succeeding Damages Payment Date until the cure of such Registration Default), multiplied by a fraction, the numerator of which is the number of days such Liquidated Damages rate was applicable during such period (determined on the basis of a 360-day year comprised of twelve 30-day months and, in the case of a partial month, the actual number of days elapsed), and the denominator of which is 360. The parties agree that the sole monetary damages payable for a violation of the terms of this Agreement with respect to which Liquidated Damages are expressly provided shall be such Liquidated Damages.

#### 4. Registration Procedures.

In connection with its registration obligations pursuant to Section 2 hereof, the Company shall:

(a) Prepare and file with the SEC, on or prior to the Filing Date, a Registration Statement or Registration Statements as prescribed by Section 2 hereof, and use its commercially reasonable efforts to cause each such Registration Statement to become effective and remain effective as provided herein; *provided* that before filing any Registration Statement or Prospectus or any amendments or supplements thereto, the Company shall furnish to and afford the Initial Purchaser a reasonable opportunity to review copies of all such documents proposed to be filed (in each case, where possible, at least three Business Days prior to such filing, or such later date as is reasonable under the circumstances) and to reflect in each such document when so filed reasonable comments of the Initial Purchaser.

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(b) Prepare and file with the SEC such amendments and post-effective amendments to each Shelf Registration, as may be necessary to keep such Registration Statement continuously effective for the Effectiveness Period; cause the related Prospectus to be supplemented by any prospectus supplement required by applicable law, and as so supplemented to be filed pursuant to Rule 424 (or any similar provisions then in force) promulgated under the Securities Act; and comply with the provisions of the Securities Act applicable to it with respect to the disposition of all Registrable Securities covered by such Registration Statement during the Effectiveness Period in accordance with the intended methods of distribution set forth in such Registration Statement as so amended or in such Prospectus as so supplemented.

(c) Notify the Selling Holders and Designated Counsel, if any, promptly (but in any event within two Business Days), (i) when a Prospectus or any prospectus supplement or post-effective amendment to a Registration Statement has been filed, and, with respect to a Registration Statement or any post-effective amendment, when the same has become effective under the Securities Act (including in such notice a written statement that any Holder may, upon request, obtain, at the sole expense of the Company, one conformed copy of such Registration Statement or post-effective amendment, including financial statements and schedules, documents incorporated or deemed to be incorporated by reference and exhibits), (ii) of the issuance by the SEC of any stop order suspending the effectiveness of a Registration Statement or of any order preventing or suspending the use of any Prospectus or the initiation of any proceedings for that purpose, (iii) of the happening of any event, the existence of any condition or any information becoming known (but not the nature or details concerning such event, condition or information) that makes any statement made in such Registration Statement or related Prospectus or any document incorporated or deemed to be incorporated therein by reference untrue in any material respect or that requires the making of any changes in or amendments or supplements to such Registration Statement, Prospectus or documents so that, in the case of the Registration Statement, it will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading, and that in the case of the Prospectus, it will not contain any untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading (provided, however, that no notice of the Company pursuant to this clause (iii) shall be required in the event that the Company promptly files a prospectus supplement to update the Prospectus or a Current Report on Form 8-K or other appropriate Exchange Act report that is incorporated by reference into the Registration Statement, which, in either case, contains the requisite information with respect to such event, condition or information that results in such Registration Statement no longer containing

any untrue statement of a material fact or omitting to state a material fact necessary to make the statements contained therein not misleading) and (iv) of the Company's determination that a post-effective amendment to a Registration Statement would be appropriate which notice may in any case, at the discretion of the Company state that it constitutes a notice of deferral under Section 3(b) hereof.

(d) Use its commercially reasonable efforts to prevent the issuance of any order suspending the effectiveness of a Registration Statement or of any order preventing or suspending the use of a Prospectus and, if any such order is issued, to use its commercially reasonable efforts to obtain the withdrawal of any such order at the earliest possible moment or if

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any such order or suspension is during any Deferral Period, at the earliest possible time after such Deferral Period ends, and provide prompt notice to the Selling Holders of the withdrawal of any such order.

(e) Furnish as promptly as practicable after the filing of such documents with the SEC to each Selling Holder and Designated Counsel, if any, upon request and at the sole expense of the Company, one conformed copy of the Registration Statement or Registration Statements and each post-effective amendment thereto, including financial statements and schedules, and, if requested, all documents incorporated or deemed to be incorporated therein by reference and all exhibits.

(f) Deliver to each Selling Holder and Designated Counsel, if any, at the sole expense of the Company, as many copies of the Prospectus (including each form of preliminary prospectus) and each amendment or supplement thereto and any documents incorporated by reference therein as such Persons may reasonably request; and, subject to Sections 4A(a) and 4A(c) hereof, the Company hereby consents (except during any Deferral Period) to the use of such Prospectus and each amendment or supplement thereto by each of the Selling Holders of Registrable Securities and dealers, if any, in connection with the offering and sale of the Registrable Securities covered by such Prospectus and any amendment or supplement thereto in the manner set forth therein.

(g) Cause the Company's counsel to perform Blue Sky law investigations and file registrations and qualifications required to be filed in connection with the registration or qualification (or exemption from such registration or qualification) of such Registrable Securities or offer and sale under the securities or Blue Sky laws of such jurisdictions within the United States as any Selling Holder reasonably requests, use its commercially reasonable efforts to keep each such registration or qualification (or exemption therefrom) effective during the period such Registration Statement is required to be kept effective and do any and all other acts or things reasonably necessary or advisable under Blue Sky laws to enable the disposition in such jurisdictions of the Registrable Securities covered by the applicable Registration Statement in the manner set forth therein; *provided* that the Company shall not be required to (i) qualify generally to do business in any jurisdiction where it is not then so qualified, (ii) take any action that would subject it to general service of process in any such jurisdiction where it is not then so subject or (iii) subject itself to taxation in any such jurisdiction where it is not then so subject.

(h) Cooperate with the Selling Holders and their respective counsel to facilitate the timely preparation and delivery of certificates representing shares of Registrable Securities to be sold, which certificates shall not bear any restrictive legends and shall be in a form eligible for deposit with The Depository Trust Company; and enable such shares of Registrable Securities to be in such denominations and registered in such names as the Selling Holders may reasonably request.

(i) Upon the occurrence of any event contemplated by Section 4(c)(ii), 4(c)(iii) or 4(c)(iv) hereof, as promptly as practicable prepare and (subject to Section 4(a) hereof) file with the SEC, at the sole expense of the Company, a supplement or post-effective amendment to the Registration Statement or a supplement to the related Prospectus or any

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document incorporated or deemed to be incorporated therein by reference, or file any other required document so that, as thereafter delivered to the purchasers of the Registrable Securities being sold thereunder, any such Prospectus will not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

(j) Prior to the effective date of the first Registration Statement relating to the Registrable Securities, (i) provide the Trustee for the Notes and the transfer agent for the Common Stock with certificates for the Registrable Securities in a form eligible for deposit with The Depository Trust Company and (ii) provide a CUSIP number for the Registrable Securities.

(k) During the Effectiveness Period, if requested in connection with a disposition of Registrable Securities pursuant to a Registration Statement, make available at reasonable times for inspection by one or more representatives of the Selling Holders and any attorney or accountant retained by any such Selling Holders (collectively, the "Inspectors"), at the offices where normally kept, during reasonable business hours, at such time or times as shall be mutually convenient for the Company and the Inspectors as a group, all financial and other records, pertinent corporate documents and instruments of the Company and its subsidiaries (collectively, the "Records") as shall be reasonably necessary to enable them to exercise any applicable due diligence responsibilities, and cause the officers, directors and employees of the Company and its subsidiaries to supply all information reasonably requested by any such Inspector in connection with such Registration Statement; *provided* that the Company shall have no obligation to provide any such information prior to the execution by the party receiving such information of a confidentiality agreement in a form reasonably acceptable to the Company. Records that the Company determines, in good faith, to be confidential and any Records that it notifies the Inspectors are confidential shall not be used for any purpose other than satisfying "due diligence" obligations under the Securities Act and exercising rights under this Agreement and shall not be disclosed by any Inspector unless (i) the disclosure of such Records is necessary to avoid or correct a material misstatement or material omission in such Registration Statement, (ii) the release of such Records is ordered pursuant to a subpoena or other order from a court of competent jurisdiction, (iii) disclosure of such information is, in the opinion of counsel for the Selling Holder or any Inspector, necessary or advisable in connection with any action, claim, suit or proceeding, directly involving or potentially involving such Selling Holder or Inspector and arising out of, based upon, relating to, or involving this Agreement or any transactions contemplated hereby or arising hereunder or (iv) the information in such Records has been made generally available to the public other than through the acts of such Inspector; *provided* that prior notice shall be provided as soon as practicable to the Company of the potential disclosure of any information by such Inspector pursuant to clauses (ii) or (iii) of this sentence to permit the Company to obtain a protective order (or waive the provisions of this paragraph (k)). Each Inspector shall take such actions as are reasonably necessary to protect the confidentiality of such information (if practicable) to the extent such actions



(l) During the Effectiveness Period, comply with all applicable rules and regulations of the SEC applicable to any Registration Statement and make generally available to its security holders earnings statements satisfying the provisions of Section 11(a) of the Securities Act and Rule 158 thereunder (or any similar rule promulgated under the Securities Act) no later than 45 days after the end of any 12-month period (or 90 days after the end of any 12-month period if such period is a fiscal year) commencing on the first day of the first fiscal quarter of the Company after the effective date of a Registration Statement, which statements shall cover said 12-month periods.

(m) Cause the Indenture to be qualified under the TIA not later than the effective date of the first Registration Statement relating to the Registrable Securities; and in connection therewith, cooperate with the Trustee and the Holders of the Registrable Securities and their respective counsel to effect such changes to the Indenture as may be required for the Indenture to be so qualified in accordance with the terms of the TIA; and execute, and use all reasonable efforts to cause the Trustee to execute, all documents as may be required to effect such changes and all other forms and documents required to be filed with the SEC to enable the Indenture to be so qualified in a timely manner.

(n) If requested by Designated Counsel, if any, or the Holders of a majority in Amount of Registrable Securities, (i) promptly incorporate in a prospectus supplement or post-effective amendment such information as the Designated Counsel, if any, or such Holders reasonably determine is necessary to be included therein, (ii) make all required filings of such prospectus supplement or such post-effective amendment as soon as reasonably practicable after the Company has received notification of the matters to be incorporated in such prospectus supplement or post-effective amendment and (iii) supplement or make amendments to such Registration Statement.

(o) Use its commercially reasonable efforts to take all other steps necessary or advisable to effect the registration of the Registrable Securities covered by a Registration Statement contemplated hereby, provided that the Company shall not be required to take any action in connection with an Underwritten Offering.

4A. Holders' Obligations. (a) Each Holder agrees, by acquisition of the Registrable Securities, that no Holder shall be entitled to sell any of such Registrable Securities pursuant to a Registration Statement or to receive a Prospectus relating thereto, unless such Holder has furnished the Company with a Notice and Questionnaire as required pursuant to Section 2(d) hereof (including the information required to be included in such Notice and Questionnaire) and the information set forth in the next sentence. Each Selling Holder agrees promptly to furnish to the Company all information required to be disclosed in order to make the information previously furnished to the Company by such Selling Holder not misleading and any other information regarding such Selling Holder and the distribution of such Registrable Securities as the Company may from time to time reasonably request. Any sale of any Registrable Securities by any Holder shall constitute a representation and warranty by such Holder that the information relating to such Holder and its plan of distribution is as set forth in the Prospectus delivered by such Holder in connection with such disposition, that such Prospectus does not as of the time of such sale contain any untrue statement of a material fact

relating to or provided by such Holder or its plan of distribution and that such Prospectus does not as of the time of such sale omit to state any material fact relating to or provided by such Holder or its plan of distribution necessary to make the statements in such Prospectus, in the light of the circumstances under which they were made, not misleading.

(b) The Company may require each Selling Holder of Registrable Securities as to which any registration is being effected to furnish to the Company such additional information regarding such Holder and its plan of distribution of such Registrable Securities as the Company may, from time to time, reasonably request to the extent necessary or advisable to comply with the Securities Act. The Company may exclude from such registration the Registrable Securities of any Selling Holder if such Holder fails to furnish such additional information within twenty (20) Business Days after receiving such request. Each Selling Holder as to which any Shelf Registration is being effected agrees to furnish promptly to the Company all information required to be disclosed so that the information previously furnished to the Company by such Holder is not materially misleading and does not omit to state any material fact required to be stated therein or necessary to make the statements therein not misleading in light of the circumstances under which they were made.

(c) Each Holder of Registrable Securities agrees by acquisition of such Registrable Securities that, upon actual receipt of any notice from the Company suspending the availability of the Registration Statement pursuant to Section 3(b) hereof, or upon the happening of any event of the kind described in Section 4(c)(ii), 4(c)(iii) or 4(c)(iv) hereof (each Holder agrees to keep any such notice confidential), such Holder will forthwith discontinue disposition of such Registrable Securities covered by such Registration Statement or Prospectus until such Holder's receipt of the copies of the supplemented or amended Prospectus contemplated by Section 4(i) hereof, or until it is advised in writing by the Company that the use of the applicable Prospectus may be resumed, and it has received copies of any additional or supplemental filings that are incorporated or deemed incorporated by reference in such Prospectus thereto.

## 5. Registration Expenses.

(a) All fees and expenses incident to the performance of or compliance with this Agreement by the Company shall be borne by the Company, including, without limitation, (i) all registration and filing fees (including, without limitation, fees and expenses of compliance with state securities or Blue Sky laws, including, without limitation, reasonable fees and disbursements of counsel in connection with Blue Sky qualifications of the Registrable Securities and determination of the eligibility of the Registrable Securities for investment under the laws of such jurisdictions as provided in Section 4(g) hereof), (ii) printing expenses, including, without limitation, expenses of printing certificates for Registrable Securities in a form eligible for deposit with The Depository Trust Company and of printing prospectuses if the printing of prospectuses is requested by the Holders of a majority in Amount of Registrable Securities included in any Registration Statement, (iii) messenger, telephone and delivery expenses, (iv) fees and disbursements of counsel for the Company, (v) Securities Act liability insurance, if the Company desires such insurance, (vi) fees and expenses of all other Persons retained by the Company, (vii) internal expenses of the Company (including, without limitation, all salaries and expenses of officers and employees of the Company performing legal or accounting duties),

(viii) the expense of any annual audit, (ix) the fees and expenses incurred in connection with the listing of the securities to be registered on any securities exchange, if applicable, and (x) the expenses relating to printing, word processing and distributing all Registration Statements and any other documents necessary in order to comply with this Agreement. Notwithstanding anything in this Agreement to the contrary, each Holder shall pay all brokerage commissions with respect to any Registrable Securities sold by it and, except as set forth in Section 5(b) below, the Company shall not be responsible for the fees and expenses of any counsel, accountant or advisor for the Holders.

(b) The Company shall bear or reimburse the Holders of the Registrable Securities being registered in a Shelf Registration for the reasonable fees and disbursements of Designated Counsel.

## 6. Indemnification.

(a) The Company agrees to indemnify and hold harmless (x) each Holder (which, for the absence of doubt, for purposes of this Section 6 shall include the Initial Purchaser), (y) each Person, if any, who controls (within the meaning of either Section 15 of the Securities Act or Section 20 of the Exchange Act) any Holder (any of the Persons referred to in this clause (b) being hereinafter referred to as a “Controlling Person”), and (z) the respective officers, directors, partners, employees, representatives and agents of any Holder (including any predecessor holder) or any Controlling Person (any person referred to in clause (x), (y) or (z) may hereinafter be referred to as an “Indemnified Holder”), against any losses, claims, damages or liabilities to which such Indemnified Holder may become subject under the Securities Act or otherwise, insofar as such losses, claims, damages or liabilities (or actions or proceedings in respect thereof) arise out of or are based upon (i) any untrue statement or alleged untrue statement of any material fact contained in any Registration Statement or Prospectus, or any amendment or supplement thereto or any related preliminary prospectus or (ii) the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, in the light of the circumstances under which they were made; *provided* that the Company will not be liable under this Section 6(a), (x) to the extent that any such loss, claim, damage or liability arises out of or is based upon an untrue statement or alleged untrue statement, or omission or alleged omission made in any such Registration Statement or Prospectus, or any amendment or supplement thereto or any related preliminary prospectus in reliance upon and in conformity with written information relating to any Holder furnished to the Company by or on behalf of such Holder specifically for use therein, (y) with respect to any untrue statement or alleged untrue statement, or omission or alleged omission made in any preliminary prospectus if the person asserting any such loss, claim, damage or liability who purchased Registrable Securities which are the subject thereof did not receive a copy of the Prospectus (or the preliminary prospectus as then amended or supplemented if the Company shall have furnished such Indemnified Holder with such amendment or supplement thereto on a timely basis) at or prior to the written confirmation of the sale of such Registrable Securities to such person and, in any case where such delivery is required by applicable law, the untrue statement or alleged untrue statement or omission or alleged omission of a material fact made in such preliminary prospectus was corrected in the Prospectus (or the preliminary prospectus as then amended or supplemented if the Company shall have furnished such

Indemnified Holder with such amendment or supplement thereto on a timely basis) or (z) arising from the offer or sale of Registrable Securities during any Deferral Period, if notice thereof was given to such Holder. The Company shall notify such Indemnified Holder promptly of the institution, threat or assertion of any claim, proceeding (including any governmental investigation) or litigation in connection with the matters addressed by this Agreement that involves the Company or such Indemnified Holder.

(b) Subject to Section 6(d) below, the Company agrees to reimburse each Indemnified Holder upon demand for any legal or other out-of-pocket expenses reasonably incurred by such Indemnified Holder in connection with investigating or defending any such loss, claim, damage or liability, any action or proceeding or in responding to a subpoena or governmental inquiry related to the offering of the Registrable Securities, whether or not such Indemnified Holder is a party to any action or proceeding. In the event that it is finally judicially determined that an Indemnified Holder was not entitled to receive payments for legal and other expenses pursuant to this Section 6, such Indemnified Holder will promptly return all sums that had been advanced pursuant hereto.

(c) Each Holder agrees, severally and not jointly, to indemnify and hold harmless the Company, its directors and officers and each Person who controls the Company (within the meaning of either Section 15 of the Securities Act or Section 20 of the Exchange Act) to the same extent as the indemnity provided in Section 6(a) from the Company to each Holder, but only with reference to such losses, claims, damages or liabilities which are caused by any untrue statement or omission or alleged untrue statement or omission made in reliance upon and in conformity with information relating to a Holder furnished to the Company in writing by such Holder expressly for use in any Registration Statement or Prospectus, or any amendment or supplement thereto or any related preliminary prospectus. The liability of any Holder under this Section 6(c) shall in no event exceed the proceeds received by such Holder from sales of Registrable Securities giving rise to such obligation.

(d) In case any suit, action, proceeding (including any governmental or regulatory investigation), claim or demand shall be brought or asserted against any Person in respect of which indemnity may be sought pursuant to Section 6(a) or (c), such Person (the “Indemnified Person”) shall promptly notify the Person or Persons against whom such indemnity may be sought (each an “Indemnifying Person”) in writing. No indemnification provided for in Section 6(a) or (c) shall be available to any Person who shall have failed to give notice as provided in this Section 6(d) if the party to whom notice was not given was unaware of the proceeding to which such notice would have related and was materially prejudiced by the failure to give such notice. Nevertheless, the failure to give such notice shall not relieve the Indemnifying Person or Persons from any liability which it or they may have to the Indemnified Person for contribution or otherwise than on account of the provisions of Section 6(a) or (c). In case any such proceeding shall be brought against any Indemnified Person and it shall notify the Indemnifying Person of the commencement thereof, the Indemnifying Person shall be entitled to participate therein and, to the extent that it shall wish, jointly with any other Indemnifying Person similarly notified, to assume the defense thereof, with counsel reasonably satisfactory to such Indemnified Person and shall pay as incurred (or within 30 days of presentation) the fees and disbursements of such counsel related to such proceeding. In any

such proceeding, any Indemnified Person shall have the right to retain its own counsel at its own expense. Notwithstanding the foregoing, the Indemnifying Person shall pay as incurred (or within 30 days of presentation) the fees and expenses of the counsel retained by the Indemnified Person in the event (i) the Indemnifying Person and the Indemnified Person shall have mutually agreed to the retention of such counsel, (ii) the named parties to any such proceeding (including any impleaded parties) include both the Indemnifying Person and the Indemnified Person and representation of both parties by the same counsel would be inappropriate due to actual or potential differing interests between them or (iii) the Indemnifying Person shall have failed to assume the defense of and employ counsel reasonably acceptable to the Indemnified Person within a reasonable period of time after notice of commencement of the action. It is understood that the Indemnifying Person shall not, in connection with any proceeding or related proceedings in the same jurisdiction, be liable for the reasonable fees and expenses of more than one separate firm for all such Indemnified Persons. Such firm shall be designated in writing by Holders of a majority in Amount of Registrable Securities in the case of parties indemnified pursuant to Section 6(a) and by the Company in the case of parties indemnified pursuant to Section 6(c). The Indemnifying Person shall not be liable for any settlement of any proceeding effected without its written consent, but if settled with such consent or if there be a final judgment for the plaintiff, the Indemnifying Person agrees to indemnify the Indemnified Person from and against any loss or liability by reason of such settlement or judgment. In addition, the Indemnifying Person will not, without the prior written consent of the Indemnified Person, settle or compromise or consent to the entry of any judgment in any pending or threatened claim, action or proceeding of which indemnification may be sought hereunder (whether or not any Indemnified Person is an actual or potential party to such claim, action or proceeding) unless such settlement, compromise or consent includes an unconditional release of each Indemnified Person from all liability arising out of such claim, action or proceeding.

(e) To the extent the indemnification provided for in this Section 6 is unavailable to or insufficient to hold harmless an Indemnified Person under Section 6(a) or (c) in respect of any losses, claims, damages or liabilities (or actions or proceedings in respect thereof) referred to therein, except by reason of the exceptions set forth in Section 6(a) or (c) or the failure of the Indemnified Person to give notice as required in Section 6(d), then each Indemnifying Person shall contribute to the amount paid or payable by such Indemnified Person as a result of such losses, claims, damages or liabilities (or actions or proceedings in respect thereof) in such proportion as is appropriate to reflect the relative benefits received by the Indemnifying Person on the one hand and the Indemnified Person on the other hand from the offering of the Notes pursuant to the Purchase Agreement and the Registrable Securities pursuant to any Shelf Registration. If, however, the allocation provided by the immediately preceding sentence is not permitted by applicable law, then each Indemnifying Person shall contribute to such amount paid or payable by such Indemnified Person in such proportion as is appropriate to reflect not only such relative benefits but also the relative fault of the Indemnifying Person on the one hand and the Indemnified Person on the other in connection with the statements or omissions which resulted in such losses, claims, damages or liabilities (or actions or proceedings in respect thereof), as well as any other relevant equitable considerations. The relative benefits received by the Company shall be deemed to be equal to the total net proceeds (before deducting expenses) received by the Company under the Purchase

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Agreement from the offering and sale of the Registrable Securities giving rise to such obligations. The relative benefits received by any Holder shall be deemed to be equal to the value of receiving registration rights for the Registrable Securities under this Agreement. The relative fault of the parties shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Company on the one hand, such Indemnified Holder on the other, and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission.

(f) The Company and the Initial Purchaser agree that it would not be just and equitable if contribution pursuant to Section 6(e) were determined by pro rata allocation or by any other method of allocation which does not take account of the equitable considerations referred to in Section 6(e). The amount paid or payable by an Indemnified Person as a result of the losses, claims, damages or liabilities (or actions or proceedings in respect thereof) referred to in Section 6(e) shall be deemed to include any legal or other expenses reasonably incurred by such Indemnified Person in connection with investigating or defending any such action or claim or enforcing any rights hereunder. Notwithstanding the provisions of Section 6(e) and (f), (i) in no event shall any Holder be required to contribute any amount in excess of the amount by which the net proceeds received by such Holder from the offering or sale of the Registrable Securities pursuant to a Shelf Registration Statement exceeds the amount of damages which such Holder would have otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission and (ii) no Person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any Person who was not guilty of such fraudulent misrepresentation.

(g) Except as otherwise provided in this Section 6, any losses, claims, damages, liabilities or expenses for which an Indemnified Person is entitled to indemnification or contribution under this Section 6 shall be paid by the Indemnifying Person to the Indemnified Person as such losses, claims, damages, liabilities or expenses are incurred (or within 30 days of presentation).

(h) The remedies provided for in this Section 6 are not exclusive and shall not limit any rights or remedies that may otherwise be available to any indemnified party at law or in equity.

(i) The indemnity and contribution agreements contained in this Section 6 shall remain operative and in full force and effect regardless of (i) any termination of this Agreement, (ii) any investigation made by or on behalf of any Holder or any Person controlling any Holder or by or on behalf of the Company, its officers or directors or any other Person controlling the Company and (iii) acceptance of and payment for any of the Registrable Securities.

## 7. Rules 144 and 144A.

The Company covenants that it will file the reports required to be filed by it under the Securities Act and the Exchange Act and the rules and regulations adopted by the SEC thereunder in a timely manner in accordance with the requirements of the Securities Act and the

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Exchange Act and, if at any time before the expiration of the Effectiveness Period the Company is not required to file such reports, it will, upon the request of any Holder, make available such information necessary to permit sales pursuant to Rule 144A under the Securities Act. The Company further covenants that, until the Effectiveness Period has expired, it will use all reasonable efforts to take such further action as any Holder of Registrable Securities may reasonably request, all to the extent required from time to time to enable such holder to sell Registrable Securities without registration under the Securities Act within the limitation of the exemptions provided by (a) Rule 144 and Rule 144A under the Securities Act, as such rules may be amended from time to time, or (b) any

similar rule or regulation hereafter adopted by the SEC. The Company will provide a copy of this Agreement to prospective purchasers of Registrable Securities identified to the Company by the Initial Purchaser upon request. Upon the request of any Holder, the Company shall deliver to such Holder a written statement as to whether it is subject to and has complied with such requirements. Notwithstanding the foregoing, nothing in this Section 7 shall be deemed to require the Company to register any of its securities pursuant to the Exchange Act.

8. Underwritten Registrations.

No Holder of Registrable Securities may participate in any Underwritten Registration hereunder.

9. Miscellaneous.

(a) No Inconsistent Agreements. The Company has not, as of the date hereof, and the Company shall not, after the date of this Agreement, enter into any agreement with respect to any of its securities that is inconsistent with the rights granted to the Holders of Registrable Securities in this Agreement or otherwise conflicts with the provisions hereof.

(b) Adjustments Affecting Registrable Securities. The Company shall not, directly or indirectly, take any action with respect to the Registrable Securities as a class with the intent of adversely affecting the ability of the Holders of Registrable Securities to include such Registrable Securities in a registration undertaken pursuant to this Agreement.

(c) Amendments and Waivers. The provisions of this Agreement may not be amended, modified or supplemented, and waivers or consents to departures from the provisions hereof may not be given, otherwise than with the prior written consent of the Company and the Holders of not less than a majority in Amount of Registrable Securities; *provided* that Section 6 and this Section 9(c) may not be amended, modified or supplemented without the prior written consent of the Company and each Holder (including, in the case of an amendment, modification or supplement of Section 6, any Person who was a Holder of Registrable Securities disposed of pursuant to any Registration Statement). Notwithstanding the foregoing, a waiver or consent to depart from the provisions hereof with respect to a matter that relates exclusively to the rights of Holders of Registrable Securities whose securities are being sold pursuant to a Registration Statement and that does not directly or indirectly affect, impair, limit or compromise the rights of other Holders of Registrable Securities may be given by Holders of at least a majority in Amount of Registrable Securities being sold by such Holders pursuant to such Registration Statement. Each Holder of Registrable Securities outstanding at the time of any amendment, modification,

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supplement, waiver, or consent or thereafter shall be bound by any such amendment, modification, supplement, waiver, or consent effected pursuant to this Section, whether or not any notice of such amendment, modification, supplement, waiver, or consent is delivered to such Holder.

(d) Notices. All notices, requests and other communications (including without limitation any notices or other communications to the Trustee) provided for or permitted hereunder shall be made in writing and delivered by hand-delivery, registered first-class mail, next-day air courier or facsimile:

(1) if to a Holder of Registrable Securities, at the most current address of such Holder set forth on (x) the records of the registrar under the Indenture, in the case of Holders of Notes, and (y) the stock ledger of the Company, in the case of Holders of common stock of the Company, unless, in either such case, any Holder shall have provided notice information in a Notice and Questionnaire or any amendment thereto, in which case such information shall control.

(2) if to the Initial Purchaser:

c/o Deutsche Bank Securities Inc.  
60 Wall Street  
New York, New York 10005  
Facsimile No.: (212) 797-8974  
Attention: Equity Capital Markets  
with a copy to the General Counsel  
Facsimile No.: (212) 797-4564

with a copy to:

Davis Polk & Wardwell  
450 Lexington Avenue  
New York, New York 10017  
Facsimile No.: (212) 450-4745  
Attention: Richard A. Drucker

(3) if to the Company:

American Equity Investment Life Holding Company  
5000 Westown Parkway  
Suite 440  
West Des Moines, Iowa 50266  
Facsimile No.: (515) 221-9947  
Attention: Wendy L. Carlson

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with a copy to:

Skadden, Arps, Slate, Meagher & Flom LLP  
333 West Wacker Drive  
Chicago, Illinois 60606  
Facsimile No.: (312) 407-0411  
Attention: William R. Kunkel

All such notices, requests and communications shall be deemed to have been duly given: when delivered by hand, if personally delivered; the earlier of the date indicated on the notice of receipt and five (5) Business Days after being deposited in the mail, postage prepaid, if mailed; one Business Day after being timely delivered to a next-day air courier; and when the addressor receives facsimile confirmation, if sent by facsimile during normal business hours, and otherwise on the next Business Day during normal business hours.

(e) Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the successors and assigns of each of the parties hereto, including the Holders; *provided* that this Agreement shall not inure to the benefit of or be binding upon a successor or assign of a Holder unless and except to the extent such successor or assign holds Registrable Securities.

(f) Counterparts. This Agreement may be executed in any number of counterparts and by the parties hereto in separate counterparts, including via facsimile, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

(g) Headings. The headings in this Agreement are for convenience of reference only and shall not limit or otherwise affect the meaning hereof.

(h) Governing Law. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, AS APPLIED TO CONTRACTS MADE AND PERFORMED WHOLLY WITHIN THE STATE OF NEW YORK, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW. EACH OF THE PARTIES HERETO AGREES TO SUBMIT TO THE JURISDICTION OF THE FEDERAL AND NEW YORK STATE COURTS SITTING IN MANHATTAN, NEW YORK CITY, THE STATE OF NEW YORK, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT.

(i) Severability. If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction to be invalid, illegal, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions set forth herein shall remain in full force and effect and shall in no way be affected, impaired or invalidated, and the parties hereto shall use their best efforts to find and employ an alternative means to achieve the same or substantially the same result as that contemplated by such term, provision, covenant or restriction. It is hereby stipulated and declared to be the intention of the parties that they would have executed the remaining terms, provisions, covenants and restrictions without including any of such that may be hereafter declared invalid, illegal, void or unenforceable.

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(j) Securities Held by the Company or Its Affiliates. Whenever the consent or approval of Holders of a specified percentage in Amount of Registrable Securities is required hereunder, Registrable Securities held by the Company or its affiliates (as such term is defined in Rule 405 under the Securities Act) shall not be counted in determining whether such consent or approval was given by the Holders of such required percentage.

(k) Third-Party Beneficiaries. Holders of Registrable Securities are intended third party beneficiaries of this Agreement and this Agreement may be enforced by such Persons.

(l) Entire Agreement. This Agreement, together with the Purchase Agreement and the Indenture, is intended by the parties as a final and exclusive statement of the agreement and understanding of the parties hereto in respect of the subject matter contained herein and therein and any and all prior oral or written agreements, representations, or warranties, contracts, understandings, correspondence, conversations and memoranda between the Initial Purchaser on the one hand and the Company on the other, or between or among any agents, representatives, parents, subsidiaries, affiliates, predecessors in interest or successors in interest with respect to the subject matter hereof and thereof are merged herein and replaced hereby.

[Signature page follows]

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IN WITNESS WHEREOF, the parties have executed this Registration Rights Agreement as of the date first written above.

AMERICAN EQUITY INVESTMENT LIFE  
HOLDING COMPANY

By: /s/ [ILLEGIBLE]

Name:

Title:

DEUTSCHE BANK SECURITIES INC.

By: /s/ Michael L. Albanese

Name: Michael L. Albanese  
Title: Director

By: /s/ Donald Sung  
Name: Donald Sung  
Title: Managing Director

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**FIRST AMENDMENT TO  
SECOND RESTATED AND AMENDED  
GENERAL AGENCY COMMISSION AND SERVICING AGREEMENT**

This **FIRST AMENDMENT** dated as of December 29, 2004, amends certain provisions of that certain **SECOND RESTATED AND AMENDED GENERAL AGENCY COMMISSION AND SERVICING AGREEMENT**, dated as of October 1, 2002 (the "General Agency Agreement") between: AMERICAN EQUITY INVESTMENT LIFE INSURANCE COMPANY, an Iowa insurance corporation ("American Equity"), and AMERICAN EQUITY INVESTMENT SERVICE COMPANY, an Iowa corporation ("AEISC").

**WHEREAS**, the American Equity and AEISC have agreed to amend certain terms and conditions of the General Agency Agreement in connection with American Equity's 2004 annuity business;

**NOW, THEREFORE**, For good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, each of the parties hereto agrees as follows:

**Section 1. Amendments**

**1.01 Amendments to Definitions.** The following amendments are hereby made to Section 1.01 of the General Agency Agreement:

- a. The definition of "AEISC Amount" shall be deleted in its entirety and the following shall be inserted in lieu thereof:

"AEISC Amount" shall mean:

(i) with respect to any Eligible Contract issued prior to July, 1999, 50% of the Sales Agent Commission payable with respect to such Eligible Contract;

(ii) with respect to any Eligible Contract issued in October, November and December of 2002, 35% of the Sales Agent Commission payable with respect to such Eligible Contract; and

(iii) with respect to any Eligible Contract issued during calendar year 2004, 13.5% of the Sales Agent Commission payable with respect to such Eligible Contract.

- b. The definition of "Commission Accumulated Value" shall be deleted in its entirety and the following shall be inserted in lieu thereof:

"Commission Accumulated Value" shall mean, with respect to any identified group of Eligible Contracts as at any Commission Payment Date, an amount equal to the aggregate of the Accumulated Values of all of the Eligible Contracts in such group that are in force on such Commission Payment Date.

- c. The definition of "Eligible Contract" shall be deleted in its entirety and the following shall be inserted in lieu thereof:

"Eligible Contract" shall mean a deferred annuity contract issued by American Equity and sold by a Sales Agent to a person in a jurisdiction in which American Equity and AEISC (or its duly-appointed representative) are duly licensed to issue such contracts or act as an insurance agency therein, as applicable, and any Replacement Contract issued in respect of any such contract; provided however, that for deferred annuity contracts issued by American Equity in 2004, any such contract which does not meet one or more of the following additional criteria shall be excluded from this definition: (i) any contract issued to a person who is age 80 or older on the date the contract is issued; (ii) any contract which does not provide for a surrender Charge for at least the first seven years of the contract term; (iii) any contract for which the surrender charge percentage is not at least 5% of the accumulated policy value of the contract during the first six years of the contract term; and (iii) any Contract which does not have a minimum guaranteed crediting rate of at least 2.25%.

- d. The following new definitions shall be added to the General Agency Commissions Agreement:

"2004 Current Commission Rate" shall mean the product of 7.7823% multiplied by the Applicable Rate.

"2004 Eligible Contract" shall mean any Eligible Contract issued between January 1, 2004 and December 31, 2004 (including both January 1, 2004 and December 31, 2004) and any Replacement Contract issued in respect of any such contract.

"Applicable Rate" shall mean the quotient of (i) \$20,000,000 divided by (ii) the Commission Accumulated Value on December 31, 2004 of all 2004 Eligible Contracts, excluding (A) any Voided Eligible Contracts (as defined in Section 3.03 hereof) which are voided during the 30-day period following December 31, 2004 and (B) any Replacement Contracts for which AEISC has no obligation to pay an AEISC Amount by reason of Section 2.03 hereof.

"Event of Default" shall mean (a) the failure of American Equity to pay any Current Commissions, Supplemental Commissions or Reimbursement Commissions when due; or (b) the failure of American Equity to perform any of its obligations under Section 8 hereof.

"Servicer" shall mean American Equity.

"Supplemental Contract Commission Rate" shall mean, with respect to

any Supplemental Contract issued in exchange for an Eligible Contract, (i) the Accumulated Value of such Eligible Contract at the time of such exchange, divided by (ii) the monthly benefit payable under such Supplemental Contract, multiplied by (iii) 7.7823%, multiplied by (iv) the Applicable Rate.

“Supplemental Contract” shall mean any contract issued by American Equity in exchange for an Eligible Contract, which Supplemental Contract provides for a series of periodic payments to the contract holder over a specified period.

c. The definition of “Account Surrender Value” shall be deleted in its entirety.

**1.02 Amendment to General Agency Current Commissions.** Section 3.01 of the General Agency Agreement is hereby deleted in its entirety and the following is inserted in lieu thereof:

**3.01 General Agency Current Commissions.** American Equity shall pay to AEISC general agency current commissions (“Current Commissions”) no later than 10:00 a.m., Central Standard Time, on each Commission Payment Date in the following amounts:

(i) 0.325% multiplied by the Commission Accumulated Value determined as of such Commission Payment Date for Eligible Contracts produced during 1998, the first six months of 1999, and the last three months of 2002;

(ii) the 2004 Current Commission Rate multiplied by the Commission Accumulated Value determined as of such Commission Payment Date for all 2004 eligible contracts; and

(iii) for each Supplemental Contract that is in force on such Commission Payment Date, an amount equal to the product of (A) the monthly benefit payable under such Supplemental Contract multiplied by (B) the Supplemental Contract Commission Rate associated with such Supplemental Contract.”

**1.03 Amendment to General Agency Reimbursement Commissions.** The following sentence shall be added to Section 3.03:

“Notwithstanding anything herein to the contrary, no Reimbursement Commissions shall be paid with respect to any 2004 Eligible Contract.”

**1.04 Amendment to Termination of Commission Obligations.** Section 3.04 shall be deleted in its entirety and the following shall be inserted in lieu thereof:

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**3.04 Termination of Commission Obligations.** The termination dates for payment of Current Commissions, Supplemental Commissions, or Reimbursement Commissions shall be as follows with respect to Eligible Contracts produced in the specified periods;

(i) For Eligible Contracts produced during 1998, the termination date is December 31, 2004;

(ii) For Eligible Contracts produced during the first six months of 1999, the termination date is December 31, 2005;

(iii) For Eligible Contracts produced during the last three months of 2002, the termination date is December 31, 2008;

(iv) For Eligible Contracts produced during 2004, the termination date is December 31, 2009.

**1.05 Amendment of Termination Section.** Section 10 shall be deleted in its entirety and the following shall be inserted in lieu thereof:

**Section 10. Termination.** Subject to the provisions of Section 3.05 hereof, the obligations of AEISC and American Equity under this Agreement shall terminate on January 31, 2010.

**Section 2. Representations.** American Equity and AEISC each warrant and represent to the other that it is duly authorized to execute and deliver this First Amendment and to perform its obligations under the General Agency Agreement as amended hereby, and that this First Amendment constitutes the legal, valid and binding obligation of each such party, respectively, enforceable in accordance with its terms.

**Section 3. Conditions Precedent.** This First Amendment shall be come effective on the date first set forth above, provided, however, that the effectiveness of this First Amendment is subject to the satisfaction of each of the following conditions precedent:

**3.01 Warranties of American Equity.** After giving effect to this First Amendment, the representations and warranties by American Equity in Section 5 of the General Agency Agreement shall be true and correct as though made on the date hereof, except for changes that are permitted by the terms of the General Agency Agreement, and except that all references to December 31, 2001 shall be deemed to be references to December 31, 2003. The execution by American Equity of this First Amendment shall be deemed a representation that American Equity has complied with the foregoing condition.

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**3.02 Warranties of AEISC.** After giving effect to this First Amendment, the representations and warranties by AEISC in Section 6 of the General Agency Agreement shall be true and correct as though made on the date hereof, except for changes that are permitted by the terms of the General Agency Agreement, and except that all references to December 31, 2001 shall be deemed to be references to December 31, 2003. The execution by AEISC of this First Amendment shall be deemed a representation that AEISC has complied with the foregoing condition.



**3.03 No Defaults.** After giving effect to this First Amendment, no Event of Default shall have occurred and be continuing under the General Agency Agreement. The execution by each of American Equity and AEISC, respectively, shall be deemed a representation that each has complied with the foregoing condition.

**3.05 Execution and Delivery.** This First Amendment shall have been executed and delivered by American Equity and AEISC.

**Section 4. General.**

**4.01 Counterparts.** This First Amendment may be executed in as many counterparts as may be deemed necessary or convenient, and by the different parties hereto on separate counterparts, each of which, when so executed, shall be deemed on original but all such counterparts shall constitute but one and the same instrument.

**4.02 Severability.** Any provision of this First Amendment which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining portions hereof or affecting the validity or enforceability of such provisions in any other jurisdiction.

**4.03 Governing Law.** This First Amendment shall be a contract made under the laws of the State of Iowa, which laws shall govern all the rights and duties hereunder.

**4.04 Successors; Enforceability.** This First Amendment shall be binding upon American Equity and AEISC and their respective successors and assigns, and shall inure to the benefit of American Equity and AEISC and their respective successors and assigns. Except as hereby amended, the General Agency Agreement shall remain in full force and effect and is hereby ratified and confirmed in all respects.

**IN WITNESS WHEREOF,** the parties hereto have caused this First Amendment to be executed at West Des Moines, IA by their respective officers thereunto duly authorized as of the date first written above.

AMERICAN EQUITY INVESTMENT  
LIFE INSURANCE COMPANY

AMERICAN EQUITY INVESTMENT  
SERVICE COMPANY

By: /s/ Kevin R. Wingert  
Kevin R. Wingert, President

By: /s/ David J. Noble  
David J. Noble, President

**CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM**

We consent to the incorporation by reference in the Registration Statement (Form S-3 No. 333-113630) of American Equity Investment Life Holding Company and in the related Prospectus of our reports dated March 11, 2005, with respect to the consolidated financial statements and schedules of American Equity Investment Life Holding Company, included in this Annual Report (Form 10-K) for the year ended December 31, 2004.

/s/ ERNST & YOUNG LLP

Des Moines, Iowa  
March 11, 2005

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[CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM](#)

**CERTIFICATION PURSUANT TO  
18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO  
SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, David J. Noble, certify that:

1. I have reviewed this annual report on Form 10-K of American Equity Investment Life Holding Company;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting.
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls over financial reporting.

Date: March 10, 2005

By: /s/ DAVID J. NOBLE

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David J. Noble, *Chief Executive Officer (Principal Executive Officer)*

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[CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002](#)

**CERTIFICATION PURSUANT TO  
18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO  
SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002**

I, Wendy L. Carlson, certify that:

1. I have reviewed this annual report on Form 10-K of American Equity Investment Life Holding Company;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and have:
  - (a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - (b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - (c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - (d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting.
5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent functions):
  - (a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - (b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal controls over financial reporting.

Date: March 10, 2005

By: /s/ WENDY L. CARLSON

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Wendy L. Carlson, *Chief Financial Officer (Principal Financial Officer)*

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[CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO SECTION 302 OF THE SARBANES-OXLEY ACT OF 2002](#)

**CERTIFICATION PURSUANT TO  
18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Annual Report of American Equity Investment Life Holding Company (the "Company") on Form 10-K for the fiscal year ended December 31, 2004 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, David J. Noble, Chief Executive Officer of the Company, certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that:

1. The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: March 10, 2005

By: /s/ DAVID J. NOBLE

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D.J. Noble, *Chief Executive Officer (Principal Executive Officer)*

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[CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002](#)

**CERTIFICATION PURSUANT TO  
18 U.S.C. SECTION 1350,  
AS ADOPTED PURSUANT TO  
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002**

In connection with the Annual Report of American Equity Investment Life Holding Company (the "Company") on Form 10-K for the fiscal year ended December 31, 2004 as filed with the Securities and Exchange Commission on the date hereof (the "Report"), I, Wendy L. Carlson, Chief Financial Officer of the Company, certify, pursuant to 18 U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that:

1. The Report fully complies with the requirements of section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
2. The information contained in the Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

Date: March 10, 2005

By: /s/ WENDY L. CARLSON

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Wendy L. Carlson, *Chief Financial Officer (Principal Financial Officer)*

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[CERTIFICATION PURSUANT TO 18 U.S.C. SECTION 1350, AS ADOPTED PURSUANT TO SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002](#)