

**LLOYD'S UNITED STATES SITUS EXCESS OR SURPLUS LINES TRUST DEED**

This DEED OF TRUST, dated \_\_\_\_\_ DECLARED by each of the grantors of the Trusts created hereunder, each of whom is a member of Syndicate No. \_\_\_\_\_ (the "Syndicate") at Lloyd's for the 200[●] year of account (each being a "Present Underwriter") and as such has executed this Deed of Trust as of the date hereof, or who is a member of the Syndicate from time to time for any subsequent year of account who has subsequently acceded to this Deed of Trust (each being together with the Present Underwriters an "Underwriter"), MADE AMONG, (i) Lloyd's, having its principal office at One Lime Street, London, England, (ii) each of the Underwriters, each of One Lime Street, London, England, (iii) the managing agent of the Syndicate named in the First Schedule hereto (the "Managing Agent"), and (iv) Citibank, N.A., a national banking organization organized and existing under the laws of the United States of America, and having its principal offices at New York, New York (the "Trustee").

WITNESSETH:

WHEREAS, each of the Underwriters is engaged in the insurance business and has or will have Policyholders (as defined herein) in the United States of America as a result of accepting insurance on a surplus or excess lines basis on risks therefrom; and

WHEREAS, each of the Underwriters desires to establish a trust fund in the United States as security for said Policyholders and Third-Party Claimants (as defined herein) and to qualify as eligible or approved surplus or excess lines insurers therein; and

WHEREAS, the Trustee is willing to act as Trustee of such trust fund; and

WHEREAS, the Trustee agrees to administer such trust fund principally from its office in the City of New York and the State of New York; and

WHEREAS, this Deed of Trust is made pursuant to a requirement made by the Council (as defined herein); and

WHEREAS, the Agent (as defined herein) has determined the Trust Fund Minimum Amount (as defined herein) as of the Effective Date (as defined herein) of this Deed of Trust and advised the Trustee thereof;

NOW, THEREFORE, each of the Underwriters creating a trust hereunder hereby transfers to the Trustee all of his interest in the property constituting the trust Principal (as defined herein), but excluding the Investment Income (as defined herein) from time to time earned thereon, valued at not less than the Trust Fund Minimum Amount as of the Effective Date of this Deed of Trust, receipt of which the Trustee hereby acknowledges and agrees to hold in trust for the uses and on the conditions hereinafter set forth:

## ARTICLE 1

### DEFINITIONS

The following terms used herein shall, unless the context otherwise requires, have the following meanings:

1.1 “1992 and Prior Business” shall mean 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.==

1.2 “Agent” shall mean the managing agent at Lloyd’s appointed by or on behalf of the Underwriter to act, and who is acting, as an agent of the Underwriter for the purpose of conducting the underwriting business of the Underwriter as a member of the Syndicate (referred to above as the “Managing Agent”), including any successors so acting of the underwriting agent so appointed and any substitute agent appointed by the Council; and shall, when the context so admits include a reference to any Representative of the Agent, as defined herein.

1.3 “American Policy” shall mean -

(a) any contract or policy of insurance (or any agreement to insure) incepting on or after August 1, 1995 (excluding all contracts or policies of insurance underwritten or any agreement to insure to be underwritten by the Underwriter as a member of the Syndicate under any binding authority incepting prior to that date and attaching on or prior to November 15, 1995) issued to a Policyholder (as defined herein) pursuant to surplus lines or excess lines laws of any state, district, territory, commonwealth or possession of the United States

- (i) which is underwritten by the Underwriter as a member of the Syndicate on or after August 1, 1995, and
- (ii) which is allocable to the year of account of the Syndicate corresponding to the particular Trust Fund;

or

(b) any contract or policy of insurance, not including 1992 and Prior Business, issued to a Policyholder (as defined herein) pursuant to surplus lines or excess lines laws of any state, district, territory, commonwealth or possession of the United States in respect of which the Underwriter is liable as a member of the Syndicate for the year of account of the Syndicate corresponding to the particular Trust Fund to members of the same Syndicate or any other syndicate for an earlier year of account pursuant to any contract of Reinsurance to Close (as defined herein).

1.4 “Beneficiary” shall mean any Policyholder (as defined herein) and any Third-Party Claimant (as defined herein).

1.5 “Claim” shall mean: (i) a claim against the Underwriter by a Policyholder or Third-Party Claimant, as defined herein, for a loss under an American Policy excluding punitive or exemplary damages awarded against a Policyholder and also excluding any extracontractual obligations not expressly covered by the American Policy; (“Loss”) or (ii) a claim against the Underwriter by a Policyholder for the return of unearned premium under an American Policy (“Unearned Premium”).

1.6 “Council” shall mean the Council of Lloyd’s or the Committee of Lloyd’s or the Chairman or a Deputy Chairman of Lloyd’s as the case may be or (except only for the purposes of Paragraph 6.4 hereof) such other person or persons as are for the time being authorized by the Council of Lloyd’s to exercise any power or discretion which is hereby vested in the Council.

1.7 “Domiciliary Commissioner” shall mean the Superintendent of Insurance of the State of New York.

1.8 “Effective Date” for each Trust created hereunder shall mean

(a) for each Trust which relates to the 1995 year of account of the Syndicate, August 1, 1995; and

(b) for each Trust which relates to any other year of account of the Syndicate, the first day of the relevant calendar year.

1.9 “IID” shall mean the International Insurers Department of the National Association of Insurance Commissioners (“NAIC”). References herein to decisions of the IID or decisions under the IID Plan of Operation are to decisions made by State Insurance Commissioners acting pursuant to the constitution and bylaws of the NAIC.

1.10 “Investment Income” shall have the meaning from time to time given to the term “income” for trust accounting purposes by Section 11-2.1(b)(1) of the New York Estates, Powers and Trusts Law as from time to time amended, or any successor provision thereto.

1.11 “Letter of Credit” shall mean a clean, unconditional, evergreen and irrevocable letter of credit in favor of the Trustee which satisfies the requirements of New York Insurance Law and which is issued or confirmed by a Qualified United States Financial Institution.

1.12 “Lloyd’s” shall mean the Society incorporated by Lloyd’s Act 1871 by the name of Lloyd’s.

1.13 “Lloyd’s Premiums Trust Deed” shall mean the Lloyd’s Premiums Trust Deed approved by Lloyd’s and notified to the Financial Services Authority pursuant to rules made by the Financial Services Authority under the Financial Services and Markets Act 2000 executed by the Underwriter in respect of insurance business at Lloyd’s other than long term business.

1.14 “Matured Claim” shall mean a Claim which is enforceable against the Trust Fund as provided for in Paragraph 2.3 hereof.

1.15 “Members’ Agent” shall mean an underwriting agent which is listed as a members’ agent on the Lloyd’s register of underwriting agents.

1.16 “Non-Domiciliary Commissioner” shall mean the Chief Regulatory Officer for Insurance other than the Domiciliary Commissioner in any state, territory, district, commonwealth or possession of the United States in which the Underwriters have Policyholders and who has provided the Trustee with written notice that he or she requires any notification required to be made to the Domiciliary Commissioner pursuant to this agreement.

1.17 “Other Underwriters” shall mean the members of Lloyd’s whether individuals, bodies corporate, or partnerships (other than the Underwriter) and such former 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 member or former member who has died or become bankrupt.

1.18 “Overseas Fund” shall mean the Lloyd’s Premiums Trust Fund or any trust fund set up with respect to the Underwriter which is constituted or regulated by an Overseas Direction under the Lloyd’s Premiums Trust Deed (as therein defined).

1.19 “Policyholder” shall mean the holder of an American Policy resident or doing business in the United States at any time during the period of coverage of such policy, and any other persons or associations who are assignees, pledgees, or mortgagees named therein.

1.20 “Principal” shall have the meaning from time to time given thereto in Section 11-2.1(b)(2) of the New York Estates, Powers and Trusts Law as from time to time amended, or any successor provision thereto.

1.21 “Qualified United States Financial Institution” shall mean an institution that:

(a) is organized and licensed (or in the case of a U.S. office of a foreign banking organization, licensed) under the laws of the United States or any state thereof;

(b) is regulated, supervised and examined by U.S. federal or state authorities having regulatory authority over banks and trust companies;

(c) has been determined by the Securities Valuation Office of the National Association of Insurance Commissioners (“NAIC”) as an acceptable financial institution; and

(d) has been granted authority to operate with trust powers, as a qualified United States financial institution, to act as the fiduciary of the trust.

1.22 “Readily Marketable Securities” shall mean securities readily marketable on regulated United States national or principal regional security exchanges or those determined by the Securities Valuation Office of the NAIC to warrant an NAIC designation of 1 or 2.

1.23 “Receiver” shall mean the Domiciliary Commissioner or such other person as may be appointed by a court of competent jurisdiction or designated by the statute of a state, territory, district, commonwealth or possession of the United States.

1.24 “Reinsurance to Close” shall mean an agreement under which underwriting members (“the reinsured members”) who are members of a syndicate for a year of account (“the closed year”) agree with underwriting members who comprise that or another syndicate for a later year of account (“the reinsuring members”) that the reinsuring members will indemnify the reinsured members against

all known and unknown liabilities of the reinsured members arising out of insurance business underwritten through that syndicate and allocated to the closed year.

1.25 “Representative of the Agent” or “Representatives” shall mean one or more persons (without limitation as to number) designated by the Agent by one or more instruments in writing filed with the 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 until its revocation by the Agent by an instrument in writing filed with the Trustee.

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

1.27 “Third-Party Claimant” is one not a party to the insurance contract but having a final judgment or arbitration award against the Underwriters for Claims or Loss covered by an American Policy.

1.28 “Trust Fund” or “Trust” in relation to a particular Underwriter and year of account shall mean the property in the actual and sole possession of the Trustee and held under the provisions of this Deed of Trust allocable to the particular trust created by the Underwriter with respect to the particular year of account of the Syndicate.

1.29 “Trust Fund Minimum Amount” (or “TFMA”) shall mean the amount required to be maintained in trust by the Underwriter pursuant to Paragraph V.B.(ii) of the IID Plan of Operation or its successor provision or the insurance laws and rules and regulations of the states where the Syndicate maintains eligibility as an excess or surplus lines insurer, whichever amount is greater, provided; that if:

(a) the U.S. Liabilities have been reinsured pursuant to any contract of Reinsurance to Close (as defined herein) with the Underwriter and/or one or more of the Other Underwriters as members of the same or another syndicate for a later year of account, and

(b) in respect of each such reinsurer under that contract there is for that syndicate and that later year of account a trust fund constituted under this Deed or any other Lloyd’s United States Situs Surplus Lines Trust Deed which is at least equal in value to the Trust Fund Minimum Amount for that trust fund in respect of that syndicate and year of account, then the Trust Fund Minimum Amount shall be zero. For the avoidance of doubt, no assets of the Trust Fund may be transferred out of such Trust Fund to pay a Reinsurance to Close premium unless such transaction is with the Underwriter and/or one or more of the Other Underwriters who have a Lloyd’s United States Situs Surplus Lines Trust that satisfies the requirements of the Domiciliary Commissioner and the IID.

1.30 “U.S. Liabilities” shall mean the aggregate of

(a) the amount of the liabilities of the Underwriter as a member of the Syndicate for a particular year of account under the American Policies as defined in subparagraph 1.3(a) and

(b) the amount in respect of which the Underwriter is liable under the American Policies as defined in subparagraph 1.3(b) (provided that as regards American Policies underwritten prior to August

1, 1995, that amount shall be taken to be the Underwriter's share of the aggregate amount shown, as of March 31, 2009, in the Second Schedule for the year of account of the Syndicate or other syndicate to which those American Policies were originally allocated, or, on or after December 31, 2009, or each of the four anniversary dates next following, of that aggregate amount reduced annually by 20 per cent thereof) .

1.31 "U.S. Representative" shall mean the individual or firm designated in writing to the Trustee by the Council.

1.32 "Underwriter" shall mean a Present Underwriter or any other member of Lloyd's (whether an individual, a body corporate, or a partnership) who has allocated premium limits to the Syndicate and is a grantor of a Trust created hereunder.

## ARTICLE 2

### THE TRUST

2.1 Duration of Trust. Each Trust shall, subject to subparagraph (b) hereof, be irrevocable and remain in full force and effect for a period of at least five years and may be terminated only upon the occurrence of any of the following events:

(a) the passage of five (5) years from the date of written notice from the Council to the Trustee of the termination of the Trust.

(b) the expiration of sixty (60) days after the Agent has sent written notice to the Trustee by certified mail, return receipt requested, that the Underwriter (i) has become qualified and licensed to conduct an insurance business in all States where he has direct insurance in force; or, (ii) has entered into an assumption and assignment agreement creating a novation that transfers all liability with respect to all risks covered by this Trust Fund to an insurer licensed to do an insurance business in such states or an insurer listed by the IID.

(c) the passage of twenty-one (21) years from the date of death of the Underwriter, if the Underwriter is a natural person, or, if the Underwriter is a body corporate or a partnership, the passage of eighty (80) years from the date of execution by the Underwriter of the Lloyd's Premiums Trust Deed, (which respective period shall be the applicable perpetuity period for purposes hereof).

Such written notice submitted to the Trustee pursuant to subparagraph (a) or (b) hereof shall include a list of all states in which the Underwriter has outstanding U.S. Liabilities with respect to an American Policy. The Trustee shall notify IID and the Insurance Commissioners of said States in writing of its receipt of a notice as provided for in subparagraphs (a) or (b) of this paragraph within thirty (30) days of receipt of such notice from the Agent.

2.2 Priority of Payments Out of Trust Fund. Subject to Article 5, the Trust Fund shall be exclusively available first for the payment of all expenditures and fees under Paragraph 3.7 of this Deed of Trust including legal fees and expenses actually incurred by or on behalf of the Trustee in connection with its administration, preservation or conservation of the Trust ("Trustee Priority Claims"); provided, however, that for any particular calendar year the amount of Trustee Priority Claims which shall be given priority in payment over Matured Claims at any given time shall be limited to the Trust's pro rata share (based on the aggregate value of all Trust Funds held under this Deed for the Syndicate) of an

amount equal to the lesser of \$50,000 or 10% of the aggregate value of all Trust Funds held under this Deed for the Syndicate. Any amount in excess of the amount necessary to satisfy Trustee Priority Claims, as limited by the proviso above, shall be available for the payment of Matured Claims, provided, however, that Losses shall always take priority over Unearned Premium in the payment of Claims so that the Trustee shall pay all Matured Claims for Losses in full prior to payment of any part of a Matured Claim for Unearned Premium. The Trustee shall pay a Matured Claim for Unearned Premium after receipt of a Claim for Losses which has not yet become a Matured Claim for any reason.

2.3 When Claims Become Enforceable Against the Trust. Subject to the payment of Trustee Priority Claims, and to the priority of Losses over Unearned Premiums, a Claim shall be enforceable against the Trust Fund when all of the following five conditions have been satisfied:

(a) The Policyholder or Third-Party Claimant has obtained a judgment against the Underwriters in any court of competent jurisdiction within the United States of America or has obtained a binding arbitration award in respect of the Underwriters' liability under an American Policy;

(b) such judgment or award has become final in the sense that the particular litigation or arbitration has been concluded, either through failure to appeal within the time permitted therefor or through final disposition of any appeal or appeals that may be taken, the word "appeal" being used herein to include any similar procedure for review permitted by applicable law;

(c) the service upon the Trustee of a certified copy of said judgment or award, together with such proof as to its finality as the Trustee may reasonably request;

(d) receipt of a written statement under oath from the Policyholder Third-Party Claimant or their legal counsel stating, without qualification other than with respect to the passage of the time period described in the following subparagraph (e), the Syndicate and year of account of the American Policy to which the Claim relates or if the Claim relates to more than one Syndicate or more than one year of account, the portion of the Claim that relates to each such Syndicate and year of account, that the Claim does not include exemplary or punitive damages or extracontractual damages not expressly covered by the Policy, the portion of the Claim, if any, that is designated for Unearned Premium, and that the Policyholder or Third-Party Claimant has complied with all of the provisions set forth in subparagraphs (a), (b), and (c) of this paragraph; and

(e) the expiration of a period of thirty (30) days beginning on the date of the service upon the Trustee of said certified copy of said judgment and all of said proofs without the Trustee having received notice from the Council that such judgment has been satisfied; provided, however, that in the event that the termination date of the Trust is less than thirty (30) days beginning on such date of service, the expiration of the period of time equal to the amount of time left before the day before the termination date of the Trust.

The Trustee shall promptly notify the Agent and the Council of the service upon it of said certified copy of said judgment or award and of the existence of said proofs and that said judgment or award has not been satisfied, and shall provide copies of said judgment or award and said proofs to the Agent and to the Council. The Trustee shall advise the Agent and the Council not later than ten days prior to the expiration of the thirty (30) day period referred to in subparagraph (e) above of whether in the opinion of the Trustee the above conditions have been met on the basis of the evidence specified above (except as to whether the judgment or award is one in respect of the Underwriter's liability under an American policy and the Syndicate and years to which the judgment or award relates), and the Council shall advise

the Trustee, again not later than ten days prior to the expiration of the thirty (30) day period referred to in subparagraph (e) above, whether the judgment or award is one in respect of the Underwriter's liability under an American Policy and of the Syndicate and Year of Account to which the Claim relates. The Council may at any time notify the Trustee if such Claim has been satisfied prior to the expiration of the period set forth in subparagraph (e). Based upon such information, the Trustee shall determine whether the above conditions have been met. In making such determination, the Trustee shall be held harmless in relying upon the information furnished to it by the Council and the Agent. If the Council does not furnish such advice to the Trustee 10 days prior to the expiration of the period described in Paragraph 2.3(e), then such judgment or award shall be deemed to relate to liability under an American Policy. If the Council determines that such judgment or award does not relate to liability under an American Policy, the Council shall notify the Trustee of such determination 10 days prior to the expiration of the period described in Paragraph 2.3(e) whereupon the Trustee shall notify the IID, the Domiciliary Commissioner and the Non-Domiciliary Commissioner of such determination by the Council. The Domiciliary Commissioner shall thereupon determine and notify the Council and the Trustee whether such judgment or award relates to liability under an American Policy and its determination shall be conclusive and binding upon all parties. Only a Claim so determined to have satisfied each of the above five conditions shall be deemed to be a Matured Claim. Any Matured Claim shall, subject to Article 5 and subject to any Trustee Priority Claims, be paid by the Trustee by check mailed to the address of the Policyholder or Third-Party Claimant specified in the notice of Claim solely out of the Trust Fund then in its actual and sole possession, without regard to the rights of any other Policyholder unless the judgment or award shall be with respect to a Matured Claim for return of Unearned Premium in which case payment by the Trustee shall be made in accordance with the priorities stated above in Paragraph 2.2. The Trustee shall notify the IID and the Domiciliary Commissioner within ten (10) days of the Trustee's determination to pay any Matured Claim.

If a Matured Claim would, if paid, reduce the Trust Fund below the Trust Fund Minimum Amount, or, if the Trustee has received notice that the Lloyd's market has ceased trading as set forth in Article 5.1, then Article 5 shall govern the distribution of the Trust Fund. A Matured Claim, which, if paid, would reduce the amount of the Trust Fund below the Trust Fund Minimum Amount shall only be paid in accordance with the provisions of Article 5 of this Agreement. The Trustee shall notify the IID, the Domiciliary Commissioner and the Non-Domiciliary Commissioner within ten (10) days of the Trustee's receipt of any Matured Claim that would reduce the Trust Fund below the Trust Fund Minimum Amount. In determining whether payment of a Matured Claim would reduce the amount of the Trust Fund below the Trust Fund Minimum Amount, the Trustee shall rely upon the value of the Trust Fund as established at its most recent valuation.

2.4 Limitations of Policyholder's Source of Recovery. No Policyholder or Third-Party Claimant shall have any right of any nature or description under this Deed of Trust to seek to enforce a claim or otherwise bring an action against the Trustee in respect of any assets of the Trustee or of any assets other than those in the Trust Fund. No Policyholder or Third-Party Claimant, even after its Claim has become a Matured Claim, may require an accounting from the Trustee or inquire into the administration of the Trust, question any of the Trustee's acts or omissions or otherwise enforce this Deed of Trust, the sole right of such Policyholder or Third-Party Claimant under this Deed of Trust being to receive the amount of its Claim after it has become a Matured Claim from the assets then in the Trust Fund and available for such payment under this Deed of Trust.

2.5 Sale of Trust Assets.

(a) Unless otherwise directed in writing by the Agent and subject to the provisions of subparagraph 2.5(b) and Paragraph 4.3, the Trustee shall retain the specific assets of the Trust Fund.

(b) Subject to the terms of this Deed of Trust, at the time a Matured Claim becomes payable by the Trustee from the Trust Fund, payment shall be effected in accordance with the Agent's written instructions or, if no such instructions are received by the Trustee at least ten (10) days prior to the expiration of the time period set forth in Paragraph 2.3(e), then as follows: (i) first from any cash in the Trust Fund; (ii) then, from the proceeds of the sale by the Trustee of any or all of the Readily Marketable Securities or other investments (other than Letters of Credit) in the Trust Fund; (iii) then, from any assets in the Trust Fund other than Letters of Credit; (iv) then, from drawings against any Letters of Credit. Subject only to the provisions set forth in the previous sentence, the Trustee, in its sole discretion, may sell all or part of the Trust Fund, in any order it elects, needed to effect timely payment of any Matured Claims or any amount of which the Trustee is authorized to obtain payment or reimbursement pursuant to Paragraph 3.7 hereof. The Trustee shall not be liable, except as provided by paragraph 3.11, for any loss incurred in the sale of assets or for its selection of the assets to be sold, and shall only be obligated to sell such assets at the market price then available to the Trustee, to the extent there is a reasonably available market.

2.6 Management of Trust Fund. The responsibility for making investments of the Trust Fund shall, for the duration of the trust, repose with the Agent, subject to Requirements and Directions of the Council; provided, however, that subject to Paragraph 2.7 hereof, all investments of the Trust Fund shall be, and the Agent shall only direct the 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 other states where the Trust Fund is required as a condition of the Syndicate's eligibility. Unless and until otherwise directed by the Agent in writing, the Trustee shall not be required to take any action in regard to investments and property held in the Trust Fund other than to collect the interest and dividends or other sums payable thereon. The Trustee shall deposit the assets of the Trust Fund, except to the extent the Trust Fund consists of Letters of Credit, or any part thereof, in one or more such banks (which may include the Trustee) or trust companies in the United States of America, or invest and reinvest the Trust Fund, except to the extent the Trust Fund consists of Letters of Credit, or any part thereof, in any such stocks, bonds and securities as the Agent shall direct in writing, notwithstanding that such investments may not be recognized by the laws of the state where the Trust Fund is administered or other applicable law as legal investments for trust funds. The Domiciliary Commissioner and the Chief Regulatory Officer for Insurance in any other state, territory, district, commonwealth or possession of the United States where the Underwriter or Syndicate is eligible for excess or surplus lines shall have the right to review the assets in the Trust to determine whether such assets are acceptable. Provided, that nothing herein contained is intended to relieve the Agent from furnishing investments in the Trust Fund of the quality required by the Surplus Lines or Excess Lines Laws of all states where the Trust Fund is required as a condition of the Syndicate's eligibility and each investment instruction from the Agent shall be a representation by the Agent that the investments specified therein meet such conditions and the conditions imposed by the definitions set forth in this Deed of Trust. The Trustee shall also make or change any deposits and sell and dispose of any negotiable assets of the Trust, other than Letters of Credit, by and with the direction in writing of the Agent. The Trustee shall be under no duty to give, and shall have no liability for omitting to give, any investment advice to any person in connection with the Trust Fund but shall always, provided the Trustee itself shall have received actual notice thereof, notify the Agent as to any rights to conversion, subscription, voting or other rights pertaining to any investments held in the Trust Fund and of any default in the payment of principal or interest. The Agent shall have the full, unqualified right to vote and execute consents and to exercise any and all proprietary rights, not inconsistent with this Deed of Trust, with respect to any of the property forming a part of the Trust

Fund. The Trustee shall collect and pay all Investment Income to an Overseas Fund as directed by the Agent, upon the Agent's written instructions, not more frequently than monthly, provided, however, that the Trustee shall have no obligation with respect to the payment of income by the issuer of any security.

2.7 Calculation and Notice of Trust Fund Minimum Amount.

(a) The Agent shall calculate the aggregate Trust Fund Minimum Amount pursuant to Paragraph V.B(ii) of the IID Plan of Operation or its successor provision or to the insurance laws and rules and regulations of the states where the Syndicate maintains eligibility as an excess or surplus lines insurer, whichever amount is greater, provided, however, that the aggregate Trust Fund Minimum Amount shall be no greater than 100 percent of the U.S. Liabilities of the Syndicate.

(b) The Agent shall advise the Trustee as to the aggregate Trust Fund Minimum Amount for each year of account of the Syndicate and the portion thereof allocable to each Trust Fund on the last day of the quarter following the Effective Date for the Trust and on the last day of each quarter thereafter, within 45 days after the end of each calendar quarter, and may advise the Trustee thereof at such other times as the Agent may elect, provided, however, that if the U.S. Liabilities with respect to the American Policies as defined in subparagraph 1.3(a) have been reinsured pursuant to any contract of Reinsurance to Close (as defined herein) with the Underwriter and/or one or more of the Other Underwriters as members of the same or another syndicate for a later year of account and which satisfies the conditions of Paragraph 1.29(b), the Agent shall so advise the Trustee and specify the Syndicate and year of account into which such U.S. Liabilities shall have been reinsured and thereafter no such report of the portion of the aggregate Trust Fund Minimum Amount allocable to the Trust Fund shall be made by the Agent. The Trustee shall be under no duty to independently calculate, and shall have no liability for omitting to independently calculate, the Trust Fund Minimum Amount for any Trust or to determine whether the U.S. Liabilities have been so reinsured pursuant to Reinsurance to Close as described above, provided that the Agent shall provide written notice to the Trustee, the Domiciliary Commissioner, the Non-Domiciliary Commissioner and the IID in the event the Trust Fund Minimum Amount for any quarter is less than 50% of the Trust Fund Minimum Amount for such year of account for the immediately preceding quarter, except where the Agent advised the Trustee that such reduction is due to Reinsurance to Close of such year of account and specified the Syndicate and year of account into which the U.S. Liabilities shall have been reinsured, and the Trustee shall not permit any withdrawal of funds from such year of account pursuant to Section 2.10 hereof for a period of 10 days after receipt of such notice. The Agent reserves the right at its sole option to substitute cash in U.S. currency or specifically designated Readily Marketable Securities and/or Letters of Credit for any cash or assets then forming part of the Trust Fund; provided, however, that the amount of cash and/or other assets and the market value at the time of substitution of the investments so substituted shall not decrease the value of the Trust Fund below the Trust Fund Minimum Amount. The value of any substituted assets shall be as determined by the Trustee at the time of substitution in accordance with general business practices as determined in the discretion of the Trustee.

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this Paragraph 2.7, in the event that the Syndicate surrenders its IID listing status and is no longer eligible as an excess or surplus lines insurer in any state, the Trust Fund Minimum Amount on any given day shall be equal to the amount held in this Trust Fund on such day but in no event shall the aggregate Trust Fund Minimum Amount be greater than 100 percent (or lesser percentage advised by the Domiciliary Commissioner) of the Syndicate's U.S. Liabilities, and the Agent shall calculate the aggregate Trust Fund Minimum Amount in accordance with this paragraph.

(d) Notwithstanding the provisions of paragraph (a), (b) and (c) of this Section 2.7, the Domiciliary Commissioner may, from time to time, advise the Trustee in writing of the aggregate Trust Fund Minimum Amount (as defined in Section 1.29 hereof) for the Syndicate. In the event the Domiciliary Commissioner provides such advice of the aggregate Trust Fund Minimum Amount for the Syndicate to the Trustee, the amount advised by the Domiciliary Commissioner shall govern until such later time as the Domiciliary Commissioner advises the Trustee in writing to accept notice of the aggregate Trust Fund Minimum Amount pursuant to paragraph (b) of this Section 2.7 from the Agent.

(e) The Agent shall provide written Notice to the Trustee and the Domiciliary Commissioner in the event that the Syndicate surrenders its IID listing status and is no longer eligible as an excess or surplus lines insurer in any state. The Domiciliary Commissioner may also provide the Trustee with such written notice. Upon receipt of such notice from the Agent or the Domiciliary Commissioner any prior or future instruction by the Agent to the Trustee to pay Investment Income out of this Trust will be invalid and any Investment Income paid to the Trustee subsequent to the receipt of such Notice shall be subject to the terms of this Trust.

2.8 Letters of Credit. In the event that the assets of the Trust Fund consist in whole or in part of a Letter of Credit (which Letter of Credit may be issued by the Trustee or an affiliate in its commercial and not its trust capacity) and said Letter of Credit shall bear a termination date prior to any stated or noticed termination date of the Trust, the Trustee shall, in the absence of notice at least thirty (30) days in advance of any termination of the Letter of Credit that the Letter of Credit will be renewed or extended, draw down and convert such Letter of Credit to cash and hold the same as assets of the Trust Fund pursuant to the terms hereof.

2.9 Contributions to the Trust Fund. The Trustee may receive further contributions to the Trust Fund from time to time which further contributions shall be subject to the terms and conditions hereof. The Agent shall advise the Trustee at the time any further contribution is made of the amount of such contribution and the Trust Fund to which it is made.

2.10 Withdrawal of Funds. Subject to the Requirements and Directions of the Council, from time to time the Agent may direct the Trustee in writing to transfer any funds in excess of the Trust Fund Minimum Amount as reported on the latest required notice given pursuant to Paragraph 2.7 to an Overseas Fund. In the event that the latest required notice has not been given, no withdrawals shall be made. For this purpose and for purposes of Paragraph 5.1(b) hereof, funds withdrawn for payment of Claims with respect to the American Policies shall be considered to be funds in excess of the Trust Fund Minimum Amount; provided, however, (i) that the Agent shall provide written notice to the Trustee and the Domiciliary Commissioner, the Non-Domiciliary Commissioner and the IID prior to any such withdrawal, which notice shall specify the reserve for such Claims as specified by the most recent determination of the Trust Fund Minimum Amount furnished to the Trustee; and (ii) funds withdrawn shall not exceed the amount previously reserved in the trust for such claims as specified in such notice.

2.11 Trustee's Authority to Hold Investments. Legal title to the assets of the trust shall be vested in the Trustee for the benefit of the Underwriters' American Policyholders and Third-Party Claimants in accordance with the provisions of this Trust. The Trustee may hold any investments or other assets hereunder in the name of a nominee. The term "hold" shall include the Trustee's authority to deposit any part or all of the aforesaid property, which consists of securities in registered or unregistered form, at a Federal Reserve Bank under federal book entry procedure, a depository trust company or other centralized securities depository system acceptable to the Domiciliary Commissioner, whether

now or hereafter organized (one or all herein called "CSDS"). All securities in registered form are to be registered in the name of a nominee of the Trustee or CSDS.

2.12 Assets of the Trust. The Trustee shall be under no duty or obligation to require the Underwriter to make any transfers or payments of additional assets to the Trust and it shall be conclusively presumed that any and all such transfers or payments to Trustee have been properly made. All assets held by a nominee of the Trustee shall be deemed held solely by the Trustee.

2.13 Trustee to Certify Trust Assets.

(a) Whenever reasonably required by the Agent, but not less often than annually and not more often than quarterly, the Trustee shall prepare and submit to the Agent a statement of (i) the assets in all of the Trust Funds held hereunder with respect to each particular year of account of the Syndicate (other than any such year of account for a Syndicate, the U.S. Liabilities of which have been reinsured pursuant to any contract of Reinsurance to Close as described in Paragraph 2.7), (ii) to the extent that the Agent so requests and has provided a method of allocation which the Trustee is reasonably able to implement, a statement of the market value of the assets in the Trust Fund determined in accordance with such method of allocation, and (iii) such other information as may be agreed upon between the Agent and the Trustee.

(b) The Trustee shall promptly certify the existence and the assets and their market valuation of the aggregate of all Trust Funds net of any charges, liens or encumbrances held hereunder with respect to each particular year of account of the Syndicate on the last day of the quarter ending after the Effective Date for such Trusts and the last day of each quarter thereafter, to the IID and the Domiciliary Commissioner; provided, however, that if the Trustee shall have been advised pursuant to Paragraph 2.7 hereof that the U.S. Liabilities with respect to the American Policies as defined in subparagraph 1.3(a) have been reinsured pursuant to any contract of Reinsurance to Close as described in Paragraph 2.7, no such certification shall be made by the Trustee. Such notification shall be made within thirty (30) days after the end of each calendar quarter.

(c) In addition, the Trustee shall certify the existence and most recent value of all Trust Funds net of any charges, liens or encumbrances held hereunder with respect to each particular year of account of the Syndicate (other than any such year of account for a Syndicate, the U.S. Liabilities of which have been reinsured pursuant to any contract of Reinsurance to Close as described in Paragraph 2.7) whenever so directed by IID, the Domiciliary Commissioner, or any Non-Domiciliary Commissioner, the Agent or its U.S. Representative; provided that in the case of any year of account of the Syndicate as to which the Trustee has been advised pursuant to Paragraph 2.7 that the U.S. Liabilities of such year of account have been reinsured pursuant to any contract of Reinsurance to Close, the Trustee shall, when so directed, provide the information received from the Agent as to the Syndicate and year of account into which such U.S. Liabilities have been reinsured. Whenever the Trustee in the performance of its duties hereunder shall be required to value the assets of the Trust Funds, it may employ an agent for such valuation (which may be the Trustee, or any subsidiary, affiliate or associate of the Trustee) and the Agent shall pay or reimburse the Trustee for any costs or expenses of valuations performed either by the Trustee or such agent. In the absence of the filing in writing with the Trustee by the Agent of exceptions to any such statement within sixty (60) days of receipt of such statement by the Agent, approval of such statement shall be deemed to have been given; and in such case or upon written

approval, the Trustee shall be released, relieved and discharged by the Agent with respect to all matters set forth in such statement.

#### 2.14 Trustee's Duties Upon Termination of Trust Fund

(a) In the event of termination in accordance with Paragraph 2.1, the Agent shall appoint a certified public or chartered accountant approved by the Council, with the consent of the Domiciliary Commissioner, which consent shall not be unreasonably withheld, as auditor. Approval of the auditor shall be deemed given if the Domiciliary Commissioner does not object to such auditor in writing to the Agent and the Trustee within 90 days beginning on the date of delivery of such request. An independent audit shall be made as of the date of such termination of the Trust Fund of the Trust Fund Minimum Amount and the Agent's estimate of the U.S. Liabilities and Unearned Premium on American Policies then ascertained or estimated by the Agent which will not or may not be paid or discharged out of other assets. The auditor shall upon the completion of such audit, and from time to time thereafter, at the request of the Trustee, issue a report to the Trustee expressing an opinion on the amount of any such outstanding liabilities and the Trust Fund Minimum Amount at the date of such termination or at such later date specified in such report. Additionally, the auditor shall provide to the Trustee a true and correct copy of the auditor's practicing certificate or equivalent document issued by the authority governing the licensing or conduct of the auditor. If the auditor's practicing certificate or equivalent document is unavailable, then the Trustee, upon the request of the Agent(s), shall submit a request for the written approval of the auditor from the Domiciliary Commissioner. The Trustee shall be protected in acting or relying upon any report of said auditor for purposes of determining the amount of assets required to be retained in the Trust Fund in order to satisfy the Trust Fund Minimum Amount and shall have the right to retain such assets in the Trust Fund, and the Trustee shall pay or cause to be paid therefrom the amount of any Losses in the manner provided in Paragraph 2.3. Upon the termination of the Trust and the payment of any fees and expenses of the Trustee provided for hereunder due and owing, the Trustee shall transfer, pay over and deliver to an Overseas Fund as directed by the Agent the income and principal of the Trust Fund then in its actual and sole possession, or the balance thereof then remaining in excess of the amount so determined to be retained, if undischarged liabilities are to be paid according to the report of the auditor, and such payment, transfer and delivery shall constitute a full, final and sufficient release, discharge and acquittance to the Trustee in respect thereof.

(b) No officer of the Trustee shall recognize the audit report of a public or chartered accountant, nor accept any annual audited financial report, if such officer has actual knowledge that such audit report was prepared in whole or in part by any natural person who: (1) has been convicted of fraud, bribery, a violation of the Racketeering, Influenced and Corrupt Organizations Act, 18 U.S.C. Sections 1961-1968, or any dishonest conduct or practices under federal or state law; (2) has been found to have violated the insurance laws of any state with respect to any previous reports submitted in connection with the aftermath of a trust established for excess or surplus lines eligibility purposes; or (3) has demonstrated a pattern or practice of failing to detect or disclose material information in previous reports filed. The Trustee shall notify promptly the Domiciliary Commissioner, the IID and Non-Domiciliary Commissioners if it shall not recognize such audit report for any reason set forth above.

### **ARTICLE 3**

### **THE TRUSTEE**

3.1 Trustee's Qualification. The Trustee and any Successor Trustee shall always meet the requirements of Subparagraphs (a), (b), (c) and (d) of Paragraph 1.21.

3.2 Trustee's Duties and Liability. The Trustee's duties and responsibilities shall be determined solely by the express terms of this Deed of Trust and no other duties or responsibilities should be implied. The Trustee shall not be liable for any loss to the Trust Fund other than losses caused by its own negligence or willful misconduct. The Underwriters agree to indemnify and hold harmless the Trustee from and against any and all claims, damages, losses or other payments of any nature whatsoever arising out of the Trustee's performance or nonperformance thereunder, unless such claims, losses, damages or other payments arise as a result of the Trustee's own negligence or willful misconduct.

3.3 Trustee May Rely on Certain Writings. The Trustee shall be entitled to rely upon, be protected, held harmless and deemed to have exercised reasonable due care, if the Trustee relies upon any writing believed by it in good faith to be genuine and to have been signed (whether facsimile or otherwise) or coded or purported to be signed or coded and transmitted, sent or delivered by the proper parties.

3.4 What Constitutes Conclusive Proof for Trustee. If the Trustee deems it necessary or desirable that a matter be proven prior to taking or omitting any action hereunder, such matter, unless other evidence in respect thereof be herein specifically prescribed, may be deemed to be conclusively proven by a statement purported to be executed in the name of the Council, the Agent or by any Representative of the Agent designated by it as such in writing to the Trustee and delivered to the Trustee for any such action or omission on its faith thereof.

3.5 What Constitutes Proper Execution for Trustee. Except as otherwise expressly provided in this Deed of Trust, any writing to be furnished by the Agent or by the Council shall be sufficiently executed if signed in such party's name by such of its officers or other agents or U.S. Representative as it may designate in writing to the Trustee, which designation shall continue in effect until changed by subsequent written notice received by the Trustee. With respect to the authority conferred on it, the Trustee may rely on any writing of any such officers or agents or U.S. Representative.

3.6 Trustee's Reliance on Opinions of its Counsel. The Trustee may consult with counsel selected by it and may rely on said counsel's opinion as complete authority in respect of any action taken or omitted by the Trustee in good faith in accordance with said opinion and the Trustee shall be deemed to have exercised reasonable due care in reliance thereon.

3.7 Trustee's Fees and Expenses. The fees of the Trustee for administering the Trust payable by the Underwriter shall be mutually agreed upon from time to time between the Council and the Trustee. The fees and all expenses of the Trustee, including its counsel's fees and expenses and other disbursements incurred in administering, preserving or conserving the Trust, shall be a Trustee Priority Claim as defined in Paragraph 2.2, and the Underwriter hereby irrevocably grants to the Trustee a security interest in and a lien upon the Trust Fund which shall be a first priority security interest and lien for the payment of Trustee Priority Claims, provided that the portion of such security interest and lien that shall be entitled to first priority in payment over Matured Claims shall be limited as provided in Paragraph 2.2. Nothing herein shall limit the right of the Trustee to assert a priority claim in any amount against amounts in excess of the Trust Fund Minimum Amount pursuant to Paragraph 5.5. All amounts to which the Trustee is entitled by reason of this paragraph shall be Trustee Priority Claims for purposes of Paragraph 2.2. Nothing in this Deed of Trust shall be construed as requiring that the Trustee's fees

and expenses be satisfied solely from the corpus of the Trust Fund, and not otherwise satisfied by the Underwriter.

3.8 Maintenance and Inspection of Trustee's Records. The Trustee shall keep complete records of the administration of the Trust which may be examined at any time, with reasonable advance notice, by the Domiciliary Commissioner or any Non-domiciliary Commissioner. Any persons duly authorized by the Agent or by Lloyd's may examine during normal business hours upon ten (10) days' written notice to the Trustee. Provided, that the Trustee shall have no obligation to maintain, and shall have no liability for omitting to maintain, records as to transactions involving the Underwriter or the Other Underwriters on a daily basis, it being understood and agreed that the Trustee shall maintain records of the activity of the Syndicate by year of account and as a whole; further provided, that the Agent shall advise the Trustee from time to time and any time upon request (and promptly upon any change therein) of the percentage interest borne by the Underwriter and each of the Other Underwriters of the liabilities of the Syndicate for each year of account and shall not, to the best of the knowledge and ability of the Agent, contribute any assets to the Trust, withdraw assets from the Trust or take any other action that would cause the percentage relationship that the assets on deposit in the Trust bears to the aggregate assets held by the Trustee for all Trust Funds related to the Syndicate for any year of account hereunder to vary from the percentage interest so borne by the Underwriter. The Underwriter shall provide on a timely basis the Trustee with any and all information, certifications, proofs and/or any other applicable documentation required under the Internal Revenue Code of 1986, as amended, and/or any other applicable law. The Trustee shall be reimbursed by the Agent for any reasonable expenses incurred by the Trustee as a result of any such examination; in the event that the Agent fails to reimburse such reasonable expenses, the Trust shall reimburse said expenses, subject to the provisions of Paragraph 2.2 herein. The Trustee shall not be required to furnish information with respect to amounts on deposit in the Trust Fund to the Underwriter or any other person other than the Domiciliary Commissioner, the IID or Non-Domiciliary Commissioner, or otherwise be required to account to the Underwriter or any person other than the Agent.

3.9 Trustee's Resignation or Removal: Appointment of Successor.

(a) Notwithstanding Paragraph 2.1 hereof, the Trustee may resign at any time by sending a written notice of resignation by certified mail, return receipt requested, to the Council at its last known address and to the Domiciliary Commissioner, all Non-Domiciliary Commissioners, and the IID to take effect on the date specified in such notice, but not less than sixty (60) days after the date of such mailing or personal delivery thereof if not mailed, unless the Council shall accept shorter notice as adequate.

(b) The Trustee or any Successor Trustee may be removed by the Council by sending written notice of such removal by certified mail, return receipt requested, to such Trustee's last known address and to the Domiciliary Commissioner, all Non-Domiciliary Commissioners and the IID to take effect on the date specified in such notice, but not less than sixty (60) days after the date of such mailing or personal delivery thereof if not mailed, unless the Trustee accepts shorter notice as adequate; provided that no such removal shall become effective without Trustee's consent until all sums due to it thereunder for its fees and expenses including legal fees and expenses have been paid to it.

(c) In the event of the resignation or removal of the Trustee, the Council shall appoint a Successor Trustee which shall qualify as the Trustee under Paragraph 3.1. The Successor Trustee shall accept its appointment in writing delivered to the Council, the Domiciliary Commissioner, all Non-Domiciliary Commissioners and the IID.

(d) Promptly upon the qualification of the Successor Trustee, the Trustee resigning or being removed shall transfer, pay over and deliver all assets comprising the Trust Fund as thus constituted (less an appropriate reserve for payment of its final fees and expenses), as well as the books and records of the Trust, to the Successor Trustee, and shall render a final account of its proceedings as Trustee to the Council and the Underwriter.

(e) The Trust Fund shall be retained by the Trustee who is resigning or who has been removed until payment of its fees and expenses as provided in Paragraph 3.7 and its Successor Trustee has accepted its appointment, at which time the Trustee shall transfer, pay and deliver to the Successor Trustee the assets comprising the Trust Fund as they may be then constituted. If a Successor Trustee has not accepted appointment and the Trustee, having resigned, wishes to be relieved of responsibility hereunder, the Trustee may tender the Trust Fund assets to the Domiciliary Commissioner and, if the Domiciliary Commissioner declines to accept responsibility for Trust Fund assets, the Trustee may deposit the Trust Fund with a court of competent jurisdiction and with regard to such action shall be responsible only for giving notice to the Domiciliary Commissioner, all Non-Domiciliary Commissioners, the IID, the Council, the Agent and such Policyholders which have notified the Trustee in writing that they have an actual or potential claim against the assets of the Trust Fund. When funds are accepted by the Domiciliary Commissioner or paid into court, the Trustee's sole remaining responsibility shall be to render a final accounting of the Trust.

(f) Copies of the required notice of resignation or removal required by this Paragraph, and of any acceptance of appointment by a Successor Trustee, shall also be sent by certified mail, return receipt requested, by the proper party to the IID, the Domiciliary Commissioner and all Non-Domiciliary Commissioners.

3.10 Trustee's Assets. No provision of this Deed of Trust shall require the Trustee to expend or risk its own funds or to otherwise incur any financial liability in the performance of any of its duties hereunder or in the exercise of its rights including, but not limited to, prosecuting, defending or otherwise enforcing any claims by or against the Trust Fund.

3.11 Trustee's Liability. The Trustee shall not be liable for any of its actions or omissions hereunder (including any actions taken in accordance with Article 5), except for its own negligence or willful misconduct. The Trustee shall be absolutely protected and shall incur no liability for any action or any failure to act taken by it in good faith and in the belief that such action or failure to act is in accordance with the terms hereof, except for an action or failure to act resulting from its own negligence. If the Trust Fund is funded, in whole or in part, by a Letter of Credit issued by the Trustee or by an affiliate of the Trustee, the failure of the Trustee to draw against the Letter of Credit in circumstances where such draw would be required by this Deed of Trust shall be deemed to be negligence and/or willful misconduct for purposes of this paragraph.

3.12 Electronic Access. The Trustee shall be protected in relying upon the instructions given by electronic access which the 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 4.4 hereof; provided that such instructions by electronic access are accompanied by code words furnished (i) by the 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 any or all powers of management and investment pursuant to Paragraph 4.4 hereof by means of the use of the electronic access terminal device; and provided further that the Trustee has not been directed by the Agent or by such person or persons not to recognize such code words.

3.13 Facsimile Transmissions. The Trustee shall be protected in relying and acting upon instructions given by facsimile transmission (regardless of whether such instructions have in fact been given or authorized by the Agent); provided that (save where the Trustee has agreed to act on the basis of the signature of a single signatory authorized to act for the Agent) such transmission bears signatures of two individuals authorized to act for the Agent and/or was sent with previously agreed upon passwords, or previously agreed upon call back procedures are followed. The Trustee shall not be obligated to confirm by telephone any instructions delivered via facsimile transmission unless otherwise specifically agreed to by the Trustee (in which case, the Trustee shall not be obligated to execute any instruction if unable to reach by telephone the person or persons designated by the Agent in writing as the confirming person(s)).

3.14 Identity and Authority of Agent. The Trustee shall accept written notice given by the Council as to the identity of the Agent. The Trustee shall be protected in acting upon any written statement made by the Agent with respect to the authority conferred on the Agent whether conferred directly or indirectly by the Underwriter.

3.15 No Principle of Conflict of Interest. 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 Underwriter, or Other Underwriters, by the Trustee acting in its individual capacity (or by any subsidiary, affiliate or associate of the Trustee) or in its capacity as trustee of Lloyd's American Trust Fund, Lloyd's American Credit for Reinsurance Joint Asset Trust, Lloyd's American Surplus or Excess Lines Insurance Joint Asset Trust, Lloyd's United States Situs Credit for Reinsurance Trust Deed or of any other Lloyd's 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 Underwriter or Other Underwriters 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 the Trust Funds.

3.16 Council Approval Protects Trustee. If any difference shall at any time arise between the Trustee and the Underwriter or his executors or administrators or his successors or assigns, or between the Trustee and the Agent, relating to the trusts under the Trust Deed, or the administration thereof, or anything in connection therewith, or if the Trustee shall at any time feel any doubt or difficulty in administering the said trusts, it shall be an absolute protection to the Trustee against all claims and demands whatsoever by the Underwriter, his executors or administrators or his successors or assigns, or by the Agent, or by any other person that in case of any act or thing already done or omitted by the 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 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 Trustee and the Agent, and if the Trustee encounters any difficulty in administering the said trusts in connection with any direction received from the Agent, it shall be an absolute protection to the Trustee that the Trustee has obtained the approval of the Council with respect to such direction and where it has sought and is awaiting such approval the Trustee shall have no liability for failing to follow such direction pending receipt of such approval, provided that this paragraph shall not alter the rights herein of any Policyholder, Third-Party Claimant, Domiciliary

Commissioner, Non-Domiciliary Commissioner or the IID. The foregoing provisions of this paragraph are only for the protection of the Trustee and shall not be construed to impose any obligation on the Trustee to apply for such approval of the Council, nor shall the Trustee be under any liability for omitting to do so.

## ARTICLE 4

### ADMINISTRATION AND USE OF TRUST PRINCIPAL

4.1 Trustee's Powers. In connection with the management and investment of the Trust Fund, the Trustee shall have all powers now or hereafter granted to a fiduciary by the laws of the State of New York, and in addition, subject to Requirements and Directions of the Council, and the laws and regulations of the State of New York applicable to insurance companies, shall have the power to engage in securities lending transactions for the account of the Trust Fund upon such terms and conditions as the Agent may direct, but only if the collateral for any such transaction is held pursuant to this Trust Deed.

4.2 Trustee's Liability For Securities Lending Transactions. In connection with any securities lending transaction referred to in paragraph 4.1 hereof, the Trustee shall be fully protected in acting upon the directions of the Agent and shall not be bound to inquire as to the application of securities loaned or as to the necessity, expediency, or propriety of any such transaction, or the terms on which any such transaction is made or any security therefor is granted. The Trustee shall not have any obligation or liability in its individual capacity in respect of any such transaction entered into on behalf of the Trust Fund, but only in its capacity as Trustee and satisfaction of any such obligation or liability shall be limited to the assets of the Trust Fund, and the Trustee shall have no obligation to enter into any such transaction, whether or not so directed by the Agent, except pursuant to instruments and agreements that expressly reflect such limitation.

4.3 Commingling Allowed. The Trust Fund may, unless the Agent shall otherwise direct, be commingled with other Trust Funds of the Underwriter or any of the Other Underwriters in the same syndicate and the assets of the Trust Fund may consist of an undivided percentage interest in the assets held on a commingled basis.

4.4 Delegation by Agent. The Agent may direct that all or any of the powers conferred on it by this Deed of Trust of giving directions relating to the management and investment of the Trust Fund shall be delegated to such other person (including any subsidiary, affiliate or associate of the Trustee) subject to the terms of this Deed of Trust.

4.5 Securities Transactions. The Trustee may (in its individual capacity or through any subsidiary, affiliate or associate of the Trustee) advance cash or securities to the Trust to effect or expedite the purchase or sale of securities for the Trust, and 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. The Trustee (in its individual capacity or through any subsidiary, affiliate or associate of the Trustee) shall have a security interest in such property or proceeds until the Trustee (in its individual capacity or through any subsidiary, affiliate or associate of the Trustee) has been reimbursed from the Trust for its advances in respect of such property. If the Trustee (in its individual capacity or through any subsidiary, affiliate or associate of the Trustee) does not receive reimbursement from the Trust for its advances in respect of such property, the Trustee (in its individual capacity or through any subsidiary, affiliate or associate of the Trustee) shall be entitled to dispose of

such property and to retain the proceeds of such disposition, or to retain such proceeds, in each case for its own account up to the amount necessary to obtain reimbursement, and shall be further entitled to reimbursement from the Trust as a Trustee Priority Claim pursuant to Paragraph 2.2 for any portion of any such advance not so reimbursed.

4.6 Relation to Other Authority. In exercising any powers authorities or discretions conferred by this Deed of Trust on the Agent, the Agent shall so exercise each power authority or discretion as not to infringe or be inconsistent with -

- (i) any agreement between the Agent and the Underwriter or between the Agent and the Members' Agent (as defined in the Lloyd's Premiums Trust Deed) or the person who appointed the Agent; and
- (ii) any Requirements or Directions of the Council; and
- (iii) terms of this Trust Deed; and
- (iv) governing law.

## **ARTICLE 5**

### **INADEQUACY OF THE TRUST FUND ASSETS**

5.1 When Trust Fund Becomes Inadequate. The Trust Fund shall be deemed inadequate upon the happening of the earlier of the following events:

(a) the Trustee actually receives written notice from the Agent, the U.S. Representative, the United Kingdom Financial Services Authority, the Domiciliary Commissioner, any Non-Domiciliary Commissioner or the IID, that the Lloyd's market has ceased trading; or

(b) the expiration of sixty (60) days after the end of relevant calendar quarter where the aggregate value of the Trust Funds held under this Deed for the Syndicate as shown by the most recent valuation of such Trust Funds as provided for in Paragraph 2.13 of this Deed of Trust was less than the aggregate Trust Fund Minimum Amount as of such valuation date. If said minimum has been replenished within said sixty (60) day period by or on behalf of the Underwriter so that the aggregate value of such Trust Funds is not less than the aggregate Trust Fund Minimum Amount as of said valuation date, notice thereof shall be given by the Trustee to the IID as provided below, and the inadequacy shall be deemed cured. Promptly after receipt of a statement of the aggregate Trust Fund Minimum Amount showing such deficiency in the aggregate value of such Trust Funds, the Trustee shall send notice to the Agent of the deficiency and a copy of such notice by certified mail, return receipt requested, to the Domiciliary Commissioner, all Non-Domiciliary Commissioners, and the IID.

5.2 Notice of Inadequacy.

(a) If the Trust Fund is deemed inadequate as defined in Paragraph 5.1(a), the Trustee shall promptly (i) transmit a written notice of this event and (ii) send a certified copy of such declaration by certified mail, return receipt requested, to the Agent, the Domiciliary Commissioner, all Non-Domiciliary Commissioners, and the IID.

(b) If the Trust Fund is deemed inadequate as defined in Paragraph 5.1(b), the Trustee shall promptly transmit a written notice of this event by certified mail, return receipt requested, to the Agent or any Representative of the Agent, the Underwriter's U.S. Representative, the Domiciliary Commissioner, all Non-Domiciliary Commissioners and the IID.

5.3 One-Year Waiting Period. Except in cases where Trust assets have been transferred to the Domiciliary Commissioner or other designated Receiver as provided for in paragraph 5.4 and unless otherwise ordered by a court of competent jurisdiction, no Claims, other than the Trustee's Priority Claims, shall be paid out of the Trust Fund during the 12-month period ("Waiting Period") commencing on the date the Trustee received written notice that the Trust Fund is deemed inadequate as defined in Paragraph 5.1(a), or the date the Trustee is required to transmit a notice to the Agent pursuant to Paragraph 5.1(b), unless the inadequacy has been cured within the sixty (60) day period as provided for in Paragraph 5.1(b), whichever occurs first. Matured Claims, whether arising prior to or during the Waiting Period, may be filed throughout said period by certified mail, return receipt requested.

5.4 Transfer of Trust Assets to Domiciliary Commissioner. In the event that the Trust becomes inadequate as specified in Paragraph 5.1(a) and notwithstanding the provisions of this Article 5 or of any other provision in this Deed of Trust, the Trustee shall comply with an order of the Domiciliary Commissioner or a U.S. court of competent jurisdiction directing the Trustee to transfer to the Domiciliary Commissioner or other designated Receiver all of the assets of the Trust Fund except those assets which are necessary to satisfy the Trustee's Priority Claims as determined in Paragraphs 2.2 and 3.7 or to reimburse the Trustee for funds or securities advanced pursuant to Paragraph 4.5. The Domiciliary Commissioner or other designated Receiver shall distribute assets transferred from the Trust in compliance with applicable state law. Compliance with such an order shall relieve the Trustee of all further duties, obligations and liabilities of any kind or description under this Deed of Trust. Nothing in this paragraph shall be construed as relieving the Trustee of any liability under this Deed of Trust for any acts or omissions which occurred prior to the date on which the Trustee transfers the assets of the Trust Fund to the Domiciliary Commissioner.

5.5 Distribution of Trust Fund Assets. If the assets of the Trust have been transferred to the Domiciliary Commissioner pursuant to Paragraph 5.4, such assets shall be applied in accordance with the laws of the State of New York applicable to the liquidation of insurance companies. If the Domiciliary Commissioner determines that the assets of the Trust Fund or any part thereof are not necessary to satisfy the Claims of Policyholders, such assets or part thereof shall be transferred by the Domiciliary Commissioner to the Trustee for application to the payment of any unpaid Trustee Priority Claims. Any remaining assets shall then be transferred by the Trustee to an Overseas Fund, as directed by the Agent.

## **ARTICLE 6**

### **MISCELLANEOUS**

6.1 No Partnership. Nothing herein shall constitute a partnership between the Underwriter and the Agent or between the Underwriter and any of the Other Underwriters, the underwriting business of each Underwriter being carried on for his or its sole and separate account.

6.2 Governing Law. This Deed of Trust shall be governed by, and construed and enforced in accordance with, the laws of the State of New York.

6.3 Survival of Obligations. Commencing on the Effective Date, this Deed of Trust shall be binding upon the parties hereto and their successors and assigns.

6.4 Amendment of this Deed of Trust.

(a) The Council shall have power in its discretion to propose to amend this Deed of Trust; provided that no amendment increasing the duties of the Trustee or reducing the rights and protections of the Trustee shall be binding upon the Trustee without the Trustee's written consent. All amendments to this Deed of Trust shall be in writing and signed on behalf of the Council.

(b) Notwithstanding the provisions of subparagraph (a), no amendment shall become effective without the prior written consent of the Domiciliary Commissioner and the IID.

(c) The Council shall give written notice of any proposed amendment to all Domiciliary and Non-Domiciliary Commissioners together with a copy of the proposed amendment. If no Non-Domiciliary Commissioner disapproves the proposed amendment within thirty (30) days of receipt of the notice, the amendment shall be effective on the date specified by the Domiciliary Commissioner.

(d) The Council shall advise the Trustee when any such amendment shall have become effective.

6.5 Notice. The Agent shall provide the Trustee with the names and mailing addresses of the manager of the IID, the Domiciliary Commissioner, all Non-Domiciliary Commissioners and the Agent's U.S. Representative, and shall update this list from time to time as may be necessary to keep the information in the list current. In providing the Notices required hereunder, Trustee may rely upon this list and in doing so shall be protected, held harmless and deemed to have exercised all reasonable due care.

6.6 Partial Invalidity Does Not Invalidate Entire Deed of Trust. If any provision of this Deed of Trust is held invalid or unenforceable, the balance of this Deed of Trust shall be construed and enforced as if such provision had not been inserted herein.

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

6.8 Headings and References. The headings herein are for reference only and not for defining any provisions hereof. Reference to this Deed of Trust shall include its amendments, if any. All articles, paragraphs and subparagraphs as well as their subdivisions and abbreviations cited herein refer to this Deed of Trust and its amendments, if any.

6.9 Accession. Each member of Lloyd's other than the Present Underwriters allocating or deemed to have allocated premium limits to the Syndicate shall establish a Trust hereunder by executing a deed of accession binding him to the terms hereof upon so allocating premium limits to the Syndicate.

6.10 Trusts for Succeeding Years of Account. The Trusts initially created hereunder by the Present Underwriters:

(a) in relation to the 1995 year of account of the Syndicate, shall relate to American Policies allocable to the short year August 1 through December 31, 1995; or

(b) in relation to any other year of account of the Syndicate, shall relate to American Policies allocable to such year of account.

Thereafter, each Underwriter allocating premium limits to the Syndicate in a subsequent year of account by entry into this Deed of Trust establishes a new Trust hereunder for such year of account upon the terms hereof.

6.11 Further Assurances. The Underwriter agrees to promptly and diligently complete, sign or execute and return to Lloyd's such deeds or other documents as Lloyd's may request from time to time to evidence and effectuate the accomplishment of the Underwriter's obligations hereunder.

6.12 Counterparts. This Agreement may be executed in any number of counterparts, each of which when signed by a party hereto, shall be deemed to be an original.

Syndicate No. «Synd\_No»

THE FIRST SCHEDULE

The Managing Agent of the above syndicate at the date of this Deed (being party hereto)

Managing Agent

«Managing\_Agent»

Address      «Address\_1»  
                 «Address\_2»  
                 «Address\_3»  
                 «Address\_4»  
                 «Address\_5»

THE SECOND SCHEDULE

Aggregate U.S. Liabilities of members of Syndicate in respect American Policies underwritten prior to August 1, 1995:

American Policies originally allocated to:

1993 year of account:

1994 year of account:

1995 year of account

Syndicate No. «Synd\_No»

IN WITNESS WHEREOF this Deed of Trust has been duly executed as a deed in the name and on behalf of each of the Present Underwriters by their duly authorized attorney-in-fact pursuant to the power of attorney presently in force for each Present Underwriter, Lloyd's, the Managing Agent and the Trustee as of the Effective Date hereof.

THE COMMON SEAL of Lloyd's was hereunto affixed in the presence of:

[*seal*]

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Authorized Signatory

Syndicate No. «**Synd\_No**»

SIGNED AND DELIVERED AS A DEED

for and on behalf of each of the )

Present Underwriters for whom )

Acts as duly authorised attorney in the )

presence of )

---

(Signature of attorney)

Witness:

Occupation:

Address:

Syndicate No. «**Synd\_No**»

SIGNED AND DELIVERED AS A )  
DEED )  
for and on behalf of )

[No seal required]

«**Managing Agent**»

by:

\_\_\_\_\_ Director

Name \_\_\_\_\_

\_\_\_\_\_ Director/Secretary

Name \_\_\_\_\_

Syndicate No. «**Synd\_No**»

CITIBANK, N.A., Trustee

Executed at One Lime Street  
London EC3M 7HA

[Seal]

By:

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«Signature»

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[Name]

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[Title]

Attest: \_\_\_\_\_

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[Name]

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[Title]