

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

Washington, D.C. 20549

FORM 8-K

CURRENT REPORT

Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934

Date of Report (Date of earliest event reported): **December 1, 2004**

**AMERICAN EQUITY
INVESTMENT LIFE HOLDING COMPANY**

(Exact Name of Registrant as Specified in its Charter)

IOWA
(State or Other Jurisdiction
of Incorporation)

001-31911
(Commission File Number)

42-1447959
(IRS Employer
Identification No.)

5000 Westown Parkway, Suite 440, West Des Moines, Iowa
(Address of Principal Executive Offices)

50266
(Zip Code)

(515) 221-0002
(Registrant's telephone number, including area code)

NOT APPLICABLE
(Former Name or Former Address, if Changed Since Last Report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Item 1.01 Entry into a Material Definitive Agreement

On December 1, 2004, American Equity Investment Life Holding Company ("AEL") entered into a purchase agreement with Deutsche Bank Securities Inc., Raymond James & Associates, Inc. and Advest, Inc. (the "Initial Purchasers"), a copy of which is attached hereto as Exhibit 1.1 (the "Purchase Agreement"). Pursuant to the Purchase Agreement, AEL agreed to sell \$175.0 million aggregate principal amount of its 5.25% Contingent Convertible Senior Notes due 2024 (the "Notes") to the Initial Purchasers. Pursuant to the Purchase Agreement, Deutsche Bank Securities Inc. was granted, for its own account, an option to purchase, within 30 days of the date of original issuance, up to \$75.0 million aggregate principal amount of additional Notes. On December 2, 2004, AEL received notice of Deutsche Bank Securities Inc.'s exercise of the option in full.

The closing of the sale of the Notes occurred on December 6, 2004. The Notes were not registered under the Securities Act of 1933, as amended (the "Securities Act"), and were sold to the Initial Purchasers in reliance on the exemption from registration provided by Section 4(2) of the Securities Act. The initial purchasers of the Notes then sold the Notes to qualified institutional buyers pursuant to the exemption from registration provided by Rule 144A under the Securities Act. The Company relied on these exemptions from registration based on representations made by the Initial Purchasers in the Purchase Agreement.

The Notes are governed by the terms of an Indenture, dated December 6, 2004, between AEL and U.S. Bank National Association, as Trustee, a copy of which is attached hereto as Exhibit 4.1 (the "Indenture").

The Notes are convertible, at the holders' option, prior to the maturity date into cash and shares of AEL's common stock in the following circumstances:

- during any fiscal quarter commencing after the date of original issuance of the Notes, if the closing sale price of AEL's common stock for at least 20 trading days in the period of 30 consecutive trading days ending on the last trading of the fiscal quarter preceding the quarter in which the conversion occurs is more than 120% of the Conversion Price (as defined below) of the Notes in effect on that last trading day;

- if AEL has called the particular 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 AEL's common stock at an initial "Conversion Price" per share of \$14.47. This represents an initial "Conversion Rate" of approximately 69.1085 shares of common stock per \$1,000 principal amount of Notes. The Conversion Price and resulting Conversion Rate are subject to adjustment in certain specified events. Subject to certain exceptions, at the time Notes are tendered for conversion, the value (the "Conversion Value") of the cash and shares of AEL'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 AEL'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

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submitted for conversion. AEL 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 or (b) the aggregate principal amount of the Notes to be converted, (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"), determined as set forth below, 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. AEL will pay the Principal Return and cash in lieu of fractional shares and deliver the Net Shares, if any, as promptly as practicable after determination of the Net Share Amount. 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, rounded down to the nearest whole share.

The Notes will bear interest at a rate of 5.25 % per annum. AEL will pay interest on the Notes semi-annually in arrears on June 6 and December 6 of each year, beginning on June 6, 2005. In addition to regular interest on the Notes, beginning with the six-month interest period ending June 6, 2012, AEL will also pay contingent interest during any six-month interest period in which the average trading price per \$1,000 principal amount of the Notes for the five-day trading period ending on the third day immediately preceding the first day of such six-month interest period equals 120% or more of the principal amount of the Notes. During any interest period in which contingent interest shall be payable, the contingent interest payable on the Notes will equal 0.50% per annum based on such average trading price.

The Notes will mature on December 6, 2024. AEL may redeem some or all of the Notes at any time or from time to time on or after December 15, 2011, at a redemption price 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, payable in cash. Holders may require AEL to repurchase all or a portion of their Notes on December 15, 2011, 2014 and 2019 for a repurchase price 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 repurchase, payable in cash. Upon a change in control, as defined in the Indenture, holders will have the right to require AEL to repurchase all or a portion of their Notes for a period of time after the change of control. The repurchase price will be 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 repurchase, payable in cash.

The Notes will be AEL's senior unsecured obligations and will rank equally in right of payment with all of AEL's existing and future senior indebtedness and senior to any existing and future subordinated indebtedness. The Notes will 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 will be structurally subordinated to all liabilities of AEL's subsidiaries.

In connection with the sale of the Notes, AEL also entered into a registration rights agreement, dated December 6, 2004, with the Initial Purchasers, a copy of which is attached hereto as Exhibit 4.3 (the "Registration Rights Agreement"). Pursuant to the Registration Rights

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Agreement, AEL has agreed to file a shelf registration statement with the Securities and Exchange Commission covering resales of the Notes and AEL's common stock issuable upon conversion of the Notes. If AEL fails to comply with certain of its obligations under the Registration Rights Agreement, it will be required to pay liquidated damages to the holders of the notes.

The summary of the foregoing transaction is qualified in its entirety by reference to the text of the related agreements, which are included as exhibits hereto and are incorporated herein by reference.

Item 2.03 Creation of a Direct Financial Obligation or an Obligation under an Off-Balance Sheet Arrangement of a Registrant

See Item 1.01, which is incorporated herein by reference.

Item 3.02 Unregistered Sales of Equity Securities

See Item 1.01, which is incorporated herein by reference.

Item 8.01 Other Events

On December 6, 2004, AEL issued a press release relating to the closing of the sale of the Notes. This press release is filed as Exhibit 99.1 to this Current Report and incorporated by reference as if set forth in full herein.

Item 9.01 Financial Statements and Exhibits

(c) Exhibits:

Exhibit Number	Description
1.1	Purchase Agreement, dated as of December 1, 2004, among American Equity Investment Life Holding Company and the Initial Purchasers.
4.1	Indenture, dated as of December 6, 2004, between American Equity Investment Life Holding Company and U.S. Bank National Association, as Trustee.
4.2	Form of 5.25% Contingent Convertible Senior Notes due 2024 (incorporated by reference to Exhibit A to Exhibit 4.1 hereof).
4.3	Registration Rights Agreement, dated as of December 6, 2004, among American Equity Investment Life Holding Company and the Initial Purchasers.
99.1	Press Release, dated December 6, 2004.

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SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the Registrant has duly caused this Report to be signed on its behalf by the undersigned hereunto duly authorized.

Date: December 6, 2004

AMERICAN EQUITY INVESTMENT
LIFE HOLDING COMPANY

By: /s/ Wendy L. Carlson
Wendy L. Carlson
Chief Financial Officer and
General Counsel

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EXHIBIT INDEX

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AMERICAN EQUITY INVESTMENT LIFE HOLDING COMPANY

5.25% Contingent Convertible Senior Notes Due 2024

PURCHASE AGREEMENT

December 1, 2004

Deutsche Bank Securities Inc.
60 Wall Street
New York, New York 10005

Raymond James & Associates, Inc.
880 Carillon Parkway
St. Petersburg, FL 33716

Advest, Inc.
90 State House Square
Hartford, CT 06103

Ladies and Gentlemen:

American Equity Investment Life Holding Company, an Iowa corporation (the "Company"), proposes, subject to the terms and conditions contained herein, to issue and sell to Deutsche Bank Securities Inc., Raymond James & Associates, Inc. and Advest, Inc. (together, the "Initial Purchasers") \$175,000,000 aggregate principal amount of its 5.25% Contingent Convertible Senior Notes Due 2024 (the "Firm Securities") as set forth in Schedule I hereto. The Company also proposes to issue and sell at the option of Deutsche Bank Securities Inc. an additional \$75,000,000 aggregate principal amount of its 5.25% Contingent Convertible Senior Notes Due 2024 (the "Option Securities" and together with the Firm Securities, the "Securities") as set forth below. The Securities will be issued pursuant to an indenture (the "Indenture"), to be dated as of the Closing Date (as defined in Section 2 hereof), between the Company and U.S. Bank National Association, as trustee (the "Trustee").

The Securities will be convertible into cash and shares of common stock of the Company, \$1.00 par value ("Common Stock"). The shares of Common Stock

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into which the Securities may be convertible are referred to herein as the "Underlying Securities".

The sale of the Securities and the Underlying Securities will be made without registration under the Securities Act of 1933, as amended (the "Securities Act"), in reliance on exemptions from the registration requirements of the Securities Act. The Initial Purchasers have advised the Company that the Initial Purchasers will offer and sell the Securities purchased by them hereunder (the "Offering") in accordance with Section 3 hereof as soon as they deem advisable.

In connection with the Offering, the Company has prepared a preliminary Offering Memorandum dated November 30, 2004 (including the information incorporated by reference therein, the "Preliminary Offering Memorandum") and a final Offering Memorandum, dated December 1, 2004 (including the information incorporated by reference therein, the "Offering Memorandum"). Each of the Preliminary Offering Memorandum and the Offering Memorandum sets forth or incorporates by reference certain information regarding the Company, the Securities and the Underlying Securities. The Company hereby confirms that it has authorized the use of the Preliminary Offering Memorandum and the Offering Memorandum, and any amendment or supplement thereto, in connection with the Offering. Unless stated to the contrary, all references herein to the Offering Memorandum are to the Offering Memorandum at the date thereof and are not meant to include any amendment or supplement, or any information incorporated by reference therein subsequent to the date thereof, and any references herein to the terms "amend", "amendment" or "supplement" with respect to the Offering Memorandum shall be deemed to refer to and include any information filed under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), subsequent to the date of the Offering Memorandum which is incorporated by reference therein.

In connection with the Offering, the Company also proposes to enter into a Registration Rights Agreement, to be dated as of the Closing Date, between the Company and the Initial Purchasers (the "Registration Rights Agreement").

In consideration of the mutual agreements contained herein and of the interests of the parties in the transactions contemplated hereby, the parties hereto agree as follows:

1. REPRESENTATIONS AND WARRANTIES OF THE COMPANY.

The Company represents and warrants to each Initial Purchaser as follows:

- (a) the Company has been duly incorporated and is validly existing as a corporation in good standing under the laws of the State of

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Iowa, with the corporate power and authority to own or lease its properties and conduct its business as described in the Offering Memorandum and to enter into and perform its obligations under this Agreement; each of the direct and indirect subsidiaries of the Company (each, a "Subsidiary" and collectively, the "Subsidiaries"), has been duly incorporated or organized and is validly existing and in good standing under the laws of the

jurisdiction of its incorporation or organization, with the corporate or other power and authority to own or lease its properties and conduct its business as described in the Offering Memorandum; the Company and each of the Subsidiaries are duly qualified to transact business in all jurisdictions in which the conduct of their business requires such qualification, except to the extent that the failure to be so qualified would not result in a Material Adverse Change (as defined herein);

(b) the outstanding shares of capital stock of each of the Subsidiaries have been duly authorized and validly issued, are fully paid and non-assessable and are owned by the Company or another Subsidiary free and clear of all liens, encumbrances and equities and claims, except those securing obligations under the Amended and Restated Credit Agreement dated September 22, 2004 among the Company, West Des Moines State Bank, LaSalle Bank and U.S. Bank National Association, as agent (the "Credit Agreement") or those that are immaterial to the Company and the Subsidiaries taken as a whole; and, except as disclosed in the Offering Memorandum, no options, warrants or other rights to purchase, agreements or other obligations to issue or other rights to convert any obligations into or exchange any securities for shares of capital stock of or ownership interests in the Subsidiaries are outstanding;

(c) the Securities have been duly authorized by all necessary corporate action on the part of the Company and, when executed by the Company, authenticated by the Trustee in accordance with the terms of the Indenture and delivered to and paid for by the Initial Purchasers in accordance with the terms of this Agreement and the Indenture, the Securities will (assuming the Indenture is a valid and binding obligation of the Trustee) be valid and binding obligations of the Company, enforceable against the Company in accordance with their terms, except to the extent that enforcement thereof may be limited by bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance or other similar laws now or hereinafter in effect relating to or affecting creditors' rights and remedies generally and by equitable principles of general applicability (regardless of whether enforceability is considered in a proceeding at law or in equity), and will be entitled to the benefits of the Indenture and the Registration Rights Agreement;

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(d) the outstanding shares of capital stock of the Company have been duly authorized and validly issued and are fully paid and non-assessable; none of the outstanding shares of capital stock of the Company was issued in violation of any preemptive or similar rights of any stockholder of the Company; the Underlying Securities have been duly authorized and reserved, and when issued upon conversion of the Securities in accordance with the terms of the Securities will be validly issued, fully paid and non-assessable; and no preemptive or similar rights of stockholders exist with respect to any of the Underlying Securities;

(e) the execution and delivery of and the performance by the Company of its obligations under this Agreement have been duly authorized by all necessary corporate action on the part of the Company, and this Agreement has been duly executed and delivered by the Company;

(f) the execution and delivery of and the performance by the Company of its obligations under the Indenture have been duly authorized by all necessary corporate action on the part of the Company and, when duly executed and delivered by the Company and the Trustee (assuming the Indenture is a valid and binding obligation of the Trustee), the Indenture will be a valid and binding agreement of the Company, enforceable against the Company in accordance with its terms, except to the extent that enforcement thereof may be limited by bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance or other similar laws now or hereinafter in effect relating to or affecting creditors' rights and remedies generally and by equitable principles of general applicability (regardless of whether enforceability is considered in a proceeding at law or in equity);

(g) the execution and delivery of and the performance by the Company of its obligations under the Registration Rights Agreement have been duly authorized by all necessary corporate action on the part of the Company and, when duly executed and delivered by the Company and the other parties thereto (assuming the Registration Rights Agreement is a valid and binding obligation of the other parties thereto), the Registration Rights Agreement will be a valid and binding agreement of the Company, enforceable against the Company in accordance with its terms, except to the extent that (x) enforcement thereof may be limited by bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance and other similar laws now or hereinafter in effect relating to or affecting creditors' rights and remedies generally and by equitable principles of general applicability (regardless of whether enforceability is considered in a proceeding at law or in equity), and (y) any right to indemnification and contribution thereunder may be limited by applicable law;

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(h) the consolidated capitalization of the Company set forth under the caption "Capitalization" in the Offering Memorandum is true and correct; all of the Underlying Securities conform to the description thereof contained in the Offering Memorandum in all material respects; the form of certificate for the shares of Common Stock conforms to the corporate law of the jurisdiction of the Company's incorporation in all material respects;

(i) except as described in or contemplated by the Offering Memorandum, there are no outstanding securities of the Company convertible or exchangeable into or evidencing the right to purchase or subscribe for any shares of capital stock of the Company and there are no outstanding or authorized options, warrants or rights of any character obligating the Company to issue any shares of its capital stock or any securities convertible or exchangeable into or evidencing the right to purchase or subscribe for any shares of such stock;

(j) each document filed, or to be filed, by the Company pursuant to the Exchange Act and incorporated, or to be incorporated, by reference in either the Preliminary Offering Memorandum or the Offering Memorandum (or any amendment or supplement thereto) at the time filed with the Securities and Exchange Commission (the "Commission") conformed, or will conform, in all material respects with the Exchange Act and the applicable rules and regulations thereunder as in effect at such time; the Preliminary Offering Memorandum as of the date thereof did not, and the Offering Memorandum and any amendment or supplement thereto do not contain, and at the Closing Date will not contain, any untrue statement of a material fact, and do not omit to state, and at the Closing Date will not omit to state, any material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; *provided, however*, that the Company makes no representation or warranty as to statements in or omissions from the Offering Memorandum or any amendment or supplement thereto made in reliance upon and in conformity with written information relating to the Initial Purchasers furnished to the Company by the Initial Purchasers specifically for use therein;

(k) the consolidated financial statements of the Company and the Subsidiaries, together with related notes and schedules, incorporated by reference in the Offering Memorandum, present fairly in all material respects the financial position and the results of operations and cash flows of the Company and its consolidated Subsidiaries, at the indicated dates and for the indicated periods; such financial statements and related notes and schedules have been prepared in accordance with generally accepted accounting principles in the United States, consistently applied throughout the periods involved, except as disclosed therein, and all adjustments

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necessary for a fair presentation of results for such periods have been made; the selected consolidated financial and other data of the Company and the Subsidiaries included in the Offering Memorandum presents fairly in all material respects the information shown therein and such data has been compiled on a basis consistent with that of the audited consolidated financial statements incorporated by reference in the Offering Memorandum or with statutory accounting principles or practices required or permitted by the National Association of Insurance Commissioners and by the appropriate insurance department of the jurisdiction of each Insurance Subsidiary (as defined below) (“SAP”), as applicable;

(l) Ernst & Young LLP, who have certified certain of the financial statements included or incorporated by reference in the Offering Memorandum, are independent public accountants as required by the Securities Act and the applicable rules and regulations thereunder;

(m) except as disclosed in the Offering Memorandum, there is no action, suit, claim, proceeding or labor dispute pending or, to the best knowledge of the Company, threatened against the Company or any of the Subsidiaries before any court or administrative agency or otherwise which, if determined adversely to the Company or any of its Subsidiaries, would reasonably be expected to result in a material adverse change in the earnings, business, properties, assets, operations, condition (financial or otherwise) or prospects of the Company and the Subsidiaries taken as a whole (a “Material Adverse Change”), or prevent the consummation of the transactions contemplated hereby or in the Indenture, the Securities or the Registration Rights Agreement;

(n) the Company and the Subsidiaries have good and marketable title to all real property owned by them and good title to all other properties owned by them, subject to no lien, mortgage, pledge, charge or encumbrance of any kind, except those securing obligations under the Credit Agreement or reflected in the consolidated financial statements hereinabove described or described in the Offering Memorandum or which do not materially affect the value of such property and do not interfere with the use made of such property; the Company and the Subsidiaries occupy their leased properties under valid and binding leases;

(o) the Company and the Subsidiaries have filed all Federal, State, local and foreign tax returns which have been required to be filed and have paid all taxes indicated by such returns and all assessments received by them or any of them to the extent that such taxes have become due, except to the extent that any failure to so file or pay would not reasonably be expected to result in a Material Adverse Change; all tax liabilities have been adequately provided for in the financial statements of the Company,

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and the Company does not know of any actual or proposed additional material tax assessments;

(p) since the respective dates as of which information is given in the Offering Memorandum, except as otherwise stated therein, there has not been any Material Adverse Change or, to the best knowledge of the Company, any development involving a prospective Material Adverse Change, whether or not arising in the ordinary course of business, and there has not been any material transaction entered into or any material transaction that is probable of being entered into by the Company or any of the Subsidiaries, other than transactions in the ordinary course of business and transactions described in the Offering Memorandum, which are material to the Company and the Subsidiaries considered as one enterprise; neither the Company nor any of the Subsidiaries has any contingent obligations which are material to the Company and the Subsidiaries taken as a whole but which are not disclosed in the Company’s financial statements that are incorporated by reference in the Offering Memorandum;

(q) neither the Company nor any of the Subsidiaries is or, with the giving of notice or lapse of time or both, will be, in violation of or in default under (i) its certificate of incorporation or bylaws or similar organizational documents or (ii) any indenture, mortgage, deed of trust, lease, contract or other agreement or instrument to which any of them is a party or to which any of them or any of their respective properties is bound (collectively, “Contracts”) and, solely with respect to this clause (ii), which violation or default would result in a Material Adverse Change;

(r) the execution and delivery of this Agreement, the Securities, the Indenture and the Registration Rights Agreement by the Company, the issuance and sale of the Securities to the Initial Purchasers by the Company pursuant to this Agreement, the issuance by the Company of the Underlying Securities, and the consummation of the transactions contemplated in this Agreement, the Securities, the Indenture and the Registration Rights Agreement and the fulfillment of the terms hereof and thereof by the Company will not conflict with or result in a breach of any of the terms or provisions of, or constitute a default under, (i) any Contract (including, without limitation, the Credit Agreement), (ii) the certificate of incorporation or bylaws of the Company, or (iii) any law, order, rule, regulation, judgment, order, writ or decree of any court applicable to the Company or any Subsidiary or of any government, regulatory body or administrative agency or other governmental body having jurisdiction over the Company or any Subsidiary, except, in the case of clauses (i) and (iii) to the extent that any such conflict, breach or default would not reasonably be expected to result in a Material Adverse Change;

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(s) each approval, consent, order, authorization, designation, declaration or filing by or with any regulatory, administrative or other governmental body necessary in connection with the execution and delivery by the Company of this Agreement, the Securities, the Indenture and the Registration Rights Agreement, the issuance and sale of the Securities to the Initial Purchasers by the Company pursuant to this Agreement, the issuance of the Underlying Securities and the consummation of the transactions contemplated in this Agreement, the Securities, the Indenture and the Registration Rights Agreement has been obtained or made and is in full force and effect, except for (i) the effectiveness of the Shelf Registration Statement (as such term is defined in the Registration Rights Agreement) under the Securities Act and the qualification of the Indenture under the

Trust Indenture Act of 1939, as amended (the “Trust Indenture Act”), in each case as contemplated by the Registration Rights Agreement, and (ii) such additional steps as may be necessary to qualify the Securities for public offering by the Initial Purchasers under state securities or “Blue Sky” laws; provided that the Company makes no such representation and warranty as it relates to the representations, warranties and agreements of the Initial Purchasers set forth in Section 3 of this Agreement.

(t) each of the Company and each Subsidiary that is engaged in the business of insurance or reinsurance (collectively, the “**Insurance Subsidiaries**”) is in compliance with the requirements of the insurance laws and regulations of its respective jurisdiction of organization or incorporation, as the case may be, and the insurance laws and regulations of other jurisdictions which are applicable to it, and has filed all notices, reports, documents or other information required to be filed thereunder, in each case, with such exceptions as would not reasonably be expected to result in a Material Adverse Change; neither the Company nor any Insurance Subsidiary has received any notification from any insurance regulatory authority to the effect that any additional authorization, approval, order, consent, license, certificate, permit, registration or qualification (“**Approvals**”) is needed to be obtained by the Company or any of the Insurance Subsidiaries in any case where it could be reasonably expected that obtaining such Approvals or the failure to obtain such Approvals would result in a Material Adverse Change;

(u) each of the Insurance Subsidiaries holds such insurance licenses, certificates and permits from governmental authorities (including, without limitation, from the insurance regulatory agencies of the various jurisdictions where it conducts business (the “**Insurance Licenses**”)) as are material to the conduct of its business as described in the Offering Memorandum; the Company and each Insurance Subsidiary have fulfilled and performed all obligations necessary to maintain such Insurance Licenses; there is no pending or, to the best knowledge of the Company,

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threatened action, suit, proceeding or investigation that would reasonably be expected to result in the revocation, termination or suspension of any Insurance License that would reasonably be expected to, individually or in the aggregate, result in a Material Adverse Change; no insurance regulatory agency or body has issued, or commenced any proceeding for the issuance of, any order or decree impairing, restricting or prohibiting the payment of dividends by any Insurance Subsidiary to its parent;

(v) All reinsurance treaties and arrangements to which any Insurance Subsidiary is a party are in full force and effect and no Insurance Subsidiary is in violation of, or in default in the performance, observance or fulfillment of, any obligation, agreement, covenant or condition contained therein, except where the failure to be in full force and effect or where such violation or default would not, individually or in the aggregate, be reasonably expected to result in a Material Adverse Change. No Insurance Subsidiary has received any notice from any of the other parties to such treaties, contracts or agreements that such other party intends not to perform such treaty and, to the best knowledge of the Company, none of the other parties to such treaties or arrangements will be unable to perform such treaty or arrangement except to the extent adequately and properly reserved for in the audited consolidated financial statements of the Company included or incorporated by reference in the Offering Memorandum, except where such nonperformance would not reasonably be expected to, individually or in the aggregate, result in a Material Adverse Change;

(w) the statutory financial statements of the Insurance Subsidiaries, from which certain data included in the Offering Memorandum have been derived, have been prepared, for each relevant period, in conformity with SAP applied on a consistent basis throughout the periods involved, except (1) as may otherwise be indicated therein or in the notes thereto and (2) in the case of any such financial statements for periods less than a full year, for any normal year-end adjustments, and present fairly in all material respects the statutory financial position of the Insurance Subsidiaries as of the dates thereof, and the statutory basis results of operations of the Insurance Subsidiaries for the periods covered thereby.

(x) the Company and each of the Subsidiaries hold all material licenses, certificates and permits from governmental authorities which are necessary to the conduct of their businesses;

(y) the Company and the Subsidiaries each own or possess, or can acquire on reasonable terms, adequate patents, patent rights, trademarks, trade names, service marks, service names, copyrights, license rights, know-how (including trade secrets and other unpatented and unpatentable proprietary or confidential information, systems or

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procedures) and other intellectual property rights (“Intellectual Property”) necessary to carry on their business in all material respects; none of the Company or any of the Subsidiaries has received notice of any infringement of or conflict with, any Intellectual Property of any other person or entity, except to the extent that such infringement or conflict if determined adversely to the Company or such Subsidiary would not reasonably be expected to result in a Material Adverse Change;

(z) neither the Company nor, to the best of the Company’s knowledge, any of its affiliates, has taken or may take, directly or indirectly, any action designed to cause or result in, or which has constituted or which might reasonably be expected to constitute, the stabilization or manipulation of the price of the Securities to facilitate the sale or resale of the Securities;

(aa) the Company is not, and after giving effect to the offering and sale of the Securities contemplated hereunder and the application of the net proceeds from such sale as described in the Offering Memorandum will not be, required to register as an “investment company” as such term is defined in the Investment Company Act of 1940, as amended (the “Investment Company Act”);

(bb) the Company and each of the Subsidiaries maintain a system of internal accounting controls sufficient to provide reasonable assurances that (A) transactions are executed in accordance with management’s general or specific authorization; (B) transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles and to maintain accountability for assets; (C) access to assets is permitted only in accordance with management’s general or specific authorization; and (D) the recorded accountability for assets is compared with existing assets at reasonable intervals and appropriate action is taken with respect to any differences;

(cc) the Company and the Subsidiaries comply with all Environmental Laws (as defined below), except to the extent that failure to comply with such Environmental Laws would not, individually or in the aggregate, be reasonably expected to result in a Material Adverse Change; none of the Company or any of the Subsidiaries is the subject of any pending or, to the best knowledge of the Company, threatened federal, state or

local investigation evaluating whether any remedial action by the Company or any of the Subsidiaries is needed to respond to a release of any Hazardous Materials (as defined below) into the environment resulting from the Company's or any of the Subsidiaries' business operations or ownership or possession of any of their properties or assets, or is in contravention of any Environmental Law that could reasonably be expected, individually or in the aggregate, to result in any Material Adverse Change; none of the

Company or any of the Subsidiaries has received any notice or claim, nor are there pending or, to the best knowledge of the Company, threatened lawsuits against them, with respect to violations of an Environmental Law or in connection with any release of any Hazardous Material into the environment that could reasonably be expected in the aggregate to result in a Material Adverse Change; as used herein, "Environmental Laws" means any federal, state or local law or regulation applicable to the Company's or any of the Subsidiaries' business operation or ownership or possession of any of their properties or assets relating to environmental matters, and "Hazardous Materials" means those substances that are regulated by or form the basis of liability under any Environmental Laws;

(dd) the Company and each of its Subsidiaries carry, or are covered by, insurance in such amounts and covering such risks as is generally deemed adequate for the conduct of their respective businesses as presently conducted and the value of their respective properties and as is customary for companies engaged in similar businesses;

(ee) the Company and each Subsidiary are in compliance in all material respects with all presently applicable provisions of the Employee Retirement Income Security Act of 1974, as amended, including the regulations and published interpretations thereunder ("ERISA"); no "reportable event" (as defined in ERISA) has occurred with respect to any "pension plan" (as defined in ERISA) for which the Company or any Subsidiary would have any material liability; neither the Company nor any Subsidiary has incurred or expects to incur any material liability under (i) Title IV of ERISA with respect to termination of, or withdrawal from, any "pension plan" or (ii) Sections 412 or 4971 of the Internal Revenue Code of 1986, as amended, including the regulations and published interpretations thereunder (the "Code"); and each "pension plan" for which the Company or any Subsidiary would have any liability that is intended to be qualified under Section 401(a) of the Code is so qualified in all material respects and nothing has occurred, whether by action or by failure to act, which would cause the loss of such qualification;

(ff) neither the Company, nor any of its affiliates (as defined in Rule 501(b) of Regulation D under the Securities Act, each, an "Affiliate"), nor any person acting on its or their behalf (other than the Initial Purchasers and their representatives, as to whom the Company makes no representation) has, directly or indirectly, made offers or sales of any security (as defined in the Securities Act), or solicited offers to buy any security, under circumstances that would require the registration of the Securities or the Underlying Securities under the Securities Act;

(gg) neither the Company, nor any of its Affiliates, nor any person acting on its or their behalf (other than the Initial Purchasers and their representatives, as to whom the Company makes no representation) has engaged in any form of general solicitation or general advertising (as those terms are used in Rule 502(c) of Regulation D under the Securities Act) in connection with any offer or sale of the Securities or the Underlying Securities;

(hh) the Securities satisfy the eligibility requirements of Rule 144A(d)(3) under the Securities Act;

(ii) the Company is subject to and in full compliance in all material respects with the reporting requirements of Section 13 or Section 15(d) of the Exchange Act;

(jj) the Securities, the Indenture, the Registration Rights Agreement each conform in all material respects to the descriptions thereof contained in the Offering Memorandum;

(kk) there is and has been no failure on the part of the Company or, to the best knowledge of the Company, any of the Company's directors or officers, in their capacities as such, to comply in all material respects with any provision of the Sarbanes-Oxley Act of 2002 that are effective and the rules and regulations promulgated in connection therewith, including Section 402 related to loans and Sections 302 and 906 related to certifications; and

(ll) except as disclosed in the Offering Memorandum, no holder of securities of the Company (other than the Registrable Securities (as defined in the Registration Rights Agreement)) will be entitled to have such securities registered under the registration statements required to be filed by the Company pursuant to the Registration Rights Agreement.

2. PURCHASE, SALE AND DELIVERY OF THE SECURITIES.

(a) On the basis of the representations, warranties and covenants herein contained, and subject to the conditions herein set forth, the Company agrees to issue and sell to the Initial Purchasers and the Initial Purchasers agree to purchase from the Company, at a purchase price of 97% of the aggregate principal amount thereof (the "Purchase Price"), plus accrued interest, if any, from December 6, 2004 to the Closing Date, the Firm Securities. Each Security will be convertible at the option of the holder into a combination of cash and the Underlying Securities at the conversion price set forth in the Securities (the "Conversion Price"), which Conversion Price is subject to adjustment in

certain events as provided in the Securities and the Indenture. One or more global securities representing the Firm Securities shall be registered by the Trustee in the name of the nominee of The Depository Trust Company ("DTC"), Cede & Co., credited to the accounts of the Initial Purchasers, and deposited with the Trustee as custodian for DTC on the Closing Date, against payment by or on behalf of the Initial Purchasers to the account of the Company of the aggregate Purchase Price therefor by wire transfer in immediately available funds. Delivery of and payment for the Firm

Securities shall be made at the offices of Davis Polk & Wardwell, 450 Lexington Avenue, New York, New York 10017 at 9:30 A.M., New York City time, on the third full business day following the date of this Agreement, or at such other place, time or date not later than five business days thereafter as the Initial Purchasers and the Company may agree upon. Such time and date of delivery against payment are herein referred to as the "Closing Date". (As used herein, "business day" means a day on which the New York Stock Exchange is open for trading and on which banks in New York are open for business and are not permitted by law or executive order to be closed.)

(b) In addition, on the basis of the representations and warranties herein contained and subject to the terms and conditions herein set forth, the Company hereby grants an option to Deutsche Bank Securities Inc. for its own account to purchase the Option Securities at the Purchase Price set forth in Section 2(a) plus accrued interest, if any, from December 6, 2004 to the Option Closing Date (as defined below). The option granted hereby may be exercised in whole or in part by giving written notice (i) at any time before the Closing Date and (ii) at any time and from time to time within 30 days after the date of this Agreement by Deutsche Bank Securities Inc. to the Company, setting forth the aggregate principal amount of Option Securities as to which Deutsche Bank Securities Inc. is exercising the option and the time and date for delivery of and payment for such Option Securities. The time and date for delivery of and payment for such Option Securities shall be determined by Deutsche Bank Securities Inc. but shall not be earlier than three nor later than ten full business days after the exercise of such option, nor in any event prior to the Closing Date (such time and date being herein referred to as the "Option Closing Date"). If the date of exercise of the option is two or more days before the Closing Date, the notice of exercise shall set the Closing Date as the Option Closing Date. Deutsche Bank Securities Inc. may cancel such option at any time prior to its expiration by giving written notice of such cancellation to the Company.

3. OFFERING BY THE INITIAL PURCHASERS.

(a) It is understood that the Initial Purchasers will offer and sell the Securities in accordance with this Section as soon as the Initial

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Purchasers deem it advisable to do so. The Securities are to be initially offered at the offering price set forth in the Offering Memorandum. The Initial Purchasers may from time to time thereafter change the price and other selling terms.

(b) Each Initial Purchaser understands and acknowledges that the Securities and the Underlying Securities have not been and will not be registered under the Securities Act (except as contemplated by the Registration Rights Agreement) and may not be offered or sold, except in compliance with the registration requirements of the Securities Act or pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act. Accordingly, each Initial Purchaser agrees that it has solicited and will solicit offers for the Securities only from, and has offered and sold and will offer, sell or deliver the Securities only to persons that it reasonably believes to be qualified institutional buyers as defined in Rule 144A under the Securities Act.

(c) Each Initial Purchaser agrees that neither it nor any person acting on its behalf has engaged or will engage in any form of general solicitation or general advertising (as those terms are used in Rule 502(c) of Regulation D under the Securities Act) in connection with any offer or sale of the Securities in the United States.

(d) Each Initial Purchaser represents and warrants to the Company that it is a "qualified institutional buyer" within the meaning of Rule 144A under the Securities Act.

4. COVENANTS OF THE COMPANY.

The Company covenants and agrees with the Initial Purchasers that:

(a) The Company will furnish to the Initial Purchasers and counsel for the Initial Purchasers, without charge, during the period mentioned in paragraph (d) below, as many copies of the Preliminary Offering Memorandum and Offering Memorandum, any documents incorporated by reference therein and any supplements or amendments thereto as they may reasonably request.

(b) The Company will not amend or supplement the Offering Memorandum, other than by filing documents under the Exchange Act which are incorporated by reference therein, and prior to the completion of the distribution of the Securities by the Initial Purchasers, the Company will not file any document under the Exchange Act which is incorporated by reference in the Offering Memorandum, unless the Initial Purchasers previously have been advised of and furnished with a copy within a

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reasonable period of time prior to the proposed filing and the Initial Purchasers shall have given their consent to such filing, such consent not to be unreasonably withheld. The Company will prepare promptly upon request by the Initial Purchasers or counsel for the Initial Purchasers any amendments or supplements to the Offering Memorandum that may be necessary or advisable in connection with the distribution of the Securities by the Initial Purchasers. The Company will advise the Initial Purchasers of the time when any amendment or supplement to the Offering Memorandum has been made or when any document filed under the Exchange Act which is incorporated by reference in the Offering Memorandum has been filed with the Commission and will provide evidence satisfactory to the Initial Purchasers of each such amendment, supplement or filing.

(c) The Company will cooperate with the Initial Purchasers in endeavoring to qualify the Securities for sale under the securities laws of such jurisdictions as the Initial Purchasers may reasonably have designated in writing and will make such applications, file such documents and furnish such information as may be reasonably required for that purpose; *provided* that the Company shall not be required to qualify as a foreign corporation or to file a general consent to service of process in any jurisdiction where it is not now so qualified or required to file such a consent or to subject itself to taxation in respect of doing business in any jurisdiction in which it is not otherwise so subject. The Company will, from time to time, prepare and file such statements, reports and other documents, as are or may be required to continue such qualifications in effect for so long a period as the Initial Purchasers may reasonably request for distribution of the Securities.

(d) If at any time prior to the date on which all of the Securities shall have been sold by the Initial Purchasers, any event shall occur as a result of which, in the judgment of the Company or in the reasonable opinion of the Initial Purchasers, it becomes necessary to amend or supplement the Offering Memorandum in order to make the statements therein, in light of the circumstances under which they were made, not misleading, or if it is necessary at any time to amend or supplement the Offering Memorandum to comply with applicable law, the Company promptly will prepare an appropriate amendment or supplement to the Offering Memorandum so that the Offering Memorandum as so amended or supplemented will not contain statements that, in light of the circumstances under which they were made, are misleading, or so that the Offering Memorandum will comply with applicable law.

(e) The Company will not, without the prior written consent of Deutsche Bank Securities Inc., directly or indirectly offer, sell, pledge, contract to sell (including any short sale), grant any option to purchase or otherwise dispose of any shares of Common Stock or enter into any

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Hedging Transaction (as defined below) relating to the Common Stock for a period from the date hereof until and including the date that is 90 days after the date of the Offering Memorandum. “**Hedging Transaction**” means any short sale (whether or not against the box) or any purchase, sale or grant of any right (including, without limitation, any put or call option) with respect to any security (other than a broad-based market basket or index) that includes, relates to or derives any significant part of its value from the Common Stock. The foregoing sentence shall not apply to (A) the sale of the Securities under this Agreement, (B) the issuance by the Company of shares of Common Stock upon conversion of the Securities pursuant to the terms of the Indenture, (C) the issuance by the Company of shares of Common Stock, stock appreciation rights or common stock equivalents or warrants, rights or options to purchase any of the foregoing pursuant to any employee, officer or director stock option plan or other benefit plan in effect on the date hereof (D) the issuance by the Company of any shares of Common Stock upon the exercise of an option, warrant or management subscription right or the conversion of a security, in each case, outstanding on the date hereof, or (E) the filing of shelf registration statements in respect of the Securities and shares of Common Stock issuable upon conversion of the Securities pursuant to the terms of the Registration Rights Agreement or any registration statement in respect of any employee, officer or director stock option or other benefit plan.

(f) The Company will not, nor will it permit any of its Affiliates to, resell any Securities that have been acquired by any of them.

(g) Except as contemplated by the Registration Rights Agreement, neither the Company, nor any of its Affiliates, nor any person acting on its behalf will, directly or indirectly, make offers or sales of any security, or solicit offers to buy any security, under circumstances that would require the registration of the Securities or the Underlying Securities under the Securities Act.

(h) Neither the Company nor any of its Affiliates nor any person acting on its behalf will engage in any form of general solicitation or general advertising (as those terms are used in Rule 502(c) of Regulation D under the Securities Act) in connection with any offer or sale of the Securities in the United States.

(i) So long as any of the Securities or the Underlying Securities are “restricted securities” within the meaning of Rule 144(a)(3) under the Securities Act, the Company will, during any period in which it is not subject to and in compliance with Section 13 or 15(d) of the Exchange Act or exempt from such reporting requirements pursuant to and in compliance with Rule 12g3-2(b) under the Exchange Act, provide to each holder of

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such restricted securities and to each prospective purchaser (as designated by such holder) of such restricted securities, upon the request of such holder or prospective purchaser, any information required to be provided by Rule 144A(d)(4) under the Securities Act. This covenant is intended to be for the benefit of the holders, and the prospective purchasers designated by such holders, from time to time of such restricted securities.

(j) The Company will cooperate with the Initial Purchasers and use its best efforts to (x) permit the Securities to be eligible for clearance and settlement through DTC and (y) arrange to have the Securities be designated by Nasdaq Stock Market, Inc. as PORTAL-eligible securities in accordance with the rules and regulations of the National Association of Securities Dealers, Inc. (“NASD”).

(k) The Company will use its best efforts to cause the Underlying Securities to be duly authorized for listing by the New York Stock Exchange on or prior to the Closing Date and ensure that the Underlying Securities remain authorized for listing following the Closing Date for so long as the Common Stock is so listed.

(l) The Company shall apply the net proceeds of its sale of the Securities as set forth in the Offering Memorandum.

(m) The Company shall not invest, or otherwise use the proceeds received by the Company from its sale of the Securities in such a manner as would require the Company to register as an “investment company” under the Investment Company Act.

(n) The Company will not take, directly or indirectly, any action designed to cause or result in, or that has constituted or might reasonably be expected to constitute, the stabilization or manipulation of the price of any securities of the Company.

(o) For so long as any Securities remain outstanding, the Company will furnish to the Initial Purchasers copies of all reports and other communications (financial or otherwise) furnished by the Company to the Trustee or the holders of the Securities and, as soon as available, copies of any reports or financial statements furnished to or filed by the Company with the Commission or any national securities exchange on which any class of securities of the Company may be listed; *provided, however*, that the Company shall not be required to provide the Initial Purchasers with any such reports or similar forms that have been filed with the Commission by electronic transmission pursuant to EDGAR.

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The Company will pay all costs, expenses and fees incident to the performance of its obligations under this Agreement, including, without limiting the generality of the foregoing, the following: accounting fees of the Company; the fees and disbursements of counsel for the Company; the cost of printing and delivering to, or as requested by, the Initial Purchasers copies of the Preliminary Offering Memorandum and the Offering Memorandum and any supplements or amendments thereto and the printing and production of all other documents connected with the transactions contemplated herein (including this Agreement, the Indenture, the Registration Rights Agreement and any other related agreements); the listing fee of the New York Stock Exchange; the expenses arising from having the Securities designated as eligible for trading in the PORTAL market; the expenses associated with the preparation, issuance and delivery to the Initial Purchasers of the Securities; the fees and expenses of the Trustee, including fees and expenses of its counsel; the expenses of the “roadshow” and any other meetings with prospective investors in the Securities; the costs and expenses of advertising relating to the Offering (other than advertising costs and expenses that the Initial Purchasers expressly agree to pay); and the expenses, including the reasonable fees and disbursements of counsel for the Initial Purchasers, incurred in connection with the qualification of the Securities under state securities or “Blue Sky” laws. The Company shall not, however, be required to pay for any of the Initial Purchasers’ expenses (other than those related to qualification under state securities or “Blue Sky” laws) except that, if this Agreement shall not be consummated because the conditions in Section 6 hereof are not satisfied, or because this Agreement is terminated by the Initial Purchasers pursuant to Section 9 hereof, or by reason of any failure, refusal or inability on the part of the Company to perform any undertaking or satisfy any condition of this Agreement or to comply with any of the terms hereof on their part to be performed, unless such failure, refusal or inability is due primarily to the default or omission of the Initial Purchasers, the Company shall reimburse the Initial Purchasers for reasonable out-of-pocket expenses, including fees and disbursements of Davis Polk & Wardwell, counsel for the Initial Purchasers, reasonably incurred in connection with investigating, marketing and proposing to market the Securities or in contemplation of performing their obligations hereunder; but the Company shall not in any event be liable to the Initial Purchasers for damages on account of loss of anticipated profits from the sale by the Initial Purchasers of the Securities.

6. CONDITIONS OF OBLIGATIONS OF THE INITIAL PURCHASERS.

The obligation of the Initial Purchasers to purchase the Firm Securities on the Closing Date and the Option Securities, if any, on the Option Closing Date are subject to the accuracy, as of the Closing Date or the Option Closing Date, as the case may be, of the representations and warranties of the Company contained herein, and to the performance by the Company of its covenants and obligations hereunder and to the following additional conditions:

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(a) The Initial Purchasers shall have received on the Closing Date or the Option Closing Date, as the case may be, the opinion and negative assurance letter of Skadden, Arps, Slate, Meagher & Flom LLP, special counsel for the Company, dated the Closing Date or the Option Closing Date, as the case may be, addressed to the Initial Purchasers, in form and substance reasonably satisfactory to the Initial Purchasers.

(b) The Initial Purchasers shall have received on the Closing Date or the Option Closing Date, as the case may be, the opinion of Skadden, Arps, Slate, Meagher & Flom LLP, special tax counsel for the Company, dated the Closing Date or the Option Closing Date, as the case may be, addressed to the Initial Purchasers, in form and substance reasonably satisfactory to the Initial Purchasers.

(c) The Initial Purchasers shall have received on the Closing Date or the Option Closing Date, as the case may be, the opinion of Wendy L. Carlson, Esq., General Counsel and Chief Financial Officer to the Company, dated the Closing Date or the Option Closing Date, as the case may be, addressed to the Initial Purchasers, in form and substance reasonably satisfactory to the Initial Purchasers.

(d) The Initial Purchasers shall have received an opinion, dated the Closing Date or the Option Closing Date, as the case may be, of Davis Polk & Wardwell, counsel for the Initial Purchasers, with respect to certain legal matters relating to this Agreement, and such other related matters as the Initial Purchasers may reasonably require. In rendering such opinion, Davis Polk & Wardwell shall have received and may rely upon such certificates and other documents and information as they may reasonably request to pass upon such matters.

(e) The Initial Purchasers shall have received, on each of the date hereof, the Closing Date and, if applicable, the Option Closing Date, letters dated the date hereof, the Closing Date or the Option Closing Date, as the case may be, in form and substance reasonably satisfactory to the Initial Purchasers and counsel for the Initial Purchasers, of Ernst & Young LLP confirming that they are independent public accountants within the meaning of the Securities Act and the applicable published rules and regulations thereunder and stating that in their opinion the financial statements and schedules of the Company examined by them and incorporated by reference in the Offering Memorandum comply in form in all material respects with the applicable accounting requirements of the Securities Act and the Exchange Act and the respective related published rules and regulations; and containing such other statements and information as is ordinarily included in accountants’ “comfort letters” to initial purchasers in Rule 144A offerings with respect to the financial statements

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and certain financial and statistical information contained or incorporated by reference in the Offering Memorandum.

(f) The Initial Purchasers shall have received on the Closing Date and, if applicable, the Option Closing Date, as the case may be, a certificate or certificates of the Chief Executive Officer and the Chief Financial Officer of the Company to the effect that, as of the Closing Date or the Option Closing Date, as the case may be, each of them severally represents, to the best of their knowledge, as follows:

(i) the representations and warranties of the Company contained in Section 1 hereof are true and correct as of the Closing Date or the Option Closing Date, as the case may be;

(ii) he or she has carefully examined the Offering Memorandum (including the documents of the Company incorporated by reference therein) and, in his or her opinion, as of the Closing Date or Option Closing Date as the case may be, the statements contained in the Offering Memorandum (including the documents of the Company incorporated by reference therein) with respect to the Company are true and correct in all material respects, and with respect to the Company such Offering Memorandum (including the documents of the Company incorporated by reference therein) does not omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading;

(iii) since the respective dates as of which information is given in the Offering Memorandum, there has not been any Material Adverse Change or any development involving a prospective Material Adverse Change, whether or not arising in the ordinary course of business; and

(iv) the Company has performed all covenants and agreements and satisfied all conditions on its part to be performed or satisfied under this Agreement and otherwise in connection with the transactions contemplated hereby at or prior to the Closing Date or the Option Closing Date, as the case may be.

(g) The Company shall have furnished to the Initial Purchasers such further certificates and documents confirming the representations and warranties, covenants and conditions contained herein and related matters as the Initial Purchasers may reasonably have requested.

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(h) The Underlying Securities shall have been duly listed, subject to notice of issuance, on the New York Stock Exchange and the Securities shall have been designated as PORTAL-eligible securities.

(i) Subsequent to the execution and delivery of this Agreement and prior to the Closing Date, there shall not have occurred any downgrading, nor shall any notice have been given of any intended or potential downgrading or of any review for a possible change that does not indicate the direction of the possible change, in the rating accorded any of the Company's securities or the rating of any Subsidiary by any "nationally recognized statistical rating organization", as such term is defined for purposes of Rule 436(g)(2) under the Securities Act.

(j) Each of the Indenture and the Registration Rights Agreement shall have been executed and delivered by all the parties thereto (other than the Initial Purchasers with respect to the Registration Rights Agreement).

(k) The Company shall have caused each person listed on Exhibit D-1 to furnish to Deutsche Bank Securities Inc., on or prior to the date of this agreement, a letter or letters, in substantially the form attached hereto as Exhibit D-2, and such letter or letters shall be in full force and effect.

The opinions and certificates mentioned in this Agreement shall be deemed to be in compliance with the provisions hereof only if they are in all material respects satisfactory to the Initial Purchasers.

If any of the conditions hereinabove provided for in this Section 6 shall not have been fulfilled when and as required by this Agreement to be fulfilled, the Initial Purchasers may terminate their obligations hereunder by notifying the Company of such termination in writing or by telegram at or prior to the Closing Date or the Option Closing Date, as the case may be.

In such event, the Company and the Initial Purchasers shall not be under any obligation to each other (except to the extent provided in Sections 5 and 7 hereof).

7. INDEMNIFICATION.

(a) The Company agrees:

(i) to indemnify and hold harmless each Initial Purchaser and the affiliates, directors, officers and employees of each Initial Purchaser and each person, if any, who controls each Initial Purchaser within the meaning of either Section 15 of the Securities Act or Section 20 of the Exchange Act,

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against any losses, claims, damages or liabilities to which such Initial Purchaser or any such affiliate, director, officer or employee or such controlling person 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 (x) any untrue statement or alleged untrue statement of a material fact contained in any Preliminary Offering Memorandum, the Offering Memorandum or any amendment or supplement thereto, or (y) the omission or alleged omission to state therein a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; *provided, however*, that the Company will not be liable in any such case 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 Preliminary Offering Memorandum, the Offering Memorandum, or any amendment or supplement thereto, in reliance upon and in conformity with written information furnished to the Company by any Initial Purchaser specifically for use in the preparation thereof; and *provided, further*, that the Company shall not be liable to any Initial Purchaser under this subsection (a) with respect to the Preliminary Offering Memorandum to the extent that such loss, claim, damage, liability or action of such Initial Purchaser results from the fact such Initial Purchaser sold Securities to a person as to whom it shall be established that such sale was an initial resale by such Initial Purchaser and there was not sent or given to such person, at or prior to the written confirmation of such sale to such person, a copy of the Offering Memorandum, if the Company had previously furnished copies thereof in sufficient quantities to such Initial Purchaser on a timely basis and the loss, claim, damage or liability of such Initial Purchaser results from an untrue statement or omission of a material fact contained in the Preliminary Offering Memorandum which was corrected in the Offering Memorandum; or

(ii) to reimburse each Initial Purchaser and each such affiliate, director, officer and employee and each such controlling person upon demand for any legal or other out-of-pocket expenses reasonably incurred by such Initial Purchaser, such affiliate, director, officer or employee or such controlling person in connection with investigating or defending or appearing as a third-party witness in connection with any such loss, claim, damage or liability, action or proceeding or in responding to a subpoena or governmental inquiry related to the Offering, whether or not such Initial Purchaser or any such controlling person is a party to any action or proceeding. In the event that it is finally judicially determined that such Initial Purchaser was not entitled to receive payments for legal and other expenses pursuant to this subparagraph, such Initial Purchaser will promptly return all sums that had been advanced pursuant hereto.

(b) Each Initial Purchaser agrees, to indemnify and hold harmless the Company, its directors, officers and employees and each person, if any, who controls the Company within the meaning of either Section 15 of the Securities Act or Section 20 of the Exchange Act, against any losses, claims, damages or liabilities to which the Company or any such director, officer or controlling person 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 a material fact contained in any Preliminary Offering Memorandum, the Offering Memorandum or any amendment or supplement thereto, or (ii) the omission or the alleged omission to state therein a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; and will reimburse any legal or other expenses reasonably incurred by the Company or any such director, officer or controlling person in connection with investigating or defending any such loss, claim, damage, liability, action or proceeding; *provided, however*, that each Initial Purchaser will be liable in each case to the extent, but only to the extent, that such untrue statement or alleged untrue statement or omission or alleged omission has been made in any Preliminary Offering Memorandum, the Offering Memorandum or any amendment or supplement thereto, in reliance upon and in conformity with written information furnished to the Company by any Initial Purchaser specifically for use in the preparation thereof. This indemnity agreement will be in addition to any liability which the Initial Purchasers may otherwise have.

(c) In case any proceeding (including any governmental investigation) shall be instituted involving any person in respect of which indemnity may be sought pursuant to this Section 7, such person (the “indemnified party.”) shall promptly notify the person against whom such indemnity may be sought (the “indemnifying party.”) in writing. No indemnification provided for in Section 7(a) or (b) shall be available to any party who shall fail to give notice as provided in this Section 7(c) 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, but the failure to give such notice shall not relieve the indemnifying party or parties from any liability which it or they may have to the indemnified party for contribution or otherwise than on account of the provisions of Section 7(a) or (b). In case any such proceeding shall be brought against any indemnified party and it shall notify the indemnifying party of the commencement thereof, the indemnifying party shall be entitled to participate therein and, to the extent that it shall wish, jointly with any other indemnifying party similarly notified, to assume the defense thereof, with counsel satisfactory to such indemnified

party and shall pay as incurred the fees and disbursements of such counsel related to such proceeding. In any such proceeding, any indemnified party shall have the right to retain its own counsel at its own expense. Notwithstanding the foregoing, the indemnifying party shall pay as incurred (or within 30 days of presentation) the fees and expenses of the counsel retained by the indemnified party in the event (i) the indemnifying party and the indemnified party 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 party and the indemnified party 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 party shall have failed to assume the defense of and employ counsel acceptable to the indemnified party within a reasonable period of time after notice of commencement of the action. It is understood that the indemnifying party 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 parties. Such firm shall be designated in writing by Deutsche Bank Securities Inc. in the case of parties indemnified pursuant to Section 7(a) and by the Company in the case of parties indemnified pursuant to Section 7(b). The indemnifying party 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 party agrees to indemnify the indemnified party from and against any loss or liability by reason of such settlement or judgment. In addition, the indemnifying party will not, without the prior written consent of the indemnified party, 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 party 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 party from all liability arising out of such claim, action or proceeding.

(d) To the extent the indemnification provided for in this Section 7 is unavailable to or insufficient to hold harmless an indemnified party under Section 7(a) or (b) above in respect of any losses, claims, damages or liabilities (or actions or proceedings in respect thereof) referred to therein, then each indemnifying party shall contribute to the amount paid or payable by such indemnified party 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 Company on the one hand and the Initial Purchasers on the other from the offering of the Securities. If, however, the allocation provided by the immediately

preceding sentence is not permitted by applicable law then each indemnifying party shall contribute to such amount paid or payable by such indemnified party in such proportion as is appropriate to reflect not only such relative benefits but also the relative fault of the Company on the one hand and the Initial Purchasers 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 on the one hand and the Initial Purchasers on the other shall be deemed to be in the same proportion as the total net proceeds from the offering (before deducting expenses) received by the Company bear to the total discounts and commissions received by the Initial Purchasers. The relative fault 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 or the Initial Purchasers on the other and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission. The Company and the Initial Purchasers agree that it would not be just and equitable if contributions pursuant to this Section 7(d) were determined by pro rata allocation or by any other method of allocation which does not take account of the equitable considerations referred to above in this Section. The amount paid or payable by an indemnified party as a result of the losses, claims, damages or liabilities (or actions or proceedings in respect thereof) referred to above in this Section 7(d) shall be deemed to include any legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending any such action or claim. Notwithstanding the provisions of this subsection (d), (i) the Initial Purchasers shall not be required to contribute any amount in excess of the discounts and commissions applicable to the Securities purchased by the

Initial Purchasers 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.

(e) In any proceeding relating to any Preliminary Offering Memorandum, the Offering Memorandum or any supplement or amendment thereto, each party against whom contribution may be sought under this Section 7 hereby consents to the jurisdiction of any court having jurisdiction over any other contributing party, agrees that process issuing from such court may be served upon it by any other contributing party and consents to the service of such process and agrees that any other contributing party may join it as an additional defendant in any such proceeding in which such other contributing party is a party.

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(f) Any losses, claims, damages, liabilities or expenses for which an indemnified party is entitled to indemnification or contribution under this Section 7 shall be paid by the indemnifying party to the indemnified party as such losses, claims, damages, liabilities or expenses are incurred. A successor to any Initial Purchaser or any affiliate, director, officer or employee of the Initial Purchasers or any person controlling any Initial Purchaser, or to the Company, any director, officer or employee of the Company or any person controlling the Company, shall be entitled to the benefits of the indemnity, contribution and reimbursement agreements contained in this Section 7.

8. NOTICES.

All communications hereunder shall be in writing and, except as otherwise provided herein, shall be mailed, delivered, telecopied, faxed or telegraphed and confirmed as follows: if to the Initial Purchasers, to Deutsche Bank Securities Inc., 60 Wall Street, New York, New York 10005; Attention: Syndicate Department, Fax: (212) 797-9344, with a copy to Deutsche Bank Securities Inc., 60 Wall Street, New York, New York 10019, Attention: General Counsel, Fax: (212) 797-4564; if to the Company, to 5000 Westown Parkway, Suite 440, West Des Moines, Iowa, 50266, Attention: David J. Noble, CEO and Chairman, Fax: (515) 221-9989, with a copy to Wendy Carlson, CFO and General Counsel, Fax: (515) 221-0744.

9. TERMINATION.

(a) This Agreement may be terminated by the Initial Purchasers by notice to the Company at any time prior to the Closing Date or the Option Closing Date (if different from the Closing Date and then only as to Option Securities) if any of the following has occurred: (i) since the date as of which information is given in the Offering Memorandum, any Material Adverse Change or any development involving a prospective Material Adverse Change, whether or not arising in the ordinary course of business, (ii) any outbreak or escalation of hostilities or declaration of war or national emergency or other national or international calamity or crisis or change in economic or political conditions if the effect of such outbreak, escalation, declaration, emergency, calamity, crisis or change on the financial markets of the United States would, in the sole judgment of the Initial Purchasers, make it impracticable or inadvisable to market the Securities or to enforce contracts for the sale of the Securities, (iii) suspension of trading in securities generally on the New York Stock Exchange, the American Stock Exchange or the Nasdaq National Market or limitation on prices (other than limitations on hours or numbers of days of trading) for securities on any such exchange or market, (iv) the enactment, publication, decree or other promulgation of any statute, regulation, rule or order of any court or other governmental authority which in the opinion of the Initial Purchasers

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materially and adversely affects or may materially and adversely affect the business or operations of the Company, (v) the declaration of a banking moratorium by United States or New York State authorities, (vi) any downgrading, or placement on any watch list for possible downgrading, in the rating of any of the Company's debt securities by any "nationally recognized statistical rating organization" (as defined for purposes of Rule 436(g) under the Exchange Act), (vii) the suspension of trading of the Company's common stock by the New York Stock Exchange, the Commission, or any other governmental authority, or (viii) the taking of any action by any governmental body or agency in respect of its monetary or fiscal affairs which in the reasonable opinion of the Initial Purchasers has a material adverse effect on the securities markets in the United States; or

(b) as provided in Section 6 of this Agreement.

10. DEFAULTING INITIAL PURCHASERS.

(a) If, on the Closing Date, or the Option Closing Date, as the case may be, any one or more of the Initial Purchasers shall fail or refuse to purchase Securities that it or they have agreed to purchase hereunder on such date, and the aggregate principal amount of Securities which such defaulting Initial Purchaser or Initial Purchasers agreed but failed or refused to purchase is not more than one-tenth of the aggregate principal amount of Securities to be purchased on such date, the other Initial Purchasers shall be obligated severally in the proportions that the principal amount of Firm Securities set forth opposite their respective names in Schedule I bears to the aggregate principal amount of Firm Securities set forth opposite the names of all such non-defaulting Initial Purchasers, or in such other proportions as you may specify, to purchase the Securities which such defaulting Initial Purchaser or Initial Purchasers agreed but failed or refused to purchase on such date.

(b) If, on the Closing Date, any Initial Purchaser or Initial Purchasers shall fail or refuse to purchase the Firm Securities which it or they have agreed to purchase hereunder on such date and the aggregate principal amount of Securities with respect to which such default occurs is more than one-tenth of the aggregate principal amount of Firm Securities to be purchased on such date, and arrangements satisfactory to the Company for the purchase of the Firm Securities are not made within 36 hours after such default, this Agreement shall terminate without liability on the part of the Company, except to the extent provided in Section 5 (other than any expenses payable to the Initial Purchasers under Section 5), Section 7 and Section 13. If arrangements satisfactory to the Company for the purchase of the Firm Securities are made within 36 hours after such default, the Company shall have the right to postpone the Closing Date, but in no event

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for longer than seven days, in order that the required changes, if any, in the Offering Memorandum or in any other documents or arrangements may be effected. Any action taken under this Section 10 shall not relieve any defaulting Initial Purchasers from liability in respect of any default of such Initial Purchasers under this Agreement.

11. SUCCESSORS.

This Agreement has been and is made solely for the benefit of the Initial Purchasers and the Company and their respective successors and assigns, and the officers, directors and controlling persons referred to herein, and no other person will have any right or obligation hereunder. No purchaser of any of the Securities from the Initial Purchasers shall be deemed a successor or assign merely because of such purchase.

12. INFORMATION PROVIDED BY THE INITIAL PURCHASERS.

The Company and the Initial Purchasers acknowledge and agree that the only information furnished or to be furnished by the Initial Purchasers to the Company for inclusion in the Offering Memorandum consists of the information set forth in the first sentence of the third paragraph, the third sentence of the fourth paragraph, the second sentence of the sixth paragraph (with respect to action by the Initial Purchasers), the entirety of the seventh and eighth paragraphs and the fourth sentence of the ninth paragraph, in each case under the heading "Plan of Distribution" (insofar as such information relates to the Initial Purchasers).

13. MISCELLANEOUS.

The reimbursement, indemnification and contribution agreements contained in this Agreement and the representations, warranties and covenants in this Agreement shall remain in full force and effect regardless of (a) subject to the last sentence of Section 6, any termination of this Agreement, (b) any investigation made by or on behalf of the Initial Purchasers or any controlling person thereof, or by or on behalf of the Company or its directors, officers and employees or any controlling person thereof and (c) delivery of and payment for the Securities under this Agreement.

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York.

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If the foregoing letter is in accordance with your understanding of our agreement, please sign and return to us the enclosed duplicates hereof, whereupon it will become a binding agreement among the Company and the Initial Purchasers in accordance with its terms.

Very truly yours,

AMERICAN EQUITY INVESTMENT
LIFE HOLDING COMPANY

By: /s/ David J. Noble
Name: David J. Noble
Title: Chief Executive Officer,
President and Treasurer

The foregoing Agreement
is hereby confirmed and accepted as
of the date first above written.

DEUTSCHE BANK SECURITIES INC.
RAYMOND JAMES & ASSOCIATES, INC.
ADVEST, INC.

By: DEUTSCHE BANK SECURITIES INC.

By: /s/ Michael Albanese
Name: Michael Albanese
Title: Director

By: /s/ Mary K. Schick
Name: Mary K. Schick
Title: Associate

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EXHIBIT A

December 1, 2004

Deutsche Bank Securities Inc.
60 Wall Street
New York, NY 10005

Raymond James & Associates, Inc.
880 Carillon Parkway
St. Petersburg, FL 33716

Advest, Inc.
90 State House Square
Hartford, CT 06103

Ladies & Gentlemen:

The undersigned understands that Deutsche Bank Securities Inc., Raymond James & Associates, Inc. and Advest, Inc. (the “**Initial Purchasers**”) proposes to enter into a Purchase Agreement (the “**Purchase Agreement**”) with American Equity Investment Life Holding Company, an Iowa corporation (the “**Company**”), providing for the offering (the “**Offering**”) by the Initial Purchasers of securities convertible into shares of common stock, par value \$1.00, of the Company (the “**Common Stock**”).

To induce the Initial Purchasers to continue their efforts in connection with the Offering, the undersigned hereby agrees that, without the prior written consent of Deutsche Bank Securities Inc., it will not directly or indirectly offer, sell, pledge, contract to sell (including any short sale), grant any option to purchase or otherwise dispose of any shares of Common Stock (including, without limitation, shares of Common Stock of the Company which may be deemed to be beneficially owned by the undersigned on the date hereof in accordance with the rules and regulations of the Securities and Exchange Commission, shares of Common Stock which may be issued upon exercise of a stock option or warrant and any other security convertible into or exchangeable for Common Stock) or enter into any Hedging Transaction (as defined below) relating to the Common Stock (each of the foregoing referred to as a “**Disposition**”) for a period from the date hereof until and including the date that is 90 days after the date of the final offering memorandum relating to the Offering (the “**Lock-Up Period**”). The foregoing restriction is expressly intended to preclude the undersigned from engaging in any Hedging Transaction or other transaction which is designed to or reasonably expected to lead to or result in a Disposition during the Lock-Up Period even if the securities would be disposed of by someone other than the undersigned. “**Hedging Transaction**” means any short

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sale (whether or not against the box) or any purchase, sale or grant of any right (including, without limitation, any put or call option) with respect to any security (other than a broad-based market basket or index) that includes, relates to or derives any significant part of its value from the Common Stock.

Notwithstanding the foregoing, the undersigned may (a) transfer shares of Common Stock acquired in open market transactions by the undersigned after the completion of the Offering, (b) transfer any or all of the shares of Common Stock or other Company securities if the transfer is by (i) gift, will or intestacy, or (ii) distribution to partners, members or shareholders of the undersigned, (c) pledge any shares of Common Stock in connection with indebtedness not maturing prior to the expiration of the Lock-Up Period; or (d) complete any transfer of the Company’s Common Stock required by operation of law or in connection with any valid order, decree or ruling of a court of competent jurisdiction; *provided* that in the case of a transfer pursuant to clauses (b) through (d) above, it shall be a condition to the transfer that the transferee execute an agreement stating that the transferee is receiving and holding the securities subject to the provisions of this letter agreement.

The undersigned agrees that the Company may, and that the undersigned will, (i) with respect to any shares of Common Stock or other Company securities for which the undersigned is the record holder, cause the transfer agent for the Company to note stop transfer instructions with respect to such securities on the transfer books and records of the Company and (ii) with respect to any shares of Common Stock or other Company securities for which the undersigned is the beneficial holder but not the record holder, cause the record holder of such securities to cause the transfer agent for the Company to note stop transfer instructions with respect to such securities on the transfer books and records of the Company.

In addition, the undersigned hereby waives any and all notice requirements and rights with respect to registration of securities pursuant to any agreement, understanding or otherwise setting forth the terms of any security of the Company held by the undersigned, including any registration rights agreement to which the undersigned and the Company may be party, *provided* that such waiver shall apply only to the proposed Offering, and any other action taken by the Company in connection with the proposed Offering.

The undersigned hereby agrees that, to the extent that the terms of this letter agreement conflict with or are in any way inconsistent with any registration rights agreement to which the undersigned and the Company may be a party, this letter agreement supersedes such registration rights agreement.

The undersigned hereby represents and warrants that the undersigned has full power and authority to enter into this letter agreement. All authority herein conferred or agreed to be conferred shall survive the death or incapacity of the undersigned and

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any obligations of the undersigned shall be binding upon the heirs, personal representatives, successors and assigns of the undersigned.

Notwithstanding anything herein to the contrary, if the closing of the Offering has not occurred prior to December 31, 2004, this agreement shall be of no further force or effect.

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Signature: _____

Print Name: _____

Number of shares owned subject
to warrants, options or
convertible securities:

Certificate numbers:

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Schedule 1

Initial Purchaser	Principal Amount of Firm Securities
Deutsche Bank Securities Inc.	\$ 140,000,000
Raymond James & Associates, Inc.	17,500,000
Advest, Inc.	17,500,000
Total	\$ 175,000,000

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**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*

Trust Indenture Act Section	Indenture Section
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
(a)(1)(B)	6.04
(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

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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 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

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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.**”

“**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).

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“**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.

“**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)
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)

Term	Defined in Section
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

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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.

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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 Indenture as periods during which such registration of transfers and exchanges need not be made.

(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

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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 thereof) 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 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

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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.

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

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, 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.

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

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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.

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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.

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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
- (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

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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.

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

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“**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 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

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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;

(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);

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(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 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

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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

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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 3.09 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

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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 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.

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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

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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

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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).

Section 4.03. *Compliance Certificate; Notice of Default.*

(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 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 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.

Section 6.02. *Acceleration.*

(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

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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.

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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.

ARTICLE 7
TRUSTEE

Section 7.01. *Duties of Trustee.*

- (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

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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.

- (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,

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- (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 Depositary 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;

(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,

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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

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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 of" 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.

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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.

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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:

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- (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

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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

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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

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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

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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

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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 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.

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(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.

(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.

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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

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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

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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,

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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,

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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.

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(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 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

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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.

(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

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(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

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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

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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.

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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

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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:

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(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**”).

(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

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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 50266

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

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(b) an Opinion of Counsel stating that, in the opinion of such counsel, all such conditions precedent have been complied with.

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

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(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 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

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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 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

U.S. BANK NATIONAL ASSOCIATION, as Trustee

By: /s/ Richard Prokosch
Name: Richard Prokosch
Title: Vice President

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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 PER \$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.

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

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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.]

[Global Securities Legend – Include only on Global Securities]

[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.

Record Dates: May 20 and November 20, commencing May 20, 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 Depository or its nominee, all payments hereon shall be made by wire transfer of immediately available funds to the account of the Depository 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, 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

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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

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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 Depository 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

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respectively, of the Indenture may be converted only if such notice of exercise is withdrawn in accordance with the terms of the Indenture.

(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

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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**

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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.

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ASSIGNMENT FORM

CONVERSION NOTICE

To assign this Security, fill in the form below:

To convert this Security into Cash and Common Stock of the Company, check the box o

I or we assign and transfer this Security to

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 assignee's soc. sec. or tax ID no.)

(Print or type assignee's name, address and zip code)

(Insert the other person's soc. sec. or tax ID no.)

and irrevocably appoint _____ agent to transfer this Security on the books of the Company. The agent may substitute another to act for him.

Date: _____

(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

Participant in a Recognized Signature
Guarantee Medallion Program

By: _____
Authorized Signatory

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)

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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:

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** _____

* Include only on Global Security

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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 & 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 210th 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 120th 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.

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“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

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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

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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

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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

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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

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 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

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

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

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.

(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

American Equity Investment Life Holding Company Announces Closing of Private Offering of Contingent Convertible Senior Notes Due 2024

WEST DES MOINES, Iowa, Dec 6, 2004 /PRNewswire-FirstCall via COMTEX/ — American Equity Investment Life Holding Company (NYSE: AEL) today announced that it has closed its previously announced private offering (the “Offering”) of \$250 million aggregate principal amount of its 5.25% Contingent Convertible Senior Notes due 2024 (the “Notes”).

The company expects to utilize substantially all of the net proceeds to increase the capital and surplus of its life insurance subsidiaries to support future growth of its business.

This press release does not constitute an offer to sell or the solicitation of an offer to buy any of the securities offered. The Offering was made only to qualified institutional buyers in accordance with Rule 144A under the Securities Act of 1933 (the “Securities Act”). The Notes and the shares of common stock issuable on conversion of the Notes have not been registered under the Securities Act or any state securities laws and unless so registered may not be offered or sold in the United States except pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act and applicable state securities laws.

American Equity Investment Life Holding Company, through its wholly-owned operating subsidiaries, is a full service underwriter of a broad line of annuity and insurance products, with a primary emphasis on the sale of fixed rate and index annuities. The Company’s headquarters are located at 5000 Westown Parkway, Suite 440, West Des Moines, Iowa, 50266. The mailing address of the company is: P.O. Box 71216, Des Moines, Iowa, 50325.

“Safe Harbor” Statement under the Private Securities Litigation Reform Act of 1995: Statements in this press release regarding American Equity Investment Life Holding Company’s business which are not historical facts are “forward- looking statements” that involve risks and uncertainties that could cause actual results to differ materially from those expressed or implied in the forward-looking statements. Forward-looking statements include the expected closing date of the transaction, satisfaction of the closing conditions and use of the proceeds. Such results may be impacted by factors outside the company’s control. Additional information concerning potential risk factors that could affect the company’s future performance are described from time to time in the company’s reports filed with the Securities and Exchange Commission, including the company’s Annual Report on Form 10-K for the most recently ended fiscal year.

SOURCE American Equity Investment Life Holding Company

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