

**AMENDMENT AND RESTATEMENT  
LLOYD'S AMERICAN TRUST DEED**

WHEREAS:

1. This Instrument (hereinafter called the "Lloyd's American Trust Deed") sets forth certain of the terms and provisions governing part of the American Business of each Underwriting Member of the Society of Lloyd's (hereinafter called the "Name").

2. The parties under the Lloyd's American Trust Deed shall be the Name, the Agent or Agents through which the Name carries out contracts of insurance underwritten by the Name (hereinafter called the "Agent"), the Trustee hereunder acting from time to time (hereinafter called the "American Trustee") and the Society of Lloyd's (hereinafter called "Lloyd's").

3. The form of the Lloyd's American Trust Deed was originally adopted on August 26, 1939 and has heretofore been amended by various instruments dated October 31, 1947, January 14, 1948, October 2, 1963 and September 22, 1982, all such amendments being made by the Committee, the then governing body of Lloyd's, and has been further amended by instruments dated April 7, 1989, December 9, 1993, July 31, 1995, December 21, 1995, September 3, 1996, January 7, 1998, March 26, 2007 and March 24, 2009 made pursuant to resolutions of the Council, the present governing body of Lloyd's.

4. The operation of the Lloyd's American Trust Deed has with effect from March 31, 2009 been confined to that part of the Name's general business that is 1992 and Prior American Business (as hereinafter defined).

5. It is proposed that the Name's 1992 and Prior American Business should with the sanction of the High Court of Justice of England and Wales by order under section 111 of the Financial Services and Markets Act (U.K.) be transferred with effect from June 30, 2009 or such other date as that Court may determine (the "Transfer Effective Date") under the laws of each state in the European Economic Area to Equitas Insurance Limited ("EIL") (hereinafter called the "Insurance Business Transfer").

23 June 6. The Council, the present governing body of Lloyd's, by resolution dated 2009, hereby exercises its power to amend the trusts and provisions of the Lloyd's American Trust Deed in the manner set forth herein. The Lloyd's American Trust Deed as so amended shall constitute the American Instrument and shall also constitute an Overseas Direction of the Council as those terms are defined in the Lloyd's Premiums Trust Deed approved pursuant to the Insurance Companies Act (U.K.) 1982 or to rules made by the United Kingdom Financial Services Authority under the Financial Services and Markets Act (U.K.) 2000 for insurance business at Lloyd's other than long term business (hereinafter called the "Premiums Trust Deed").

7. The Lloyd's American Trust Deed as so amended is with the prior written consent of the Superintendent of Insurance of the State of New York hereby restated in its entirety.

NOW, THEREFORE, it has been agreed that with effect on and after the Transfer Effective Date the Lloyd's American Trust Fund (as hereinafter defined) shall be held upon the following trusts and provisions:

## ARTICLE 1

### DEFINITIONS

The terms defined in this Article shall, unless the context otherwise requires, have the following meanings:

1.1 "1992 and Prior American Business" means that part of the Name's American Business comprising 1992 and Prior Business directly underwritten by the Name or directly or indirectly reinsured to close by the Name.

1.2 "1992 and Prior Business" means any liabilities under contracts of insurance (whether direct or otherwise) or reinsurance underwritten at Lloyd's (other than long term business as defined from time to time by the Insurance Companies Act (U.K.) 1982 or under the Financial Services and Markets Act (U.K.) 2000 or by or under a later similar statute) and originally allocated to the 1992 Year of Account or any earlier Year of Account including, without limitation, any such liabilities reinsured to close into the 1993 or any later Year of Account but excluding any liabilities re-signed, or reallocated pursuant to a premium transfer, into the 1993 or later Year of Account.

1.3 "Agent" means:

(A) in relation to any matter not falling within (B), any one or more of:

- (i) the Name's Members' Agent at Lloyd's;
- (ii) any agent appointed by the Name and any agent appointed by the Name's Members' Agent in exercise of any authority given by the Name (or appointed by any agent or sub-agent of the Members' Agent acting under any such authority or delegation of such authority) to act as an agent or sub-agent of the Name for the purpose of conducting all or any part of the Name's underwriting business and any successor thereto acting, or any substitute agent appointed by the Council in place of or in the absence of any such agent in respect of the Name;

(iii) any Regulating Trustee;

(B) on or at any time after the date and time of fulfillment of the last of the conditions set out in clause 2.1 of the Equitas Reinsurance Agreement to be fulfilled, in relation to the performance of any function or discharge of any liability in respect of 1992 and Prior Business which Equitas Reinsurance Limited ("ERL") is authorized or required by the Equitas Reinsurance Agreement to perform or discharge and in relation to the giving of Withdrawal Notices, ERL, Equitas Limited ("EL"), or any person appointed, directly or indirectly, to act on behalf of either, provided, that from and after the amendment of the Equitas Trust Agreement, which states that ERL and EL have agreed that National Indemnity Company ("National

Indemnity") shall be the successor grantor thereunder, and so long as National Indemnity has not given notice under Section 2(f) of the Equitas Trust Agreement resulting in the reversion to ERL and EL of the status of grantor under the Equitas Trust Agreement, Agent shall mean Resolute Management Services Limited or any person appointed, directly or indirectly, to act on its behalf; and

(C) as respects either (A) or (B), any Representative of the Agent.

1.4 "American Business" means such part of the Name's underwriting business at Lloyd's (other than long term business as defined from time to time by the Insurance Companies Act (U.K.) 1982 or under the Financial Services and Markets Act (U.K.) 2000 or by or under a later similar statute) as complies with the following two conditions: (i) the liability of the Name in respect thereof is expressed in U.S. dollars; and (ii) the premium payable to or for the account of the Name has been paid or is payable in U.S. dollars.

1.5 "Council" means the Council of Lloyd's constituted by Lloyd's Act 1982 and (except only for the purpose of Paragraph 12.1 hereof) such persons as shall from time to time be authorized by the Council to exercise any power hereby conferred on the Council.

1.6 "EIL American Trust Deed" means the trust deed proposed to be made by Equitas Insurance Limited as grantor for the purpose of providing security for its obligations in connection with 1992 and Prior American Business of the Name and Other Names proposed to be transferred to it pursuant to the Insurance Business Transfer.

1.7 "EIL American Trust Fund" means the Trust Fund held under the EIL American Trust Deed

1.8 "EIL Trustee" means the Trustee for the time being of the EIL American Trust Deed.

1.9 "Equitas Reinsurance Agreement" means the Reinsurance and Run-off Contract dated September 3, 1996, pursuant to which ERL agreed to reinsure 1992 and Prior Business, as the same may from time to time be amended or supplemented.

1.10 "Equitas Retrocession Agreement" means the Retrocession Agreement dated September 3, 1996, between ERL and EL, pursuant to which EL agreed to reinsure and indemnify ERL against, inter alia, its Reinsurance Obligation as the same may from time to time be amended or supplemented.

1.11 "Equitas Termination Notice" means a notice of termination of the Equitas Trust Agreement given in accordance with the Equitas Trust Agreement to the American Trustee, as beneficiary under the Equitas Trust Agreement.

1.12 "Equitas Trust Agreement" means the Trust Agreement originally entered into among ERL and EL, as grantors, the American Trustee, as beneficiary, and the Equitas

Trustee, as the same has been amended or supplemented and may from time to time in the future be amended or supplemented.

1.13 "Equitas Trust Fund" means the trust fund under the Equitas Trust Agreement and any successor or replacement trust fund.

1.14 "Equitas Trustee" means Wells Fargo Bank, N.A., in its capacity as trustee under the Equitas Trust Agreement, and any successor or replacement trustee therefor or any other successor thereto.

1.15 "Letter of Credit Obligation" shall have the meaning ascribed to it in paragraph 4.2(B).

1.16 "Letter of Credit Issuer" shall have the meaning ascribed to it in paragraph 4.2(B).

1.17 "Lloyd's American Trust Deed" means this Instrument.

1.18 "Lloyd's American Trust Fund" or the "Trust" means the property held in trust hereunder.

1.19 "Members' Agent" means an underwriting agent which is listed as a members' agent on the Lloyd's register of underwriting agents, any successor thereto, or any substitute agent appointed by the Council as a members' agent in respect of the Name.

1.20 "Name" means the Underwriting Member of Lloyd's or former Underwriting Member of Lloyd's who is a party to the Lloyd's American Trust Deed in respect of his 1992 and Prior American Business and who through the agency of the Agent carries out contracts of insurance underwritten by the Name as an Underwriting Member of Lloyd's.

1.21 "Net Capital Gain" means the excess in each calendar year of realized and unrealized capital gains over realized and unrealized capital losses calculated annually as of December 31.

1.22 "Other Names" means the Underwriting Members of Lloyd's (other than the Name) and such former Underwriting Members of Lloyd's as continue to have underwriting business at Lloyd's not fully wound up and the personal representatives or trustee in bankruptcy of any such Underwriting Member or former Underwriting Member who has died or become bankrupt.

1.23 "Policyholder" means any policyholder to whom the Name is liable in respect of the 1992 and Prior American business.

1.24 "Premiums Trust Deed" means the Lloyd's Premiums Trust Deed approved pursuant to the Insurance Companies Act (U.K.) 1982 or to rules made by the United

Kingdom Financial Services Authority under the Financial Services and Markets Act (U.K.) 2000, or pursuant to a later similar statute, executed by the Name in respect of insurance business at Lloyd's other than long term business.

1.25 "Premiums Trust Fund" means the property held in trust subject to the provisions of the Name's Premiums Trust Deed.

1.26 "Qualifying Reinsurer" means an insurance company designated by the Council for the purpose of providing Reinsurance to Close.

1.27 "Regulating Trustee" means the Trustee for the time being designated as the Name's Regulating Trustee pursuant to any of the Name's Premiums Trust Deeds.

1.28 "Reinsurance Obligation" means the obligations of ERL and any successor thereto to the Name under the Equitas Reinsurance Agreement.

1.29 "Reinsurance to Close" shall mean:

(A) in relation to any Year of Account of a Syndicate, including without limitation the 1993, 1994 or 1995 Year of Account, a reinsurance agreement under which members of a Syndicate for a Year of Account agree with the members of the same or another Syndicate for a later Year of Account or a Qualifying Reinsurer that the reinsuring members, or the Qualifying Reinsurer, as the case may be, will indemnify the members to be reinsured, without limit, against all known and unknown liabilities of the reinsured members arising out of insurance business underwritten through the Syndicate and allocated to the closed Year of Account; or

(B) in relation to the 1993, 1994 or 1995 Year of Account of a syndicate, a reinsurance agreement whereby any Qualifying Reinsurer agrees to indemnify without limit the members of that Syndicate for that Year of Account against all 1992 and Prior Business reinsured to close into that Year of Account, taken together with an unlimited reinsurance agreement whereby the members of the same or another Syndicate for a later Year of Account or a Qualifying Reinsurer agree to reinsure all liabilities of the reinsured members arising out of insurance business underwritten through that Syndicate and allocated to the closed Year of Account other than 1992 and Prior Business;

and for the purposes of this definition only, the Reinsurance Obligation shall be deemed to be without limit.

1.30 "Representative of the Agent" or "Representative" means one or more persons (without limitation as to number) designated by the Agent by one or more instruments in writing filed with the American Trustee as the Agent's Representative or Representatives with power, to the extent set forth in the relevant designation, to act in like manner and with the same effect as the Agent itself might act hereunder. The designation of any person as the Agent's Representative as hereinbefore provided shall remain effective for the period provided in the

relevant designation or if no period is so provided such designation shall be effective until revoked by the Agent by an instrument in writing filed with the American Trustee.

1.31     “Requirements and Directions of the Council” means any requirements or directions of the Council (whether comprised in any byelaw, regulation, direction or any other written instrument issued by the Council to the Agent or other person concerned).

1.32     “Syndicate” means a group consisting of Underwriting Members of Lloyd’s, to which a particular number has been assigned by or under the authority of the Council, for whose account an underwriter accepts insurance or reinsurance business at Lloyd’s.

1.33     “Trust Term”

(A)     If the Name is an individual, the period from the date of commencement of the underwriting business of the Name until such underwriting business shall have been wound up or until twenty-one years after the date of death of the Name, whichever shall first occur.

(B)     If the Name is a corporation, the period from the date of commencement of the underwriting business of the Name until such underwriting business shall have been wound up or until twenty-one years after the date of death of the survivor of the President and Vice President of the United States in office at the date of commencement of such underwriting business, whichever shall first occur.

For the purposes of this definition, the Name’s underwriting business shall not be considered to have been wound up by virtue of the Name being a party to a Reinsurance to Close agreement, including, without limitation, the Equitas Reinsurance Agreement.

1.34     “Withdrawal Notice” shall mean a Notice of Withdrawal of assets from the Equitas Trust Fund given in accordance with the Equitas Trust Agreement.

1.35     “Year of Account” means a year which is accounted for as a separate underwriting venture by a Syndicate under Lloyd’s system of accounts.

## ARTICLE 2

### PRINCIPAL OF THE LLOYD’S AMERICAN TRUST FUND

2.1     Principal of the Lloyd’s American Trust Fund shall consist of: (i) all premiums and other monies payable including, without limitation, monies payable under any reinsurance policy, at any time during the Trust Term to the Name or to any person on behalf of the Name in connection with the 1992 and Prior American Business; (ii) all other assets from time to time transferred to the American Trustee to be held by it as part of the Lloyd’s American Trust Fund for the purposes specified in paragraph 4.1 and (iii) all investments and monies for the time being representing the same.

1.1 (A) All premiums and other monies payable to the Name or to any person on behalf of the Name at any time during the Trust Term in connection with the 1992 and Prior American Business shall be paid or accounted for to the American Trustee and shall until so paid or accounted for be held (by any person including the Name by whom and in whatever names the same may at any time be held) on the trusts of the Lloyd's American Trust Deed, but the American Trustee need not inquire whether this provision has been complied with, or verify the correctness of any account submitted to it, or take any steps to collect the said premiums or other monies, and the American Trustee shall only be responsible for the amounts actually received by it.

(B) Because premiums may be received by the American Trustee before all brokerage and/or commission and/or discount payable in respect thereof has been paid, the Council may from time to time make regulations or give directions to the American Trustee regarding the payment of such brokerage and/or commission and/or discount by the American Trustee. The American Trustee shall comply with such regulations and directions, and shall be protected in so doing, without inquiring whether or not the same are authorized or appropriate.

### ARTICLE 3

#### INCOME OF THE LLOYD'S AMERICAN TRUST FUND

3.1 Income of the Lloyd's American Trust Fund shall include Net Capital Gain.

3.2 Income of the Lloyd's American Trust Fund shall, subject to paragraph 4.2(C), be transferred to principal of the Lloyd's American Trust Fund. The American Trustee shall accept and act upon the statement of the Agent as to what income is to be paid or transferred in accordance with the foregoing provisions.

### ARTICLE 4

#### USE OF PRINCIPAL OF LLOYD'S AMERICAN TRUST FUND

4.1 Except so far as the creditor concerned recognises, or is bound by the judgment of a court of competent jurisdiction within the United States which recognizes, the Insurance Business Transfer or the order of the High Court of Justice of England and Wales sanctioning the Insurance Business Transfer, principal of the Lloyd's American Trust Fund shall be held in trust for the following purposes:

(A) To pay any losses, claims, returns of premiums, reinsurance premiums and other outgoings in connection with the 1992 and Prior American Business.

(B) To pay the expenses incurred in connection with the 1992 and Prior American Business, which expenses shall be deemed to include:



- (i) remuneration and proper expenses of the American Trustee any remuneration payable to any person, or any proper expenses of any person, in connection with the conduct or winding up of the 1992 and Prior American Business;
- (ii) the costs of any surety or other bonding arrangements required in connection with litigation in respect of any claim by any Policyholder of the Name; and
- (iii) other expenses in connection with the management and investment of the Lloyd's American Trust Fund hereunder.

(C) To make, in particular, such transfers of cash and other property out of, or establish such accounts or subaccounts within, the Lloyd's American Trust Fund and transfer therein cash and such other property, in each case from time to time as may be required:

- (i) by the insurance regulatory bodies of one or more of the United States in respect of the 1992 and Prior American Business; or
- (ii) to meet one or more contributions levied on the Name in respect of the 1992 and Prior American Business pursuant to Requirements and Directions of the Council, but only to the extent that such transfers out of the Lloyd's American Trust Fund are approved by the Superintendent of Insurance of the State of New York; or
- (iii) to secure and/or to pay each Letter of Credit Issuer any of the Name's several Letter of Credit Obligations (proportionate to the Name's respective share of the obligations to which the Letter of Credit relates on the part of the Name, and of one or more of the Other Names) arising with respect to the issuance of a Letter of Credit in connection with a Policyholder of the Name; or
- (iv) to secure and/or to pay the Name's several obligations (proportionate to the Name's respective share of the obligations of the Name and one or more Other Names) arising with respect to any surety or other bonding arrangement in connection with litigation by a Policyholder of the Name.

(D) If requested by the Agent and approved by the Council, to transfer to the Premiums Trust Fund all such property of the Lloyd's American Trust Fund received in connection with American Business that is not 1992 and Prior American Business and investments or monies representing such property or income arising therefrom and transferred to principal of the Lloyd's American Trust Fund.

1.1 (A) The American Trustee shall accept and act upon the statement of the Agent as to what sums are from time to time required to be paid out of,

or to be segregated (whether in an account or subaccount or otherwise) within, the Lloyd's American Trust Fund (including, without limitation, to secure and pay Letter of Credit Obligations in accordance with clause (C) (iii) of paragraph 4.1), and to whom payable, and what sums are to be withdrawn from the Equitas Trust Fund, for any of the purposes specified in this Article without requiring the accuracy of any such statement to be verified and shall be fully protected in so doing, without inquiring whether or not the same is authorized or appropriate, provided, however, that such statement shall be accompanied, where required by this Article, by a certificate or report of auditors approved by the Council and, where so required, by written evidence of such approval; and provided further that such statement does not conflict with any regulation or direction of the Council to the American Trustee pursuant to paragraph 2.2(B). Any statement of the Agent as to sums to be paid out of, or to be segregated within, the Lloyd's American Trust Fund for any of the purposes specified in this Article insofar as such statement purports to be in respect of 1992 and Prior American Business shall, insofar as the Equitas Trust Agreement permits, be deemed to include a direction from the Agent to issue a Withdrawal Notice for, and, unless the Agent has directed that the payment be made directly by the Equitas Trustee to a third party (provided, however, that the Council has not, by written notice to the American Trustee received by the American Trustee prior to such time, revoked the American Trustee's right to rely on such direction), collect from the Equitas Trust Fund, assets necessary to effect such purpose, pursuant to the applicable provisions of paragraph 4.2(C) and (D) and the American Trustee shall be fully protected in so doing, without inquiring whether or not the same is authorized or appropriate, and without verifying whether the purpose to be served is in respect of 1992 and Prior American Business or the Agent is so authorized.

(B) The American Trustee shall enter into agreements with issuers of letters of credit, which may include the American Trustee in its individual capacity (on its behalf or on behalf of any of its subsidiaries, affiliates or associates), or any other person, at the direction of the Agent, (i) to issue letters of credit (and to maintain, reinstate, renew, amend, supplement or otherwise modify such letters of credit) relating to the obligations of the Name and one or more Other Names to one or more Policyholders in respect of the 1992 and Prior American Business (each such letter of credit being a "Letter of Credit", and each such issuer of a Letter of Credit being a "Letter of Credit Issuer"), each Letter of Credit to be on such terms and conditions, and to give rise to such several obligations proportionate to the Name's respective share of the obligations to which the Letter of Credit relates (including, without limitation, reimbursement obligations, obligations to pay interest, fees, costs, expenses and indemnities) on the part of the Name, and each of such Other Names, to the respective Letter of Credit Issuer (such obligations to such Letter of Credit Issuer being, collectively, "Letter of Credit Obligations"), (ii) to furnish, maintain, commingle, invest and apply the collateral securing the Letter of Credit obligations, (iii) to grant or waive such rights of set-off, charge and application and (iv) to provide for such other rights and remedies all as the Agent and the American Trustee and such Letter of Credit Issuer shall agree.

(C) The American Trustee shall, when so directed by the Agent, immediately issue a Withdrawal Notice for, and, unless the Agent has directed that the payment be made directly by the Equitas Trustee to a third party (provided, however, that the Council has not, by written notice to the American Trustee received by the American Trustee prior to such time, revoked the American Trustee's right to rely on such direction), collect from the Equitas Trust Fund, assets in respect of any portion of ERL's Reinsurance Obligation in respect of 1992 and Prior American Business. In the event that the American Trustee has, at the direction of the Agent, collected funds from the Equitas Trust Fund in respect of any portion of ERL's Reinsurance Obligation in respect of 1992 and Prior American Business and is unable to apply such funds as directed, or in the event that the American Trustee receives a return of funds paid out of the Lloyd's American Trust Fund in respect of 1992 and Prior American Business, the American Trustee shall transfer such unapplied or returned funds, together with any income earned thereon, to the Equitas Trustee for deposit to the Equitas Trust Fund.

(D) The American Trustee shall, when so directed by the Agent, immediately issue a Withdrawal Notice for, and, unless the Agent has directed that the payment be made directly by the Equitas Trustee to a third party (provided, however, that the Council has not, by written notice to the American Trustee received by the American Trustee prior to such time, revoked the American Trustee's right to rely on such direction), collect from the Equitas Trust Fund, assets necessary to secure, and/or to pay, a Name's obligation under paragraphs 4.1(C)(iii) and (iv), provided that such security and/or payment arises in respect of 1992 and Prior American Business. Assets withdrawn from the Equitas Trust Fund in order to provide security for such obligations shall, to the extent reverting to the American Trustee upon termination, expiration or release from such security, be transferred, together with any income earned thereon, to the Equitas Trustee for deposit to the Equitas Trust Fund.

(E) Upon receipt of an Equitas Termination Notice, accompanied by: (i) the written certification by the grantor under the Equitas Trust Agreement as to the Obligations (as defined in the Equitas Trust Agreement) remaining unliquidated and undischarged as of the proposed date of termination; and (ii) a report of one or more firms of independent actuaries as to the amount of such Obligations as of the date set forth in such report, which date shall be within 90 days of the proposed date of termination, the American Trustee, upon receipt of the written approval of the Superintendent of Insurance of the State of New York, shall (jointly with the EIL American Trustee if the EILATD has been brought into force) immediately issue a Withdrawal Notice for, and collect from the Equitas Trust Fund, assets held in such trust fund in an amount equal to the sum of such Obligations, provided that no amount shall be withdrawn pursuant to this paragraph 4.2(E) unless the American Trustee shall have received the prior written approval of the Superintendent of Insurance of the State of New York for such termination. The American Trustee shall deposit such amount in a separate account, apart from its other assets and not as part of the trust funds established by this Lloyd's American Trust Deed, in the names of the American Trustee and (if the EIL American Trust Deed has been brought into force) of the EIL American Trustee, in any bank or trust company organized in the United States (including, without limitation, the American Trustee) in trust for the purposes specified in the subparagraphs of Section 4(a) of the Equitas Trust Agreement.

(F) The American Trustee is authorized to enter into and perform its obligations under the Equitas Trust Agreement as beneficiary thereunder and shall be fully protected in withdrawing funds for transfer to or for the account of the grantor thereunder pursuant to the provisions of the Equitas Trust Agreement permitting such transfer in reliance on the statement of the grantor that such funds are required for application to a purpose so permitted, without any obligation to inquire, or any liability for omitting to inquire, as to the application of such funds.

4.3 The American Trustee shall not be required to inquire and shall not be liable for omitting to inquire as to: (i) the accuracy of any certificate or report of the said auditors furnished to it under the provisions of this Article; or (ii) whether such certificate or report has been prepared in accordance with Requirements and Directions of the Council; or (iii) the propriety of any approval by the Council; or (iv) the accuracy of any certificate or determination of the grantor under the Equitas Trust Agreement or of any report of independent actuaries as to the Obligations (as defined in the Equitas Trust Agreement). The American Trustee shall be fully protected in relying upon any auditors' certificate or report or any resolution of the Council determining what transfers may be made to the Premiums Trust Fund under the foregoing provisions of this Article. The American Trustee shall be fully protected in relying upon any certification or determination by the grantor under the Equitas Trust Agreement or any report of independent actuaries with respect to the Obligations (as defined in the Equitas Trust Agreement) under the foregoing provisions of this Article.

4.4 With respect to sums requested by the Agent to be paid in accordance with this Article, the American Trustee shall either make payment directly in the amounts and to the person or persons specified by the Agent, or, in its discretion, make payment to the Agent to be disbursed by the Agent in the manner specified. The American Trustee shall have no duty to see to the application of payments so made to the Agent nor the application of any payments made by the Equitas Trustee to third parties pursuant to Section 4.2(C) or 4.2(D) at the direction of the Agent, nor shall it be liable for the misapplication of such payments.

4.5 No principle of conflict of interest or any duty of undivided loyalty shall apply to, and any such conflict of interest or duty of undivided loyalty is hereby deemed waived with respect to, any transactions with or services provided to any one or more of the Trust Fund, the Council, the Name or the Other Names, by the American Trustee acting in its individual capacity (or by any subsidiary, affiliate or associate of the American Trustee) or in its capacity as trustee of Lloyd's American Surplus or Excess Lines Insurance Joint Asset Trust Fund, Lloyd's American Credit for Reinsurance Joint Asset Trust Fund, any Lloyd's United States Situs Surplus Lines Trust Fund, any Lloyd's United States Situs Credit for Reinsurance Trust Fund, the Equitas Trust Fund, EIL American Trust Fund, or of any other trust that may be created from time to time (including, without limitation, any trust established to provide security to policyholders in respect of, or in respect of reinsurance assumed covering, liabilities of the Name or the

Other Names for prior years) or any Letter of Credit Issuer, including without limitation, the issuance of Letters of Credit and the investment management of the assets of the Trust Fund, provided however, that such transactions or services or such conflict of interest or duty of undivided loyalty relate to one or more of such Trust Funds.

## ARTICLE 5

### RIGHTS OF POLICYHOLDERS

5.1 The Lloyd's American Trust Fund shall enure for the benefit of all Policyholders. No Policyholder shall be entitled at any time to charge the American Trustee in respect of any assets, other than the assets of the Lloyd's American Trust Fund in the hands of the American Trustee at the time the Policyholder's claim becomes enforceable as herein provided. Nor even after his claim becomes enforceable as herein provided, shall any Policyholder be entitled to require from the American Trustee any account, or otherwise to inquire into the course of administration of the trusts relating to the Lloyd's American Trust Fund, or to question any act or thing done or suffered by the American Trustee, or otherwise to enforce such trusts, the sole right under the Lloyd's American Trust Deed of such Policyholder being to receive the amount of his claim after it has become enforceable as herein provided from the assets of the Lloyd's American Trust Fund then actually in the hands of the American Trustee and available for such payment as provided in paragraph 5.4.

5.2 The claim of a Policyholder against the Lloyd's American Trust Fund shall become enforceable within the meaning of this Article when all of the following conditions have been complied with:

(A) A judgment has been obtained by the Policyholder in any court of competent jurisdiction within the United States against the Name or against the Syndicate through which the Name underwrites in respect of the Name's liability under a policy constituting 1992 and Prior American Business.

(B) Such judgment has become final in the sense that the particular litigation has been concluded either through the failure to appeal within the time permitted therefor or through the final disposition of any appeal or appeals that may be taken. The word "appeal" as used in this paragraph 5.2 shall include any similar procedure for review permitted by the applicable law.

(C) The filing with the American Trustee of a certified copy of the said judgment, together with such proof as to its finality, and its conformance with the other conditions specified in this paragraph 5.2 as the American Trustee shall require.

(D) The expiration of a period of thirty (30) days from the date of the filing of the said certified copy of the said judgment and all of the said proofs with the American Trustee without the American Trustee having received notice from the Council that such judgment has been satisfied.

(E) A certified statement under oath from counsel to the Policyholder that to the best of that counsel's knowledge and belief:

(a) the Policyholder has not also:

liability (i) obtained a judgment against EIL, ERL, EL or any agent or affiliate of any of them in respect of the same which it has not subsequently agreed not to enforce; or

(ii) entered into any agreement or arrangement with EIL, ERL, EL or any agent or affiliate of any of them to compromise that liability; or

(b) where the policyholder has obtained a judgment against EIL, ERL or EL or any agent or affiliate of any of them, the Policyholder has irrevocably undertaken in a manner binding on the Policyholder and in a form satisfactory to the American Trustee not to execute that judgment.

(F) An undertaking by that counsel on behalf of the Policyholder not to claim any further against EIL or any agent or affiliate thereof in respect of the same liability.

5.3 Upon the filing with the American Trustee pursuant to paragraph 5.2(C) above of a certified copy of the judgment and such proofs as to the judgment's finality as the American Trustee may require, the American Trustee shall promptly notify the Agent, EIL, the EIL Trustee, the Council, and the grantor under the Equitas Trust Agreement of the filing and that said judgment has not been satisfied, and shall provide copies of said judgment and said proofs to the Agent, EIL, the EIL Trustee, the Council and the grantor under the Equitas Trust Agreement. The American Trustee shall advise the Agent, EIL, the EIL Trustee, the Council and the grantor under the Equitas Trust Agreement not later than fifteen (15) days prior to the expiration of the thirty (30) day period referred to in paragraph 5.2(D) above of whether in the opinion of the American Trustee the conditions set forth in paragraph 5.2 have been met on the basis of the evidence specified in such section (except as to whether the judgment is one in respect of American business and the Syndicate and Years of Account to which the judgment relates). The Council shall advise the American Trustee, the Agent, EIL, the EIL Trustee, and the grantor under the Equitas Trust Agreement, not later than ten (10) days prior to the expiration of the thirty (30) day period referred to in paragraph 5.2(D) above,

whether the judgment is one in respect of 1992 and Prior American Business. If the Council does not furnish such advice to the American Trustee ten (10) days prior to the expiration of the period described in paragraph 5.2(D) above, then the American Trustee shall notify the Superintendent of Insurance of the State of New York of such fact, and the Superintendent shall thereupon determine and notify the Council and the American Trustee whether such judgment relates, in whole or in part (and if in part, the portion thereof which so relates), to liability in respect of 1992 and Prior American Business. If the Council advises the American Trustee that such judgment does relate, in whole or in part, to liability in respect of 1992 and Prior American Business, or if the Superintendent makes such determination in accordance with the foregoing sentence, and the American Trustee has determined that the claim otherwise satisfies the conditions prescribed in paragraph 5.2 above, then, upon receipt of the written approval of the Agent (including, without limitation, any approval of the Agent required pursuant to Section 3 of the Equitas Trust Agreement), the American Trustee shall issue a Withdrawal Notice for, and collect from the Equitas Trust Fund, assets in respect of ERL's Reinsurance Obligation as it relates to the portion of the judgment which the American Trustee has been advised has been determined to relate to 1992 and Prior American business. The Council, EIL, or the Agent may at any time notify the American Trustee if a claim has been satisfied prior to the expiration of the period set forth in paragraph 5.2(D). In making a determination whether a claim has satisfied the conditions set forth in paragraph 5.2 above, the American Trustee shall be fully protected in relying upon the information furnished to it by the Council EIL, or the Agent and shall not be required to inquire, and shall have no liability for omitting to inquire, as to the accuracy or propriety of such information. Nothing in this paragraph 5.3 shall affect the rights of parties under the Equitas Reinsurance Agreement.

5.4 Where the claim of any Policyholder becomes enforceable as defined in paragraph 5.2, the judgment therein referred to shall be forthwith satisfied by the American Trustee out of the Lloyd's American Trust Fund without regard to the rights of the other Policyholders or any payment that may be then due for any of the purposes specified under Article 4 hereof, other than the remuneration and expenses of the American Trustee, which shall be entitled to priority of payment to the extent such remuneration and expenses of the American Trustee due at the time the claim becomes enforceable do not exceed 1% of the value, as at December 31 of the preceding year, of principal and income of the Lloyd's American Trust Fund (which shall be deemed to include the principal and income of the Equitas Trust Fund as at such date to the extent funds were transferred from the Lloyd's American Trust Fund to the Equitas Trust Fund). Nothing in this Article shall entitle the American Trustee to payment or reimbursement from the Lloyd's American Trust Fund of the fees and expenses of the Equitas Trustee or to any indemnity in respect thereof.

5.5 The American Trustee shall be fully protected and shall incur no liability for any action taken or any failure to act or any omission by it in good faith hereunder, and shall be fully protected in relying upon the opinion of its counsel in New

York as to whether or not any judgment obtained by a Policyholder conforms with all of the conditions specified in paragraph 5.2 of this Article, including, without limitation, whether or not the court in which such judgment was obtained is a court of competent jurisdiction within the meaning of the said paragraph, and whether or not such judgment is final within the meaning of the said paragraph. In the event of any suit or proceeding brought against the American Trustee based upon a judgment obtained by a Policyholder against the Name in respect of the Name's liability under a policy, the American Trustee shall be entitled to charge against the Lloyd's American Trust Fund any expenses incurred by it in the said suit, including attorneys' fees, and also any judgment obtained against the American Trustee, including interest and costs.

#### ARTICLE 6

##### ERL'S BENEFICIAL INTEREST: DISTRIBUTION AT EXPIRATION OF TRUST TERM

6.1 Subject to the aforesaid trusts, the Lloyd's American Trust Fund shall be held in trust during the Trust Term for ERL, its successors or assigns.

6.2 Upon the expiration of the Trust Term, principal and income of the Lloyd's American Trust Fund shall be distributed to ERL or its successors or assigns..

#### ARTICLE 7

##### ADMINISTRATION AND INVESTMENT

7.1 The Lloyd's American Trust Fund shall be managed and invested by the American Trustee at the direction of the Agent; provided, however, that, subject to paragraph 7.3, all investments of the Lloyd's American Trust Fund shall be, and the Agent shall only direct the American Trustee to make and retain such investments as are, of a kind permitted under the insurance laws of the State of New York, or of another United States jurisdiction with substantially similar laws, in effect from time to time which investments may include obligations of the American Trustee in its individual capacity or any subsidiary, affiliate or associate thereof.

7.2 In connection with the management and investment of the Lloyd's American Trust Fund, the American Trustee shall have all powers now or hereafter granted to a fiduciary by New York law.

7.3 The American Trustee shall not be bound to inquire, and shall have no liability for omitting to inquire, whether the Agent has complied with the requirements of, or whether the investments directed by the Agent to be made or held by the American Trustee in the Trust are of a kind permitted under, the insurance laws of the State of New York or of any other United States jurisdiction with substantially similar laws, or as to the necessity, expediency or propriety of any such investment and shall be fully protected in



acting at the direction of the Agent with respect to any investment and, unless otherwise directed by the Agent, shall be under no duty to take, and shall have no liability for omitting to take, any action with respect to investments other than to collect the income or other sums payable thereon.

7.4 Provided it shall have received actual notice thereof, the American Trustee shall notify the Agent of conversion or subscription or other rights accruing on property held in the Lloyd's American Trust Fund and of any default in the payment of principal or interest or the passing of any dividend or other payment in respect of any such property. Copies of such notice may be addressed to the Agent.

7.5 As and when (but not otherwise) directed by the Agent in each particular case, the American Trustee shall exercise, sell or waive all conversion, subscription, voting and other rights of whatsoever nature including options and warrants, and grant proxies, discretionary or otherwise.

7.6 Unless the Agent shall otherwise direct, the American Trustee may register and hold property of the Lloyd's American Trust Fund in its own name or in the name of its nominee, or in an appropriate depository, without adding words descriptive of its fiduciary character.

7.7 The American Trustee shall withdraw from, or shall segregate (whether in an account or subaccount or otherwise) within the Lloyd's American Trust Fund such monies or other property as the Agent may direct for any of the purposes to which the Lloyd's American Trust Fund is applicable hereunder including, without limitation, for the repayment of any Letter of Credit Obligations.

7.8 Unless the Agent shall otherwise direct, the Lloyd's American Trust Fund may be commingled with the Lloyd's American Trust Fund of any of the Other Names, provided, however, that the American Trustee shall have no obligation to maintain, and shall have no liability for omitting to maintain, records of any payments, withdrawals, receipts, borrowings, pledges or other transactions involving the Trust, except to the extent the Agent shall furnish the American Trustee data with respect thereto, in such form and detail as is sufficient to permit the American Trustee to maintain such records; further provided, that the American Trustee shall have no obligation to maintain, and shall have no liability for omitting to maintain, records as to transactions involving individual Names or Trusts, it being understood and agreed that the American Trustee shall maintain records of the activity of the group accounts maintained by the Agent comprising all or a portion of one or more Syndicates and for one or more Years of Account as a whole for which it has been provided data by the Agent. The Name shall provide the American Trustee on a timely basis with any and all information, certifications, proofs and other applicable documentation required under the Internal Revenue Code of 1986, as amended, or by any other applicable law.

7.9 The Agent may direct that all or any of the powers conferred on it by this Article of giving directions relating to the management and investment of the Lloyd's American Trust Fund shall be delegated to such company or other person (including any subsidiary, affiliate or associate of the American Trustee) on such terms and subject to such conditions, with such remuneration payable out of the Lloyd's American Trust Fund, as the Agent may think fit and agree with the company or other person to whom the delegation is to be made, and the Agent may at any time revoke or agree to vary any such delegation.

7.10 If the American Trustee (in its individual capacity or through any subsidiary, affiliate or associate of the American Trustee) advances cash or securities to the Trust to effect or expedite the purchase or sale of securities for the Trust, the property so purchased or the proceeds from the sale shall be security for repayment of the cash or securities advanced in connection with the purchase or sale of such property and the American Trustee (in its individual capacity or through any subsidiary, affiliate or associate of the American Trustee) shall have a security interest in such property or proceeds until the American Trustee (in its individual capacity or through any subsidiary, affiliate or associate of the American Trustee) has been reimbursed from the Trust for its advances in respect of the American Trustee (in its individual capacity or through any subsidiary, affiliate or associate of the American Trustee) does not receive reimbursement from the Trust for its advances in respect of such property, the American Trustee (in its individual capacity or through any subsidiary, affiliate or associate of the American Trustee) shall be entitled to dispose of such property and to retain the proceeds of such disposition, or to retain such proceeds for its own account up to the amount necessary to obtain reimbursement, and shall be further entitled to reimbursement from the Trust for any portion of any such advance not so reimbursed.

## ARTICLE 8

### AMERICAN TRUSTEE TO FURNISH INFORMATION

8.1 If and to the extent required by the insurance laws or the regulations thereunder of a state where the Lloyd's American Trust Fund serves as security for Policyholders with respect to such state, the American Trustee shall (when directed by the Council to do so) furnish to the commissioner, Director or Superintendent of insurance of such state:

(A) a statement of the assets held in the Trust and, where such assets are commingled, in the Lloyd's American Trust Funds of the Other Names and the fair market value thereof as of the date such statement is required; and

(B) a statement that it has been advised by the Council that no termination of the Trust is planned, or a statement of the proposed effective date of termination if a termination of the Trust is planned.

8.2 Notwithstanding the foregoing provisions of this Article, the American Trustee shall have no duty to ascertain what statements (if any) are required to be furnished thereunder or how the fair market value of assets held in the Trust is required to be determined or to determine the fair market value of any such assets other than assets for which a fair market value is readily determinable from published sources and shall have no duty to take any action with respect to such statements except as directed by the Council and shall be fully protected in acting upon the directions of the Council. Whenever the American Trustee in the performance of its duties hereunder shall be required to value the assets of the Trust, it may employ an agent for such valuation, which may be the American Trustee acting in its individual capacity (or any subsidiary, affiliate or associate thereof), and be reimbursed from the Trust for any costs or expenses of valuations performed either by the American Trustee or by any such agent.

8.3 An authorized representative of the Commissioner, Director or Superintendent of insurance in a state where the Lloyd's American Trust Fund serves as security for Policyholders with respect to such state may from time to time examine the assets of the Trust and, where such assets are commingled, the Lloyd's American Trust Funds of the Other Names at the offices of the American Trustee. The American Trustee shall be reimbursed from the Trust for its expenses in connection with any such examination.

#### ARTICLE 9

##### NAME NOT A PARTNER WITH AGENT OR OTHER NAMES

9.1 Nothing herein contained shall constitute a partnership between the Name and the Agent or between the Name and any of the Other Names, the underwriting business of the Name being carried on for his or its own sole and separate account.

#### ARTICLE 10

##### COUNCIL APPROVAL PROTECTS AMERICAN TRUSTEE; LIMITATION ON PROTECTION OF AMERICAN TRUSTEE

10.1 If any difference shall at any time arise between the American Trustee and the Name or his executors or administrators or his or its successors or assigns, or between the American Trustee and the Agent, relating to the trusts under the Lloyd's American Trust Deed, or the administration thereof, or anything connected therewith, or if the American Trustee shall at any time feel any doubt or difficulty in administering the said trusts, it shall be an absolute protection to the American Trustee against all claims and demands whatsoever by the Name, his executors or administrators or his or its successors or assigns, or by the Agent, or by any other person (including any Policyholder), that in case of any act or thing already done or omitted by the American Trustee the Council shall approve of such act or thing having been so done or omitted,

and that in the case of any act or thing intended to be done or omitted the Council shall approve of such intended act or omission, and it shall not be necessary for the Council to give any reason for any such approval. In furtherance and not in limitation of the foregoing, the obligations of the American Trustee to take action at the direction of the Agent shall be subject to such procedures, conditions and limitations as may be agreed from time to time by the American Trustee and the Agent, and if the American Trustee encounters any difficulty in administering the said trusts in connection with any direction received from the Agent, it shall be a full protection to the American Trustee that the American Trustee has obtained approval of the Council with respect to such direction, and where it has sought and is awaiting such approval the American Trustee shall have no liability for failing to take such direction pending receipt of such approval. The foregoing provisions of this Article are only for the protection of the American Trustee and shall not be construed to impose any obligation on the American Trustee to apply for any such approval of the Council, nor shall the American Trustee be under any liability for omitting to do so.

10.2 Notwithstanding any other provision of the Lloyd's American Trust Deed, the American Trustee shall be protected for any action taken, any failure to act or any omission by it hereunder in good faith, except that it shall not be protected in respect of any acts, failures to act or omissions by it which are fraudulent or which constitute gross negligence.

#### ARTICLE 11

##### ACCOUNTING BY AMERICAN TRUSTEE

11.1 The American Trustee shall submit to the Agent, whenever requested by the Agent in writing, an account in respect of its acts and proceedings as such trustee, but no more often than semi-annually (except in the case of the death or retirement of the Name or in the event of the removal or resignation of the American Trustee). The approval of any account of the American Trustee by the Agent shall be binding and conclusive upon any and all persons interested hereunder, and shall constitute a complete discharge and acquaintance to the American Trustee with respect to any and all matters covered by such account, and the American Trustee shall not thereafter be accountable to any person whomsoever with respect to its acts and proceedings during the period covered by such account. The American Trustee shall not be required to account to any person other than the Agent.

#### ARTICLE 12

##### AMENDMENT, REVOCATION AND REPLACEMENT OF THE LLOYD'S AMERICAN TRUST DEED

12.1 The Council shall have power in its discretion to amend the Lloyd's American Trust Deed and also to revoke the trusts created hereunder; provided

that its power to revoke the trusts created hereunder shall not be exercised by the Council unless the Council is satisfied that all liabilities both actual and estimated of the Name in respect of the American business have been met or provided for and shall have so notified the American Trustee; and provided that any revocation of the trusts hereunder shall not be effective until five years (or any shorter period that may be permitted pursuant to the provisions of the New York State insurance law, or the regulations thereunder) from the date on which the Council shall notify the American Trustee, the EIL Trustee and the Agent in writing of the Council's intention to revoke such trusts; except that the foregoing proviso shall not be deemed to prevent the replacement of the trusts hereunder with another trust or trusts meeting the requirements of the New York State insurance law, or the regulations thereunder; and provided that notice of the decision to replace the trusts shall be given to the American Trustee, the EIL Trustee and the Agent at least one year before such trust or trusts shall become effective. No amendment, replacement or revocation of the Lloyd's American Trust Deed shall become effective without the prior written consent of the Superintendent of Insurance of the State of New York. The Council shall give written notice of any proposed amendment to the American Trustee, the EIL Trustee, the Agent and EIL and shall direct the American Trustee to give written notice to the Commissioner, Director or Superintendent of Insurance of each state identified by the Council as requiring such notice ("Commissioner") together with a copy of the proposed amendment. A proposed amendment shall be effective on the date specified by the Superintendent of Insurance of the State of New York unless the American Trustee receives notice that a Commissioner disapproves the proposed amendment within thirty (30) days of receipt of the notice by such Commissioner. The Council shall give written notice to the American Trustee, to the Agent (and the Agent shall in turn notify the Name) and to the Superintendent of Insurance of the State of New York of any such amendment, replacement or revocation and of the effective date thereof.

12.2 If a court of competent jurisdiction within the United States determines that the Insurance Business Transfer is effective within the United States against all Policyholders the trusts hereunder shall terminate immediately upon the Superintendent of Insurance of the State of New York giving his written approval of such termination.

### ARTICLE 13

#### REMUNERATION OF AMERICAN TRUSTEE

13.1 The Council may make such arrangements with the American Trustee as the Council and the American Trustee think fit as to the remuneration of the American Trustee and any such remuneration shall be an expense of the Lloyd's American Trust Fund. The American Trustee shall be entitled to reimbursement out of the Lloyd's American Trust Fund of any reasonable expenses (including, without limiting the generality of the foregoing, counsel fees) incurred by it in connection with the

administration of the Lloyd's American Trust Fund, and the American Trustee shall have a first lien on the property from time to time comprising the Lloyd's American Trust Fund for any such remuneration and the amount of any such expenses to the extent such remuneration and expenses do not exceed 1% of the value, as at December 31 of the preceding year, of principal and income of the Lloyd's American Trust Fund (which shall be deemed to include the principal and income of the Equitas Trust Fund as at such date to the extent funds were transferred from the Lloyd's American Trust Fund to the Equitas Trust Fund).

#### ARTICLE 14

##### REMOVAL OR RESIGNATION OF AMERICAN TRUSTEE

14.1 Subject to the effective date provisions of this Article, the American Trustee may at any time be removed as trustee and, subject to the prior written approval of the Superintendent of Insurance of the State of New York, a new American Trustee appointed hereunder by a resolution passed by the Council; provided that any trustee appointed under this Article shall be a bank or trust company organized under the laws of the United States of America or any State thereof and shall be regulated, supervised and examined by United States or State authorities having regulatory authority over banks and trust companies. Upon adoption of any such resolution of appointment, an authorized officer of Lloyd's shall execute such instruments as are necessary or proper for effectuating the appointment of the new American Trustee. Upon the appointment of the new American Trustee, the Lloyd's American Trust Fund shall be transferred to the new American Trustee. The American Trustee may resign at any time by giving written notice addressed to the Chairman of Lloyd's. Such removal or resignation shall take effect on the date specified therein which, in the case of resignation, shall not be less than ninety (90) days from the date the resignation is received at Lloyd's, London. On and after the effective date of such removal or resignation, the sole duty of the former American Trustee shall be to transfer the Lloyd's American Trust Fund to the new American Trustee. The former American Trustee shall, nevertheless, remain entitled to the settlement of its account and to the payment out of the Lloyd's American Trust Fund of any compensation due to it up to the time of its removal or resignation and any expenses or other disbursements (whether theretofore or thereafter arising) for which it would be entitled to reimbursement from the Lloyd's American Trust Fund if it had not been transferred to the new American Trustee.

#### ARTICLE 15

##### NOTICE TO AND COMMUNICATION WITH AMERICAN TRUSTEE

15.1 The American Trustee shall be fully protected in relying upon the authenticity of any communication from the Council which purports to be signed by an authorized officer of Lloyd's.

15.2 The American Trustee shall also be fully protected and shall incur no liability for any action taken or omitted by it in reliance on any written instrument of any kind believed by it to be genuine and purporting to be signed or sent by the proper person or persons or to have been passed by the proper authorities.

15.3 The American Trustee may require that any request made by the Agent under this instrument shall be in writing and filed with the American Trustee at its head office.

15.4 The American Trustee shall accept written notice given by the Council as to the identity of the Agent. The American Trustee shall be protected and deemed to have exercised reasonable due care in acting upon any written statement made by the Agent with respect to the authority conferred on it whether directly or indirectly by the Name.

15.5 The American Trustee shall be protected in relying upon instructions given by electronic access which the American Trustee believes to be genuine and which purport to be given by the Agent or by the person or persons to whom the Agent has delegated all or any powers of management and investment pursuant to paragraph 7.9 of this Instrument; provided that such instructions by electronic access are accompanied by the code words furnished (i) by the American Trustee, or (ii) by the Agent by means of the use of the electronic access terminal device, or (iii) by the person or persons to whom the Agent has delegated all or any powers of management and investment pursuant to paragraph 7.9 by means of the use of the electronic access terminal device; and provided further that the American Trustee has not been directed by the Agent or by such person or persons not to recognize such code words.

#### ARTICLE 16

##### CERTAIN MATTERS RELATING TO THE EQUITAS TRUST AGREEMENT

16.1 Where the American Trustee receives a request for its approval as beneficiary under the Equitas Trust Agreement for the modification, amendment or waiver of any term of the Equitas Trust Agreement, the American Trustee shall so advise the Council and the Superintendent of Insurance of the State of New York, and shall be fully protected in giving or withholding such approval if so directed by the Council, provided that, if directed to give such approval, the American Trustee shall have received the prior written approval of the Superintendent of Insurance of the State of New York for such modification, amendment or waiver.

16.2 Where the American Trustee receives a request for its approval as beneficiary of any account pursuant to Section 9 of the Equitas Trust Agreement, the American Trustee shall so advise the Council and shall give such approval if so directed by the Council and shall lodge any objection of the Council to any such account with the

Equitas Trustee, provided that such objection is in writing and received by the American Trustee not less than five (5) business days prior to the expiration of the period during which objection to such account may be made under the Equitas Trust Agreement. The American Trustee shall be fully protected in giving such approval or lodging such objection if so directed by the Council, and in failing to give such approval or lodge such objection unless timely so directed by the Council.

16.3 Where the American Trustee receives a request under section 9(o) of the Equitas Trust Agreement for a statement or certificate signed by it (or on its behalf) as beneficiary under the Equitas Trust Agreement, the American Trustee shall so advise the Council and shall be fully protected in giving or withholding such statement or certificate if so directed by the Council.

16.4 The foregoing provisions of this Article shall not, in and of themselves, be construed to impose any obligation on the American Trustee, except for the provisions of paragraph 16.1 insofar as it requires the American Trustee to advise or obtain the prior written approval of the Superintendent of Insurance of the State of New York of certain matters.

#### ARTICLE 17

##### LEGAL ESTATE IN AMERICAN TRUSTEE; REVERSION IN ERL

17.1 The legal estate in property from time to time constituting the Lloyd's American Trust Fund shall be vested in the American Trustee, subject only to the execution of the trusts hereunder, and the only right of ERL its successors or assigns shall be one in personam against the American Trustee to enforce the performance of the trusts hereunder, and pursuant thereto to receive any balance that may be available after the application of the Lloyd's American Trust Fund to satisfy all liabilities, both actual and estimated, of the Name in respect of 1992 and Prior American Business or for any of the other purposes specified herein.

#### ARTICLE 18

##### INADEQUACY OF THE TRUST FUND ASSETS

18.1 The Lloyd's American Trust Fund shall be deemed inadequate if: (a) the United Kingdom Financial Services Authority has ordered that the Lloyd's market cease trading; or (b)(i) ERL invokes the "proportionate cover" provisions set forth in the Equitas Reinsurance Agreement; (ii) the proportionate cover rate on American business is less than 100%; and (iii) the claim of any Policyholder that has satisfied all of the conditions set forth in paragraph 5.2 hereof has not been satisfied within one hundred and twenty (120) days of the expiration of the period in paragraph 5.2(D) hereof.



18.2 In the event that the American Trustee receives written notice from the United Kingdom Financial Services Authority that it has ordered that the Lloyd's market cease trading or the American Trustee receives written notice from ERL that ERL has invoked the "proportionate cover" provisions in the Equitas Reinsurance Agreement, the American Trustee shall immediately transmit a written notice of this event to the Superintendent of Insurance of the State of New York.

18.3 In the event that the Lloyd's American Trust Fund becomes inadequate as specified in paragraph 18.1(a) or (b), then notwithstanding any other provision in this Lloyd's American Trust Deed, grounds shall be deemed to exist for the Superintendent of Insurance of the State of New York to obtain from a court of competent jurisdiction an order that, in accordance with Article 74 of the New York Insurance Law, directs the American Trustee to transfer to the Superintendent of Insurance of the State of New York all of the assets of the Lloyd's American Trust Fund except those assets which are subject to a lien of the American Trustee hereunder. Compliance with such an order shall relieve the American Trustee of all further duties, obligations and liabilities of any kind or description under this Lloyd's American Trust Deed. Nothing in this paragraph shall be construed as relieving the American Trustee of any liability under this Lloyd's American Trust Deed for any acts or omissions which occurred prior to the date on which the American Trustee transfers the assets of the Lloyd's American Trust Fund to the Superintendent of Insurance of the State of New York.

18.4 If the assets of the Lloyd's American Trust Fund have been transferred to the Superintendent of Insurance of the State of New York pursuant to paragraph 18.3, such assets shall be applied in accordance with the laws of the State of New York applicable to the conservation of insurance companies. If the Superintendent of Insurance of the State of New York determines that the assets of the Lloyd's American Trust Fund or any part thereof are not necessary to satisfy the Name's obligations to Policyholders in respect of American business, such assets or part thereof shall be transferred by the Superintendent of Insurance of the State of New York to the American Trustee for application to the payment of any unpaid amounts due to the American Trustee under Article 13. Any remaining assets shall then be transferred by the American Trustee to ERL.

## ARTICLE 19

### MISCELLANEOUS PROVISIONS


19.1 The provisions of the Lloyd's American Trust Deed and the rights of all parties in respect of the Lloyd's American Trust Fund shall be governed by the laws of the State of New York.

19.2 The use herein of one gender shall be deemed to include another and the singular shall be deemed to include the plural, as the context may require.

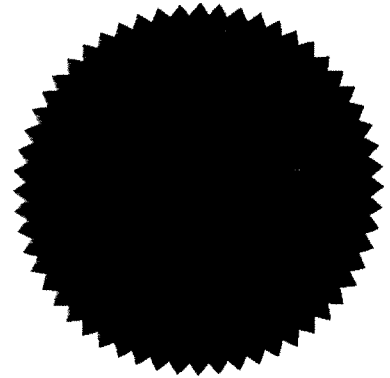
19.3 This Instrument may be executed in any number of counterparts, each of which when signed by or on behalf of the parties hereto, shall be deemed to be an original.

IN WITNESS WHEREOF, the Council of Lloyd's has executed the foregoing form of Lloyd's American Trust Deed as a Deed this 23<sup>rd</sup> day of June 2009 and has adopted the same as the amended and restated Lloyd's American Trust Deed for all Names writing American business effective from and after the 23<sup>rd</sup> day of June 2009, and Citibank, N.A. has accepted the same as American Trustee.

The **COMMON SEAL OF LLOYD'S** was hereto affixed  
on 23 June 2009 in the presence of:

  
.....

Authorised Signatory



CITIBANK, N.A., now serving as the American Trustee, acknowledges receipt of the amended and restated Lloyd's American Trust Deed, signed on JUNE 23 2009 and effective on JUNE 25 2009, accepts the terms thereof and acknowledges that it has received the written notice required by Article TWELFTH of the Lloyd's American Trust Deed.

**ATTEST:**

On JUNE 23, 2009, before me personally came William Mulrennan being duly sworn said that he resides at Brooklyn, NY and is a Vice President of CITIBANK, N.A., described in and which executed the foregoing instrument, that he knows the seal of said corporation; that the seal affixed hereto is the corporate seal and was so affixed by authority of the Board of Directors of said corporation and that he signed his name thereto by like order.

WILLIAM MULRENNAN, JR.  
WOLFE Client Services  
Insurance Trust Unit  
111 Wall Street/14th Fl./7th 20

*Feize Kahn*

FEIZE KAHN  
Notary Public, State of New York  
No. 01KA4990645  
Qualified in New York County  
Commission Expires Jan. 13, 2010